

Wanaka Community Board
16 March 2016

Report for Agenda Item: 2

Department: Infrastructure and Property

Right of Way Easement – 299 Dublin Bay Road

Purpose

The purpose of this report is to consider a Right of Way Easement application to formalise an existing access way to 299 Dublin Bay Road and to consider notifying Council's intentions to grant the easement if applicable.

Recommendation

That the Wanaka Community Board:

1. **Note** the contents of this report;
2. **Approve** notification of the intention to grant a Right of Way Easement over Council Reserve Land (Part Section 28 Blk V Lower Wanaka SD) in favour of the proprietors of 299 Dublin Bay Road (Lot 1 DP 24442).
3. **Appoint** three Committee Members (any two of which can form a hearing panel) to hear any submissions and make a recommendation to Council.

Prepared by:



Blake Hoger
APL Property Limited

25/02/2016

Reviewed and Authorised by:



Aaron Burt
Planner: Parks & Reserves

1/03/2016

Background

- 1 The family of the applicant, Mr Ben Wilson, held a lease over approximately 90 acres of crown land early in the 1900s which largely encompassed the Dublin Bay reserve area.
- 2 The family had the option to purchase the land in the 1960s however elected to acquire only the land surrounding the existing cottage on the understanding the remaining land would be vested to the local Council as Reserve. Such land was vested as Recreation Reserve in 1964 – NZGZ 1964 P231.

- 3 In the 1990s the retained land around the cottage was subdivided into 3 sections being Lots 1, 2 & 3 DP 24442. Lots 2 & 3 were eventually sold.
- 4 Driveway access was established for Lots 2 & 3 at the time of the subdivision however Lot 1, the subject of this report, continued to use the original driveway, established in the 1940s, which now traverses over the Recreation Reserve.
- 5 The Owners of Lot 1 are currently encroaching over the Reserve due to their fences extending beyond the boundary of the lot. It is understood this was due to the original survey not accurately reflecting the occupation of the time.
- 6 The applicant would like to acquire the land over which they are encroaching and has commenced discussions with the Council to do so. As the process to acquire the land will take some time, the applicant would like to proceed with the Right of Way in the meantime. The encroachment and acquisition is not considered in this report.
- 7 The applicant is seeking to formalise the driveway access via a Right of Way Easement over Pt Section 28 Blk V Lower Wanaka SD in favour of Lot 1 DP 24442. Approval for the Right of Way Easement was considered as part of Resource Consent (RM150457) and granted in accordance with Section 348(2) of the Local Government Act. This report considers whether to grant the easement from a landowner's perspective which is required despite the Resource Consent approval.

Comment

- 8 The driveway provides access to the existing dwelling and a boat shed. The maximum width of the proposed Right of Way is 6.23m with a minimum width of 4.52m. The formed width of the driveway is between 3.5m and 4.5m. There is a gate approximately half way down the driveway (with a passing width of 4.5m). The access is unsealed and, as Dublin Bay Road is also unsealed, the applicant considers it appropriate that the Right of Way remains unsealed.
- 9 The Dublin Bay Reserve Management Plan lists the primary use of the Reserve as being picnicking, swimming and boating and its prime function is to provide for recreational opportunities.
- 10 The driveway dissects approximately 450m² of reserve land from the remaining Recreation Reserve. This resultant isolated parcel of land is bordered by the current driveway, Lot 1 DP 24442 and the Dublin Bay Road Reserve. As a result, it is limited in its recreational use. It is noted however that regardless of the driveway, this particular parcel of reserve would unlikely generate any recreational use given its distance to the lake and close proximity to the access road.
- 11 When Lots 1, 2 & 3 DP 24442 were created, a strip of land for each section was formed connecting the lots to the Dublin Bay Road Reserve. The strip of land for Lot 1 is approximately 1.8m wide. Should a Right of Way Easement not be granted, Lot 1 DP 24442 would have little alternative but to redirect the driveway down their strip of land. As a result, it would be necessary for them to relocate existing sheds on the property and remove existing vegetation. Further, the strip

of land, being too narrow for general vehicular access, would likely result in a subsequent encroachment on to the Reserve.

- 12 Under the Reserves Act 1977, Ministerial consent is required before an easement can be granted over a reserve. This consent is now delegated to Council and must be granted prior to the Easement being lodged with LINZ. An intention to grant an easement must first be publicly notified unless it can be shown that people's ability to enjoy the reserve is not affected and that there is no long term effect on the land.
- 13 By granting a Right of Way Easement, the established driveway will be formalised and that part of the reserve will permanently be allocated for Right of Way by the owners of Lot 1 DP 24442.
- 14 Although this easement application is essentially a retrospective one, Council does have the opportunity to decline the easement and insist the land be returned to passive recreational use. We believe it is appropriate therefore that Council's intention to grant the easement, should they wish, be publicly notified.

Options

- 15 This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002.

- 16 Option 1 Approve notification to grant a Right of Way easement.

Advantages:

- 17 Will allow the public to provide comment with respect to the use of the reserve.
- 18 If eventually approved,
 - a. The decision to grant the Easement from a landowner's perspective will be consistent with the Resource Consent decision.
 - b. The owner of the property will be able to continue accessing their property in the same manner they have since the 1940's.
 - c. QLDC will receive an easement fee (valuation pending).

Disadvantages:

- 19 Public notification will delay Council's decision on whether to grant an Easement.
- 20 Option 2 Recommend to Council that they either grant or decline the easement without notification.

Advantages:

- 21 A decision on the application can be made quickly.

Disadvantages:

22 Members of the public may feel that they have not been given proper opportunity to provide comment on the matter.

23 Option 3 Decline the Right of Way easement.

Advantages:

24 The existing use of the reserve as a driveway for Lot 1 DP 24442 will cease and the land can revert to recreational use.

Disadvantages:

25 The applicant will be required to establish a new access way to their property resulting in expense and loss of existing vegetation.

26 This report recommends **Option 1** for addressing the matter as it will enable Council to receive public submissions, assess any concerns and gauge the public's interest in the matter. Council will then be in a better position to make an informed decision as to whether to grant the Right of Way Easement or not.

Significance and Engagement

27 This matter is of low significance, as determined by reference to the Council's Significance and Engagement policy as it does not involve a Council strategic asset, is of low importance to the Queenstown Lakes District, is not of great interest to the general community, is not inconsistent with policy and strategy and does not impact on Council's capability and capacity.

Risk

28 This matter relates to operation risk OR011A Decision Making. The risk is classed as moderate.

Financial Implications

29 The applicant has paid an application fee and has agreed to pay for all legal and surveying costs to establish the easement.

30 Council will receive an easement fee in accordance with the Easement Policy 2008 (valuation pending).

Council Policies, Strategies and Bylaws

31 The following Council policies, strategies and bylaws were considered:

- Significance & Engagement Policy 2014
- Easement Policy 2008 – the application is consistent with the policy.
- Dublin Bay Reserve Management Plan – the proposal is not inconsistent with the management plan.

Local Government Act 2002 Purpose Provisions

32 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by allowing for the establishment of a Right of Way Easement over an established access way;
- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

Consultation: Community Views and Preferences

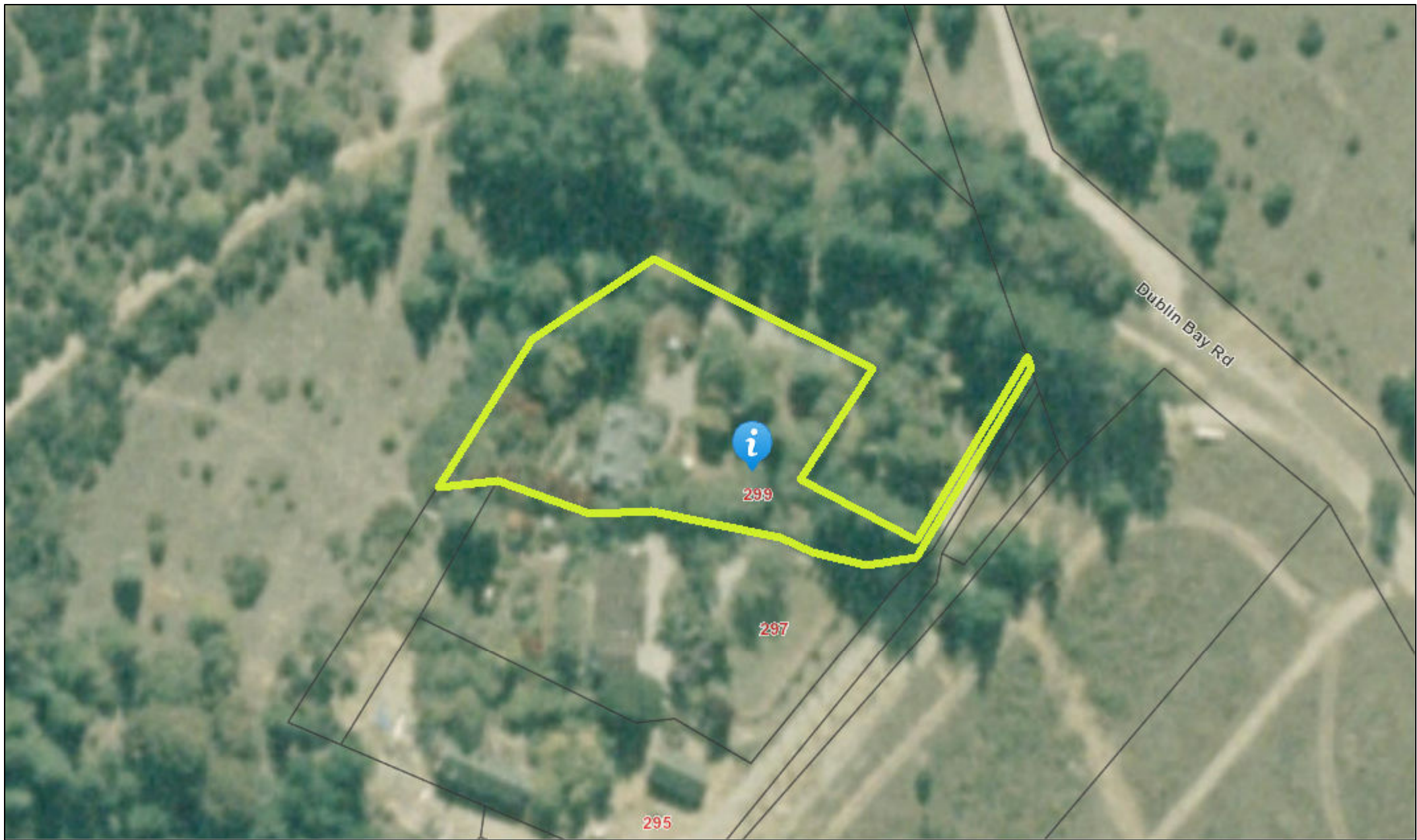
33 The persons who are affected by or interested in this matter are general members of the public.

34 We recommend that the intention to grant an easement be publicly notified in accordance with Section 48 (2) of the Reserves Act 1977.

Attachments

Attachment A – Site Plan

Attachment B – Resource Consent Decision including proposed Survey Plan & Right of Way Plan



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DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

APPLICATION UNDER SECTION 348

LOCAL GOVERNMENT ACT 1974

Applicant:	B Wilson
RM reference:	RM150457
Application:	Application under s348 of the Local Government Act 1974 (LGA) to create a new right of way approval.
Location:	299 Dublin Bay Road, Wanaka
Legal Description:	Lot 1 Deposited Plan 34442 contained in Computer Freehold Register OT16B/797
Zoning:	Rural General
Decision Date:	20 July 2015

SUMMARY OF DECISIONS

1. Consent is granted pursuant to Section 348 of the LGA, subject to the conditions outlined in Appendix 1 of this decision, imposed pursuant to Section 348 (2) of the LGA. The consent only applies if the conditions outlined are met.
2. To reach the decision to grant consent the application was considered (including the full and complete records available in Council's electronic file and responses to any queries) by Quinn McIntyre, Resource Consent Manager, as delegate for the Council. This decision was made and its issue authorised under delegated authority on 20 July 2015.

1. PROPOSAL

The applicant seeks to formalise an existing physical access to 299 Dublin Bay Road. The application is to create a right of way over Part Section 28 Block V Lower Wanaka Survey District which is a recreation reserve (NZGZ 1964 P2310).

The ROW is between 4.52 and 6.23 metres with a formed width of 3.5-4.5 metres.

2. REASONS FOR THE DECISION

The existing access is considered to be of an appropriate and no upgrade is considered necessary.

3. DECISION ON APPLICATION TO CREATE A NEW RIGHT OF WAY PURSUANT TO SECTION 348 OF THE LGA

Consent is **granted**, subject to the conditions outlined in *Appendix 1* of this decision imposed pursuant to Section 348 (2) of the LGA, for the creation of the following ROW Easements;

Parcel	Purpose	Servient Tenement	Dominant Tenement
A LT 488593	Right of Way Easement	Pt Sec 28 Blk V Lower Wanaka SD	Lot 1 DP 24442

4. OTHER MATTERS

The costs of processing the application are currently being assessed and you will be advised under separate cover whether further money is required.

If you have any enquiries please contact Sarah Picard on phone (03) 441 0499 or email sarah.picard@qldc.govt.nz.

Report prepared by



Sarah Picard
PLANNER

Decision made by

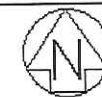


Quinn McIntyre
SENIOR PLANNER

APPENDIX 1 – CONSENT CONDITIONS

- 1 That the activity be undertaken in accordance with the application for the creation of the ROW easements as shown on the following plans, attached to this decision:
 - Digital Title Plan LT 488593
 - Proposed Right of Way - 299 Dublin Bay Road, being Lot 1 DP 24442 prepared by Southern Land

stamped as approved on 20 July 2015
- 2 A Licensed Cadastral Surveyor shall prepare all necessary documentation to enable the certification to be lodged with Land Information New Zealand.



Non Primary

Part Section 28 Block V Lower Wanaka SD

Dublin Bay Road
Legal Road

Lot 1 DP 24442

Part Section 28 Block V Lower Wanaka SD

QUEENSTOWN LAKES DISTRICT COUNCIL

**APPROVED PLAN:
RM150457**

Monday, 20 July 2015

Lot 2 DP 24442

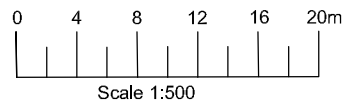
T 1/1

Land District: Otago
Dataset Type: Parcels without Survey Information
Digitally Generated Plan
Generated on: 10/06/2015 12:02am Page 4 of 4

Easement over Part Section 28 Block V Lower Wanaka Survey District

Surveyor: Lucan Jonathan Waite
Firm: Southern Land Limited
Survey Date: 9/06/2015

CSD Plan
LT 488593
DRAFT



Pt Section 28
Blk V Lower Wanaka SD

Dublin Bay Road

RIGHT OF WAY

Lot 1
DP 24442
3175m²



QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM150457

Monday, 20 July 2015



**SOUTHERN
LAND**

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Proposed Right of Way
299 Dublin Bay Road, being Lot 1 DP 24442

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PREPARED FOR

Ben Wilson

SCALE

1:500 @ A3

DATUM & LEVEL

Lindis Peak 2000
LEVEL IN TERMS OF FALSE DATUM
ORIGIN - NAL RL = 30643

SURVEYED	DATE	CHECKED	DATE	DRAWING REFERENCE	REVISION
AHB	13/09/13	LW	23/09/13	P4066_T2	B
EH	25/06/15	LW	23/09/13		