



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

Date:	18 March 2020
Time:	9.00 a.m.
Location:	Council Chamber, Civic House 110 Trafalgar Street Nelson

Agenda

Rārangi take

Chair	Cr Kate Fulton
Members	Cr Matt Lawrey Cr Pete Rainey

**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. Findlay Place Easements - Deliberations Report 4 - 19**

Document number R14807

Recommendation

That the Hearings Panel - Other

- 1. Receives the report Findlay Place Easements - Deliberations Report (R14807) and its attachments (A2342495 and A2349318); and***
- 2. Considers submissions and objections from the community; and***
- 3. Grants right of way, right to drain wastewater and right to drain water easements over the Local Purpose Reserve (Road) (Lot 17 DP 486996) in favour of Lot 2 DP 366503 with all costs associated with the easements to be met by Wholesale Landscapes Limited, subject to final consent of the Council (acting as the Minister of Conservation's delegate).***

Recommendation to Council

That the Council

- 1. Consents to right of way, right to drain wastewater and right to drain water easements over the Local Purpose Reserve (Road) (Lot 17 DP 486996) in favour of Lot 2 DP 366503 under section 48(1) of the Reserves Act 1977, acting pursuant to a delegation from the Minister of Conservation.***

Findlay Place Easements - Deliberations Report

1. Purpose of Report

- 1.1 To consider the issues raised in submissions and objections on the proposed easements for right of way, to drain sewage and drain water over Council Local Purpose Reserve (Road) and decide whether to grant the easements, subject to the final consent of the Council (acting as the Minister of Conservation's delegate).

2. Summary

- 2.1 The proprietors of Lot 2 DP 366503, Wholesale Landscapes Limited, wish to create a second entrance from Findlay Place to their land at 51 Saxton Road. This will give traffic safer options than entry and exit on Saxton Road and allow them to develop a 'one way' system for delivery trucks.
- 2.2 The proposed entrance requires a right of way (ROW) across a Local Purpose Reserve (Road) at the end of Findlay Place. This was intended to become formed road when Lot 2 DP 366503 was subdivided and developed. The development of the second entrance may also require Wholesale Landscapes to install waste and stormwater pipes through the Reserve land.
- 2.3 Easements formalise the use of land by parties other than the landowners. In this case the easement instrument will stipulate the standards to which the infrastructure must be constructed and will include a restriction preventing the ROW being used for a future subdivision of Lot 2 DP 366503 without being upgraded to full subcollector road standard.
- 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 for right of way, water systems and drainage, subject to final consent of the Minister of Conservation. The administer 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

Item 6: Findlay Place Easements - Deliberations Report

notification process took place during December 2019 and January 2020, closing on 10 February 2020. This prompted two submissions.

- 2.6 The Hearings Panel – Other must give full consideration to every objection or submission received before deciding to proceed with the proposal. If the Hearings Panel – Other decides to proceed with the proposal, it must then be referred to Council for final consent.

3. Recommendation

That the Hearings Panel - Other

1. ***Receives the report Findlay Place Easements - Deliberations Report (R14807) and its attachments (A2342495 and A2349318); and***
2. ***Considers submissions and objections from the community; and***
3. ***Grants right of way, right to drain wastewater and right to drain water easements over the Local Purpose Reserve (Road) (Lot 17 DP 486996) in favour of Lot 2 DP 366503 with all costs associated with the easements to be met by Wholesale Landscapes Limited, subject to final consent of the Council (acting as the Minister of Conservation's delegate).***

Recommendation to Council

That the Council

1. ***Consents to right of way, right to drain wastewater and right to drain water easements over the Local Purpose Reserve (Road) (Lot 17 DP 486996) in favour of Lot 2 DP 366503 under section 48(1) of the Reserves Act 1977, acting pursuant to a delegation from the Minister of Conservation.***

4. Background

- 4.1 Wholesale Landscapes Limited, wish to create a second entrance from Findlay Place to their land at 51 Saxton Road. This will give traffic safer options than entry and exit on Saxton Road and allow them to develop a 'one way' system for delivery trucks.
- 4.2 The proposed right of way (ROW) route is across a Local Purpose Reserve (Road) at the end of Findlay Place. The development of the

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second entrance may also require Wholesale Landscapes to build an entrance control office. This is likely to be a portacom style building with a toilet and sink. The wastewater from this building will connect into the public wastewater system in Findlay Place.

- 4.3 The wastewater pipe will be located under the right of way and will cross the Local Purpose Reserve. An easement is required to legalise the encroachment across the Reserve and to allow the owner of the pipe to access it for repairs or maintenance.
- 4.4 There is an existing stormwater facility at the end of Findlay Place. It appears to be partially in legal road and partially in the Local Purpose Reserve. The construction of the right of way may impact on this infrastructure requiring the installation of further stormwater controls in the Reserve. Again, an easement is required to legalise the encroachment across the Reserve and to allow the owner of the infrastructure to access it for repairs or maintenance.
- 4.5 The Council may grant easements under section 48(1) of the Reserves Act 1977 (RA) for specified purposes, including for right of way, water systems and drainage,
- 4.6 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.
- 4.7 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:
 - 4.7.1 The reserve is not likely to be materially altered or permanently damaged; **and**
 - 4.7.2 The rights of the public in respect of the reserve are not likely to be permanently affected.
- 4.8 In this case the Hearings Panel – Other decided to publicly notify the proposed easements. The Hearings Panel – Other (HEA/2019/031) authorised public notification of the proposed easements on 12 December 2019 –

That the Hearings Panel - Other

1. *Receives the report Easements - Findlay Place Local Purpose Reserve (Road) (R13699) and its attachment (A2315077); and*

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2. Amends decision HEA/2019/023 of the Hearings Panel - Other meeting held on 3 December 2019 to read as follows:

3. Grants Right of Way, right to drain wastewater and right to drain water Easements over the Local Purpose Reserve (Road) (Lot 17 DP 486996) in favour of 51 Saxton Road (Lot 2 DP366503) subject to public notice under section 119 (1)(b) of the Reserves Act 1977 with all costs being met by the applicant; and

4. Notes that if any objections to the proposed easements are received, a further report will be brought to the Hearings Panel – Other to enable consideration and decision on those objections.

Edgar/Skinner

Carried

- 4.9 Public notification was given via the Council website, the 17 December 2019 issue of Our Nelson and a letter sent to all of the property owners and occupiers on Findlay Place.
- 4.10 Two submissions were received by the deadline of 10 February 2020. Submission 21544 neither objected to nor supported the easements, while Submission 21545 did not object to the proposed right of way (Attachment One A2342495).

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)).

Submission 21544

- 5.2 The submitter, The Smokehouse, does not state an objection to the proposed easements but raises concerns about the existing landscape supplier's operations and the potential impacts of landscape materials being transported along Findlay Place.
- 5.3 The Smokehouse has concerns about the amount of dust, which they attribute to Wholesale Landscapes, that is trapped in their air filters and questions whether those volumes will increase when materials are being transported past their facility in Findlay Place. Their facility is adjacent to Wholesale Landscapes, with their building approximately 20 metres from the closest material within the yard.
- 5.4 Wholesale Landscapes operate under a consent from 1994 when Saxton Road was in a rural area surrounded by orchards and associated industry. There are no specific conditions on this consent relating to dust control.
- 5.5 There is a rule in the Nelson Resource Management Plan about landscaping supply businesses but as this site predates this rule and is

Item 6: Findlay Place Easements - Deliberations Report

consented this is not applicable. However, the Nelson Air Quality Plan has regulations on dust (AQr.39) which states:

5.5.1 AQr.39 Dust from surfaces – the discharge of dust into air from any surface that does not expressly contravene any other rule in this Plan or the Nelson Resource Management Plan is permitted, if:

a) the general conditions in Rule AQr.22 are met.

5.5.2 AQr.22

The following general conditions apply to all discharges of contaminants to air, including those allowed as permitted activities in the Rule Table, excluding those allowed by a resource consent unless the consent states otherwise¹:

a) The discharge must not result in any offensive or objectionable odour to the extent that it causes an adverse effect beyond the boundary of the site of the discharge, and

b) The discharge must not result in dispersal or deposition of particles, including smoke particles or dust, to the extent that it causes an offensive or objectionable effect beyond the boundary of the site of the discharge,

5.6 Environmental Inspections Limited (EIL) have had many dealings with Wholesale Landscapes over a period of 10-15 years regarding complaints about particulate and odour discharges from the yard. This has predominantly related to screening/grading/stockpiling and handling of bark and topsoil. As a result of these complaints, the business has made a number of changes including down-sizing, relocating stockpiles and installing sprinklers. They have also moved some of the business to a site in Tasman which has helped.

5.7 The last recorded complaint of dust from the site was on 1 June 2018 from a private residence in Lucy Murcott Place. EIL staff visited Wholesale Landscapes and noted that the site had greater sealed area than previously, that dust controls were in place and were working well. They monitored the operation several times, in varying wind conditions, over the next month and found no evidence of dust escaping the site.

5.8 Wholesale Landscapes have stated that automated sprinklers and a tanker truck effectively suppress dust. As a wholesale supplier traffic from the yard using Findlay Place will be utility vehicles or small to medium tonnage trucks rather than private vehicles with trailers. As such there would be an expectation that the legislated requirements to cover and contain loads would be met.

5.9 As a food production business The Smokehouse is required to meet certain air quality standards and to have appropriate air filtering systems. It appears that these are working as required.

5.10 The submitter's concerns are properly addressed under Resource Management Act processes and officers consider that they should not prevent the grant of the proposed easements.

Submission 21545

- 5.11 The submitter, The Fresh Fruit Company of Nelson Limited, states that they do not object to the right of way easement but have great concern regarding increased traffic numbers on Findlay Place.
- 5.12 Fresh Fruit have large numbers of B-trains entering and exiting their site through 9 Findlay Place. Their concern is that increased traffic from Wholesale Landscapes will interfere with their operations.
- 5.13 Findlay Place is in the Nayland South Industrial Area and was constructed to a subcollector road standard in anticipation of increased traffic numbers when Lot 2 DP 366503, Wholesale Landscapes, is developed in the future.
- 5.14 Wholesale Landscapes have estimated that there may be 100 vehicle movements per weekday on Findlay Place and fewer at the weekend.
- 5.15 The formed carriageway is 10 meters from kerb to kerb. This is adequate for traffic, including two B-train type vehicles, to be able to pass safely in opposite directions. An additional 100 traffic movements per weekday is within the capacity of the carriageway. As the aerial view (Attachment Two) shows there are currently a number of undeveloped Lots on Findlay Place and little demand for kerbside parking. As the Lots are developed appropriate parking and traffic control measures will be put in place and monitored by officers.
- 5.16 The Fresh Fruit Company states that it does do not object to the ROW easement.
- 5.17 Officers consider that the submitter's concerns can be adequately addressed by the above measures and should not prevent the grant of the proposed easements.

6. Options

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

Option 1: Approve the ROW and drainage easements to Wholesale Landscapes Limited	
Advantages	<ul style="list-style-type: none">• Enables better traffic flow for the landowner• Reduced traffic congestion on Saxton Road thereby improving traffic safety
Risks and Disadvantages	<ul style="list-style-type: none">• Increased traffic flow on Findlay Place

Option 2: Decline the ROW and drainage easements to Wholesale Landscapes Limited	
Advantages	<ul style="list-style-type: none">• Landscape materials not transported past food production facilities• No increase in traffic on Findlay Place
Risks and Disadvantages	<ul style="list-style-type: none">• Council seen as unsupportive• Ongoing traffic congestion on Saxton Road• Potential of business relocating to Tasman

7. Conclusion

- 7.1 Reserves Act 1977 consultation on a proposed right of way on Findlay Place for Wholesale Landscapes Limited (Lot 2 DP 366503) over Local Purpose (Road) Reserve (Lot 17 DP 486996) resulted in two submissions.
- 7.2 Neither submission objected to the easements but raised concerns regarding increased traffic on Findlay Place. It is considered that these concerns can be adequately addressed by the measures outlined in this report and officers recommend granting the easements.

8. Next Steps

- 8.1 Subject to final consent of the Council (acting as the Minister of Conservation's delegate), draft an Agreement to Grant Easements setting out the conditions Wholesale Landscapes Limited must meet regarding the easements. Once construction is complete Wholesale Landscapes will survey their occupation of the Reserve and register the easements.

Author: Peter Hunter, Team Leader Property

Attachments

Attachment 1: A2342495 - Right of Way Easement-Findlay Place - Total Submissions - Feb2020 [↓](#)

Attachment 2: A2349318 - 51 Saxton Road and Findlay Place location diagram [↓](#)

<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 right of way and drainage easements over Council administrated Local Purpose Reserve. Granting the easements will allow the applicants to operate more efficiently and to reduce traffic congestion thereby improving traffic safety.</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>This is a low risk decision as, if approved, the easements will be controlled by an appropriate legal instrument and the physical construction of the works will be to the Nelson Tasman Land Development Manual standard.</p>
<p>4. Financial impact</p> <p>The costs of securing the easements, and the physical works, will be met by Wholesale Landscapes Limited as the beneficiaries of the easements.</p>
<p>5. Degree of significance and level of engagement</p> <p>This matter is of low significance because it does not impact the public or Council’s use of the reserve. The community has been given an opportunity to make their views known under section 119 of the Reserves Act.</p>
<p>6. Climate Impact</p> <p>This decision will have no impact on the ability of the Council or District to proactively respond to the impacts of climate change now or in the future.</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: Findlay Place Easements - 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 but 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.

Right of Way Easement – Findlay Place – Index

Page No.	Sub No.	Name	Organisation
1	21544	Peter Pattullo	The Smokehouse
3	21545	Peter O’Sullivan	The Fresh Fruit Company of Nelson Ltd

A2342495

Submission Summary

Right of Way Easement - Findlay Place - Submission #21544

Mr Peter Pattullo
The Smokehouse

Nelson 7010

Speaker? False

Department	Subject	Opinion	Summary
NCC - Community Services	Right of Way Easement - Findlay Place	I object to the proposed easement	Please see attached

A2342495

Printed: 11/02/2020 01:51

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21544-1

From: Peter Pattullo // Smokehouse [REDACTED]
Sent: Monday, 10 February 2020 2:43 PM
To: Peter Hunter
Subject: Findlay

Hi Peter, thanks for the call earlier in relation to the proposed right of way for Wholesale Landscapes.

As I was saying, we are a neighbour of theirs. We run a smoked seafood business, supplying ready to eat smoked seafood. Food safety and hygiene is critical to us and we have to demonstrate as such to MPI on a regular basis.

I have some issues/concerns that I would like to raise.

Whilst our building is enclosed, we do bring fresh air into the building via a filter that we are required to do to meet fresh air (and positive air) requirements. Quite often when Wholesale Landscapes are working their yards, the particles etc from their materials works its way into our building in the form of dust and cause mould. Due to the nature of our business, this is hardly ideal.

My worry would be that if there was a right of way, with increased traffic movements in front of my building, with trucks etc carrying a range of materials, possibly uncovered, the situation that I describe above will amplify and need to mitigate will increase.

I would be interested to hear your/their response.

Kind regards
Peter



Peter Pattullo
peter@smokehouse.co.nz

Find our delicious smoked seafood at www.smokehouse.co.nz
Learn about our business at <https://www.youtube.com/user/thesmokehousemapua>

Submission Summary

Right of Way Easement - Findlay Place - Submission #21545

Mr Peter O'Sullivan

General Manager The Fresh Fruit Company of Nelson Ltd

PO Box 2067
Nelson 7041

Speaker? False

Department	Subject	Opinion	Summary
NCC - Community Services	Right of Way Easement - Findlay Place	I do not object to the proposed easement	Please see attached

21545-1

[REDACTED]

From: Peter O'Sullivan [REDACTED]
Sent: Monday, 10 February 2020 1:43 PM
To: Peter Hunter
Cc: [REDACTED]
Subject: Findlay place - Stoke

Hi Peter,

As per our discussion today I have great concern about trucking accessibility on Findlay place stoke. I/ we do not object to wholesale landscapes having access to Findlay place but wish to make all aware of the trucking movements on this culdesac.

Freshco Nelson and OJI (common landlord Saxton Fruit) will have approximately 1433 x b-trains entering lot 15 DP 486996 and 1253 X B-trains plus 280 40 ft. container trucks exiting lot 14 DP 486996 (9 Findlay place).

The current marking out of parking on this street will inhibit access to our site. I/ we believe that one side of the road should be made free of parking for any vehicles to allow for current and future truck movements.

Regards
Peter O'Sullivan

General Manager
The Fresh Fruit Company of Nelson Ltd



Stoke, Nelson 7041



From: [REDACTED]
Sent: Monday, 10 February 2020 1:53 p.m.
To: [REDACTED]
Subject: Message from C30806598



51 Saxton Road and Findlay Place

 **Nelson City Council**
te kaunihera o whakatū

PO Box 645 Nelson 7040 New Zealand
PH 03 5460200
www.nelson.govt.nz

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Scale 1:3,000

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Date: 14/11/2019

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A2349318