



**Notice of the ordinary meeting of the
Hearings Panel - Other
*Rōpū Rongonga – Aha atu anō***

Date:	10 June 2020
Time:	9.00 a.m.
Location:	Council Chamber, Civic House 110 Trafalgar Street Nelson

Agenda

Rārangi take

Chair	Cr Gaile Noonan
Members	Cr Yvonne Bowater Cr Tim Skinner

**Pat Dougherty
Chief Executive**

Nelson City Council Disclaimer

Please note that the contents of these Council and Committee Agendas have yet to be considered by Council and officer recommendations may be altered or changed by the Council in the process of making the formal Council decision.

Hearings Panel – Other

Functions:

To conduct hearings and/or determine under delegated authority applications relating to the Dog Control Act 1996, all matters relating to Temporary Road Closures pursuant to Schedule 10 Clause 11(e) of the Local Government Act 1974, matters relating to naming features within the city, and any other matters required for determination by Council under legislation as determined by Council.

Membership:

All elected members aside from the Mayor, in rotation. Each Hearings Panel-Other will be made up of three members.

The Group Manager Environmental Management may appoint one or more Independent Commissioners to either assist the Hearings Panel - Other or to hear and determine any particular application, such as when Council or a Council-Controlled Organisation or Council-Controlled Trading Organisation is (or could be perceived to be) an interested party, other than applications made for temporary road closure under Schedule 10 Clause 11(e) of the Local Government Act 1974.

Powers to Decide:

The power to appoint a panel to hear and determine with any other consent authority any application requiring a joint hearing

The power to hear and recommend appropriate actions from hearings of designations and heritage orders

The power to hear, consider and attempt to resolve contested road stopping procedures

The power to consider and determine applications for temporary road closures made under Schedule 10 Clause 11(e) of the Local Government Act 1974

The power to hear and determine all matters arising from the administration of the Building Act 1991, and the Building Act 2004

The power to hear and determine objections to the classification of dogs, and all other procedural matters for which a right of objection and hearing is provided for under the Dog Control Act, 1996

The power to name all features within the city requiring naming including roads, streets, service lanes, plazas, parking areas, parks, reserves, gardens and all public facilities or infrastructure, aside from those impacted by the Naming Rights and Sponsorship Policy for Community Services Facilities

The power to provide advice to applicants on appropriate names for private roads, rights of way or other legal forms of private access to property

The power to make changes to the schedules to the Parking and Vehicle Control Bylaw that do not require public consultation

The power to hear submissions and recommendations on proposed changes to the schedules to the Parking and Vehicle Control Bylaw requiring public consultation

The power to administer the administering body functions under section 48 of the Reserves Act 1977 on proposed rights of way and other easements on reserves vested in Council

1. Apologies

Nil

2. Confirmation of Order of Business

3. Interests

3.1 Updates to the Interests Register

3.2 Identify any conflicts of interest in the agenda

4. Public Forum

5. Confirmation of Minutes

There are no minutes to be confirmed

**6. Te Manu Reserve Stormwater Easement -
Deliberations Report**

5 - 11

Document number R15908

Recommendation

That the Hearings Panel - Other

- 1. Receives the report Te Manu Reserve Stormwater Easement - Deliberations Report (R15908) and its attachments (A2329363); and***
- 2. Grants the easement in gross, meaning granting the easement to Nelson City Council, in favour of Nelson City Council over the area shown in blue on the plan (A2329363) of Te Manu Reserve (Lot 1 DP 4341), subject to final consent of the Council (acting as the Minister of Conservation's delegate).***

Recommendation to Council

That the Council

- 1. Consents to the easement in gross in favour of Nelson City Council over the area shown in blue on the plan (A2329363) of Te Manu Reserve (Lot 1 DP 4341) under section 48(1) of the Reserves Act 1977, acting pursuant to a delegation from the Minister of Conservation.***

Te Manu Reserve Stormwater Easement - Deliberations Report

1. Purpose of Report

- 1.1 To consider the issues raised in submissions and objections on the proposed easement in gross to drain water over Council Recreation Reserve and decide whether to grant the easement, subject to the final consent of the Council (acting as the Minister of Conservation's delegate).

2. Summary

- 2.1 Officers consider that it is necessary to increase the level of stormwater control in Te Manu Reserve in order to protect the reserve and improve flood protection for nearby residential properties on Emano Street.
- 2.2 Council requires an easement over Te Manu Reserve in order to carry out the works.
- 2.3 Granting the easement is best practice for the Council because it formalises the terms of the easement granted to satisfy what rights are being provided and over what area of the reserve land. If the infrastructure needed maintenance and that part of the reserve is temporarily inaccessible to the public, the Council has the legal documentation to permit this; and the registration of the easement on the title provides public notice of the existence of the easement rights and infrastructure if, for instance, another party requested an easement over the reserve or the use of the reserve changed.
- 2.4 The Council, as administering body of the reserve, may grant easements under section 48(1) of the Reserves Act 1977 (RA) for specified purposes, including drainage, subject to final consent of the Minister of Conservation. The administering body functions have been delegated to the Hearing Panel – Other. The Minister's final consent role has been delegated to Council (and cannot be sub-delegated).
- 2.5 In this case the Hearings Panel - Other decided to public notify the proposed easements prior to making any decision. The public notification process took place between 4 March and 6 April 2020. No objections or submissions were received.

3. Recommendation

That the Hearings Panel - Other

1. ***Receives the report Te Manu Reserve Stormwater Easement - Deliberations Report (R15908) and its attachments (A2329363); and***
2. ***Grants the easement in gross, meaning granting the easement to Nelson City Council, in favour of Nelson City Council over the area shown in blue on the plan (A2329363) of Te Manu Reserve (Lot 1 DP 4341), subject to final consent of the Council (acting as the Minister of Conservation's delegate).***

Recommendation to Council

That the Council

1. ***Consents to the easement in gross in favour of Nelson City Council over the area shown in blue on the plan (A2329363) of Te Manu Reserve (Lot 1 DP 4341) under section 48(1) of the Reserves Act 1977, acting pursuant to a delegation from the Minister of Conservation.***

4. Background

- 4.1 The subject land was first set aside under the Land Act 1948 and at the same time vested in the Council as reserve under the Reserves and Domains Act 1953 for recreation purposes. The land is therefore a reserve administered under section 16(6) of the Reserves Act 1977 (RA), as if it were classified as recreation reserve. Council adopted the name Te Manu Reserve in 2018
- 4.2 Te Manu Reserve has been subject to slips in the past as stormwater from Matipo Terrace was not piped or controlled and was simply discharged onto the slopes of the Reserve. An open polyethylene channel approximately 20 metres long was installed from Matipo Terrace into the Reserve sometime in the early 2000s. This existing channel can be seen in Attachment One.
- 4.3 During heavy rainfall in 2014 stormwater discharge from the open channel caused a slip to occur on the Reserve leading to a large quantity of vegetation being carried down to Emano Street. (Attachment One.)
- 4.4 Council proposes to construct a rock lined channel to direct stormwater runoff from Matipo Crescent through the Reserve to Emano Street

Item 6: Te Manu Reserve Stormwater Easement - Deliberations Report

- 4.5 A walking track linking Matipo Crescent to Emano Street will also be constructed as part of the project. The design and exact location of this track have not yet been finalised.
- 4.6 The Council may grant easements under section 48(1) of the Reserves Act 1977 (RA) for specified purposes, including to drain water.
- 4.7 The Reserves Act 1977 sets out a two-step process to grant such easements. As the administering body of the reserve, the Council makes the initial decision on whether to grant an easement. This role has been delegated to the Hearings Panel – Other. Final consent of the Minister of Conservation is then also required. The Minister has delegated that final consent role to Council, but it cannot be sub-delegated. Hence the requirement for the Hearings Panel – Other to make an initial decision to grant the easement and then for the matter to be referred to Council for final consent.
- 4.8 Before granting any easement, the administering body must give public notice in accordance with the requirements of sections 119 and 120 of the RA, unless it determines that:
- 4.8.1 The reserve is not likely to be materially altered or permanently damaged; **and**
- 4.8.2 The rights of the public in respect of the reserve are not likely to be permanently affected.
- 4.9 In this case the Hearings Panel – Other decided to publicly notify the proposed easements. The Hearings Panel – Other (HEA/2020/003) authorised public notification of the proposed easements on 19 February 2020 –

That the Hearings Panel – Other

1. Receives the report Te Manu Reserve - stormwater easement (R12563) and its attachments (A2337197 and A2335791); and

2. Resolves to publicly notify the proposal to grant a stormwater easement over Te Manu Reserve (Lot 1 DP 4341) in favour of Nelson City Council under section 48 (1) and in accordance with the requirements of sections 119 and 120 of the Reserves Act 1977; and

3. Notes that officers will report back on the public notification process to enable the Hearings Panel - Other to make a decision on the proposed easement, subject to final consent of the Council (as the Minister of Conservation's delegate).

Sanson/McGurk

Carried

- 4.10 Public notification was given via the Council website, the 4 March 2020 issue of Our Nelson and a letter delivered to 80 properties bordering on the Reserve.

5. Discussion

- 5.1 The Reserves Act 1977, requires the Hearings Panel - Other to give full consideration to every objection or submission received before deciding to proceed with the proposal (sec 120 (1) (d)).
- 5.2 The public notification process took place between 4 March and 6 April 2020. The community was notified of the proposal via Our Nelson (4 March 2020), the Council’s Shape Nelson website and letter drops to approximately 80 neighbours of the Reserve.
- 5.3 No objections or submissions were received by the deadline of 4.00 pm 6 April 2020.
- 5.4 In addition the officer responsible for this project has also undertaken informal engagement with neighbours of the Reserve on the stormwater controls and not received any negative feedback.
- 5.5 Officers have considered the effects of the Covid-19 lockdown on the public notification process. The lockdown probably meant that people were hugely distracted, but did not necessarily prevent them from being aware of the consultation and submitting or at the very least seeking an extension.

6. Options

- 6.1 The Hearings Panel - Other could decide to grant or not grant the proposed easement. Granting the easement is the recommended option.

Option 1: Approve the drainage easement in gross to Nelson City Council	
Advantages	<ul style="list-style-type: none"> Formalises the terms of the easement granted to satisfy what rights are being provided and over what area of the reserve land If the stormwater controls needed maintenance and that part of the reserve is temporarily inaccessible to the public, the Council has the legal documentation to permit this The registration of the easement on the title provides public notice of the existence of the easement rights and infrastructure if, for instance, another party requested an easement over the reserve or the reserve was ever to be sold or the use of the reserve changed
Risks and Disadvantages	<ul style="list-style-type: none"> None identified

Item 6: Te Manu Reserve Stormwater Easement - Deliberations Report

Option 2: Decline the drainage easement in gross to Nelson City Council	
Advantages	<ul style="list-style-type: none">• Officer time available for other projects
Risks and Disadvantages	<ul style="list-style-type: none">• If the easement is not granted then Nelson City Council will not be able to proceed with the stormwater upgrade• Community dissatisfaction

7. Conclusion

- 7.1 Reserves Act 1977 consultation on a proposed easement in gross to Nelson City Council to drain water over Te Manu Recreation Reserve (Lot 1 DP 4341) resulted in no objections or submissions from the community.

8. Next Steps

- 8.1 Subject to final consent of the Council (acting as the Minister of Conservation's delegate) officers will, once construction is complete, arrange for a survey plan of the occupation of the Reserve and registration of the easement on the Title.

Author: Antony Hobbs, Manager Property Services

Attachments

Nil

<p>Important considerations for decision making</p>
<p>1. Fit with Purpose of Local Government</p> <p>The recommendation in this report is aligned with the purpose of Local Government in enabling “<i>democratic decision-making and action by, and on behalf of, communities</i>” as it requires the consideration of the community’s feedback on the granting of a drainage easements over Council administrated Recreation Reserve. Granting the easement will allow Council to improve stormwater controls in the Reserve.</p>
<p>2. Consistency with Community Outcomes and Council Policy</p> <p>Supports community outcomes –</p> <ul style="list-style-type: none"> • <i>Our infrastructure is efficient, cost effective and meets current and future needs</i> • <i>Our communities are healthy, safe, inclusive and resilient</i>
<p>3. Risk</p> <p>The granting of an easement will ensure that Council can access the stormwater infrastructure in the future for repairs and maintenance and temporarily restrict the public’s access to that area of the reserve.</p>
<p>4. Financial impact</p> <p>The costs of securing the easements, and the physical works, will be met by existing project budgets.</p>
<p>5. Degree of significance and level of engagement</p> <p>This matter is of medium significance, based on previous feedback regarding the importance of the Reserve to the local community. The public notification required under section 48 (2) of the Reserves Act 1977 gave the community the opportunity to make their views known under the Act’s section 119 process.</p>
<p>6. Climate Impact</p> <p>Improving stormwater controls in Te Manu Reserve will increase the capability to cope with additional or extreme rainfall events.</p>
<p>7. Inclusion of Māori in the decision making process</p> <p>No engagement with Māori has been undertaken in preparing this report.</p>
<p>8. Delegations</p>

Item 6: Te Manu Reserve Stormwater Easement - Deliberations Report

The Hearings Panel – Other has the following delegations to consider this matter –

- *The power to administer the administering body functions under section 48 of the Reserves Act 1977 on proposed rights of way and other easements on reserves vested in Council*

Final consent for easements in reserves must be given by the Minister of Conservation. The Minister has delegated this role to Council and it cannot be sub-delegated. Any decision of the Hearings Panel – Other to grant the proposed easements will therefore need to be referred to Council for final consent.