

18 September 2023

Team Leader
Planning & Compliance
Napier City Council
Private Bag 6010
NAPIER

Dear Sir/Madam,

Proposed Rights of Way
12 & 16 Brewster Street and 3 Onslow Road, Napier

We wish to submit the attached application to create a new right of way.

Application Summary:

Project Address:	12 & 16 Brewster St, 3 Onslow Road, Napier
NCC Property No:	PID 4226991, 4238508 & 4240655
Applicant / Debtor:	Martin Hussey East Coast Building Ltd 157 Shakespeare Rd, Napier Email: eastcoastbuildingltd@gmail.com
Application Fees:	Applicant to pay on Council's invoice
Address for service:	C/- Surveying The Bay Ltd PO Box 611, Hastings 4156
Contact Person:	Guy Panckhurst
Phone No:	021 173 9953
Email:	guy@surveyingthebay.co.nz
<u>Job Reference for correspondence</u>	# 6033

We request you acknowledge receipt of this documentation and that you contact the undersigned should you have any enquiries in the processing of this application.

Yours faithfully



Guy Panckhurst

Land Development Consultant

Surveying The Bay Ltd (Napier)



APPLICATION

**Proposed Rights of Way - 12 & 16 Brewster Street, and 3 Onslow Road,
Napier**



On behalf of

Martin Hussey

18 September 2023
Job No. 6033

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1.0 INTRODUCTION

A written agreement between the adjoining owners at 12 & 16 Brewster Street has been made to grant reciprocal rights of way to enable better off-street access. Refer to Appendix A for a copy of the agreement.

The properties are primarily located in Brewster Street, which is a very narrow 6.05m wide road with limited off-street parking.

The property at 12 Brewster Street currently has pedestrian access only via steps. However, the legal access to the site is presently 3.05m wide and, with widening, is considered feasible for vehicle access.

In exchange for granting widening for the right of way access, the owners of 16 Brewster Street will also be able to use the new right of way for access to the rear of their site.

In addition, the applicant also owns 3 Onslow Road, adjacent to 12 Brewster Street, which has an existing dwelling with very poor pedestrian access from Onslow Road. There is potential for this property to also have vehicle access from Brewster Street, so is included as an ancillary part of this application.

The creation of a right of way requires Council consent under Section 348 of the Local Government Act 1974, which is the purpose of this application.

2.0 SITE DETAILS

2.1 LOCALITY

The subject sites and proposed right of way are located at 12 & 16 Brewster Street. The applicant also owns 3 Onslow Road, at the rear of 12 Brewster Street, and would also like that property to have access rights since physical access to the property from Onslow Road is steep and very difficult.

Please refer to the attached easement plan in Appendix B and Figure 1 below.

2.2 LEGAL DESCRIPTION

1. #12 Brewster Street is contained in title HB144/126, legally described as Lot 1 DP 4533 of 673m² and is owned by Martin Derek Hussey.
2. #16 Brewster Street is contained in title HBW1/496, legally described as Lot 1 DP 26169 of 1563m² and is owned by Alison Jane Pavlovich and Geoffrey Raymond King.
3. #3 Onslow Road is contained in title HBH3/595, legally described as Lot 2 DP 3239 of 1535m² and is owned by Martin Derek Hussey.

Attached in Appendix C are the relevant titles, and in Appendix D the relevant survey plans.

2.3 TOPOGRAPHY

There is currently no dwelling on 12 Brewster Street, but 3 Onslow Road does have a substantial two storey dwelling. The dwelling at 3 Onslow Road is only accessed by a steep and precarious footpath from Onslow Road.

2.4 AMENITY AND CHARACTER

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3.0 PLANNING PROVISIONS

3.1 NAPIER HILL CHARACTER ZONE

Planning Map G8 of the Napier City Council plan shows this property is located within the Napier Hill Character Zone.

3.2 ACCESS

Chapter 61 of the District Plan sets out transportation requirements across the City.

The District Plan provides for physical and legal access from a formed legal road with Section 61.20 providing controls around Rights of Way as follows:

1. The following condition shall apply to all land uses where access to a site is provided by a right of way from a road:

- a. Sufficient manoeuvring space must be provided either wholly within the site or where right-of-ways are shared by 2 or 3 dwelling units, provision must be made for manoeuvring within each section or within the right-of-way, so that no reverse manoeuvring onto or off the road is necessary.*
- b. Where right-of-ways are shared by 4 or more dwelling units, the right-of-way must incorporate a specifically designed turning head.*

NOTE: Refer to Chapter 66 (Volume II), Part C5.7 for conditions relating to the construction and/or creation of right of ways and other non-public accessways.

The Engineering Code of Practice 2022 also sets out various criteria for private access.

For Residential Activities, Section 61.17 of the District Plan states that the minimum access width must comply with Chapter 66 C5.7.1.

Table C5.7 states that for 2-3 Allotments/Units the access width should be 3.0m plus 250mm if there is a kerb on one side. The proposed access will comply with the width requirement, as there are a maximum of 3 users of the proposed right of way.

3.3 FURTHER PLAN NOTATIONS

The E-Planning Maps of the District Plan show no further planning notations applying to the subject site in the vicinity of the proposed right of way.

4.0 THE PROPOSAL

4.1 SUMMARY

The easement diagram 6033-1B and photos below show the general location of the proposed right of way which essentially covers the existing 3m wide legal access (Area A), with an additional 0.5m strip on the right hand side (Area B).

We have shown an additional 1.0m wide easement “Area C” that is a right of access to enable construction of the right of way, but is not to be part of the legal right of way.

It is noted that the proposed right of way will be adjacent to, and at the same grade, as the existing access to #10 Brewster Street, shown in Photo 1.

There will clearly be considerable construction work required to form the access, but the applicant is a builder and competent in this type of project.



Photo 1: Existing access to 10 Brewster St, and 12 Brewster St legal access strip



Photo 2: Upper section of existing 3m wide access strip

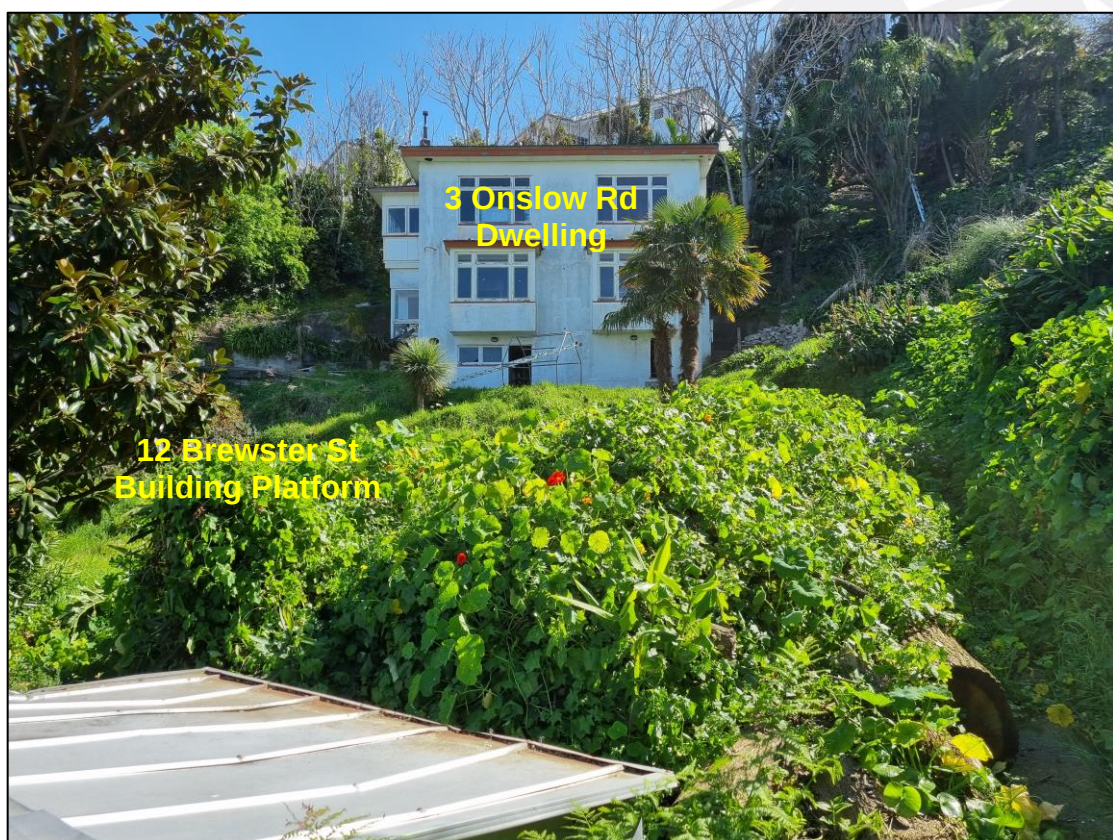


Photo 3: Existing dwelling at 3 Onslow Rd, and building platform of 12 Brewster St



Photo 4: Existing access to 16 Brewster St (under reconstruction)

5.0 PROPOSED FORMATION

A similar proposal was explored in 1998 at which time Graeme Harrison Consultants Ltd prepared reasonably detailed design plans for a vehicle access – attached in Appendix E.

We believe the Graeme Harrison design is feasible in principle, but may require upgrading particularly in terms of stormwater control.

The applicant is happy to discuss with Council engineers once they have viewed the proposal to ascertain their requirements, after which a fresh set of construction drawings can be prepared for the approval of Council.

It is noted that the maximum gradient of the Graeme Harrison design is about 34.6%, which is over the maximum grade for a right of way. However, this is clearly feasible as evidenced by the existing access to 10 Brewster Street, and there are other instances on Napier Hill that have been approved with similar grades.

We also note that manoeuvring will be required within the allotment of 12 Brewster Street. However, manoeuvring cannot be designed until this application has been granted and it is known that vehicle access is available. At that point a new building can be designed on the site, which will no doubt also require earthworks for a building platform that is also yet to be designed.

6.0 STATUTORY CONSIDERATIONS

Section 348 of the Local Government Act 1974 states the powers of Council when evaluating the creation of a Right-of-Way:

“(1) Except with the prior permission of the Council, no person shall lay out or form any private road or private way, or grant or reserve a right of way over any private way in the district.”

Conditions can be imposed on various matters as outlined in subsections (2) – (6).

We note that 12 Brewster Street is an existing title with 3.05m legal access, and technically vehicle access to the site could be constructed “as of right” under Building Consent. However, that would be an even more difficult build than presently contemplated due to the existing narrow legal width.

The current proposal is more feasible, and also gives the opportunity for 16 Brewster St to have access to the rear of the site, and for better access to 3 Onslow Road, which is currently only serviced by a steep and precarious footpath.

The proposal will also allow access for vehicles to enable construction of a dwelling at 12 Brewster Street which, under the current scenario with pedestrian access only, would be very difficult.

7.0 CONCLUSION

This proposed right of way application describes how it is proposed to construct a vehicle access to 12 Brewster Street to enable construction of a dwelling on the site, and also improved on access to 3 Onslow Road and 16 Brewster Street.

We believe the proposal is appropriate for the following reasons:

- Access to 12 Brewster Street is currently limited to pedestrian access only.
- The existing 3.05m wide legal access to 12 Brewster Street can be widened to 3.55m to enable construction of a right of way.
- A 1.0m wide access easement for construction has also been negotiated with the owners of 16 Brewster Street to enable construction of the access and a retaining wall.
- Vehicle access will potentially also be enabled for the rear portion of 16 Brewster Street.
- The right of way will potentially enable vehicle access to the dwelling on 3 Onslow Road, which currently has difficult and steep pedestrian access only.
- Brewster Street is a very narrow road with limited parking, and this proposal will enable off-street parking to be created.
- The access is feasible from an engineering perspective, as demonstrated by the drawings prepared by Graeme Harrison Engineers.

Accordingly, we believe it is appropriate for Council to issue consent and Section 348 certification to allow legal creation of the right of way.

SURVEYING THE BAY LTD

September 2023