
REPORT 7
(1215/52/IM)

**DECLARING PRIVATE ROAD TO BE PUBLIC ROAD
AND VESTING OF ROAD RESERVE AS ROAD –
KNOLLS STREET, ISLAND BAY**

1. Purpose of Report

This report has two purposes:

1. To declare the private section of road at Knoll Street, Island Bay to be public road by resolution under Section 349 of the Local Government Act 1974; and
2. To vest the Road Reserve (segregation strips) as road by means of passing a resolution under Section 111 of the Reserves Act 1977.

2. Recommendations

It is recommended that the Committee:

1. *Receive the information.*
2. *Recommend that the Council pursuant to Section 349(1)(a) of the Local Act 1974:*
 - (a) *Agree to declare the private road, known as Knoll Street, Island Bay, Being 508 square metres more or less being Part Lot 651 on Deposited 251 comprised in Computerised Freehold Register WN92/259 as public road.*
3. *Recommend that the Council pursuant to Section 111 of the Reserves Act 1977:*
 - (a) *Agree to vest 67 square metres more or less being Part Reserve Plan 1591 comprised in Computerised Freehold Register Title WN4/1168 as Public Road.*

3. Background

The section of Knoll Street, Island Bay, legally described as Part Lot 651 DP 251 being 505 square metres (shown in yellow in Appendix 1) is a private road with a segregation reserve (marked in red in Appendix 1) separating the adjoining landowners from the private road.

3.1 Ownership

The area of private road was acquired by Richard Keene (former Mayor of Melrose Borough Council) on 4 February 1898. Mr Keene was a property developer and died on 23 August 1927. A search of his death certificate and will has revealed that this piece of land did not transfer after his death to his heirs and beneficiaries but has remained as an “orphan” parcel with no person being rated for it or holding any legal responsibility for the land.

The segregation reserve which adjoins Part Lot 651 was put in place in 1904 as part of the subdivision requirements for the Milne Terrace development to prevent access onto the private road through the rear of the adjoining properties. Mr Francis Loudon owned the segregation reserve which transferred to Council’s ownership in 1951 in lieu of rates owing under the Rating Act 1925.

Council sold a small section of the segregation reserve behind 24 Knoll Street to the adjoining landowner on 14 August 1965. The rest of the reserve remains in place, legally preventing access onto the private road.

3.2 General History

On the 12 September 1955 after receiving a petition from adjoining landowners, Council passed a resolution to vest the private road as a public street, subject to it being upgraded and formed to the satisfaction of the City Engineer. This resolution was adopted by Council on the 14 September 1955. The upgrading of the road was to be arranged and paid for by the adjoining landowners. This did not occur so the road did not vest at this time.

In 1959, 1974 and 1980 adjoining landowners wrote to Council requesting the road be legalised as a public street and Council take over the maintenance of the road. Council reaffirmed its original resolution that subject to the road being formed and upgraded to Council’s standard with the costs being met by the adjoining landowners; Council would then declare the road as a public road and take over future maintenance.

Council reached an agreement with the residents adjoining this piece of Knoll Street to undertake the upgrade work on their behalf subject to them reimbursing Council for the costs. In 1983 Council undertook repair works and upgraded the private section of Knoll Street on behalf of the adjoining landowners who were then required to reimburse Council for the construction costs.

From 1983 to 1995 dialogue and meetings were held with the residents in respect of the road and storm water issues. Recovery of outstanding construction costs continued over this period protracted by the change of ownership of some properties.

On 6 June 2000 a further approach was made to Council by the then owner of 184A Derwent Street to legalise the access.

On 31 October 2005, the new owner of 184A Derwent Street approached Council to obtain agreement in principle to vest Knoll Street as a public road. Council confirmed in writing on 14 November 2005 acceptance in principle to the vesting of Knoll Street as public road subject to all legal and survey costs involved in the vesting of the road and segregation strips being borne by the owner of 184A Derwent Street.

On 9 August 2006 Council's Roading Business Unit, confirmed that the road was now at an acceptable standard to be vested into Council ownership as a public street without any further improvements being required. All outstanding monies have been recovered.

The adjoining landowner of 184A Derwent Street has given Council a written undertaking to pay all legal and survey costs associated with the vesting of the private road and segregation reserve as road.

While the declaring of the private road as public road and the vesting of the segregation strips as road may create the potential for future development, any future proposals will be subject to obtaining the necessary resource consents.

This agreement to vest the road and segregation strips gives affect to an existing Council resolution and recognises that payment has been made by the adjoining landowners in respect of upgrading the road.

4. Discussion

4.1 Legislative Process

There are two processes which are required to vest the private road and segregation reserve as public street.

First, the private road can be declared public road under Section 349 of the Local Government Act 1974 subject to Section 2 of the Act which required the road to be properly formed. Section 4 of this Act states that every private road declared to be a public road shall become a road vested as such in the Council.

Secondly, once the private road is vested as public road, the segregation reserve can be vested as road under Section 111 of the Reserves Act 1977.

4.2 Consultation

The declaring of the private road as public road does not require any public consultation however all affected parties such as adjoining landowners and immediate residents have been sent letters explaining Council intentions and the benefits they will derive from this process. The majority of adjoining landowners have provided positive feedback.

Consultation has been carried out with Roding in relation to this matter and they have confirmed their acceptance of the vesting of the private road and segregation reserve as road.

5. Conclusion

The adjoining landowners of the private section of Knoll Street, Island Bay have now complied with Council's requirement to upgrade the road to a standard acceptable by Council at their own cost. Council is now required to declare the private road a public road as previously resolved by Council on 14 September 1955.

The road reserve (segregation strips) adjoining the boundary of the private road can then be vested as road to provide legal access onto the road for the adjoining landowners.

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Supporting Information

1) Strategic Fit / Strategic Outcome

This paper supports Council's strategic direction for managing growth in the suburbs through provision of adequate infrastructure under the Transportation Asset Management Plan 2006.

2) LTCCP/Annual Plan reference and long term financial impact

The costs incurred with the declaration and vesting process are being paid for by an adjoining land owner. There will eventually be costs involved in the maintenance of the road but this will be budgeted for in the future by Roading.

3) Treaty of Waitangi considerations

There is no Treaty of Waitangi implementations in respect of this matter.

4) Decision-Making

A decision to take over ownership of this land requires a Council resolution as does the vesting of the road reserve as road. The report sets out the process and reflects the views and preferences of those with an interest in this matter who have been consulted with.

5) Consultation

a) General Consultation

All affected parties have been identified. The effects of this work are confined to the street and surrounding neighbourhood. Consultation was targeted to the local neighbourhood. Letters have been sent to all affected parties notifying them of Council's proposed intentions to declare the private road as public road and vest the segregation reserve as road and providing them with the benefits which will result in this action. The Council is not required under legislation to consult on this matter.

Consultation with Roading has been carried out.

b) Consultation with Maori

There is no requirement to consult with Maori on this matter.

6) Legal Implications

Council's lawyers have been consulted during the development of this report.

APPENDIX ONE

Private Rd and Segregation Reserve Knoll St



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 Accuracy in urban areas: +/-1m
 Accuracy in rural areas: +/-30m
 Other information generally +/- 1m accuracy.

Other data has been compiled from a variety of sources and its accuracy may vary.
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Scale 1:800