

**QLDC Council
30 April 2015**

Report for Agenda Item: 1

Department:

Planning & Development

Request for permit for farm gates under Section 344 of the Local Government Act 1974 – Cameron Craigie and Anita Holthaus, Lovers Leap Road, adjacent to Part Lot 5 DP 395145, Glenorchy

Purpose

- 1 To consider a request to locate three gates across Lovers Leap Road, Glenorchy from Cameron Craigie and Anita Holthaus, who manage property adjacent to the road, legally described as Part Lot 5 DP 395145, Glenorchy.

Executive Summary

- 2 The applicant (Cameron Craigie and Anita Holthaus) has applied to Council for a permit under Section 344 of the Local Government Act 1974 for three farm gates located within Lovers Leap Road, Glenorchy.
- 3 The farm gates have been in place for several years and the owners of the gates, have not been required to apply for a permit.
- 4 The neighbouring property owners Roger Taylor and Karen Luttrell have asked the Council to remove the gates and make reference to an earlier decision of Council made in 2008, which vested the existing private road as a Council road and also requested that staff progress the issue of gate removal with the applicant.
- 5 This report discusses the request for a permit and the relevant legislation which permits the gating of roads provided a number of conditions are met. The report also details the views of the applicant and the neighbouring property owner.
- 6 The recommendation is that the permit be granted for Gates One and Three subject to conditions outlined below, and that the application for Gate Two be declined. This recommendation is intended to address the expected use of publicly accessible Council roads which adjoin farmland as anticipated in Section 344 of the Local Government 1974.

Recommendation

- 7 *That Council:*
 - a. **Grant** a permit under Section 344 (1) (b) of the Local Government Act 1974 across Lovers Leap Road for two unlocked swing farm gates (Gate One and Gate Three) as shown in the attached plan (Attachment B) subject to the following conditions:

- i Each gate must display a board with the words "Public Road" legibly painted thereon in letters of not less than 75 millimetres in height and this shall be fixed upon each side of the gate.
 - ii Plans of the gates must be submitted and approved to the satisfaction of the Council's Infrastructure Division.
 - iii Gates are to be used to prevent stock from creating a traffic hazard when they are being moved and otherwise, the gates are to remain open.
 - iv Gates are to be open in the period 5pm to 8am, seven days a week.
- b. **Decline to grant** a permit under Section 344 of the Local Government Act 1974 Section 344 (1) (b) across Lovers Leap Road for one unlocked swing farm gates (Gate Two) as shown in the attached plan (Attachment B).

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Reviewed and Authorised by:

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5/03/2015

Background

- 8 Cameron Craigie and Anita Holthaus are the farm managers for property known as Part Lot 5 DP 395145. This property, which is farm land, is bisected by a formed legal road known as Lovers Leap Road. Prior to 2008, the road was private farm land, and was a track used for farm access. As part of an agreement about stopping a road in a different location, the farm track was vested as a Council road, and was formed as part of Lovers Leap Road.
- 9 Currently the farm property is fenced alongside the road and there are swing gates hung (but not necessarily closed) in three locations. Council records do not state the date that the swing gates were installed, however gates within the road reserve are referred to in a decision the Council made in 2008.
- 10 The use of this section of Lovers Leap road for farming activities (either for moving stock or for grazing) and the effect that this has on the ability to use the road for access to private property has been the subject of a number of reports to Council.
- 11 As a consequence, the farm gates are now located within a public road. The use of the gates across the legal road has been the subject of a longstanding dispute between the property owners and the adjoining landowners, Karen Luttrell and Roger Taylor. They use the road to access their property at the rear of the subject site.

- 12 When approving the legalisation of the farm track in 2008, it was resolved that staff be asked to progress the issue of the gate removal with the applicant. In 2010, the Council's roading officer discussed boundary fencing of Lovers Leap Road and the installation of a cattle stop along the road in same area containing Gates 1 & 3 as alternatives to using the gate and to progress gate removal with the then lessee of the farm. While the fencing of the roadside was installed, the Council resolved not to install the cattle stop.
- 13 The Council's Principal Enforcement Officer has stated that while the gates have never been removed, other options for control of stock were under discussion between 2008 and 2011. The Officer's understanding at that time was that the gates were not permanently placed across the road carriageway, and the lessee at the time agreed that they would remain open. Therefore, it was not necessary for Council to take formal enforcement action as the carriageway was not obstructed.
- 14 Roger Taylor and Karen Luttrell have reported incidences of gate closures in 2014 and have asked the Council to take enforcement action to effect removal of the gates from the roadway.
- 15 The applicant now applies to the Council for the use of the gates under Section 344 of the Local Government Act 1974. The applicants have agreed to continue their practice of not closing the gates until the outcome of their application is known. Enforcement action has been suspended until the application has been determined.

Comment

The Application

- 16 As the lessees of Mount Earnslaw Station, the applicant states they need to shut the gates from time to time for stock movements around the property. They state that the adjacent Glenorchy-Paradise Road is busy and the gates are considered vital for the safety of road users, when large mobs of stock are moved on the road.
- 17 The applicant states that the gates are closed for short amounts of time while stock are being moved and the gates are never locked. The applicant states the gates have only been closed four or five times since the start of July 2014. The application advises that the gates are closed for the purposes of farm management and for traffic safety. The roads are used for moving stock and this can involve a single animal to mobs of 4000.
- 18 The position of the applicant concerning their desire to keep the gates is summarised below:
 - The gates have been in place well before the Lovers Leap Road was made into a legal road.
 - The gates need to be shut from time to time for stock movements around the property.

- Glenorchy-Paradise Road is extremely busy. The gates are also vital for traffic safety when there are larger mobs of stock moved on the road.
- Stock control is a Health and Safety issue, i.e. stock could run onto the Glenorchy-Paradise Road or the riverbed (the road accesses the Rees River) when being moved. Also people working on the farm and farm dogs are at risk from people speeding along the road
- Removing the gates would have a large effect on farm management. It is not safe to leave stock on the road unattended while somebody goes away to open and shut gates. Gates need to be shut for an amount of time for general farming practices.

Opposition to the application

19 The position of those who object to the gates, Roger Taylor and Karen Luttrell outlining why the gates should be removed, is also summarised below:

- Lovers Leap Road provides the only legal and physical access to the property located at RAPID 124 of which they are a beneficial owner.
- Lovers Leap Road is a legal public road. The QLDC is the road controlling authority.
- The road became legalised at the application of Mr Cragie's lessor in 2008. In its decision to grant the request of Mr Thompson (Mr Craigie's lessor), Council required the gates be removed.
- Council officers have consistently refused to give effect to Council's decision.
- Staff appear to have solicited the request from Mr Craigie for this application, rather than give effect to Council's resolution or to the law.
- Under Mr Thompson's farming of his land there was no requirement for gates to be closed.
- A public road may be used to drove stock, but there is no need for gates to be closed to enable this. When a drove is used to drove stock, appropriate traffic management signage must be in place.
- There is no valid reason why Mr Cragie's farming practices require gates to be in place across the public road or used to obstruct the public road. It may be convenient for them, but it is not necessary.
- Having closed gates across the road is inconvenient and unsafe. It interferes with legitimate rights to free and unfettered passage over the road, whether by vehicle, horseback or on foot.
- Council does not maintain the road. Having stock on the road causes a significant deterioration to the road surface, this damages our vehicles. Stock also defecate on the road, causing soiling of vehicles.
- In addition to providing legal access to private property, it provides general public access to the Rees River. Over the summer (particularly) the road is used by visitors to the District for this purpose.
- Allowing gates to be in place presents a health and safety risk to use of the road as it will not be known if gates are open or closed.

- The applicant does not need to use a public road to hold stock that has escaped. There are many paddocks which could much more appropriately be used to hold stock, rather than a public road.
- Council should refer to its complaints register to confirm that there have been numerous complaints against Mr Thompson regarding his stock being out on the road.
- Any decision by Council to agree to this “request” from the applicant will set a significant precedent for all other roads in the district to have gates across them.
- The Local Government Act 1974 provides for a Council’s responsibilities around permitting an obstruction across a road.
- S344 (1) of the Local Government Act 1974 requires an assessment by Council that “it is not practicable or reasonable to fence the road”. There is no legitimate basis on which Council could make such an assessment.
- The general public’s right to unfettered access across Lovers Leap Road should not be subservient to the private profit interests of the applicant.

Officer Evaluation

- 20 It is considered that moving stock is part of a normal farming operation and the use of the gates to keep stock away from main roads such as Glenorchy-Paradise Road and neighbouring land (either for traffic safety or to prevent nuisance) while they are being moved is desirable.
- 21 It is also accepted that stock that escape while being moved, could pose a hazard to traffic along Glenorchy-Paradise Road and that the gates are one way of reducing this hazard, more so than the farmer managing the stock while moving them.
- 22 We have considered the views of the applicant, and the opposing views of Karen Luttrell and Roger Taylor that the gates could be hazardous when closed and that the closed gates are an inconvenience to them. We agree that the road should not be used to hold stock as part of a farming activity (we expect that the gates could be used if stock escape, to keep the animals away from live traffic and from private property).
- 23 Provided that the gates meet the requirements of section 344(1) of the Local Government Act 1974 (i.e. a permit is issued by Council and the gates are marked with specified signage) the Council has the discretion to allow a swing gate to be located across a legal road with use of the gate controlled by conditions of the permit.
- 24 Roger Taylor and Karen Luttrell state that Council would be setting a precedent by permitting the gates. There are a number of legal roads throughout the District that are fenced and gated by adjoining farm owners. Therefore, it would also set a precedent if the application was declined in this case.

Gates One and Three

- 25 Section 344(1)(b) of the Local Government Act 1974 provides that the Council may grant a permit for the erection of a swing gate across any road where the road has been constructed through private land and the gates are located on the outer boundary of that private land. In this case, gates one and three are located on private land that was subsequently vested in Council as legal road, as part of an agreement with the land owners (report to infrastructure services committee - 21 August, 2008). The applicant has implied that their application for the permit for these gates is necessary as a result of the land owner agreeing to vest their land as legal road.
- 26 The grant of a permit with the proposed conditions means that the gates one and three will remain open unless stock movements are underway. The gates must not be closed overnight, or be used to enclose stock for grazing. The conditions of the permit are considered to strike the appropriate balance between minimising hazards which exist while stock movements are underway, and the convenience of road users.
- 27 Given the history of competing uses of the road for the movement of stock and for access, we consider that the gates in accordance with the conditions of approval, are a reasonable method of accommodating both activities.
- 28 It is recommended that a condition that the gates be used for the purposes of stock movement only be imposed, as well as a condition that the gates are not to be shut between 5pm and 8am as there is a potential visibility hazard if the gates are shut at night.

Gate Two

- 29 In respect of Gate Two, the Council may also allow a swing gate across any road where in the Council's opinion it is not practicable or reasonable to fence the road (section 344(1)(a) Local Government Act 1974).
- 30 Council records note that the area of land lying between gates one and three is fenced. The applicant has not offered information as to why a swing gate is required in this location, and why this is needed for safety despite fencing and the closure of gates one and three.
- 31 With the information currently provided, it cannot be established that the criteria for granting a permit for Gate 2 is met. Therefore, it is recommended that this part of the application is declined.

Options

Rejecting Officer Recommendation

Advantages

- 32 In 2008, elected members passed a resolution, in which staff were asked to progress the issue of gate removal with the applicant. To decline the application outright, and require the removal of the gates will be consistent

with that decision. The owners of the neighbouring property will have as they desire, unimpeded, unobstructed access to their property, provided that stock movements are not occurring at the time they are using the road.

- 33 It is presumed that if all the gates are removed, all their concerns will be alleviated.

Disadvantages

- 34 Stock are now prevented from straying onto the road by fencing on either side of Lovers Leap Road, but the applicant states that when stock is being moved, they need to keep the animals contained with the gates. The applicant notes Glenorchy-Paradise Road as 'extremely busy'. Gates can be considered a safer option than driving the stock as the gates are a physical barrier. A disadvantage of rejecting the officer recommendation is that the applicant will need to drive the stock without a physical barrier.
- 35 The applicant cannot install cattle stops to control stock (as the stock are sheep and cattle stops will not assist in controlling them) so would need to manage their stock movements by other means. The applicants consider the gates are the most practical means of ensuring that the stock is moved safely.
- 36 Comments from Roger Taylor and Karen Luttrell suggest that the presence of stock on the road is an issue. It can be assumed that removing the gates will not resolve their concerns about the road being used to move stock.
- 37 The removal of the gates may incur costs to Council, should the applicant not comply with the request for gate removal and the Council needs to take enforcement action.

Accepting Officer Recommendation

Advantages

- 38 The Local Government 1974 provides the Council with a mechanism to permit gates in such a manner that farming activities can occur in such a way that they do not prevent the road being used by the general public. By permitting the gates, stock can be moved safely and all users of the road can have their activities reasonably accommodated.

Disadvantages

- 39 By permitting the gates, the Council could be considered inconsistent with an earlier resolution suggesting that their removal be progressed. Although alternatives to gates were explored with the then lessee of the property, these alternatives have now been fully considered. The applicant considers that those alternatives are not fit for purpose and that gates are the most appropriate means of controlling stock movements.

40 The applicant has stated that the gates are unlocked and have been closed four or five times in the last four months for no more than a few hours at a time. The officer recommendation would set clear parameters for the use of the swing gate across the road.

41 While it is acknowledged that gate closures may cause some inconvenience to Karen Luttrell and Roger Taylor, the gating of the road for short periods does not prevent legal access to their property. Closures will only occur during stock movements. It is considered that the conditions proposed for the permit will minimise any inconvenience caused.

Financial Implications

42 There are no budgets or cost implications resulting from the recommendation. Should Council decide to remove the gates, enforcement proceedings may be necessary at the Council's cost.

Local Government Act 2002 Purpose Provisions

43 Section 10(2) of the Local Government Act 2002 has been considered in the submission of this report to the Council.

44 The issue of a permit for these gates under Section 344 of the Local Government Act 1974 is a regulatory function and the recommendation noted in this report is efficient, effective and appropriate to present and anticipated future circumstances.

Council Policies

45 The following Council Policies were considered in the preparation of this report:

Council's Significance and Engagement Policy 2014

The decision associated with this report is not considered to be of low significance as:

- The decision will not impact on the environment, culture and people of the district.
- Individuals, organisations, groups and sectors in community will not be affected to a large extent by the decision.
- The recommendation is not inconsistent with existing policies or strategies (as none exist on the matter the subject of this report).
- There is no impact on the Council's capability and capacity in respect to the objectives set out in the Financial Strategy, Ten Year Plan and the Annual Plan.
- The decision does not relate to the sale or transfer of shareholding of any of the Council's strategic assets.

46 This decision does not involve a transfer or change ownership, a long term lease, or a sale or transfer of shareholder of any significant strategic asset.

Long Term Plan

47 The decision to grant or decline a permit has no impact on the activities set out in the Long Term Plan, as it is the exercise of an administrative power under the Local Government Act 1974.

Consultation

48 The Infrastructure Division has been consulted about this matter. Provided the proposed conditions of the permit are met by the applicant it is considered unlikely to affect the normal operation of Lovers Leap Road. However it is acknowledged that the gates prevent unimpeded access for short periods where stock movements are underway.

49 Staff from the Legal and Regulatory Department have received multiple complaints from the neighbouring property owner. They have also had discussions with the applicants. They have advised that the applicants must apply to the Council for permission to formalise the gates.

50 We have consulted with the affected neighbour, Karen Luttrell and Roger Taylor who have provided us with a submission and this is attached to this report.

Publicity

51 No media statements or public communications are required in association with this request.

Attachments

A Location Map

B Map showing the location of gates along Lovers Leap Road

C Photos of gates

D Letter of application

E Points of opposition