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## **Right of Way Easement - Findlay Place Local Purpose Reserve (Road)**

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### **1. Purpose of Report**

- 1.1 To approve the granting of an easement to Wholesale Landscapes Limited over Council Local Purpose Reserve (Road) for a right of way, subject to public notice and Council consent.

### **2. Summary**

- 2.1 For reserves vested in Council as the administering body, the Reserves Act (1977) enables the Council to grant an easement for specified purposes, including a right of way to any other land not forming part of the reserve, subject to the consent of the Minister of Conservation. The Hearings Panel – Other has been delegated the administering body powers. The Minister’s powers to grant consent have been delegated to Council.

### **3. Recommendation**

***That the Hearings Panel - Other***

- 1. Receives the report Right of Way Easement - Findlay Place Local Purpose Reserve (Road) (R12532) and its attachment (A2300467 and A2288406); and***
- 2. Grants a Right of Way Easement over the Local Purpose Reserve (Road) (Lot 17 DP 486996) in favour of 51 Saxton Road (Lot 2 DP 366503) subject to public notice under section 119 (1)(b) of the Reserves Act 1977 with all costs being met by the applicant; and***
- 3. Notes that if any objections to the proposed easement are received, a further report will be brought to the Hearings Panel - Other to enable consideration and decision on those objections.***

#### **4. Background**

- 4.1 The proprietors of Lot 2 DP 366503 wish to create a second entrance from Findlay Place to their land at 51 Saxton Road. This will allow them to develop a 'one way' system for delivery trucks. Attachment One shows the relationship between Findlay Place and 51 Saxton Road; attachment two indicates the position and extent of the proposed right of way.
- 4.2 The proposed route is across a Local Purpose Reserve (Road) at the end of Findlay Place that was intended to become formed road when Lot 2 DP 366503 was subdivided and developed.
- 4.3 Findlay Place is within the Industrial – Nayland Road South Zone and services a number of light industrial businesses. The road was built to a subcollector road standard in anticipation of increased traffic numbers when Lot 2 DP 366503 is developed in the future.
- 4.4 Easements formalise the occupation of land by parties other than the landowners. The Easement instrument will stipulate the standard of the right of way formation. It will also contain a restriction preventing the ROW being used for a future subdivision of Lot 2 DP 366503 without being upgraded to full subcollector road standard.

#### **5. Discussion**

- 5.1 The Reserve comprises approximately 13 m<sup>2</sup>, slightly over 18 metres long and less than 1 metre wide. It was created at the same time as Findlay Place was formed and vested in Council.
- 5.2 The intention of this was to ensure that Council could control access to Lot 2 DP 366503 with the intention that:
- the road could be extended into 51 Saxton Road when further development occurred on the site;
  - Council would not be responsible for upgrading or forming the road extension to 51 Saxton Road prior to that development occurring; and
  - Findlay Place could be extended through number 51 and connect to Saxton Road so that it does not remain as a cul-de-sac.
- 5.3 Allowing an access to Lot 2 DP 366503 to be formed over the Local Purpose Reserve (Road) at this time is not in conflict with the intent of the Reserve.
- 5.4 The Easement Instrument will include a number of conditions:
- 5.4.1 The proprietors of Lot 2 DP 366503 agreeing that the ROW can only be used for the existing consented activities at this site and

## Item 6: Right of Way Easement - Findlay Place Local Purpose Reserve (Road)

cannot be used for any future subdivision or development without approval from the Divisional Manager Infrastructure;

- 5.4.2 They agree to a mechanism which ensures that if they sell the land then the above condition automatically transfers to the new landowner;
  - 5.4.3 The physical works of constructing the ROW are shown on detailed engineering plans to the requirements of the Nelson Tasman Land Development Manual (NTLDM) and approved by Council prior to starting the work;
  - 5.4.4 The works are constructed to the requirements of the NTLDM with as built engineering plans provided to Council within 2 weeks of completion of the work.
- 5.5 The proprietors of Lot 2 DP 366503 will be responsible for all of the costs to develop the ROW and the easement.
- 5.6 It is hard to imagine members of the public, or Council, currently utilising the Reserve due to its size and shape and proximity to the boundary with Lot 2 DP 366503/51 Saxton Road. Allowing the ROW to cross the Reserve would not impact on any potential users of the Reserve.
- 5.7 Any future developer of Lot 2 DP 366503 will be required to surrender the Easement and construct an extension to Findlay Place over the Reserve land, to Council standards.

### **Legislation**

- 5.8 In the case of reserves vested in Council as the administering body, the Reserves Act enables the Council to grant an easement for specified purposes, including *"providing or facilitating access...to...any other land not forming part of the reserve..."*. This approval is subject to the consent of the Minister of Conservation who has delegated the power to grant consent to Council.
- 5.9 The Hearings Panel – Other has been delegated the powers of Council as the administering body. The Ministerial powers to grant final consent remain with the Council. The Hearings Panel – Other is therefore required to decide whether or not to give public notice in accordance with the tests set out in section 48 (3) of the Reserves Act 1977, consider any submissions if public notice is given, and determine whether to grant the easement. If it is determined to grant the easement, consent of the Council is then required.
- 5.10 Where a reserve is likely to be materially altered or permanently damaged due to the granting of an easement public notice is required under section 119 of the Reserves Act 1977. This proposal will materially alter the reserve as the grassed area will be crossed by a paved accessway. This requires Council to publish a plan and description of the proposal in a newspaper circulating in the area in which the reserve is

## Item 6: Right of Way Easement - Findlay Place Local Purpose Reserve (Road)

situated, allow one month for objections and to consider those objections.

- 5.11 The Reserves Act requires that where publication of the notice falls within the period commencing with 10 December in any year and ending with 10 January in the next succeeding year, the date before which objections and submissions shall be made shall be not earlier than 10 February next following that period. In this instance officers intend to publish the notice before 10 December but to give the public until 10 February 2010 to lodge an objection with Ministerial approval of the easement to be considered at the first full Council meeting of 2020.

### Options

- 5.12 The Hearings Panel - Other has the options of approving or declining the easement. Approving the easement, subject to public notification, is the recommended option.

<b>Option 1: Approve the ROW easement to Wholesale Landscapes Limited subject to public notification</b>	
Advantages	<ul style="list-style-type: none"><li>• Enables better traffic flow for the landowner</li><li>• Reduced traffic congestion on Saxton Road thereby improving traffic safety</li><li>• Allows the community to make their views known</li></ul>
Risks and Disadvantages	<ul style="list-style-type: none"><li>• Possible objections from the community</li></ul>
<b>Option 2: Decline the ROW easement to Wholesale Landscapes Limited</b>	
Advantages	<ul style="list-style-type: none"><li>• Officer time available for other matters</li></ul>
Risks and Disadvantages	<ul style="list-style-type: none"><li>• Council seen as unsupportive</li><li>• Ongoing traffic congestion on Saxton Road</li></ul>

## 6. Conclusion

- 6.1 The easement Wholesale Landscapes Limited has requested will help with traffic flow through to their property at 51 Saxton Road. As granting the easement will materially alter the Local Purpose Reserve public notification of the easement is required. This is a matter that the Hearings Panel – Other can make a decision on.

## 7. Next Steps

- 7.1 Lodge the Public Notice in the Nelson Mail and on the Council website. Copies of the proposal will also be sent to business operators and landowners in Findlay Place. If objections are received officers will

Item 6: Right of Way Easement - Findlay Place Local Purpose Reserve (Road)

prepare a further Report to the Hearings Panel – Other/Committee, or, if no objections are received, seek the approval of Council acting under a delegation from the Minister of Conservation.

- 7.2 Subject to Council agreement, draft an Agreement to Grant Easement setting out the conditions Wholesale Landscapes Limited must meet regarding the right of way easement.

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**Attachments**

Attachment 1: A2300467 - 51 Saxton Road and Findlay Place Diagram [↓](#)

Attachment 2: A2288406 - Findlay Place Indicative Area of ROW [↓](#)

## **Important considerations for decision making**

### **1. Fit with Purpose of Local Government**

The recommendation in this report is aligned with the purpose of Local Government in enabling “*democratic decision-making and action by, and on behalf of, communities*” as it enables the community the opportunity to consider and comment on the granting of a right of way over Council administrated Local Purpose Reserve. Granting the right of way will allow the applicants to operate more efficiently and to reduce traffic congestion thereby improving traffic safety.

### **2. Consistency with Community Outcomes and Council Policy**

Supports community outcomes –

- *Our infrastructure is efficient, cost effective and meets current and future needs*
- *Our communities are healthy, safe, inclusive and resilient*

### **3. Risk**

This is a low risk decision as, if approved, the easement will be controlled by an appropriate legal instrument, physical construction of the right of way will be to the Nelson Tasman Land development Manual standard and the community will have an opportunity to consider and provide feedback on the impacts on the Reserve itself.

### **4. Financial impact**

The costs of securing the easement, and the physical works, will be met by Wholesale Landscapes Limited as the beneficiaries of the easement.

### **5. Degree of significance and level of engagement**

This matter is of low significance because it does not impact the public or Council’s use of the reserve. However, consultation is required under section 48(2) of the Reserves Act because this easement proposal means that the reserve will be materially altered or permanently damaged. The community will be given an opportunity to make their views known under section 119 of the Act.

### **6. Climate Impact**

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.

**7. Inclusion of Māori in the decision making process**

No engagement with Māori has been undertaken in preparing this report.

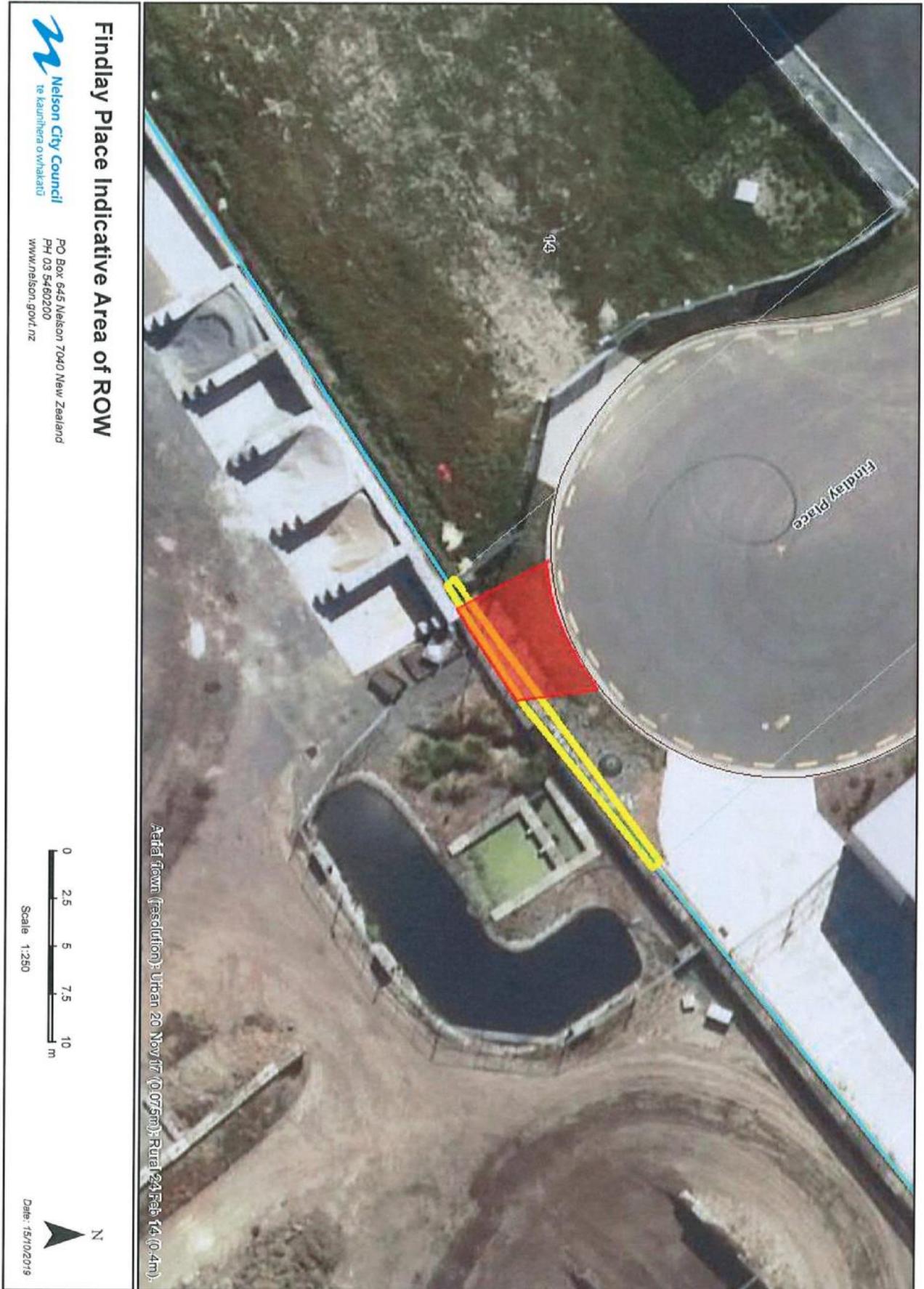
**8. Delegations**

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*



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