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**REPORT 3**  
*(1215/52/IM)*

## **ACCESS PATHS TO PRIVATE PROPERTY ON ROAD RESERVE POLICY**

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### **1. Purpose of Report**

This report:

- provides appropriate information on Council's responsibilities with regards to the use of access paths on unformed legal road reserve to enable a review of the current Half Cost access paths to private property policy
- request's that SPC agree three technical modifications to the Half Cost access paths policy to ensure that the Council's safety practices remain consistent with our legislative obligations under the Local Government Act (1974).

This review is part of the Infrastructure Directorate's regular audit of policies to ensure they remain relevant.

### **2. Executive Summary**

The current Council policy for managing access paths located on unformed legal road reserve serving three or more private properties has been in place for over 70 years. The steep topography of Wellington means construction of these access paths is costly. The Council has set a threshold for cost contribution at three or more properties. The Council contributes up to half the cost of the maintenance of these access paths on the basis that they provide a pedestrian network for the public to use, while also, providing access to private properties.

This report recommends that the policy incorporate three technical modifications.

Firstly, to ensure Council's safety practices remain consistent with our legislative obligations under the Local Government Act (1974), where access paths are deemed dangerous to users, the Council will take steps to make the access path safe in the manner it sees fit. This will apply to all access paths situated on unformed legal road reserve.

The Council has no obligation under the Local Government Act (1974) to construct or maintain access paths. However, as a land owner, Council could be held liable for negligence where it is aware of an unsafe access path and takes no reasonable action to make it safe.

In the case of unsafe Half Cost access paths (serving three or more properties), the Council will contribute up to half the cost of making these safe.

In the case of access paths on unformed legal road that serve less than three properties (i.e. are not half-cost access paths), the Council recover the full cost of making these paths safe for users and will have no ongoing responsibility for the maintenance of the access paths. It is estimated that the cost of making such footpaths safe could be up to \$10k per year.

Council will continue to pay for the full cost of public access paths.

Secondly, it is recommended that Council modify the policy removing residents' ability to provide a private quote for their labour only to complete the construction work for Half Cost access paths themselves. Council will no longer provide the required materials for this work. Instead, Council will provide residents with the option of carrying out such works through Council's contractors or a contractor of their choice provided their work meets Council's standard and the cost is reasonable to Council.

Thirdly, it is recommended that for all new applications seeking to construct access paths on unformed road reserve (regardless of the number of properties the access path serves), the property owner's ongoing maintenance responsibilities will now be documented in an encumbrance on the title and also noted in the corresponding Land Information Memorandum (LIM) report at the applicant's expense.

### 3. Recommendations

It is recommended that the Committee:

1. *Receive the information.*
2. *Recommend that Council:*
  - a) *Confirm that where a private access path on unformed legal road serves **three or more properties**, Council will assist to the extent of half the cost of the maintenance of the access path. These paths are deemed to be Half Cost access paths. (Refer to Appendix 1).*
  - b) *Confirm that responsibility for access paths to private properties on unformed legal road reserve remains with the affected property owners.*
  - c) *Confirm that where access paths on unformed legal road are considered unsafe by the Council, the Council will contact the property owners in the first instance and request that the access path be repaired and made safe within a specified time frame. If the property owners fail to do so, the Council will take any steps that it considers appropriate and reasonable to make the access path safe*

*in the manner it sees fit. This will apply to all access paths found on road reserve.*

- d) *Confirm that it will:*
- seek to recover the cost of making safe access paths serving less than three properties and will have no ongoing responsibility for their maintenance*
  - contribute up to half the cost of making Half Cost access paths serving three or more properties safe*
  - continue to pay for the full cost of public access paths.*
- e) *Confirm that it will remove the ability of property owners to provide a private quote for their labour only to complete the construction work for Half Cost access paths themselves. Council will no longer provide the required materials for this work. Instead, Council will provide residents with the option of carrying out such works through Council's contractors or a contractor of their choice provided their work meets Council's standard and the cost is reasonable to Council.*
- f) *Confirm that for all new applications for access paths on unformed legal road reserve (regardless of the number of properties), the property owner's ongoing maintenance responsibilities will now be documented in an encumbrance on the title and noted in the Land Information Memorandum Report at the applicant's expense.*
3. *Note that a Through Path connects two sections of the road and applies only where there is no public footpath on that side of road. Through Paths are funded on the same basis as public foot paths given the public benefit they provide to users.*
4. *Note that this modified policy will be advertised on the Council's website and by way of a letter to all Half Cost access paths property owners once confirmed by Council.*

## **4. Background**

### **4.1 Categories of Access Paths**

There are three categories of access paths - Public, Half Cost and Private.

Public access paths serve the public. The total cost of construction and ongoing maintenance is met by the Council and allows for the unimpeded travel of the public from one location to another. Examples include: kerbside paths in the Central Business District, suburban retail areas and public parks. Through Paths between two streets are also considered public paths. A Through Path connects two sections of the road and applies only where there is no public footpath on that side of road. Through Paths are funded on the same basis as

public access paths given the public benefit they provide to users. Appendix 2 provides examples of public access paths.

A Half Cost access path serves three or more properties and the owners concerned are collectively responsible for the original formation, including obtaining and complying with any necessary building and/or resource consents at the owners' cost. The Council may assist to the extent of providing half the cost of maintenance of surfacing, hand rails, and storm water channels. Half Cost access paths must meet the following criteria:

- pedestrian paths only, and not vehicular access
- serve at least three or more properties
- be the only access to the property (i.e. there is no vehicular access to the relevant properties)
- the access path is located on unformed legal road (not private property); and
- generally run parallel to the formed road.

Appendix 1 provides examples of situations in which the policy is applied.

Under the current policy, Council has agreed with the owners of 403 (16 km) Half Cost access paths to contribute to their maintenance. The process stipulated by the policy requires property owners to make an application to the Council for the contribution of half the cost of maintenance of an access path serving three or more properties. The Council has a capped budget of \$31k within the Pedestrian Network Maintenance Project - C448 budget for the purpose of contributing to such paths each year. In addition the cost of maintaining structures associated with these accesses is between \$30-40k per year.

Private access paths serve private properties only. The Council pays for none of the costs associated with the footpath. These access paths provide no public benefit and the only beneficiary are private properties. Examples include, footpaths located on private property and private access paths on legal road that serve fewer than three private properties. We estimate that there are 150km of access paths serving less than three properties. Appendix 3 provides an example of this situation.

The rationale for funding, not funding or contributing toward the cost of the access paths, is based on whether an access path is primarily for private, public or public/private benefit.

Where an access path to an adjoining property is shared with other neighbours the benefits lie primarily with the property owners. There is often benefit to the property owner in respect of sharing the costs with others and having a gentler gradient on the access path.

In some situations access paths provide a Through Path value to the broader public. A Through Path situation arises where there is no roadside foot path adjoining the side of the street. The Through Path connects two sections of the road.

The Council has also previously acknowledged some public/community benefit in situations where there is:

- no public footpath along the adjoining side of the street, and
- the access path provides a reasonable through path for the public travelling along the street.

Because the Through Path provides value to the public they are fully funded and considered public footpaths.

#### **4.2 Current Council Policy**

The current Council policy on access paths was encapsulated in a report to Council on 3 December 1934. The current policy provides that:

*"Paths, drives and any works carried out on road reserve primarily for the purpose of enabling people to get to individual properties or to small groups of properties are deemed to be accesses to private properties. The following policy has applied to the construction and maintenance of such accesses:*

*"(a) Pedestrian accesses serving one or two properties: Construction and maintenance is the responsibility of the owner or owners concerned.*

*"(b) Pedestrian accesses serving three or more properties: The owners concerned are collectively responsible for the original formation and the Council assists to the extent of half cost in surfacing, erection of hand rails, installation of storm water channels. Council assists in the maintenance to the extent of half cost in these accesses.*

*(c) Vehicular accesses: These are entirely the responsibility of the individual's concerned."*

The responsibility for the maintenance of vehicular accesses or private driveways is contained in the Construction and Maintenance of Private Driveways Policy. This policy was reconfirmed by Council on 24 August 1995.

In the case of the Half Cost access paths policy, Council set a threshold for involvement on the basis of the number of houses being served, that is, where there are three properties or more there is usually enough foot traffic to warrant community funding. Therefore the Council contributes to half the costs of the maintenance of these access paths. This policy has been in place for over 70 years. We believe that there is an expectation that this policy continue.

Half Cost access paths represent 1.9% (16 km) of the public footpath (850kms). The Council currently contributes to the maintenance of 403 Half Cost access

paths. The Council expects that the standard of these access paths meets the level of service the Council sets for standard public access paths.

From 30 June 2002 to 30 June 2007, the Council paid approximately \$155,456.00 toward Half Cost access paths. The Council provides a dollar for dollar contribution toward their maintenance on a first come, first serve basis each year. Based on the current spending, the annual estimated renewal and maintenance cost will be \$31k. In addition we estimate the cost of maintaining structures associated with these access paths to be between \$30-40k per year. These costs are met within existing budgets.

Manukau, Dunedin, Auckland, and Christchurch city council's do not contribute to the cost of access paths serving private residences. Wellington City Council is the only major city to offer this policy.

## **5. Discussion**

### ***5.1 Removing the ability of property owners to provide their labour and the Council to supply materials to complete the construction of Half-Cost Access Paths***

The first technical modification to the current policy recognises that the Council no longer has the ability to supply materials to property owners, so it removes the ability of property owners to provide their labour to complete the construction of Half Cost access paths.

The existing Half Cost access paths policy provides that, where it is practical and the owners of properties adjoining the access path concerned are in agreement, those property owners can ask the Council to contribute up to half the cost of repairs to the access paths and to arrange the purchase of the required materials. The property owners can, if they choose, provide the labour to construct the access path.

It has now become administratively impractical for Council to continue to provide this option to property owners. In order to ensure that the eventual costs to Council are validated, Council staff are required to assess the required works, agree the cost estimates, ensure that the final works are as agreed and validate that payment is provided by the private owners prior to work commencing. Sometimes, agreement between private owners can be problematic with individual owners disputing their respective proportions of payment.

In the past, Council could acquire construction materials from "in house" sources. The out-sourcing of roading construction operations since 1998, means this option is no longer viable. Over 90% of Half Cost access paths are completed by the Council's contractor, not the private property owners wishing

to supply their own labour. Therefore it is no longer practical to offer this option as part of the policy.

Instead, the Council will remove the ability of residents to provide a quote for their labour, and provide the option of carrying out such works through the Council's contractors or a contractor of their choice provided their work meets Council's standard and the cost is reasonable to Council. Council will pay its share of the costs and the property owners will pay the contractor to complete this work.

## **5.2 Making Safe Unsafe Access Paths found on Road Reserve**

The second technical modification to the current policy provides that Council will make safe all unsafe and hazardous access paths located on legal road reserve to protect user safety.

Sometimes situations develop where an access path situated on unformed road reserve, whether a half cost or private, becomes unsafe and creates a hazard to the users. In such cases, the Council's position as stated by the Chief Engineer Jeffrey's in 1956 is that:

*"Notwithstanding the fact that the Council is not responsible for the construction and maintenance of access to private property, on occasions as a result of storm damage or some other circumstance, where it is in the interests of public safety to do so, the Council may take steps to eliminate any hazard or to barricade off any dangerous place."*

Council has a statutory power to maintain legal road as it sees fit. This is not a statutory obligation to do so, but the Council may face liability as the land owner if a member of the public suffers a loss as a result of the Council not exercising its power to maintain legal road in a safe condition if it is aware of the situation.

In addition the Local Government Act (1974) provides a mandate for the Council to carry out work to make unsafe situations safe. An "unsafe situation" arises where the state of an access path creates a clear and immediate hazard including the risk of physical injury to a user. The main focus is to ensure safety and not the long term condition of such assets.

It is therefore proposed that where access paths located on unformed legal road are considered unsafe by the Council, the Council will contact the property owners in the first instance and request that the access path be repaired and made safe within a specified time frame. If the property owners fail to do so, the Council will take any steps that it considers appropriate and reasonable to make the access path safe in the manner it sees fit. This will apply to all access paths found on road reserve.

In the case of access paths serving less than three properties (private access paths), Council will have the right to recover the cost of making safe the access

path from the affected property owners. Council will have no ongoing responsibility for the maintenance of these access paths. In the case of Half Cost access paths, Council will have the right to recover up to half the cost of the repairs from the affected residents.

It is estimated that there are 150km of access paths serving less than three properties. If Council were to take full responsibility for these access paths, it is estimated that the annual renewal and maintenance cost would be between \$350-\$400k. In addition a further \$250 – 350k expenditure would be required for retaining structures associated with these access paths. It is not recommended that Council considers taking over the maintenance of these access paths.

### ***5.3 Ensuring Property Owners are Aware of their Responsibility to Maintain Access Paths***

The third technical modification to the current policy provides that for all new access paths located on legal road reserve, the Council will require that the property title contain an encumbrance making the property owner fully aware of their ongoing responsibility to maintain the access path. This encumbrance will also be documented in the LIM report. The applicant will meet all administration costs.

Currently, the Council has no mechanism to ensure property owners are aware of their responsibility to maintain their access path located on legal road reserve. The encumbrance and any LIM report issued will ensure that should ownership of property change, a property owner will be fully cognisant of their responsibility to maintain the access path.

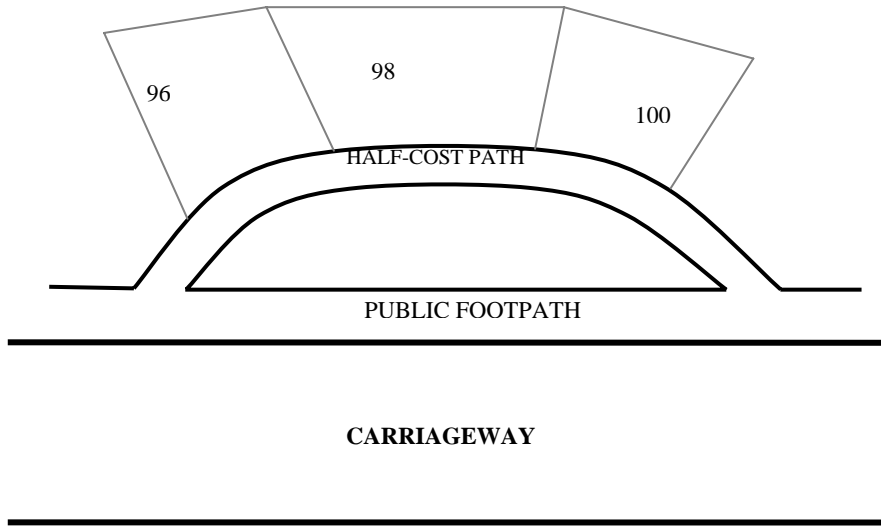
To ensure all access path owners are aware of the proposed changes, the modified policy will be advertised on the Council's website and by way of a letter to all Half Cost access paths property owners once confirmed by Council.

## **6. Conclusion**

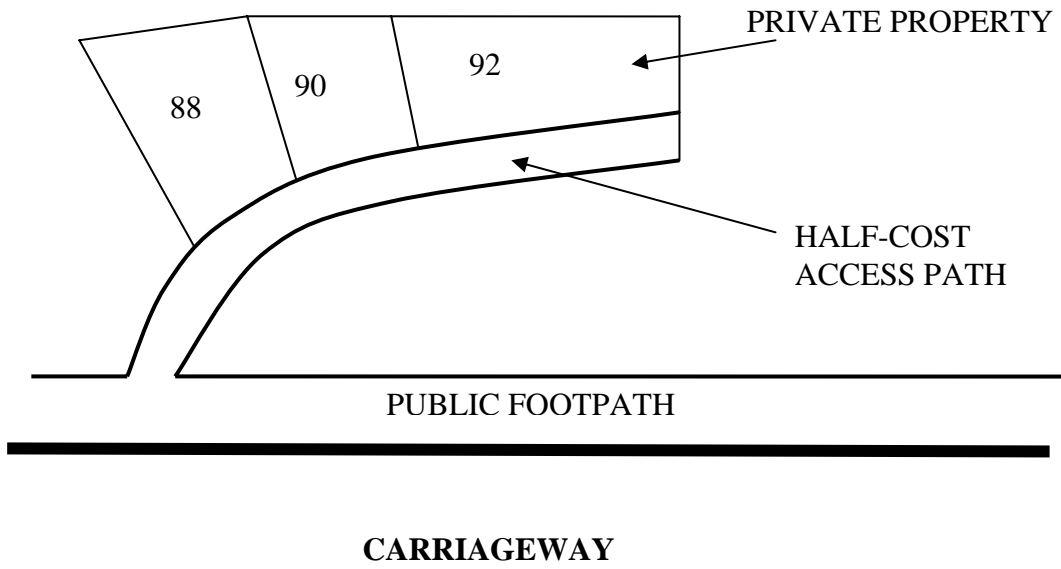
This paper proposes three technical modifications to the Half Cost access paths policy to ensure the Council's safety practices remain consistent with our legislative obligations under the Local Government Act (1974). It also recommends that the Access Paths to Private Property on Road Reserve Policy be confirmed by the Council as detailed above.

Contact Officer: Jack Morris, Strategic Adviser – Asset Planning Team

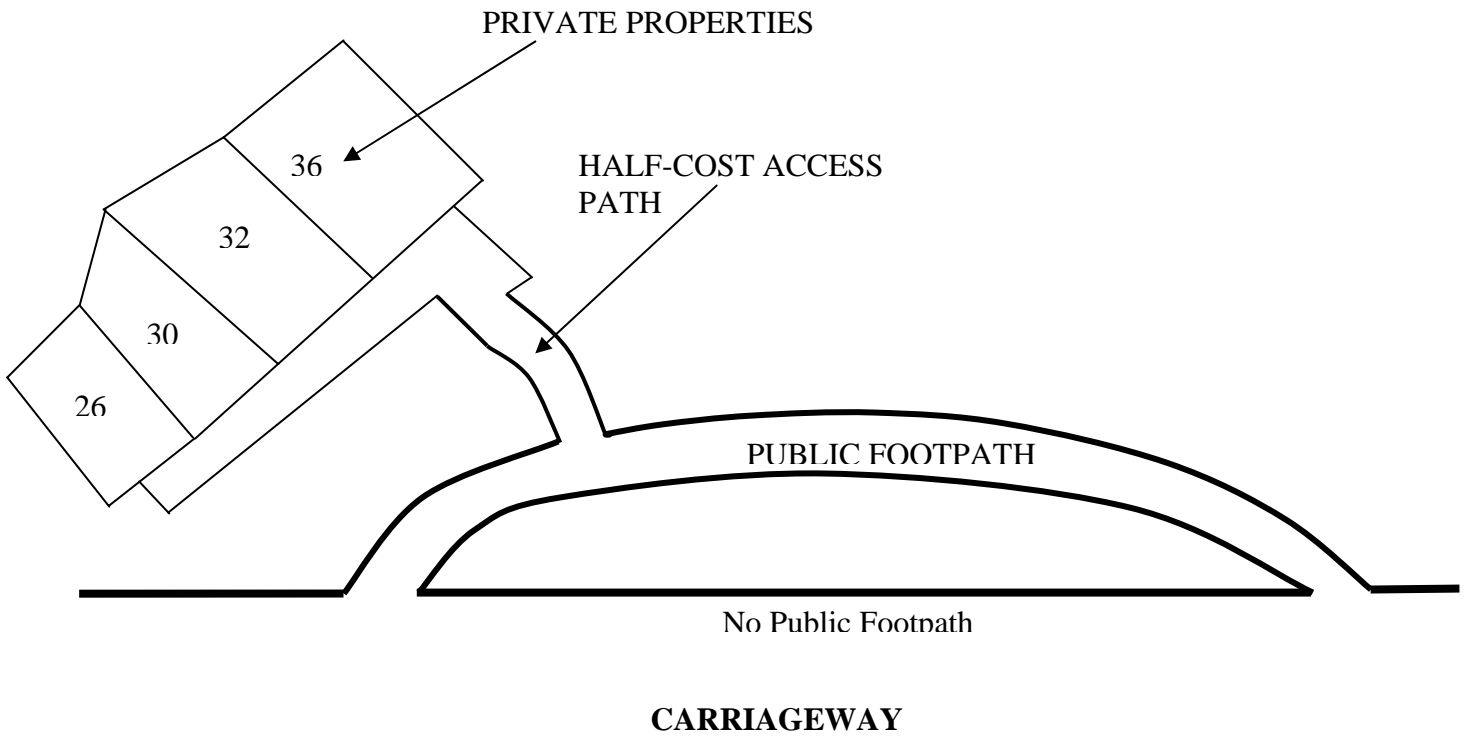
**Appendix 1 - Half Cost Access Path (serves three or more properties)**  
Example 1: 96, 98 & 100 Campbell St



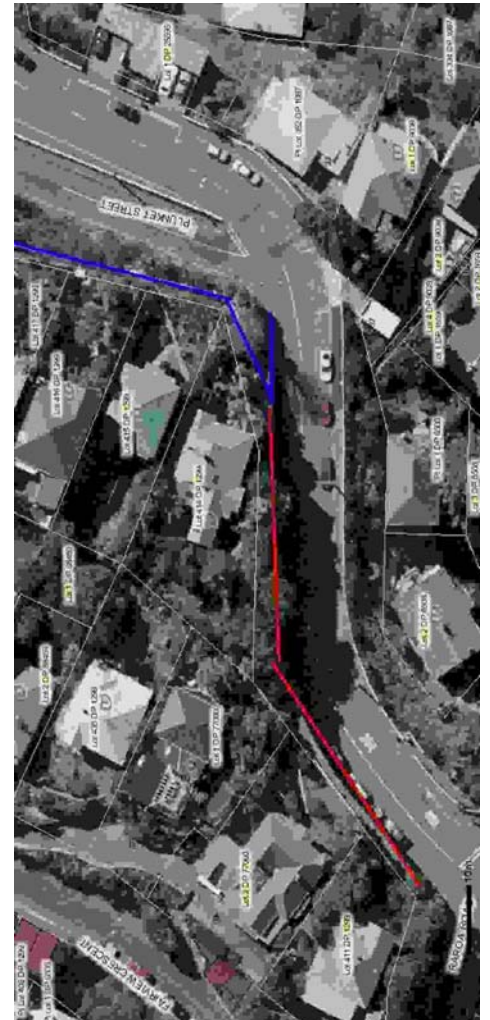
Example 2: 88, 90 & 92 Glenmore St



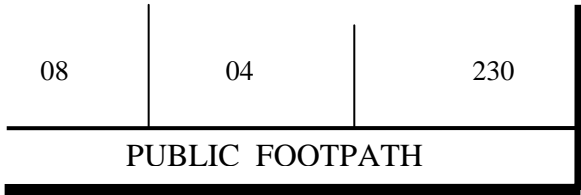
Example 3: 26 – 32 Plunkett St



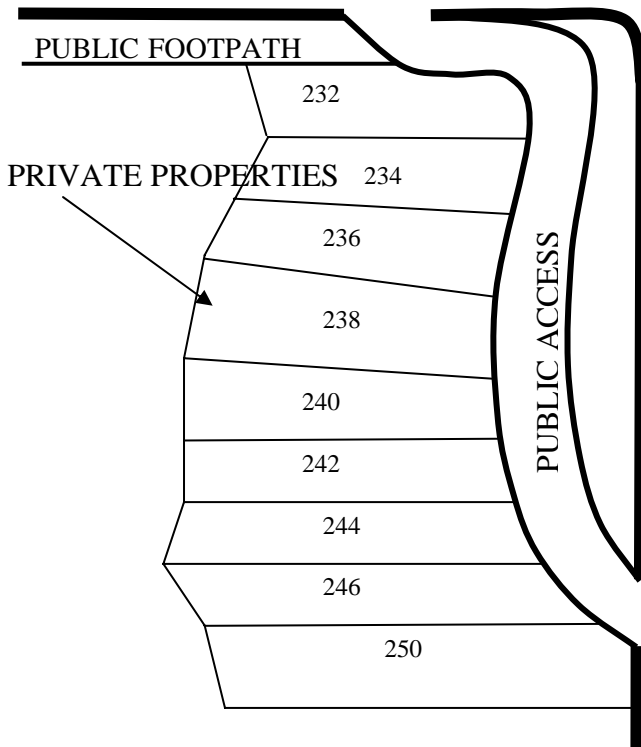
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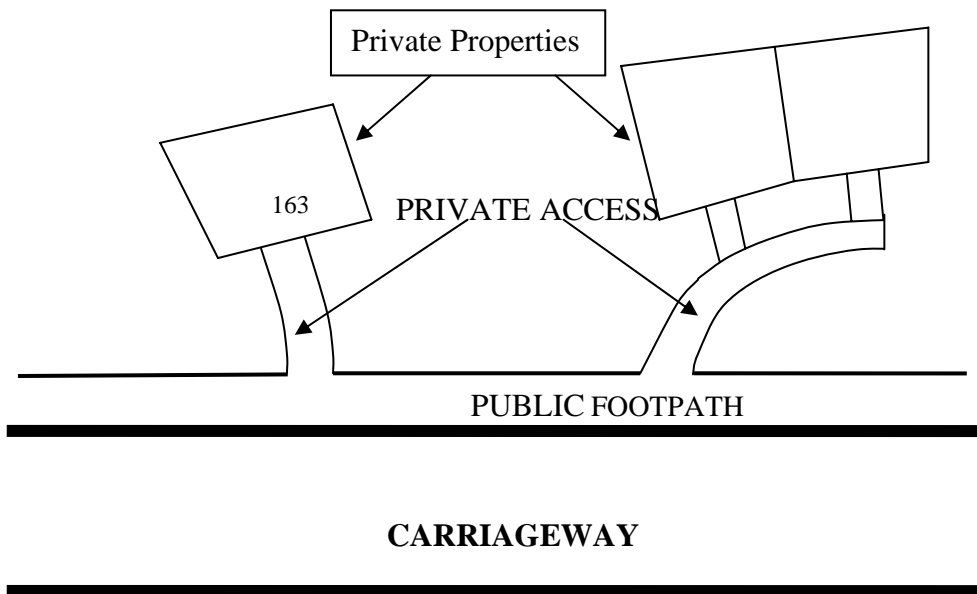
**Appendix 2 – Public Access Path (Benefit is to the Public)**  
 Example 1: 232 – 250 Ohiro Rd



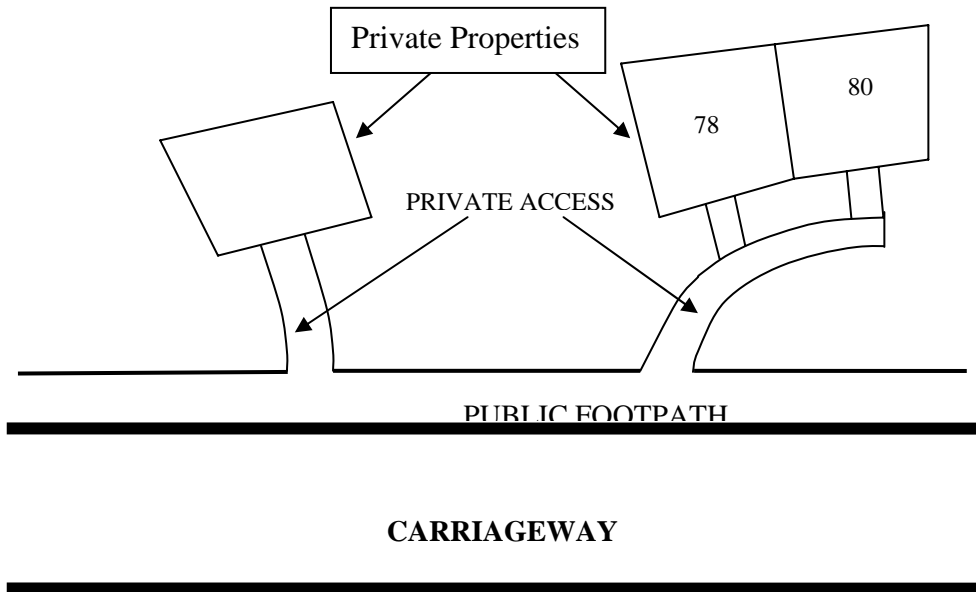
**CARRIAGEWAY**



**Appendix 3 – Private Access Paths (Less than three properties)**  
Example 1: 163 Wilton Rd (1 Property)



**Appendix 3 – Private Access Paths (Less than three properties)**  
Example 2: 78 & 80 Glenmore St (2 Properties)



<b>Supporting Information</b>
<p><b>1) Strategic Fit / Strategic Outcome</b>  <i>Agreement to the policy will contribute to Council meeting the following long term goals or outcomes:</i>  <i>Wellington will become more actively engaged</i>  <i>Wellington will be safer</i>  <i>Wellington will become healthier</i>  <i>Wellington will be better connected</i>  <i>The policy will also contribute to improving Wellington's pedestrian network.</i></p>
<p><b>2) LTCCP/Annual Plan reference and long term financial impact</b>  <i>All Half Cost access paths are funded by C448 Pedestrian Network Maintenance.</i>  <i>No additional funding has been requested.</i></p>
<p><b>3) Treaty of Waitangi considerations</b>  <i>N/A</i></p>
<p><b>4) Decision-Making</b>  <i>This is not a significant decision. The report seeks agreement for SPC to agree three technical modifications to the Half Cost access paths policy (the "policy") and ensure that the Council's safety practices remain consistent with our legislative obligations under the Local Government Act 1974. This review is part of the Infrastructure Directorate's regular audit of policies to ensure they remain relevant.</i></p>
<p><b>5) Consultation</b>  <b>a) General Consultation</b>  <i>Council is not required under legislation to consult on this matter. Formal consultation has not been undertaken as the modifications recommended are driven by legislative requirements and public input on the technical modifications are unlikely to have an impact on the final decision made.</i>   <i>This is inline with our expectations as outlined in the Council's Engagement Policy.</i></p> <p><b>b) Consultation with Maori</b>  <i>N/A</i></p>
<p><b>6) Legal Implications</b>  <i>Council's lawyers have been consulted during the development of this report.</i></p>
<p><b>7) Consistency with existing policy</b>  <i>This policy is consistent with Council's existing policies.</i></p>