

9. WASTEWATER OUTFALL EASEMENTS – APPOINTMENT OF COMMISSIONERS

General Manager responsible:	General Manager City Environment
Officer responsible:	Greenspace Manager
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PURPOSE OF REPORT

1. The purpose of this report is to enable the Council to appoint Commissioners to hear submitters in support of their submissions regarding proposals for temporary and permanent easements over South New Brighton Park and the South New Brighton foreshore reserves, to enable temporary construction sites to be located on park and reserve land, and for the wastewater pipeline to be laid through this land.

EXECUTIVE SUMMARY

2. There is a need for the Council to appoint impartial Commissioners to a Reserve Hearings Panel to hear submitters' views concerning the proposal to approve both temporary and permanent easements over South New Brighton Park, and part of the South New Brighton foreshore reserves, both areas of land being vested in the Council under the Reserves Act 1977. The easements are required to enable the pipeline to be laid through these reserves.
3. The Hearings Panel, after hearing submitters and considering their views and submissions, will make recommendations to the Council, which will be included in a detailed report for its consideration, and decision.
4. There is an opportunity to use the same Commissioners that have been appointed to hear the submissions in relation to the resource consent applications to Environment Canterbury, the Christchurch City Council, and the Banks Peninsula District Council with respect to the construction and operation of the proposed ocean outfall for treated wastewater, these same Commissioners being the Commissioners that heard, and decided on the resource consent application conditions for the Waimakariri District Council Ocean Outfall.
5. It is recommended that the Council also appoints these Commissioners to a Reserves Hearings Panel to hear submitters' views in relation to the proposal for temporary and permanent easements over the reserve land vested in the Council, to enable the wastewater outfall and pipeline to proceed. After considering submitters' views the hearings panel will make a recommendation to the Council for consideration.

FINANCIAL AND LEGAL CONSIDERATIONS

6. The Council is required under section 48 of the Reserves Act 1977; sub-section (6), to grant itself easements prior to establishing temporary construction sites on a reserve, and placing pipelines through a reserve. This section of the Reserves Act provides:
 - (6) *Rights of way and other easements may be granted under this section to any person, including, notwithstanding any rule of law to the contrary, the administering body in which the reserve is vested, and, where the right of way or other easement is granted to the administering body, covenants and agreements in respect of any such transaction may be entered into by the administering body in the one capacity so as to bind or benefit the administering body in the other capacity as fully and effectually as if the administering body were a separate person in each capacity.*
7. The temporary easements will be granted under sub-section 48(1)(a) of the Reserves Act 1977, 'Any *Public Purpose*;' while the easements in which the pipe will be laid will be permanent, being granted under section 48(1)(f), *Provide or facilitate access or the supply of water to or the drainage of any other land not forming part of the reserve or for any other purpose connected with any such land.*

8. The Council has publicly advertised its intention to grant the easements in accordance with the requirements of sub-section 48(2) of the Reserves Act 1977. Sub-section 48(3) states that sub-section 2 *'shall not apply in any case where-*
 - (a) *The reserve is vested in the administering body and is not likely to be materially altered or permanently damaged; and*
 - (b) *The rights of the public in respect of the reserve are not likely to be permanently affected - by the establishment and lawful exercise of the right of way or other easement.'*
9. The Council needs to put in place easements that allow tenderers for the ocean outfall construction contract to consider the widest range of methods that they may wish to use to construct the outfall. If the successful contractor decides to lay the pipeline using an open trench method, then a small number of trees in South Brighton Park may need to be removed. However if a micro tunnelling method is used, no disturbance to the trees will occur. Officers have decided after consulting with officers from the Department of Conservation to advertise all the proposed easements, to ensure that there is no possibility of a legal challenge being made in the future, against a decision to grant the easements.

PROPOSED COMMISSIONERS

10. It is important that because the easements being applied for are for the benefit of the Council, that elected members who usually constitute the Council's Reserve Hearings Panels to hear submitters' views, and make a recommendation to the Council are not involved in this process.
11. A hearing has been arranged to hear submitters' views as part of the resource consent process for acquiring the resource consents necessary for the project to proceed. This hearing has been set down for the period from Tuesday 7 until Friday 24 June. The Commissioners for this hearing have already been appointed. It is sensible therefore to appoint these Commissioners as the Reserve Hearings Panel to hear submitters' views, in support of their submissions concerning the proposal for both temporary and permanent easements over South New Brighton Park, and the South New Brighton foreshore, because of their inherent knowledge of the project. With respect to the other consent applications, these Commissioners will after considering submitters' views and their submissions make recommendations to the Council, on the proposal to grant the easements. These recommendations will be included in a full report that will be prepared for Council deliberation. It is anticipated that this hearing will occur at the end of the resource consent hearing.
12. The Commissioners proposed are:

Anthony Hughes-Johnson, a Queen's Counsel based in Christchurch, who is an experienced commissioner.

John Lumsden, a Coastal and Resource Management Engineering Consultant, based in Christchurch, who is very experienced in this field, having in the past been retained to undertake work for local authorities, and private companies in his specialist field throughout New Zealand.

Dr Greg Ryder, a Water Quality Scientist/Consultant, based in Dunedin. He has a PhD in Zoology, and extensive experience in the production of publications, technical reports, and extensive experience as an expert witness appearing for local authorities, and private enterprise.
13. These three Commissioners were the three Commissioners who heard and decided on the resource consent application conditions required for the Waimakariri District Council Ocean Outfall.

PROCESS

14. The process by which the Council is able to grant easements is set out in section 48 of the Reserves Act 1977. The process is set out below:
 - 14.1. The Council publicly advertises its intention to grant an easement(s) in a newspaper which circulates in the area, giving the public one calendar month to make a submission on or object to the Council's proposal.
 - 14.2. If a submission is received, and the submitter wishes to be heard in support of their submission, **(two submitters have indicated that they wish to be heard in support of their submission)**, they are given the opportunity to be heard, hence the appointment of a Reserve Hearings Panel.
 - 14.3 The Reserve Hearings Panel hears submitters, and considers any other submissions received, making a recommendation to the Council.
 - 14.4. Officers prepare a report for the Council to consider, which includes a synopsis of the submitters' concerns, and the Reserves Hearings Panel's recommendations
 - 14.5. If the Council resolves to grant the easements, the file is sent to the Minister of Conservation for review, and consent or otherwise for the granting of the easements proposed.

STAFF RECOMMENDATION

It is recommended that the Council appoints Anthony Hughes-Johnson, John Lumsden, and Dr Greg Ryder to a Reserve Hearings Panel, to hear submitters' views in support of their submissions concerning the proposal to obtain Council approval for the granting of temporary and permanent easements over land vested in the Council under the Reserves Act 1977, to enable the construction of the wastewater outfall and pipeline, and to make a recommendation to the Council on the submissions.