

Gull Service Station access over segregation strip

Meeting: Kaipara District Council
Date of meeting: 28 June 2023
Reporting officer: Anin Nama, General Manager Infrastructure Services

Purpose | Ngā whāinga

To request:

- The Council exercise its powers under section 48(3) of the Reserves Act 1977 (**Reserves Act**) to waive the requirement for public notification under section 48(2) of the Reserves Act; and
- The Council delegates to the Chief Executive the authority to grant an easement of right of way in favour of Gull NZ Limited (**Gull**) over the Local Purpose Reserve (segregation strip) at Lot 41 DP 341981 adjoining Molesworth Drive Mangawhai under section 48(1)(f) of the Reserves Act, on terms consistent with the terms of any access arrangements that are approved as part of Gull's application for resource consent (RM220251) that is currently before the Council.

Executive summary | Whakarāpopototanga

Gull has applied to the Council for resource consent under the Resource Management Act 1991 (**RMA**) (RM220251) to develop a self-service petrol station at Lot 1 DP 341981 Molesworth Drive Mangawhai.

If the resource consent is granted, to improve access options to the site from Molesworth Drive and to satisfy safety recommendations in the resource consent process, an easement of right of way needs to be granted by the Council in favour of Gull to create a secondary access point across the segregation strip that sits between Molesworth Drive and the service station site.

Under section 48(1) of the Reserves Act the Council has the legal authority to grant an easement of right of way in favour of Gull over the segregation strip.

The Council officer's recommendation is that Council approves the delegation of authority to the Chief Executive (CE) under section 41(1)(f) of the Reserves Act to grant the easement of right of way over the segregation strip subject to conditions consistent with the terms of any access arrangements approved as part of Gull's application for resource consent currently before the Council.

The Northern Transport Alliance (NTA) will have the opportunity to provide input in relation to the safety and design of the proposed access arrangements as part of the resource consent process.

Council is required to give public notice of the proposed easement of right of way under sections 48(2) and 119 of the Reserves Act, unless the requirements in section 48(3) of the Reserves Act are met, in which case public notification is not required. Section 48(3) of the Reserves Act provides that the requirement for public notification does not apply if Council is satisfied the grant of the proposed easement will not result in the reserve being materially altered or damaged, and the right of the public in respect of the reserve will not be permanently affected.

The Council officer's recommendation is that these requirements are met, and that Council waive the requirement the requirement for public notification.

Recommendation | Ngā tūtohunga

That the Kaipara District Council:

- a) Waives the requirement for public notification under section 48(2) of the Reserves Act 1977; and
- b) Delegates the Chief Executive authority to grant an easement of right of way in favour of Gull NZ Limited over Local Purpose Reserve (Segregation Strip) at Lot 41 DP 341981 under section 41(1)(f) for the Reserves Act 1977 on terms consistent with the terms of any access arrangements that are approved as part of Gull NZ Limited's application for resource consent (RM220251) that is currently before the Council.

Context | Horopaki

Council is the registered owner and administering body (under the Reserves Act) of the Local Purpose Reserve (segregation strip) located at Lot 41 DP 341981 Molesworth Drive Mangawhai. The segregation strip was vested in the Council on 31 May 2005 as a condition of subdivision consent.

Segregation strips are commonly used by local authorities to control access onto roads where there are traffic safety or efficiency concerns. In this case, at the time the segregation strip was vested in the Council, there was a speed limit of 80km per hour on Molesworth Drive ¹. As a result of this, it is understood additional direct accesses onto Molesworth Drive in this location was generally considered to be inappropriate, or if it was to occur, needed to be subject to approval by the Council. Segregation strips give the Council the ability to control access to public roads from adjoining land because before an adjoining land owner can obtain access across a segregation strip the segregation strip either needs to be revoked ², or (as is proposed here) an easement of right of way over the Local Purpose Reserve (segregation strip) be granted by the Council as the administering body of the Reserve under the Reserves Act.³

Gull has formally approached Council and requested Council grant an easement of right of way over the segregation strip enabling an additional access to its site, where it is seeking resource consent (RM220251) from the Council for a service station and commercial development.

The request from Gull for an easement of right of way, although related to its application for resource consent, needs to be decided under section 48 of the Reserves Act. Gull has asked Council officers to present this report seeking approval under the Reserves Act for the easement of right of way that is required now, so the application for resource consent can be progressed without undue complication. Gull has requested the terms of any easement of right of way approved by Council be able to "match" any access arrangements that are approved, following the consideration of expert traffic evidence, as part of its application for resource consents currently before Council (and discussed further below).

Discussion | Ngā kōrerorero

Applications for resource consent for a commercial development and a self-service petrol station on Lot 1 DP 341981 Molesworth Drive, Mangawhai were lodged with the Council in July and September 2022, respectively. The site's frontage consists of a Local Purpose Reserve (segregation strip) approximately 95m long, vested as part of a subdivision application in 2005. Note, the Mangawhai Shared Path was recently constructed along this site frontage.

There is currently one existing vehicle crossing to the site from Molesworth Drive, at the most easterly end of the site frontage (see attachment A). Gull has proposed an additional two-way crossing to allow access from the site across the segregation strip onto Molesworth Drive. Although there is no

¹ This has since been reduced to 50kph.

² Under section 24 of the Reserves Act.

³ Noting that the Minister of Conservation has delegated its powers to approve this to the Council.

formal process, a request to revoke the segregation strip, or alternatively have right of way granted over it, was put forth by Gull.

Under section 48(1) of the Reserves Act the Council has the legal authority to grant an easement of right of way in favour of Gull NZ Limited over the segregation strip. The alternative is revoking part of the Reserve (what Gull had initially proposed). Council officers recommend a right of way option over revoking due to finality of removing the segregation strip; if the site returns to general use in the future, the right of way would no longer be in effect, returning the full traffic movement legal protection of the segregation strip. In addition, granting an easement of right of way is a more straightforward and efficient process as Council has been delegated Minister of Conservation's powers to approve the grant of easements over reserves under section 48(1) of the Reserves Act. However, if the Reserve was to be revoked (even in part) approval from the Minister of Conservation would be required.⁴

Therefore, it is recommended that Council approves the delegation of authority to the CE under section 41(1)(f) of the Reserves Act to grant the right of way over the segregation strip subject to conditions consistent with the terms of any access arrangements approved as part of Gull's application for resource consent currently before Council. Council, through NTA, will have the opportunity to provide input in relation to the safety and design of the proposed access arrangements as part of the resource consent process. Gull will have the opportunity as part of this process to respond and provide its own expert evidence on traffic safety and access. Once the proposed access arrangements are confirmed as part of the resource consent process, the proposed delegation to the CE means the arrangements can be implemented, by the granting of an easement of right of way on the terms set under the decision on the application for resource consent. This approach is supported by Gull and by Council officers on the basis of efficiency and it avoids the potential for any "mismatch" between the two processes.

Prior to Council approving the grant of an easement of right of way over any public reserve, section 48(2) of the Reserves Act 1977 requires the Council (as the administering body of the reserve) to give public notice of the proposed easement of right of way under section 119 of the Reserves Act 1977 and provide the opportunity for members of the public to lodge objections under section 120.

However, the requirement for public notification in section 48(2) does not apply if the requirements in section 48(3) of the Reserves Act 1977 are met. Namely, if the Council is satisfied under section 48(3) that the grant of the proposed easement will not result in the reserve being materially altered or damaged, and the right of the public will not be permanently affected. It is considered these requirements are satisfied in the present case as (a) the Reserve, which is a reserve for a segregation strip (i.e. a narrow strip of land vested in the Council to control access to Molesworth Drive) will not be materially altered or damaged by the grant of an easement of right of way, and (b) it is noted the purpose of the easement of right of way is to enable members of the public to access a proposed new service station (i.e. public amenity) in Mangawhai. For these reasons, it is recommended that Council exercise its powers under section 48(3) of the Reserves Act 1977. A copy of a legal opinion from Holland Beckett Law in relation to this matter is attached to this report (attachment A).

Options

Option 1:

The Council:

- Exercise its powers under section 48(3) of the Reserves Act 1977 to waive the requirement for public notification under section 48(2) of the Reserves Act; and
- Approve the delegation of authority to the CE to approve the creation of an easement of right of way in favour of Gull NZ Limited at Lot 41 DP 341981 under section 41(1)(f) for the Reserves Act 1977 consistent with the terms of any access arrangements that are approved as part of Gull NZ Limited's application for resource consent (RM220251) that is currently before the Council.

This is the recommended option.

⁴ See section 24 of the Reserves Act 1977.

Option 2:

Do not approve delegation of authority to approve the creation of an easement of right of way or revocation of a section of the segregation strip. This option would potentially result in Gull NZ Limited being unable to implement a resource consent for development, potentially to be approved by the RMA Consents team.

This is not the recommended option.

Risks and mitigations

Risks are considered in the NTA reports (attachments B & C).

Increased crash risk for active mode users along the shared use path, due to the increased turning movements/conflict. This risk is twofold; increased traffic flow from the proposed development (traffic generation) and introducing a new conflict zone through the proposed additional entry/exit onto Molesworth Drive. Risks are mitigated by implementation of NTA recommendations.

This will be process through the resource consent application.

Significance and engagement | Hirahira me ngā whakapapa

The decisions or matters of this report are considered to have a low degree of significance in accordance with Council's Significance and Engagement Policy.

Next steps | E whaiake nei

If the recommended option is approved, the applicant will be informed of the outcome. It is expected that easement wording will be drafted for CE approval once proposed access arrangements have been confirmed through the resource consent process.

Attachments | Ngā tapiritanga

	Title
A	NTA Memo - Gull service station (Molesworth Drive)
B	Proposed Gull Station Molesworth Drive Mangawhai
C	Letter to Kaipara District Council from Gull requesting easement
D	Gull Mangawhai additional traffic information 290323