



AGENDA

Ordinary meeting of the

Brook Reserve Hearings Panel

**Tuesday 27 November 2018
Deliberations commencing at conclusion of
Community Services Committee
Council Chamber
Civic House
110 Trafalgar Street, Nelson**

**Pat Dougherty
Chief Executive**

Membership: Councillor Kate Fulton, Councillor Luke Acland and Councillor Tim Skinner

Quorum: 3

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.

Guidelines for councillors attending the meeting, who are not members of the Committee, as set out in Standing Order 12.1:

- All councillors, whether or not they are members of the Committee, may attend Committee meetings
- At the discretion of the Chair, councillors who are not Committee members may speak, or ask questions about a matter.
- Only Committee members may vote on any matter before the Committee

It is good practice for both Committee members and non-Committee members to declare any interests in items on the agenda. They should withdraw from the room for discussion and voting on any of these items.

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. Confirmation of Minutes

4.1 1 November 2018

5 - 8

Document number M3864

Recommendation

That the Brook Reserve Hearings Panel***Confirms the minutes of the meeting of the Brook Reserve Hearings Panel, held on 1 November 2018, as a true and correct record.*****5. Brook Reserve - Deliberations on Classification and Road Stopping Processes****9 - 26**

Document number R9723

Recommendation

That the Brook Reserve Hearings Panel***Receives the report Brook Reserve - Deliberations on Classification and Road Stopping Processes(R9723) and its attachments (A2097629) and (A2097617); and******Confirms that the Chair should prepare a report recommending that the Council:***

Declares the stopped road land as marked purple on Attachment 1 (A2097617) of report (R9723) to be vested in it as Local Purpose (Outdoor Leisure, Camping, Conservation and Education) Reserve under section 14 of the Reserves Act 1977, so as to amalgamate it into the adjoining reserve; and

Approves the change in specified purpose of the Local Purpose (Recreation) Reserve as marked green on Attachment 2 (A2097629) of report (R9723) to Local Purpose (Outdoor Leisure, Camping, Conservation and Education) Reserve under section 24A of the Reserves Act 1977; and

Delegates the authority to the Chief Executive to take the steps necessary to prepare and place notices in the Gazette in order to vest the stopped road land as reserve and change the specific local purpose of the Local Purpose Reserve; and

Delegates the authority to the Chief Executive to take the steps necessary to complete the road stopping process under the tenth schedule of the Local Government Act 1974 and amalgamate the reserve.



Minutes of a meeting of the Brook Reserve Hearings Panel

Held in the Council Chamber, Civic House, 110 Trafalgar Street, Nelson

On Thursday 1 November 2018, commencing at 9.00a.m. Hearing of submitters/objectors

Present: Councillor K Fulton (Chairperson), Councillor L Acland and Councillor T Skinner

In Attendance: Group Manager Strategy and Communications (N McDonald), Manager Strategy (M Tregurtha), Leases Officer (J Read) and Governance Adviser (Elaine Stephenson)

Apologies : Nil

Group Manager Strategy and Communications, Nicky McDonald opened the meeting and called for nominations for Chairperson.

1. Election of Chairperson

In accordance with the Terms of Reference for the Brook Reserve Hearings Panel, approved by Council on 9 August 2018, the Chairperson was elected by the Panel.

Resolved BRHP/2018/001

That the Brook Reserve Hearings Panel

Appoints Councillor Fulton as Chairperson of the Brook Reserve Hearings Panel.

Skinner/Acland

Carried

2. Apologies

There were no apologies.

3. Confirmation of Order of Business

There was no change to the order of business.

4. Interests

There were no updates to the Interests Register, and no interests with items on the agenda were declared.

5. Public Forum

There was no public forum.

6. Hearing of Submissions/Objections to the Brook Reserve Change to Specific Local Purpose of Reserve and Land to be declared Reserve Proposal

Document number R9809, agenda pages 4 - 113 refer.

- 6.1 Nathanael Rais, supported by fellow Youth Councillors Christiane Leaper, Jacob Mason, Latai Funaki and Max Schneider – Nelson Youth Council (19339/19338) – speaking to both topics

Nathanael Rais spoke to the Youth Council's submission and answered questions regarding the benefits of closing the road and who Youth Council was representing. He noted that there had been many hearings over the years, but only the current topic was explained in the public notices.

- 6.2 Tamika Simpson (19345/19344) speaking to both topics

Tamika Simpson tabled supporting information and outlined her concerns, noting that her preference would be that the land sold to Council in the 1950's be offered back for the price that was paid and returned to the community to be run by a community board.

The Chairperson requested officers subsequently provide Ms Simpson with the long-term aims and the main aim of stopping the road.

Attachments

- 1 A2086684 - Tamika Simpson supporting information

- 6.3 Christopher St Johanser (19286) speaking to change to specific local purpose of reserve; and

- 6.4 Christopher St Johanser – Brook Valley Community Group (Inc.) (19295) speaking to change to specific local purpose of reserve

Christopher St Johanser tabled supporting information and spoke to both objections noting that his tabled document was received by Council on 21 December 2016. Mr St Johanser answered questions regarding his preferred way forward, which was to return to the original land classifications, and who he represented.

Attachments

- 1 A2079654 - Christopher St Johanser supporting information

- 6.5 Pam Mander (19293) speaking to change to specific local purpose of reserve

Pam Mander spoke to her submission and in response to a question, said that she would like to know the reasons for the reclassification.

- 6.6 Dan McGuire (19302/19303) speaking to both topics

Dan McGuire spoke to his submission, highlighting his concerns regarding proper process and answered questions regarding his opinion on what he thought the classification of the reserve should be.

- 6.7 Richard Sullivan (19334/19335) speaking to both topics

Richard Sullivan spoke to his objection and in response to questions said that the land between Brook Street and the stream was sold to Council for public recreation and it should be incumbent on Council to say why the change was necessary.

It was noted that the Panel's role was to recommend to Council whether the new classification should be adopted or not and that previously the land was a mix of land statuses, including freehold, reserve and roading.

- 6.8 Hudson Dodd and Derek Shaw – Brook Waimarama Sanctuary Trust (19348/19349) speaking to both topics

Hudson Dodd and Derek Shaw, spoke to the Trust's submission, highlighting their support of the vision in the Reserve Management Plan. They answered questions regarding their understanding of the intention of the road stopping, public access, including during the interim period, the need for visitor flows and a turnaround and the gate at the boundary.

It was reiterated that the Panel was constrained in what it could include in its recommendation to Council and the importance of getting the designation correct. The possibility of parts of the reserve being designated 'outdoor leisure, camping, conservation and education' and parts being designated 'recreation reserve' to provide greater protection was raised, as long as that gave effect to the management plan.

The meeting was adjourned at 10.53a.m. and reconvened at 11.15a.m.

- 6.9 Gail Collingwood (19343) speaking to change to specific local purpose of reserve

Gail Collingwood spoke to her submission noting the importance of the inclusion of Eureka Park in the reserve and long term planning for this park to recognise the sister city relationship.

- 6.10 Dai Mitchell (19261) speaking to change to specific local purpose of reserve

Dai Mitchell spoke to his objection, highlighting his concerns regarding process. In response to questions, he said that he was seeking that the classification be retained as recreation in perpetuity.

- 6.11 Donna Butler (19289) speaking to land to be declared reserve, was not present.

Panel members listed their questions to officers, and requested that answers be provided prior to deliberations on this matter.

There being no further business the meeting ended at 11.48a.m.

Confirmed as a correct record of proceedings:

_____ Chairperson _____ Date

Brook Reserve - Deliberations on Classification and Road Stopping Processes

1. Purpose of Report

- 1.1 To summarise and outline the issues raised in submissions and objections on the proposed declaration of stopped road to be held as local purpose reserve, and change in specified purpose of local purpose reserve, in the area known as the Brook Recreation Reserve. The report also provides further information on a number of issues that the Hearings Panel requested be brought back to this deliberations meeting.

2. Summary

- 2.1 The Hearings Panel has heard submissions and objections as part of the public notification and consultation process on the proposed declaration of stopped road to be held as reserve and change in the specified purpose of the local purpose reserve. The Panel must now consider the issues raised by submitters and objectors before the Chair prepares a report with recommendations to Council.

3. Recommendation

That the Brook Reserve Hearings Panel

Receives the report Brook Reserve - Deliberations on Classification and Road Stopping Processes(R9723) and its attachments (A2097629) and (A2097617); and

Confirms that the Chair should prepare a report recommending that the Council:

Declares the stopped road land as marked purple on Attachment 1 (A2097617) of report (R9723) to be vested in it as Local Purpose (Outdoor Leisure, Camping, Conservation and Education) Reserve under section 14 of the Reserves Act 1977, so as to amalgamate it into the adjoining reserve; and

Approves the change in specified purpose of the Local Purpose (Recreation) Reserve as marked green on Attachment 2 (A2097629) of report (R9723) to Local Purpose (Outdoor Leisure, Camping, Conservation and Education) Reserve under section 24A of the Reserves Act 1977; and

Delegates the authority to the Chief Executive to take the steps necessary to prepare and place notices in the Gazette in order to vest the stopped road land as reserve and change the specific local purpose of the Local Purpose Reserve; and

Delegates the authority to the Chief Executive to take the steps necessary to complete the road stopping process under the tenth schedule of the Local Government Act 1974 and amalgamate the reserve.

4. Background

- 4.1 On 24 November 2014, the Council gave public notice of its intention to prepare a management plan for Brook Reserve land and sought suggestions during the period from November 2014 to February 2015.
- 4.2 After considering the views expressed by the community, on 11 June 2015, the Council publicly notified the draft Reserve Management Plan (draft RMP), and invited submissions on it.
- 4.3 After hearing submissions (and considering the Hearing Panel's recommendation), on 15 October 2015 the Council resolved to adopt the draft RMP in principle.
- 4.4 The Council also decided at the 15 October 2015 meeting that a local purpose reserve would be better suited for the Council's vision for the land. The Council delegated the necessary powers to the Chief Executive to carry out the statutory processes to enable the land to be amalgamated into a single local purpose reserve. The necessary processes were:
 - changing the classification of the reserve land from recreation reserve to local purpose reserve;
 - declaring and gazetting the fee simple land to be local purpose reserve; and
 - stopping the legal road and amalgamating that land into the adjoining reserve land.

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- 4.5 After a consultation process, which was extended at the request of the Brook Valley Community Group (BVCG), on 23 March 2017, Council resolved to change the classification of the recreation reserve to Local Purpose (Recreation) reserve, vest the freehold land for this same purpose and reject the objections to the road stopping proposal. The road stopping matter was referred to the Environment Court and in November 2017 it confirmed the road stopping, subject to Council resolving to declare the land reserve under the RA, so as to amalgamate it into the adjoining reserve.
- 4.6 At its meeting of 9 August 2018 Council considered the steps required to complete the road stopping process and the specific purpose of the adjoining Local Purpose Reserve. At this meeting Council passed the following resolutions:

Approves that the Chief Executive be delegated authority to proceed with public notification under section 14 of the Reserves Act 1977 of the intention to declare the stopped road land to be reserve to be held as Local Purpose (Outdoor Leisure, Camping, Conservation and Education) Reserve, so as to amalgamate it into the adjoining reserve; and

Approves that the Chief Executive be delegated authority to proceed with public notification under section 24A of the Reserves Act 1977 to change the classification of the Local Purpose (Recreation) Reserve to Local Purpose (Outdoor Leisure, Camping, Conservation and Education) Reserve.

Summary of submissions and objections

- 4.7 Council publicly notified and consulted on two processes, to declare stopped road land to be Local Purpose Reserve, and to change the specified purpose of the adjoining Local Purpose Reserve. Both consultation processes ran concurrently with submissions and objections sought from 8 September 2018 to 12 October 2018.
- 4.8 Public notifications were placed in the Nelson Mail on 8 September 2018, in the Customer Service Centre at the Council offices and at the Brook Valley Holiday Park from 8 September 2018 to 12 October 2018.
- 4.9 Sixteen submissions and objections were received for the proposed change to declare the stopped road as Local Purpose (Outdoor Leisure, Camping, Conservation and Education) Reserve.
- 4.10 Twenty three submissions and objections were received for the proposed change to the specified purpose from Local Purpose (Recreation) Reserve to Local Purpose (Outdoor Leisure, Camping, Conservation and Education) Reserve.

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- 4.11 One submitter gave no indication of support or objection to the proposals but stated they would speak to the Hearings on 1 November 2018. However the submitter did not contact Council to make an appointment to speak.
- 4.12 Eleven people requested to speak to their submissions or objections at hearings on 1 November 2018.
- 4.13 A number of submitters objected to, or submitted on, matters that are outside of the two consultation processes. For completeness these are covered in section seven of this report, together with additional information requested by the Hearings Panel.

5. Discussion

Proposal to declare stopped road Local Purpose (Outdoor Leisure, Camping, Conservation and Education) Reserve

- 5.1 Fifteen submissions were received by the closing date of 12 October 2018. Of these ten supported, and five objected to the proposal.

The main reasons set out by those in favour of the proposal included that it (note: officer comment on the points raised by objectors is included after their submission number in italics):

- 5.1.1 Enables Council to better manage the area as a whole (submission 19289).

Resolving to vest the land as reserve to be amalgamated into the adjoining reserve and thereby enabling completion of the road stopping process achieves integrated and appropriate management, consistent with the vision and intended uses, of the area as a whole. The Council can then proceed to consider final approval of the draft RMP and preparation of the comprehensive development plan.

- 5.1.2 Provides for a safer environment for visitors to the Brook Sanctuary and the campground (submission 19333).

See comment for 5.1.1.

- 5.1.3 Allows for the redesign of the current layout of the area to best reflect its current and potential future uses (submissions 19274, 19337).

See comment for 5.1.1.

- 5.1.4 Allows Council to proceed with preparation of a Comprehensive Development Plan as set out in the Brook Reserve Management Plan (submissions 19338, 19349).

See comment for 5.1.1.

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Note: Four submitters supported the proposal without additional commentary.

- 5.2 The main reasons set out by those who oppose the proposal included that: (note: officer comment on the points raised by objectors is included after their submission number in italics):

- 5.2.1 Keeping the road separate from the Reserve was necessary to consolidate infrastructure assets, provide for consistency of decision making and improve accessibility and use of the recreation reserve (submission 19335).

Council has previously notified and heard objections on its proposal to stop the legal road. Following the Council rejecting objections, the matter was referred to the Environment Court for decision. The Environment Court was satisfied that there was no need for the road for public use and confirmed the road stopping, provided that the Council resolved to vest the land as reserve so as to amalgamate it into the adjoining reserve.

Resolving to vest the land as reserve to be amalgamated into the adjoining reserve and thereby enabling completion of the road stopping process achieves integrated and appropriate management, consistent with the vision and intended uses, of the area as a whole.

Although the road will be legally "stopped", there will continue to be a road, and public access will be provided under the provisions of the Reserves Act 1977 applying to Local Purpose Reserve and the draft RMP. Furthermore, the draft RMP includes objectives and policies relating to public access and a Development Plan that is required (amongst other things) to provide for a redeveloped roading network.

The Brook Reservoir has been decommissioned, however there are water pipes underneath the road through the Reserve which service the reserve and up to the Sanctuary. No change to the management of this infrastructure was proposed in the consultation processes. If Council received a proposal to develop the land on the other side of the Brook Stream, then access to, and supply from Council water pipes would be considered at that time.

- 5.2.2 There was insufficient detail included in the proposal (submitter 19344).

The proposed changes and where to find more information were set out in the public notices. More detailed information, including the background and the reasons for the changes, was provided in Our Nelson and on the Council's website. It is considered that adequate information was provided to the public to enable them to understand and submit on the proposals. It

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is considered that providing any further level of detail on past council decisions and consultations would have confused, not assisted, the current processes.

- 5.2.3 Access through the reserve by vehicle is required for those members of the public who are unable to walk to the dam (submitter 19344) and two submitters raised concerns that the proposed incorporation of the road within the Reserve might restrict the public from using the road to access the Brook Sanctuary, or other land beyond the Reserve (submitters 19335, 19344).

See comment on public access and the road in 5.2.1 above.

The draft RMP includes requirements that the Development Plan provide for services and facilities required to manage, operate and service the Brook Waimarama Sanctuary, accessibility for people with disabilities and a redeveloped roading network to suit the users of the area.

- 5.2.4 "...land in front of the camp was sold to Council in the 1950's for use as a camp for all people of Nelson and that the land being between the river and the public road would not be the limitation of future development or access across the river". The submitter considered that the road stopping contravened both these understandings (submitter 19344).

This view has been raised and dealt with during previous consultation processes. The Environment Court has confirmed the road stopping subject to the land being incorporated with the reserve.

- 5.2.5 The process will allow for more commercial development of the recreation reserve and reduce public access to the area (submitters 19303, 19296, 19320).

The vesting of the stopped road land as Local Purpose (Outdoor Leisure, Camping, Conservation and Education) Reserve so as to amalgamate it with the adjoining reserve does not in itself allow for more commercial development of the area. Any development would need to meet the requirements of the Reserves Act 1977, including that it was consistent with the specific local purpose of the reserve and the draft RMP. Under the draft RMP, the Vision for the Reserve is that:

"The Brook Recreation Reserve serves as a centre for environmental education and conservation and as a destination for camping and outdoor recreation, including appropriately-scaled and complementary commercial recreation and tourism development"

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The draft RMP also includes objectives and policies relating to any commercial development. These are not changed as part of this process.

See also the comment on public access and continued use of the road in paragraph 5.2.1.

Proposal to change the classification of the Local Purpose (Recreation) Reserve to Local Purpose (Outdoor Leisure, Camping, Conservation and Education) Reserve.

- 5.3 Twenty two submissions were received by the closing date of 12 October 2018. Of these, 10 supported the proposed change and 12 objected.

The main reasons set out by those in favour of the proposal included that:

- 5.3.1 The Brook Sanctuary provides a unique asset for Nelson with a suitable area for education and conservation close to town and the Nelson Marlborough Institute of Technology (NMIT). The proposed change will enable a closer cooperation between education providers in the Nelson area and allow for buildings or areas in the reserve to be used for educational purposes (submitter 19332).

The proposed classification, including providing for education, is aligned with, and supports, the draft RMP Vision.

- 5.3.2 The proposed change is in line with Nelson Nature 2050 (sic) and the Halo effect (submitter 19332).

The proposed classification is aligned with several of the Nelson 2060 Goals, including "Our natural environment – air, land, rivers and sea – is protected and healthy" and "Our economy thrives and contributes to a vibrant and sustainable Nelson".

The "Halo" is part of the Nelson Nature programme and is a buffer around the Brook Sanctuary to ensure that there is safe and diverse habitat for birds from the sanctuary to migrate to. The completion of the draft RMP and the Development Plan will contribute to this work.

- 5.3.3 Holding the land for the same purpose will better allow Council to manage future development of the area, generate revenue to update the current outdated facilities and promote cooperation between the Brook Sanctuary, NMIT and other education providers (submitters 19273, 19336).

The proposed classification, including providing for education, is aligned with, and supports, the draft RMP Vision.

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- 5.3.4 The proposed change is in line with the Brook Reserve Management Plan's vision and the goals of the Long Term Plan 2018-28 (submitter 19348).

Agreed.

- 5.3.5 Amending the classification will avoid any potential legal issues in relation to the Brook Reserve (submitters 19339, 19255).

Council has identified that the current specific local purpose may be ultra vires. The Council is therefore proposing to make the change under section 24A to a more legally robust specific local purpose.

- 5.3.6 The change will support a comprehensive planning approach to the future of the Brook Reserve (submitter 19348).

Completing of the road stopping process and ensuring that all the land has the same classification achieves integrated and appropriate management, consistent with the vision and intended uses, of the area as a whole. The Council can then proceed to consider final approval of the draft RMP and preparation of the comprehensive development plan.

- 5.3.7 The change in specific local purpose better provides for the appropriate management of the reserve in keeping with its intended uses (submitter 19348).

The proposed classification is aligned with, and supports, the RMP Vision and management of the reserve.

Four submitters supported the change to the specific local purpose of the reserve as proposed by Council without further reasons (19288, 19281, 19267, 19291).

Objections to the proposed change in purpose

The main reasons set out by those who objected to the proposal are set out below (note: officer comment on the points raised by objectors is included after their submission number in italics):

- 5.3.8 The camp would change and that the community and general public could be excluded. This objection noted that there is a need to keep the camp open for the needs of the community that currently reside there (submitter 19347)

The proposed change does not affect the current accessibility or use of the campground.

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The proposed change makes it clearer that camping is a specific local purpose of the reserve.

The draft RMP is not being amended by this proposal. Part of the draft RMP's Vision (quoted above) is that the reserve serve as a centre for camping (amongst other things) and the requirement that a Development Plan be developed that includes specific provision for a campground.

- 5.3.9 The camp and general area would be less accessible to the public, including the walking track around the perimeter of the predator fence (submitter 19345).

The proposed changes would not affect accessibility or access to the walking track.

- 5.3.10 The proposed change would allow for the commercialisation of the reserve at the expense of the general public and residents of the Brook (submitter 19257, 19261, 19263, 19302)

See comment in paragraph 5.2.5 above on how the change affects any potential commercial development of the Reserve.

- 5.3.11 The area would not be used for the intended purpose as when gifted to Council by Thomas Cawthron which was for use as a reserve for recreation purposes, due to potential commercial development that could be allowed under the new status (submitter 19320, 19334)

The Cawthron endowment land is not part of the Brook Reserve.

- 5.3.12 The specific purpose would enable Council to give/lease more land to the Brook Sanctuary therefore further reducing public access to the area (submitter 19283)

As noted by the submitter, the proposed change does explicitly include "conservation" as a specific local purpose and may therefore more readily accommodate activities that support the adjacent Brook Waimarama Sanctuary.

Lease of any of the Local Purpose Reserve to the Trust would continue to be subject to the requirements of the Reserves Act 1977 applying to Local Purpose Reserve. Ordinarily, there is no requirement under the Reserves Act to publicly notify an intention to grant a lease of this type, but depending on significance the Council may exercise discretion to consult. The draft RMP requires preparation of a Development Plan that includes provision for facilities and services required to manage, operate and service the Brook Waimarama Sanctuary.

See also the comment on public access and continued use of the road in paragraph 5.2.1.

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- 5.3.13 Council cannot proceed lawfully with the change to the specific local purpose as the land was previously reclassified as Local Purpose (Recreation) Reserve which contravenes the Reserves Act 1977 and therefore the land should retain its prior status or classification or be classified as Recreation Reserve (submitter 19295).

The Reserve is currently classified as Local Purpose (Recreation) Reserve. The Council is able to change the specific local purpose of the reserve at any time in accordance with the requirements of section 24A of the Reserves Act 1977. The Council has identified that the current specific local purpose may be ultra vires. The Council is therefore proposing to make the change under section 24A to a more legally robust specific local purpose. To change the land to either Recreation Reserve, or to its earlier status (a mix of Recreation Reserve, legal road and freehold land) is likely to require a new consultation/objection process.

- 5.3.14 The process does not mention making changes to, or further consultation on the Adopted in Principle Brook Recreation Reserve Management Plan (submitter 19295)

Decisions about the Reserve Management Plan are not part of the current process. Refer to section nine for the proposed next steps.

Alternative suggestions for the classification of the Reserve.

- 5.4 As noted in paragraph 5.3.13 one submitter requested that the land "revert back" to Recreation Reserve, the classification of some of the land before it was changed to Local Purpose (Recreation) Reserve.

Less than 1/3 of the land was previously classified as Recreation Reserve, the balance was freehold land and legal road.

- 5.5 Another suggestion is that the land that was previously classified as Recreation Reserve "remain classified" as such, and that the balance of the land be classified as proposed, Local Purpose (Outdoor leisure, Camping, Conservation and Education).

The Council is not able to consider alternative primary classifications for the Local Purpose (Recreation) Reserve land as part of this process under section 24A of the Reserves Act 1977. Section 24A only allows the Council to change the specific local purpose of the Local Purpose Reserve.

The Council may be able to consider an alternative primary classification, such as Recreation Reserve, for the vesting of the stopped road land as part of this process under section 14 of the Reserves Act 1977.

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The main advantage of a divided classification appears to be that it would meet some of the wishes of some members of the public who submitted. This would complicate the integrated management of the Reserve. The Council would also be unable to amalgamate the Recreation Reserve into the adjoining Local Purpose Reserve raising questions about meeting the condition of the Environment Court for the road stopping. There would be ongoing complications for future decision making processes, as all decisions would need to be examined under both types of reserve classification and their restrictions. There could be implications if activities straddled boundaries of the different reserve classifications.

If Council supported a divided classification for the Reserve then officers would report back on options and advantages and disadvantages for each.

Other matters raised

- 5.6 The Brook Waimarama Sanctuary raised a concern regarding access to the Sanctuary between the time when the final gazettal process is completed, and the implementation of the Development Plan. It requested that Council put in place a legal mechanism to ensure that access through the Reserve to the Sanctuary will continue until the development plan is in place.

No change to access is proposed as part of this consultation process and accordingly a legal mechanism to protect access to the Sanctuary is not considered necessary.

The draft RMP states that the Comprehensive Development Plan shall provide for "a redeveloped roading network to suit the users...providing for pedestrian, cycle, car and bus access, and emergency evacuation". Consultation with the Sanctuary and the Brook Valley Community Group (Inc) will be undertaken as part of the development of this plan.

See also the comment on public access and continued use of the road in paragraph 5.2.1.

- 5.7 Council and the Brook Waimarama Sanctuary have worked together to "unlawfully exclude members of the public from the area" and that the land was never intended to be leased for profit or private business purposes (submitter 19296).

The leasing of land to the Sanctuary is outside the scope of this consultation/objections process.

6. Process issues

- 6.1 *Difference between submissions and objections:* The question was raised by one submitter that Council should have only called for objections, instead of submissions and objections. Subsequent to the hearings

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Council has also received a letter on behalf of two of the submitters challenging that both submissions and objections were called for.

The first public notice in the Nelson Mail sought "submissions", and the notices on the Council's website and in an Our Nelson article sought submissions and objections. S(24)(2) of the RA states that:

"every person claiming to be affected by the proposed change of classification or purpose or revocation shall have a right of objection to the change or revocation, and may, at any time within 1 month after the date of the first publication of the notice of the proposal, give notice in writing of his or her objections to the proposed change..."

It is considered that the Council's request for "submissions" includes submissions in opposition/objections, neutral submissions and submissions in support.

While the Council is required to consider objections under s 24A(2) of the Reserves Act, it also has consultation and decision making requirements under the Local Government Act 2002 and the common law that require the Council to consider the views and preferences of all interested persons. Accordingly, the Council has sought the views and preferences of all members of the community who have an interest in the proposals.

7. Matters that the Hearings Panel requested further information on.

7.1 Purchase of Simpson's land:

This land was purchased in the 1950s and it is not intended to offer to sell this land back to the family.

7.2 Implications of the proposed changes on Council's water infrastructure:

One submitter proposed that Council re-examine the impact of the proposed change on waterworks pipes and protect future "unknown needs".

The Maitai pipeline does not run through the Reserve, although there is a pipeline with an easement that runs through the Simpson's property. No change has been proposed to this infrastructure.

7.3 Provision of land to Nelson Marlborough Institute of Technology for ranger training facilities:

Any proposed training facilities would need to meet the requirements of the Reserves Act 1977 and comply with the Reserve Management Plan (once finally approved).

7.4 Development of Eureka park:

The draft RMP notes that the Development Plan should provide for:

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"Walking tracks and information services for Eureka Park, developed in consultation with the promoters of that park."

The intent of the park is to celebrate the area of the Reserve that was named after the sister city agreement with Eureka City, USA, which was signed on 26 March 2004. The land incorporates many mature redwood trees and previous Council intentions were to develop the existing track incorporating family picnic and passive recreation areas.

This work can be considered, along with previous submissions on Eureka Park as the draft RMP and comprehensive development progresses.

Previous proposals for the Reserve included the location of a gondola for walkers and mountain bikers. However, the project promoters have indicated that the Maitai Valley is now considered a "better option".

8. Options

8.1 Option 1 is recommended.

Option 1: Recommend to Council that: i) The specific local purpose of the Local Purpose (Recreation) Reserve be changed to Local Purpose (Outdoor Leisure, Camping, Conservation and Education) Reserve; and ii) Declare the stopped road land to be Local Purpose (Outdoor Leisure, Camping, Conservation and Education) Reserve so as to amalgamate it into the adjoining reserve.	
Advantages	<ul style="list-style-type: none">• Meets the condition of the Environment Court and enables Council to finalise the road stopping and amalgamate this land into the adjoining reserve.• Enables Council to address the ongoing legal risk associated with the current Local Purpose (Recreation) Reserve classification.• Enables Council to consider the next steps for the adopted in principle Reserve Management Plan.
Risks and Disadvantages	<ul style="list-style-type: none">• Possible risk of legal challenge if any of the submitters disagree with the Council's decision or decision making process.
Option 2: Recommend to Council that: i) The specific local purpose of the Local Purpose (Recreation) Reserve be changed to Local Purpose (Outdoor Leisure, Camping, Conservation and Education) Reserve; and ii) Declare the stopped road land to be Recreation Reserve.	

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Advantages	<ul style="list-style-type: none"> Partly meets the requests of some submitters.
Risks and Disadvantages	<ul style="list-style-type: none"> Complicates integrated management of the Reserve Risk that condition of the Environment Court is not met and road stopping cannot be completed. Possible risk of legal challenge by other submitters who do not support recreation reserve status for this land.
Option 3: Do nothing	
Advantages	<ul style="list-style-type: none"> No further work would be undertaken.
Risks and Disadvantages	<ul style="list-style-type: none"> Does not meet the condition of the Environment Court and prevents completion of the road stopping process. Ongoing legal risk associated with the current Local Purpose (Recreation) Reserve classification. Council unlikely to progress the final approval of the management and development plans and therefore Council will be unable to achieve the objective of integrated and appropriate management of the Reserve.

9. Next Steps

- 9.1 Following deliberations the Chair will prepare a report with recommendations to Council and this, together with a covering report from officers, will be considered by Council at its meeting of 13 December.
- 9.2 If the Council resolves to declare the stopped road as Local Purpose (Outdoor Leisure, Camping, Conservation and Education) Reserve, then the Environment Court's condition is satisfied. Council can then proceed to complete the road stopping under the tenth schedule of the Local Government Act 1974 and amalgamate the land into the adjoining reserve.
- 9.3 If the decision is made to change the specific local purpose of the Local Purpose (Recreation) Reserve to Local Purpose (Outdoor Leisure, Camping, Conservation and Education) Reserve then Council can place a notice in the Gazette and the change will take effect.
- 9.4 Depending on the outcome of deliberations and the decision making process to change the specific local purpose and declare the stopped road land to be reserve, it is proposed that officers come back to Council

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in the new year with a report on the final approval of the adopted in principle draft RMP.

10. Conclusion

- 10.1 Having heard submissions and objections the Hearings Panel now needs to deliberate and, through the Chair's report, make a recommendation to Council.

Author: Mark Tregurtha, Manager Strategy

Attachments

Attachment 1: Public Notice - Change to Specific Local Purpose(A2097629) [↓](#)

Attachment 2: Public Notice - Stopped Road to be Declared Reserve(A2097617) [↓](#)

Important considerations for decision making	
1. Fit with Purpose of Local Government	Approval of the Road Stopping and Classification processes will enable Council to consider the next steps for finalising the Brook Recreation Reserve Management Plan, and then the Development Plan for the Reserve. These processes contribute towards Council providing good-quality local public services.
2. Consistency with Community Outcomes and Council Policy	The recommendations in this report support the Community Outcomes of "Our unique natural environment is healthy and protected" and "Our communities have access to a range of social, educational and recreational facilities and activities".
3. Risk	Consultation has been carried out to determine the community's views on the proposals. There is a risk that the recommendations and decision making process are not supported by some stakeholders or objectors. This might result in legal action. This risk can be partly mitigated through explaining to submitters why the recommendations were made. There is also a legal risk if the current classification of Local Purpose (Recreation) Reserve remains as this classification may be ultra vires to the Reserves Act 1977.
4. Financial impact	There are no significant financial impacts from this part of the process.
5. Degree of significance and level of engagement	This matter is of low significance to most members of the public.
6. Inclusion of Māori in the decision making process	No engagement with Māori has been undertaken for this report.
7. Delegations	The Hearings Panel was delegated authority to hear and deliberate on submissions. The Chair of the Hearings Panel was delegated authority to prepare the report to Council, along with recommendations.

Item 6: Brook Reserve - Deliberations on Classification and Road Stopping Processes:
Attachment 1



CHANGE TO SPECIFIC LOCAL PURPOSE OF RESERVE, BROOK VALLEY

Notice is given pursuant to section 24A of the Reserves Act 1977 that the Nelson City Council proposes to change the specific local purpose of the Local Purpose (Recreation) Reserve described in the schedule and detailed in green on the map below to Local Purpose (Outdoor Leisure, Camping, Conservation and Education) Reserve. The reason for the proposed change is to provide for the appropriate management of the reserve in keeping with its intended uses.

Please note there is a second public notice relating to the land running through the Local Purpose Reserve.

Schedule

**Land Registration District
Legal Description**

Allotment 49 Deposited Plan 210
Lot 1 Deposited Plan 5496
Section 8 Survey Office Plan 498803
Section 14 Survey Office Plan 498803
Part Section 9 District of Brook Street and Maitai
Section 10 Survey Office Plan 498803
Section 12 Survey Office Plan 498803
Section 6 Survey Office Plan 498803

**Nelson
Title Reference**

NL34/283
NL133.27
786619
786621
53911
791500
786623
786617

Total land area approximately 9.399 hectares

Any person wishing to make a submission on this proposal should do so in writing to Nelson City Council, PO Box 645, Nelson, 7040, or by email to submissions@ncc.govt.nz or through the Nelson City Council website at www.nelson.govt.nz/council/consultations/consultations/ from 10 September 2018.

Submissions must be received no later than 5pm on 12 October 2018.



Local Purpose (Recreation)
Reserve proposed to be changed
to Local Purpose (Outdoor Leisure,
Camping, Conservation and
Education) Reserve

A2097629

Item 6: Brook Reserve - Deliberations on Classification and Road Stopping Processes: Attachment 2



LAND TO BE DECLARED RESERVE, BROOK VALLEY

Notice is given under section 14 of the Reserves Act 1977 that the Nelson City Council intends to resolve to declare the land described in the schedule and shown as purple on the plan below, to be reserve to be held as Local Purpose (Outdoor Leisure, Camping, Conservation and Education) Reserve, so as to amalgamate it into the adjoining Local Purpose Reserve.

Please note there is a second public notice relating to the adjoining Local Purpose Reserve.

Schedule

Land registration District Nelson

7173m² adjoining or passing through the land contained in the legal descriptions below and as shown on SO Plan 498803:

Legal Description	Title Reference
Allotment 49 Deposited Plan 210	NL34/283
Lot 1 Deposited Plan 5496	NL133.27
Section 8 Survey Office Plan 498803	786619
Part Section 9 District of Brook Street and Maitai	53911
Section 10 Survey Office Plan 498803	791500
Section 12 Survey Office Plan 498803	786623
Section 6 Survey Office Plan 498803	786617

A copy of SO Plan 498803 can be viewed at the Council Office, 110 Trafalgar Street during normal office hours.

Any person wishing to make a submission on this proposal should do so in writing to Nelson City Council, PO Box 645, Nelson, 7040, or by email to submissions@ncc.govt.nz or through the Nelson City Council website at www.nelson.govt.nz/council/consultations/consultations/ from 10 September 2018.

Submissions must be received no later than 5pm on 12 October 2018.



Land proposed to be held as Local Purpose (Outdoor Leisure, Camping, Conservation and Education) Reserve

A2097617