

1. CHRISTCHURCH CITY WASTEWATER OCEAN OUTFALL - PROPOSED TEMPORARY AND PERMANENT EASEMENTS OVER RESERVE LAND

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 seek Council approval to grant itself both temporary and permanent easements over South Brighton Park and the South New Brighton foreshore reserves, both areas being vested in the Council as recreation reserve under the Reserves Act 1977, to enable the establishment of the temporary construction sites from which the pipeline will be constructed, and for the alignment in which the pipe will be laid.

EXECUTIVE SUMMARY

2. The Council at its meeting held on 11 December 2003 decided after much public consultation to choose the routes for the Christchurch City Waste Outfall, as shown on the aerial photograph labelled Christchurch City Ocean Outfall Pipeline Route - Reserves Easement Plan (attached).
3. The Council's intention to put in place the necessary easements across reserve land vested in the Council was advertised as required under the Reserves Act 1977, resulting in two submissions in opposition to the proposal, both concerning the temporary easement over part of the South Brighton Foreshore Reserve only.
4. On 9 June 2005 the Council appointed Mr A C Hughes-Johnson QC, Mr J Lumsden and Dr G Ryder as Commissioners, for the purpose of hearing 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 which is held under the Reserves Act 1977, to enable construction of the wastewater outfall and pipeline, and make recommendations to the Council. The same three Commissioners had previously been appointed by the Canterbury Regional Council as Commissioners to hear and determine the City Council's applications for the resource consents sought from the Canterbury Regional Council.
5. The three Commissioners subsequently met as a Reserves Hearings Panel, for the purpose of hearing the submissions, and related reports submitted by officers of the affected local authorities. The Commissioners also heard from counsel for the parties involved. The Commissioners have since submitted a comprehensive 381 page report and related recommendations. A copy of the Commissioners' report is tabled. City Council officers fully support the Commissioners' report and recommendations.

FINANCIAL AND LEGAL CONSIDERATIONS

6. Where a reserve is vested in the Council under the Reserves Act 1977, the Council pursuant to Section 48(1)(a) and 48(1)(f) of the Reserves Act 1977 is required under Section 48(6) to grant itself both temporary, and permanent easements over the proposed construction sites, and the proposed alignment of services to supply or drain water to or from any other land not forming part of the reserve that are to be located on the reserves, (Section 48 of the Reserves Act 1977).
7. The process by which the Council is able to put in place the required temporary and permanent easements over these reserves is set out in Section 48 of the Reserves Act 1977, the process being elaborated upon below.
8. Where the reserve is likely to be materially altered, or permanently damaged, or the rights of the public are likely to be permanently affected, the Council is required to publicly advertise its intention to approve the easements over the reserve(s) in a newspaper which circulates in the area, giving the public one calendar month to make a submission or object to the Council's intentions. The required easements were advertised, because one of the options for laying the pipe requires the removal of a small number of pine trees in South Brighton Park, and both options require part of South Brighton Park, and part of the South Brighton Foreshore Reserve to be fenced off for construction sites for a considerable period of time.

9. If a submission is received, and the submitter wishes to be heard in support of their submission, they are given the opportunity to be heard before a Reserves Hearings Panel, which the Council appointed at the Council meeting held on 9 June 2005. Two submissions of objection were received to the proposal to approve the temporary easement on the South Brighton Foreshore Reserve, for the outfall construction site.
10. The Reserve Hearings Panel hears submitters views, and as well considers any other submissions received, where the submitter has indicated that they do not wish to be heard in support of their submission, before making a recommendation to the Council as to whether they should approve the application(s) for easement(s) or not.
11. The Council considers the Reserves Hearings Panel's recommendations before deciding to either approve the application(s), for the easement(s) or not. This is the purpose of this report.
12. If the Council approves the application, the file is sent to the Minister of Conservation to review, prior to approving or otherwise the easements applied for.
13. The Board does not have delegated authority from Council (16 December 2004) to make the decision on behalf of Council whether to grant the easements or not, where the granting of the easements is considered to have an influence on the park that is considered more than local, and is of a metropolitan significance. Officers deem that the temporary closure of parts of South New Brighton Park (picnic and sports field areas), and the South Brighton foreshore reserves to be of metropolitan significance. The Board has considered the report and recommends that the Council approves the recommendations of the Reserves Hearings Panel.
14. The areas that the Reserves Hearings Panel's recommendations apply to has been legally described in the recommendation to ensure that these areas are properly described.

BACKGROUND ON CHRISTCHURCH CITY WASTEWATER OCEAN OUTFALL - PROPOSED TEMPORARY AND PERMANENT EASEMENTS OVER RESERVE LAND

15. The Council has approved the route for the proposed wastewater outfall pipeline across South Brighton Park, along Jellicoe Street, and beneath the sand dunes out into Pegasus Bay. This route was approved at the Council meeting held on 11 December 2003 after extensive consultation with the community.
16. The Council has been granted resource consents to construct, operate and, maintain the ocean outfall pipeline along this route. It is envisaged that two methods of construction (open trench or underground tunnelling) are possible, this being dependant on how the successful tenderer intends to undertake the work. Depending on the method used, different temporary easements for construction will be required, and the location of the permanent easements over the pipeline will be in different locations, (see attached aerial photograph). It is for this reason that the Council is being requested to approve two different easement options, one of which will only be used, this being dependant upon which method of construction of the outfall pipeline the successful tender uses.

SUMMARY OF RESERVES HEARINGS PANEL HEARING

Introduction

17. Commissioners Mr A C Hughes-Johnson QC, Mr J Lumsden, and Dr G Ryder were appointed by the Council as a Reserves Hearings Panel to hear the views of submitters concerning the proposal to obtain Council approval for the granting of temporary and permanent easements over land vested in Christchurch City Council, held under the Reserves Act 1977 to enable the construction of the wastewater outfall and pipeline over reserve land to occur.
18. The Reserves Act Hearings process is independent of the resource consent process but in panel members minds, was particularly clearly linked to their consideration of the environmental effects of the proposal, in particular the effects on public use of the reserves in question. Mr John Allen, the Policy and Leasing Administrator for the Greenspace Unit of Christchurch City Council gave evidence in support of the Council's position.

Reserves Act 1977

19. Whilst the panel's function in respect of the works proposed to be conducted in the public reserve was different from their function in considering applications for resource consents, they found it convenient to deal with matters relating to the reserves part way through their decision. South New Brighton Park and the sand dunes at South New Brighton Beach are areas affected by the construction and occupation of the pipeline and which are reserves administered by the Council under the Reserves Act. The proposed activities in relation to the South New Brighton Park and South Brighton foreshore reserves are not provided for under the Reserves Act and thus the Council needs to grant itself easements for these areas to enable the construction and access, followed by permanent easements for the occupation and maintenance of the pipeline.
20. The panel noted that under Section 48(1) of the Reserves Act 1977, the Council may grant itself an easement over any part of the reserve for any public purpose (Section 48(1)(a)), the provision of water systems (Section 48(1)(e)), or providing access to the supply of water or drainage to other land (Section 48(1)(f)).
21. The panel noted that Section 48 of the Reserves Act 1977 provides the process by which the Council is able to put in place the required temporary and permanent easements over reserves.

Notification Process

22. Mr Allen traversed the process which the Council had followed in publicly notifying its intention to grant the temporary and permanent easements. Public advertising in "The Press" newspaper was followed by a letter with a plan attached being sent to the occupiers of 209 residential properties in the relevant area. Mr Allen stated that two submissions were received in relation to the granting of a temporary easement over the South New Brighton foreshore reserves, and no submissions were received concerning South New Brighton Park or the permanent easements that were required for the occupation of the pipeline. As panel members saw it this reflected the extensive consultation process which had taken place prior to the notification. The first submission was from Mr Graham Callander and the second from Mr Christopher Arnesen, this submission being signed by a further eight people, including Mr Callander, who live at six neighbouring addresses.

Issues Raised by Submitters

23. The following matters were raised by submitters:

Access

- (a) It was said that the temporary easement would necessitate the closing of the present beach access opposite 460 and 462 Marine Parade to the beach. Mr Allen noted that the temporary foreshore construction site was the maximum area that would be required if the seaward ocean outfall prefabrication work was undertaken on the foreshore reserve and that the resource consent applications addressed the access and relevant effects in relation to these construction management areas. In reporting for the Council, Mr Higgins, who is a senior planner for the Environmental Services Unit of the Council, stated that limitations on access to South New Brighton Park, and the sand dune and foreshore area of New Brighton beach would only be temporary and, where possible, alternative access arrangements could be made. Mr Higgins supported the suggestion of Mr Glasson, the landscape architect acting on behalf of the Council for the consent application, that interpretation signs for public use be erected to explain the project, construction method and duration. Given these matters, Mr Higgins considered that any restrictions on access in these areas would only have minor effects on users of those areas. Undoubtedly there will be some restriction on access associated with the works. However, panel members were satisfied that because these restrictions would only exist for a limited time and because of the significant public interest in the completion of the pipeline, given the benefits which it will bring, the restrictions are not such as to militate against recommending that appropriate easements be granted by the Council and that appropriate consents be granted by panel members acting under the Resource Management Act.

Blown Sand

- (b) It was said that the lowering of the present stabilised sand dunes would result in sand being blown by wind from the sea into their properties causing damage to their properties. Mr Allen noted that resource consent conditions were proposed in relation to the sand dunes which required stabilisation and rehabilitation in conjunction with the Council's Coast Care Department. Panel members were satisfied that appropriate mitigation measures could avoid undue migration of sand. The panel drew attention to their discussion of this matter earlier in their resource consent decision.

Views

- (c) It was said that the proposal would result in a loss of unspoilt sea views during the period that the area was used for construction. In answer Mr Allen said the applicant proposed to screen the construction site from the road by a natural looking brush fence, which was set back from the road, this being a resource management matter rather than an easement matter.

Vibration, Noise etc

- (d) It was said that homes near the construction site might be subject to vibration levels and noise. Mr Allen said that these matters were not relevant to the consideration of easements and more properly dealt with by resource consent conditions. Panel members agreed that these issues were also a resource management matter. Mr Allen noted that at the conclusion of the need for the temporary foreshore construction site, a proposed resource consent condition was that all the material used to construct the temporary car park and temporary brushwood fence would be removed and that the sand dunes would be re-contoured as near as possible to their present contours and height.

Value of Properties

- (e) It was said that during the duration of the project the value of the submitters' properties might be lowered. Mr Callander requested that the Council provide a mechanism whereby if he chose to relocate during the course of the construction he would realise full market value for his property. Mr Allen commented that the Council would not compensate adjoining property owners for inconvenience or temporary lowering of market value of properties that might occur when work was being undertaken to provide essential services to city residents.

Safety Hazards

- (f) The Ministry of Education did not make a submission on the proposed easements, but made a submission under the resource consent process, expressing concern about school children's safety when walking to and from school through South New Brighton Park to the community hall in Beatty Street and for children who were picked up at the gate by the park. It was considered that trenches and machinery might constitute a potential safety hazard to children. In addition it was said that construction works tended to attract children who would walk past the construction area on their way to and from school. The panel members noted that they have imposed a requirement to fence all construction and work sites.

South New Brighton Residents' Association

- (g) The South New Brighton Residents' Association, who did not make a submission on the proposed easements, maintained that the general tender specification for the design/build pipeline installation contract should require a minimum lowering of the water table for the dig and lay option in South New Brighton Park to prevent damage to the adjacent pine trees. Panel members did not believe that it was for them to dictate the precise method of pipeline installation, because they accepted that there must be some flexibility for the contractor. The pipeline route has been selected to minimise the number of trees affected. They were satisfied that the Council will take appropriate steps to ensure that the damage to trees is kept to a minimum.

Kahikatea Adventure Education Trust

- (h) The panel noted that in the submission of Kahikatea Adventure Education Trust, which did not make a submission on the proposed easements, concerns were expressed about the effects of the open trench method on the Christchurch Challenge Ropes Course located in South New Brighton Park. During the panel's site inspection they noted the equipment, and the position of the trees supporting that equipment. They were satisfied that the Council will respect the concerns of the Trust, and that there is no reason why the activities of the Trust should not be able to continue without undue interference.

Trees

- (i) In his evidence-in-chief, Mr Tipler, who is the consultant acting for URS New Zealand Limited, which have been retained by the Council for the preparation of the AEE to gain resource consent, said that there would be three mature trees removed for the pipeline in South New Brighton Park, and that it was possible that a small number of other pine trees might require removal if health and safety was compromised. It was the panel's understanding that this applies only to the "dig and lay" method of pipeline construction. He said that soil compaction around the roots of other trees might affect their health. He went on to state that after extensive consultation with local residents, the pipeline route had been selected to minimise the number of trees affected. A construction road would be established for heavy vehicles through the park to avoid compaction, and increase traffic ability and apart from the loss of three trees all effects would be short term.

Mr John Allen's Conclusion

- 24. Mr Allen was firmly of the view that the commissioners should recommend to the Council that it grant the easements applied for, subject to receiving Ministerial consent for the granting of the easements.

The Panel's Conclusions

- 25. The panel concluded that it was clear that the Council has jurisdiction to grant rights-of-way and other easements which relate to the proposal, given the provisions of Section 48(1)(a) of the Reserves Act 1977, which provides that, subject to Ministerial consent, an administering body may grant rights-of-way and other easements over any part of a reserve for "... any public purpose." The panel observed that it would be hard to contemplate a clearer example of a public purpose than the establishment of a pipeline to facilitate the disposal of treated effluent. Mr Gould, legal counsel acting for the Council on this application, noted that a formal easement would not normally be required for sewage disposal facilities because the Council could rely on designation. This is correct but of course it does not remove the need for the panel to consider the recommending of relevant easements for construction and access followed by permanent easements for occupation and maintenance of the pipeline.
- 26. The panel concluded that it was not possible for it to make recommendations in relation to the granting of easements in isolation. The panel formed the view that appropriate easements should be granted because when viewed overall, the ocean outfall pipeline proposal is meritorious, subject to the imposition of appropriate conditions upon the granting of resource consents. However, in considering their recommendation in relation to the granting of easements, they paid particular regard to certain environmental effects which are associated with the construction of the pipeline in the two reserves.
- 27. The panel did not believe that any further conditions were necessary, accepting that this aspect of their consideration of the proposal is not directly concerned with resource management matters. They noted that conditions relating to sand dune stabilisation and rehabilitation, dust and wind blown sand control and other matters had been imposed in relation to resource consents associated with construction management. In the circumstances they were of the view that no further conditions were necessary in the context of their recommendation.

BOARD RECOMMENDATIONS

That, in accordance with the Reserve Hearings Panel's recommendations, the Council:

1. Approve pursuant to Section 48(1)(a), of the Reserves Act 1977, the granting of temporary easements over three construction management areas needed to undertake the construction of the pipeline, these being fenced off from the rest of the parks as described in Schedule A for a period of up to 30 months, during the consent period of five years, as shown on The Christchurch City Ocean Pipeline Route - Reserve Easement Plan (attached).

Schedule A

- (a) Construction Management Area 2A - Open Trench Method

Approximately 7,187 square metres of Reserve 4874, a classified recreation reserve of 12.2417 hectares vested in the Christchurch City Council under the Reserves Act 1977, known as South Brighton Park contained in CT 8K/989. Picnic Area D is located on this area of the reserve.

or

- (b) Construction Management Area 2B - Underground Tunnelling Method

Approximately 2,737 square metres made up of: 1,500 square metres of Reserve 4874 a classified recreation reserve of 12.2417 hectares vested in the Christchurch City Council under the Reserves Act 1977, contained in CT 8K/989; 562 square metres of Reserve 4875 a classified recreation reserve of 15.5678 hectares vested in the Christchurch City Council under the Reserves Act 1977 contained in CT 8K/989; and 675 square metres of Section 1 SO 17958 a fee simple lot of 6253 square metres vested in the Council for no particular purpose contained in CT 32B/70. All this land is part of South Brighton Park. Picnic Area B is located on this area of the reserve.

- (c) Construction Management Area 3 - All Pipe Laying Methods

Approximately 2.5 hectares of the South Brighton foreshore reserves made up of the following land areas: 6,927 square metres of RS 40855 a classified recreation reserve of 9.0004 hectares vested in the Council under the Reserves Act 1977; 4,477 square metres of RS 40856 a classified recreation reserve of 15.0903 hectares vested in the Council under the Reserves Act 1977; 7,616 square metres of RS 37333 a classified recreation reserve of 4.0468 hectares vested in the Council under the Reserves Act 1977; 5,980 square metres of RS 40922 a recreation reserve of 5.6426 hectares vested in the Council under the Reserves Act 1977, contained in certificate of title 18K/671. The sand dunes will be levelled off, before work commences on the site, being restored after the work is complete.

That the above temporary grants be subject to the following conditions:

- (a) Be limited to a period of five years.
 - (b) That during construction, any construction areas be adequately fenced off from the rest of the reserves for public safety.
2. Approve pursuant to Section 48(1)(f), of the Reserves Act 1977, the granting of a 20 metre wide easement over the areas of land described in Schedule B below in which to place the pipeline, as shown on The Christchurch City Ocean Pipeline Route - Reserve Easement Plan (attached).

Schedule B

- (a) Open Trench Method

Approximately 6,800 square metres of Reserve 4874, a classified recreation reserve of 12.2417 hectares vested in the Christchurch City Council under the Reserves Act 1977, known as South Brighton Park contained in CT 8K/989. Picnic Areas C and D are located on this area of the reserve. The route that has been chosen is to ensure that the minimum number of pine trees will need to be removed to enable construction of the pipeline to take place.

or

(b) Underground Tunnelling Method

Approximately 2,440 square metres of Reserve 4874 a classified recreation reserve of 12.2417 hectares vested in the Christchurch City Council under the Reserves Act 1977, known as South Brighton Park contained in CT 8K/989. Picnic Area B is located on this area of the reserve. It is envisaged that no pine trees will need to be removed using this method.

(c) All Pipe Laying Methods

Approximately 1380 square metres of RS 40922 a recreation reserve of 5.6426 hectares vested in the Christchurch City Council under the Reserves Act 1977 contained in CT 18K/671, and 680 square metres of RS 37333 a classified recreation reserve of 4.0468 hectares vested in the Christchurch City Council under the Reserves Act 1977, these areas being part of the South Brighton foreshore reserves.

That the above grants be subject to the following condition:

- (a) That during construction, any construction areas be adequately fenced off from the rest of the reserves for public safety.