

QLDC Council
2 June 2022**Report for Agenda Item | Rīpoata moto e Rāraki take [5]****Department: Community Services****Title | Taitara Application by Bridesdale Farm Developments Limited for a Right of Way Easement over Widgeon Park recreation reserve land****PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO**

The purpose of this report is to consider an application by Bridesdale Farm Developments Limited for a Right of Way Easement to provide formal legal vehicle access to the Bridesdale Garden Allotments and the adjoining rural zoned land DP505513 Lots 404 and 405.

RECOMMENDATION | NGĀ TŪTOHUNGA

That Council:

1. **Note** the contents of this report;
2. **Note** the Hearing Panel recommendation to approve the Right of Way easement subject to the amended conditions set out in recommendation 4 below.
3. **Approve** a Right of Way Easement to the landowner of DP 505513 Lot 404 and 405.
4. **Direct** that the approval of any easements over Council Reserve Land is subject to the following terms and conditions:
 - a. Use to be restricted to light vehicle and pedestrian access for the current farming use and to enable access to the garden allotments.
 - b. Final alignment of the easement to be agreed with Council.
 - c. QLDC Parks and Reserves and Infrastructure departments to be consulted prior to any works commencing.
 - d. Final conditions of the easement to be agreed between Council and Bridesdale Farm Developments Limited that must include:
 - i. A mechanism to ensure ongoing legal access for the garden allotment owners;
 - ii. Safe and unimpeded public access to the remainder of the reserve;
 - iii. In the event that Council develops an alternative access to its reserve land through Widgeon Place, and access is to be provided to the land

- in record of title DP505513 Lot 404, creation of the access will be at the landowner of DP505513 Lot 404's cost.
- iv. Subject to item d(v), the Council and the owner of record of title DP505513 Lot 404 are equally responsible for all ongoing maintenance costs associated with the easement to maintain it in good order as at the date of grant. .
 - v. The owner of record of title DP505513 Lot 404 is responsible for all maintenance and/or repairs associated with the easement that are attributable to any improvements associated with and/or to the easement carried out by the landowner.
- e. Ability to register the easement limited to a period of 3 years from the date of full Council approval.
 - f. Bridesdale Farm Developments Limited will meet all of Council's reasonable costs associated with the easement.
5. **Agree** to exercise the Minister's consent (under delegation from the Minister of Conservation) to the granting of the identified easements over Council Reserve Land; and
6. **Delegate** approval of final wording of the easement conditions and signing authority to the General Manager Community Services.

Prepared by:



Jeannie Galavazi
Senior Parks Planner

12/05/2022

Reviewed and Authorised by:



Thunes Cloete
General Manager Community
Services

12/05/2022

CONTEXT | HOROPAKI

- 1 Bridesdale Farm Developments Ltd (the applicant or BFDL), was approved as a Special Housing Area developer in 2016. The development resulted in the subdivision of 147 lots, referred to in this report as Bridesdale. As part of the development, the applicant provided garden allotments on adjacent low-level farmland that were linked to the main property title for each subdivided lot. Each of the garden allotments adjoins Lot 405 DP 505513 (Lot 405) which is owned by BDFL.
- 2 Lot 404 DP 505513 (Lot 404) is currently a vacant balance lot and extends from Lot 405 down to the Kawarau River. It is zoned Rural and used (currently) for farming. Lot 404 is also owned by BDFL.
- 3 The applicant originally intended to provide access to the garden allotments and Lots 404 and 405 via a piece of land that was proposed by BDFL to be vested in Council as legal road - Lot 205 DP 505513 (Lot 205).
- 4 However, the Council did not accept the legal road as it is situated in a flood zone, and Lot 205 was vested as recreation reserve land. As a consequence, at the time of subdivision approval, while Lots 404, 405 and the garden allotments were confirmed to have “legal access” via Alec Robins Road, they had no practical formed legal access.
- 5 The recreation reserve was vested in Council as part of the subdivision and provides a public connection from the development through to the river trails. Lot 205 also immediately adjoins several large recreation reserve parcels, known as Widgeon Park, which is currently largely undeveloped. Lot 308 DP 505513 (Lot 308) is recreation reserve land above the garden allotments and a small section of the existing gravel accessway passes through this parcel.
- 6 The applicant has previously sought resource consent for activities on Lot 404, such as for a private Tennis Academy. This application was declined. Through an appeal on the Proposed District Plan Open Space and Recreation Zone Chapter, the applicant is also seeking to rezone the land from Rural to Open Space and Recreation.
- 7 BDFL have applied for a Right of Way (ROW) easement over recreation reserve Lots 205 and 308 DP 505513, in favour of Lots 404 and 405 DP 505513 (and consequently the garden allotments). A survey plan has been prepared (**Attachment A**).
- 8 It was agreed between BDFL and council officers prior to notification that an easement fee was not appropriate in this instance as BDFL had previously owned Lots 205 and 308 and then vested the land to Council.
- 9 The intention to grant the ROW easement was publicly notified on 13 January 2022, in accordance with Section 48 (2) of the Reserves Act with the following conditions:
 - a. *Use to be restricted to light vehicle and pedestrian access for the current farming use and to enable access to the garden allotments.*
 - b. *Final alignment of the easement to be agreed with Council.*

- c. *QLDC Parks and Reserves and relevant Infrastructure departments to be consulted prior to any works commencing.*
 - d. *Final conditions of the easement to be agreed between Council and Bridesdale Farm Developments Limited that must include:*
 - i. *A mechanism to ensure ongoing legal access for the garden allotment owners;*
 - ii. *Safe and unimpeded public access to the remainder of the reserve;*
 - iii. *Enable Council to relocate the access in the event that Council develops an alternative access to the reserve land through Widgeon Place at Bridesdale Farm Developments Limited's cost.*
 - iv. *Prevent Bridesdale Farm Developments Limited from objecting to future uses of the reserve land for other purposes that do not prevent Bridesdale Farm Developments from accessing their farm lots.*
 - v. *Bridesdale Farm Development Limited will pay for all ongoing maintenance costs associated with the easement.*
 - e. *Ability to register the easement limited to a period of 3 years from the date of full Council approval.*
 - f. *Bridesdale Farm Developments Limited will meet all of Council's reasonable costs associated with the easement.*
- 10 One submission was received within the notification period from the applicant BDFL **(Attachment B)**.
- 11 The submitter supports the intention of the notice to grant a ROW easement but objects to three of the conditions and seeks the following amendments to the terms (amendments shown in underline and deletions shown in strike-through):
- 12 Condition (a): "Use to be restricted to light vehicle and pedestrian access for the current farming use and to enable access to the garden allotments, and and/or any other use of [Lot 404] that may be permitted by relevant zoning or consents from time to time".
- 13 Condition (d)(iii): "Enable Council to relocate the access in the event that Council develops an alternative access to the reserve land through Widgeon Place at the cost of the Council.", ~~at Bridesdale Farm Development Limited's cost~~
- 14 Condition d(v): "~~Bridesdale Farm Development Limited will pay for~~ All ongoing maintenance costs associated with the easement shall be split equally between the parties to the easement in accordance with Schedule 5 of the Land Transfer Regulations 2018".
- 15 A hearing was held on 3 May 2022. The Hearing Panel (the Panel) comprised Councillors Calum MacLeod, Esther Whitehead and Glyn Lewers.

ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

Submission and Hearing Panel Deliberations

- 16 BDFL pre-circulated information to the Hearing Panel expanding their argument in support of their submission. This is included as **Attachment C**.
- 17 BDFL requested to have longer than normal to speak to their submission, and subsequently were allocated 30 minutes.
- 18 The Hearing Panel gave full consideration to the submission received and determined the extent to which the submission was accepted or disallowed. Deliberations immediately followed the Hearing and the minutes are included as **Attachment D**.

Main issues and subsequent changes

Future rezoning

- 19 Condition (a) restricts the use of the easement to the current 'light vehicle and pedestrian access for the current farming use and to enable access to the garden allotments'. BDFL sought that this condition be changed to allow for future zoning or development.
- 20 The Panel considered that the notified wording of condition (a) provides council and the public with certainty of the use and purpose of the ROW easement. No information has been provided by BDFL as to what the future use (and subsequently effects) of Lot 404 will be. In the event that the zoning or use of Lot 404 was changed in future, council will consider any application by BDFL to change the easement terms and conditions.
- 21 BDFL submitted that their proposed changes would avoid the inefficiency associated with the need to make a new application to change conditions in the future. However, given the lack of information about potential future uses, the Panel was more comfortable to retain the proposed restrictions and deal with a change in the future through another process.
 - a. Recommended change: No change.

Cost of connection

- 22 Condition d (iii) enables QLDC to relocate the access in the event that it develops an alternative access to the reserve land via Widgeon Place and Widgeon Park at BDFL's cost. The applicant submitted that this be at council's cost.
- 23 The Hearing Panel noted that public access to the garden allotments and Lot 404 will always be provided via the recommended easement which is an enduring property right. It was also noted that Lots 205 and 308 are recreation reserve which already ensures public access to the garden allotments. Should the Widgeon Park be developed in future that results in the main access to the reserve being via Widgeon Place (which is a bigger road and not as constrained as the roads through the Bridesdale residential streets) then it is appropriate that the landowner form their own connection to this if required.

24 Condition d (iii) should be amended to read 'the Landowner of Lots 404 and 405 DP 505513', not Bridesdale Farm Developments Limited as the landowner may change in future.

25 Recommended change:

d (iii) In the event that Council develops an alternative access to its Reserve Land through Widgeon Place, and access is to be provided to the land in record of title DP505513 Lot 404, creation of the access will be at the landowners cost. ~~Enable Council to relocate the access in the event that Council develops an alternative access to the reserve land through Widgeon Place at Bridesdale Farm Developments Limited's the Landowner of Lot 404 and 405 DP XXXXX cost.~~

Shared Maintenance

26 Condition (d) (v) would require that BDFL be solely responsible for the costs of the ongoing maintenance of the easement. The applicant sought that this cost be split evenly between BDFL (or the Landowner) and the Council.

27 The Panel agreed in part with BDFL. The accessway (Lots 205 and a small section on Lot 308) is currently maintained by council as a gravel accessway. Should the accessway remain at this level of service then it's appropriate for the maintenance costs to be split evenly between the council and the landowner. However, the Panel agreed that should any future landowner undertake development on Lot 404 that would require a higher level of service (eg a sealed road) then the increase in maintenance for this higher level of service would sit with the landowner.

28 Recommended change:

29 Condition (d)(v) (now condition (d) (iv)) shall be replaced with the following:

- vi. Subject to item d(v), the Council and the owner of record of title DP505513 Lot 404 are equally responsible for all ongoing maintenance costs associated with the easement to maintain it in good order as at the date of grant and to prevent it from becoming a danger or nuisance.
- v. The owner of record of title DP505513 Lot 404 is responsible for all maintenance and/or repairs associated with the easement that are attributable to an act or omission of the owner and/or any improvements associated with and/or to the easement.

30 Following the hearing, the panel have also agreed to delete the non-object clause from the easement in response to a query from staff. No person is prejudiced by this amendment.

31 The Panel recommend the Easement be granted subject with the following conditions:

- a. Use to be restricted to light vehicle and pedestrian access for the current farming use and to enable access to the garden allotments.
 - b. Final alignment of the easement to be agreed with Council.
 - c. QLDC Parks and Reserves and relevant Infrastructure departments to be consulted prior to any works commencing.
 - d. Final conditions of the easement to be agreed between Council and Bridesdale Farm Developments Limited that must include:
 - i. A mechanism to ensure ongoing legal access for the garden allotment owners;
 - ii. Safe and unimpeded public access to the remainder of the reserve;
 - iii. In the event that Council develops an alternative access to its reserve land through Widgeon Place, and access is to be provided to the land in record of title DP505513 Lot 404, creation of the access will be at the landowners cost.
 - iv. Subject to item d(vi), the Council and the owner of record of title DP505513 Lot 404 are equally responsible for all ongoing maintenance costs associated with the easement to maintain it in good order as at the date of grant and to prevent it from becoming a danger or nuisance.
 - v. The owner of record of title DP505513 Lot 404 is responsible for all maintenance and/or repairs associated with the easement that are attributable to an act or omission of the owner and/or any improvements associated with and/or to the easement.
 - e. Ability to register the easement limited to a period of 3 years from the date of full Council approval.
 - f. Bridesdale Farm Developments Limited will meet all of Council's reasonable costs associated with the easement.
- 32 Under the Reserves Act 1977, Ministerial consent is required before an easement can be granted over a reserve. This consent is delegated to Council and must be granted prior to the easements being lodged with LINZ.
- 33 Option 1 To approve the ROW easement over Council Reserve Land, with the terms and conditions as detailed above.

Advantages:

- 34 The owners of the Bridesdale properties and any future landowners of Lot 404 and 405 will have practical formal legal access.

35 Formal legal access will be provided to the garden allotments.

36 The costs of maintaining the easements and any future connection to the easements will fall fairly to the council/ratepayer and the landowner of Lot 404 and 405.

Disadvantages:

37 The recreation reserve will be encumbered.

38 Option 2 Decline the ROW easement and renotify the easement with different terms and conditions.

Advantages

If there are alternative conditions that Council wishes to impose on the easement, declining the easement and re-notifying it with new conditions will create an opportunity to do this and will ensure that the Council's process is fair.

BDFL will have further opportunity to submit on the easement terms and conditions and may receive a different outcome.

The public will have another opportunity to submit on the easement terms and conditions.

Disadvantages

The recommendations from the Hearing Panel will not be incorporated.

This process would not be an efficient use of council or BDFL resources as it will require another round of public consultation, submissions and a hearing if there are submissions.

This will further delay the process for BDFL to obtain an easement to access its property legally.

39 Option 3 Decline the ROW easement

Advantages:

40 The reserve will remain unencumbered.

Disadvantages:

41 The recommendations from the Hearing Panel will not be incorporated.

42 The owners of the Bridesdale properties and any subsequent landowner of Lot 404 and 405 will not have practical formal legal access to the garden allotments and Lot 404 and 405.

43 This report recommends **Option 1** for addressing the matter because it would allow the ROW easement that provides certainty to council on the use of the easement and the costs are fairly shared.

CONSULTATION PROCESS | HĀTEPE MATAPAKI:

> SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

- 44 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because it relates to a public recreation reserve and it is an enduring property right.
- 45 The persons who are affected by or interested in this matter are the residents/ratepayers of the Queenstown Lakes District community, the residents of Bridesdale, the users of the recreation reserves and BDFL.
- 46 The Council has undertaken consultation in accordance with the process in the Reserves Act 1977. The Council also consulted with the public on the Lake Hayes Estate Shotover Country Reserve Management Plan 2021 which included Widgeon Reserve.

> MĀORI CONSULTATION | IWI RŪNANGA

- 47 The Council has consulted with Kai Tahu on the Lake Hayes Estate Shotover Country Bridesdale Reserve Management Plan 2021. No specific feedback was received on Widgeon Park.

RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

- 48 This matter relates to the Community & Wellbeing risk category. It is associated with RISK0056 relating to the ineffective provision for the future planning and development needs of the district within the QLDC Risk Register. This risk has been assessed as having a low inherent risk rating.
- 49 The approval of the recommended option will support the Council by allowing us to retain the risk at its current level.

FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

- 50 There are no operational and capital expenditure requirements additional to existing approved budgets or Annual/Ten Year Plans associated with the adoption of the recommended option. Maintenance of the easement will be met through current operational budgets.

COUNCIL EFFECTS AND VIEWS | NGĀ WHAKAAWEAWE ME NGĀ TIROHANGA A TE KAUNIHERA

- 51 The following Council policies, strategies and bylaws were considered:
- The Lake Hayes Estate Shotover Country Bridesdale Reserve Management Plan 2021
 - The QLDC Easement Policy 2008: <https://www.qldc.govt.nz/council-online/council-documents/policies/>
 - The QLDC Disability Policy: <https://www.qldc.govt.nz/assets/Uploads/FINAL-Disability-Policy-May-2018.pdf>

- Refer to online documents here: <http://www.qldc.govt.nz/policies>

52 The recommended option is consistent with the principles set out in the named policy/policies.

53 This matter is not included in the Ten Year Plan/Annual Plan as it will be met by existing operational budgets.

LEGAL CONSIDERATIONS AND STATUTORY RESPONSIBILITIES | KA TURE WHAIWHAKAARO, ME KĀ TAKOHAKA WAETURE

54 Under the Reserves Act 1977, Ministerial consent is required before an easement can be granted over a Reserve. This power is now delegated to Council and must be granted prior to the easement being lodged with LINZ. Section 48 ‘Grants of rights of way and other easements’ (Reserves Act 1977), allows for the consideration of proposed easements.

LOCAL GOVERNMENT ACT 2002 PURPOSE PROVISIONS | TE WHAKATURETURE 2002 O TE KĀWANATAKA Ā-KĀIKA

55 Section 10 of the Local Government Act 2002 states the purpose of local government is (a) to enable democratic local decision-making and action by, and on behalf of, communities; and (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future. The recommendation in this report is appropriate and within the ambit of Section 10 of the Act.

56 The recommended option:

- Can be implemented through current funding under the Ten 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.

ATTACHMENTS | NGĀ TĀPIRIHANGA

A	Survey Plan showing easements and reserve land parcels
B	Submission from BDFL
C	Pre-circulated evidence for Hearing from BDFL
D	Hearing and Deliberations Minutes