

29. 7. 2004

**COUNCIL HEARINGS PANEL
21 JULY 2004**



**A meeting of the Council Hearings Panel
was held on Wednesday 21 July 2004 at 11am**

PRESENT: Councillor Sue Wells (Chairperson),
Councillors Lesley Keast and Graham Condon.

The Hearings Panel reports that:

PART A - MATTERS REQUIRING A COUNCIL DECISION

**1. REPORT OF THE COUNCIL HEARINGS PANEL: PROPOSED CHANGE OF CLASSIFICATION
OF 386 SQUARE METRES OF BARNETT PARK FROM RECREATION RESERVE TO LOCAL
PURPOSE COMMUNITY BUILDINGS RESERVE**

Officer responsible City Solutions Manager	Author Dale Wreford, DDI 941-8941
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This is a report on a meeting of the Council Hearings Panel acting as a Reserves Hearings Panel in accordance with section 24 of the Reserves Act 1977 and its amendments. The panel, comprising Councillors Sue Wells, Lesley Keast and Graham Condon, met on Wednesday 21 July 2004 to consider an objection lodged by Mrs Neralie Brittenden, 1-202A Main Road, Redcliffs, Christchurch, to the proposed change of classification of part of Barnett Park, to accommodate a community crèche.

HEARING PROCESS

The process under the Reserves Act 1977 does not permit the Council to delegate to hearing commissioners. Therefore, the Council Hearings Panel was made up of three elected members who had not taken part in any discussion or voting on this matter when it came before the Council.

In the event of the Minister of Conservation granting consent to the change of classification of part of Barnett Park, and a resource consent being sought, the resource consent application would be heard by an independent Commissioner.

RESERVES ACT 1977 – PROCESS

The next steps in the process are:

- Under the Reserves Act 1977 the Council is required to make a determination based on the Council Hearings Panel's recommendation for a change of classification.
- This will then be notified in writing to the Minister of Conservation.
- The Minister will then make his determination to sign off on the Council's recommendation, or not.
- Should the Minister agree to the change of classification, the resource management process will then commence.

BACKGROUND

The community crèche is currently located temporarily in Augusta Street premises, the lease for which expired in August 2000. Temporary arrangements are in place to allow the crèche to remain until a solution is found for their accommodation needs. The current premises do not meet the standards of the Ministry of Education for crèches, and compliance with some Occupational Safety and Health needs is questionable.

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The Christchurch City Council's Annual Plan Subcommittee allocated \$300,000 over two years (\$100,000 2001/02, \$200,000 2002/03). This amount has been carried forward. The Crèche Committee has raised approximately \$50,000 and obtained a grant of \$60,000 from the Canterbury Trust to augment the Council funding provided for a new crèche. However, it has become apparent that without a large increase in funds to purchase land upon which to build the crèche, the only option is for the crèche to be built upon Council owned land. The Council at its meeting on 12 December 2001 resolved to approve in principle the use of part of Barnett Park as a preferred site for the proposed Redcliffs Crèche, subject to an appropriate consultation process.

A copy of classification plan SM1298-01 upon which is shown the proposed area of Barnett Park it is intended to change from Recreation Reserve to Local Purpose (Community Buildings) Reserve is attached as Appendix 1. The outline of the proposed community crèche building is superimposed on this plan. There are two semi-mature trees on the site which will be retained for shade. No car parks will be lost from the existing car park.

Once the area is classified as Local Purpose Reserve the Council can issue a lease/licence to the crèche under the Public Bodies Leases Act 1969 without further consent being required by the Minister.

NOTIFICATION PROCESS

The Council has fulfilled the advertising requirements of section 24(2) of the Reserves Act 1977. A letter was also sent to 144 properties of residents deemed to be most affected by the proposal.

MANAGEMENT PLAN ISSUES

The crèche is a new potential application. It is not appropriate to use a Recreation Reserve for a community crèche. Such use is not consistent with the permitted uses of a Recreation Reserve. The Reserves Act allows the potential for change to occur in accordance with changing community needs, hence the inclusion of section 24 in the Reserves Act 1977. To achieve this the classification of the part of the reserve on which part of the crèche building and playground are to be located needs to be changed from Recreation Reserve to Local Purpose (Community Buildings) Reserve. If the process is successful a review of the Barnett Park Management Plan will need to be made using the management plan review processes as outlined in section 41 of the Reserves Act.

A legal opinion obtained from Buddle Findley states:

- A proposal such as a change in classification, which is not in conformity with, nor is contemplated by the management plan, may still be considered and consented to by the Minister of Conservation subject to compliance with the provisions of section 24 of the Reserves Act.
- The proposed change in classification, if successful, will necessitate a review of the existing management plan for Barnett Park under section 41(4) of the Reserves Act.
- The requirement for a management plan to promote the purposes for which a reserve is classified would seem to necessitate a change in classification occurring prior to a review being undertaken.

SITES INVESTIGATED UPON BARNETT PARK

Eight sites upon Barnett Park were investigated for the crèche site and assessed by a committee made up of the Crèche Committee, representation from elected representatives, and Council officers. A working party comprising of Council officers and local residents was established when further possible sites in the Redcliffs area were investigated to locate the community crèche, after the Council decided to reject the initially preferred site at the front of Barnett Park.

SUBMISSIONS RECEIVED

Two submissions were received, one being in support, and one in opposition to the proposed change in classification. The submission in support of the proposed change in classification was lodged by Ms Christine Toner of 139 Main Road, Redcliffs and that in opposition by Mrs Neralie Brittenden, 1/202A Main Road, Redcliffs. Mrs Brittenden attended the hearing and spoke to her submission. Mr Hawker, of 2/202A Main Road, was present to support Mrs Brittenden.

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ISSUES RAISED BY BOTH SUBMITTERS

Both submitters had concerns about traffic problems at the entrance of the driveway into Barnett Park. Ms Toner indicated her support was contingent upon preventing parking along the side of the driveway, widening the driveway, and creating a "no stopping" area on the south side of the Main Road, to the Sumner side of the driveway entrance, so approaching cars could move out of the traffic flow before turning into the driveway. Mrs Brittenden indicated that she had concerns about cars turning right into the park in the morning.

The panel accepted the officers' information that the crèche opening hours will be Monday to Friday at times when the sports fields are not being used, and therefore parking along the sides of the driveway should not be an issue.

It was noted the intention of the Council is to widen the entrance to the driveway from 5.5 metres to 7.5 metres to enable cars to turn in and out of the splayed driveway entrance at the same time. "No stopping" lines will be placed either side of the driveway into the park. The driveway is approximately 5.2 metres wide which will allow two cars to pass carefully when travelling in opposite directions. This will automatically keep traffic speeds down. Ms Toner received a letter from the Council dated 17 June 2004 with these comments, and a reply was received from her dated 19 June 2004 indicating that her concerns were now satisfied.

SUBMISSION IN OBJECTION: MRS NERALIE BRITTENDEN

Mrs Brittenden lives adjacent to the park, and she expressed her concerns to the panel that the views, peace and ambience which she experienced daily would be lost should the crèche and playground be sited as proposed. Despite more than two years of consultation with the Council she considered her concerns have not been mitigated. In her opinion, given the size of Barnett Park, and the range of alternative sites which Mrs Brittenden had suggested at various times, she considered that a "win win" outcome should be possible with further negotiation.

Mrs Brittenden and Mr Hawker both described to the panel the potential for the crèche building to channel flood waters toward their properties. In response, it was explained by officers that the building would be located on piles, which would cater for flood water flow, and that the subsequent resource consent process would be required to take flooding aspects into consideration.

The panel also considered that other issues raised by Mrs Brittenden would best be served by the resource consent process, including the proximity of the proposed building in relation to her property boundary, and the width of the proposed building.

Submission

Mrs Brittenden stated, "If this change is allowed, I believe a precedence is being created for similar changes to be made on other parks such as Hagley Park".

The panel accepted that the Reserves Act 1977 clearly allows for the changing of classification of whole or parts of any reserve to reflect the changing needs of the community which surrounds a particular park or reserve. The process is a formal one enshrined in law, as required by section 24 of the Act. A number of changes to classification of different parts of parks has occurred in the city previously, and therefore the panel considered that this proposed change of classification does not set a precedent. It was also noted that the Council is only allowed to use or allow other parties to use a particular park or reserve for an activity or use that is in accordance with what the classification type allows.

Submission

Mrs Brittenden stated, "I object to the proposal as this portion of the park is being taken for what is effectively private use by a minority group".

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The panel accepted the information provided by the officer which stated that the Reserves Act 1977 allows parts of different types of classified reserves (for example recreation, and local purpose reserves) to be set aside by way of lease or other legal instrument for the exclusive use of a particular section of the community. Examples are bowling and tennis clubs, kindergartens, community crèches etc. The exclusive use is subject to compliance with the public consultation process as set out in the Reserves Act.

Submission

Mrs Brittenden indicated in her submission she was of the view that the crèche is a commercial activity, in competition with other commercial crèches that are located upon private land in the area. Therefore, in her opinion, this crèche should neither be situated upon public land, nor Council funds be given to this venture, and private land in the community should be used to ensure that this crèche does not have a competitive advantage. Mrs Brittenden also submitted that the parkland is being taken for what is effectively a private use.

The panel accepted the officers' information that this crèche is a community crèche, the fees for which are set at a level to pay the staff, and operate the crèche on an ongoing basis. The fees that are charged do not include a percentage that is returned to a private individual as a return on their investment. A management committee (all the members of which are unpaid except for the professional staff they employ) manages the crèche. The officer does not believe this community crèche is a commercial venture, nor that it can be said to be for 'private use' as the crèche is available for all in the community who need childcare to use.

The officer comment that no money is available to buy land in the area and therefore without the use of Council owned land the building of a purpose built community crèche would be unable to proceed, was accepted by the panel.

The panel was aware of the Council's current policy of assisting community crèches to become established in the community to provide childcare for the citizens of Christchurch.

Submission

Mrs Brittenden submitted that the Council's intention to change the classification of part of Barnett Park is premature, and that this should not occur until after resource consent is obtained, as required by the Resource Management Act 1991. It could be argued that if the change of classification does eventuate, but the resource consent is not granted, then it would be possible to build another community type of building upon this area of land in the future, subject to Council approval being obtained.

It was clear to the panel that the process of obtaining resource consent within the provisions of the Resource Management Act 1991, and the change of classification as required by the Reserves Act 1977 are two different processes that are not linked. Both processes have to succeed before the crèche building is able to be built upon the park.

Submission

Mrs Brittenden questioned to what degree does this commercial venture complement or enhance the public's enjoyment of the environmental, cultural and landscape qualities of the park (as outlined in the Barnett Park Management Plan – Management Policy 1.3).

The panel accepted the officers' opinion that a community crèche is not a commercial venture. The issues raised concerning the changing of the classification of part of the park in relation to the management planning issues were covered earlier in the hearing, based upon a legal opinion obtained by the Council.

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THE HEARING

The panel considered the following as it formulated its decision:

- The land in Barnett Park adjacent to Mrs Brittenden's property was not the land affected by the change of classification proposal.
- The panel considered that in allowing the change of classification, there would be a greater opportunity through the resource consent process to minimise the effects on Mrs Brittenden which may take place on the site adjacent to her property.
- That the land adjacent to Mrs Brittenden's property is not reserve land, but fee simple and does not require any reserve classification change.
- That the purpose of the hearing was to consider only those matters set out in the Reserves Act - not those which would follow through any consequential resource consent process.
- That the panel had sympathy with Mrs Brittenden's views that the process was complex and difficult. While the panel listened to her concerns which related to future potential effects of any construction on the site next to her, the only concerns which were relevant to this decision are those set out in the Reserves Act.
- The panel did not feel that the change of use would affect provisions of the Act relating to Recreation Reserves (s.17) - to provide areas for the recreation and sporting activities, and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of open spaces and on outdoor recreational activities, including recreational tracks in the countryside. The panel considered the effect of the proposed change on public freedom of entry and access to the park as required by the Act, would be no more than minor.
- The panel also noted that there were no other submissions expressing concern about the loss of general use of the 386m site from the wider recreation reserve of Barnett Park.
- The panel was also satisfied that there would be no effect on the ponding ability of Barnett Park as a result in this change of use, given that the Council would still be the landowner of the site.

CONCLUSION

After carefully considering the submitters' views, both written and those presented orally at the hearing, the panel was firmly in agreement that the Council's proposal to change the classification of 386 square metres of Barnett Park, as shown on classification plan SM1298-01 (attached) from Recreation Reserve to Local Purpose (Community Buildings) Reserve should be recommended to the Council for adoption.

Hearings Panel

Recommendation:

That the Minister of Conservation grant conditional approval for the change of classification of 386 square metres of Barnett Park from Recreation Reserve to Local Purpose (Community Buildings) Reserve as shown upon plan number SM1298-01. This approval being subject to resource consent being obtained to build the crèche upon this site, and therefore gazetting of this change of classification is not to occur, unless the resource consent application to locate the crèche upon this site is approved.

The meeting concluded at 12.40pm

CONSIDERED THIS 29TH DAY OF JULY 2004

MAYOR