

IN THE MATTER OF the Reserves Act 1977,
Section 41

AND

IN THE MATTER OF a submission and concerns raised by Mahaanui Kurataiao Ltd (MKT) to a proposed limited review of part of the Rawhiti Domain and Thomson Park Management Plan.

DECISION OF THE HEARINGS COMMISSIONER

DATE OF HEARING: At Christchurch in the No 2 Committee Room on 29 May 2013 at 9.15am before the Hearings Commissioner.

COMMISSIONER: **DAVID MOUNTFORT**

IN ATTENDANCE: Andrea Lobb and Claire Gibb for Mahaanui Kurataiao Ltd
John Allen (Policy and Leasing Administrator, Christchurch City Council)
Janet Anderson (Committee Adviser).

BACKGROUND

The Council has notified a limited review of part of the Rawhiti Domain and Thomson Park Management Plan to broaden the Council's ability to grant easements in gross to utility providers to lay public utilities across the reserve.

Rawhiti Domain and Thomson Park is a large Recreation Reserve in North New Brighton, containing a golf course, sports grounds and a number of club houses. There is also an electricity substation owned by Orion NZ Ltd) on the Keys Rd frontage of the reserve, constructed after the Canterbury earthquakes to strengthen power supply in the eastern suburbs under the provisions of the Canterbury Earthquake (Reserves Legislation)No 2 Order 2011.

Orion has applied for an easement to lay 66 Kva cables through Rawhiti Domain to provide a permanent electricity supply to the substation.

Under Section 48 of the Reserves Act such easements are permitted and need not be publically notified unless the reserve is likely to be materially altered or permanently damaged or the rights of the public permanently affected. However the Council must comply with its own Management Plan for the Reserve which in this case limits utility services in the Reserve to those servicing buildings and other facilities within the Park.

Such an easement cannot be granted under the current wording of the Management Plan and the Council is proposing an amendment to the Management Plan to enable not only an easement to be granted to Orion but to enable other services to be provided to the communities in the east such as sewage and stormwater. Any such review of the management plan must be publicly

notified. The procedure for carrying out such a review is set out in section 41 of the Reserves Act 1977.

The appropriate public notification procedure was followed and one objection was received from Mahaanui Kurataiao Ltd (MKT).

THE HEARING

Staff Briefing

Mr Allen advised that many reserves throughout the city had sewer and stormwater pipes laid. For example all clubrooms were linked to the sewer, telephones and electricity. Connecting facilities on a Reserve to services was analogous to taking services to private dwellings from the roadway and no easement was required unless the service extended beyond that dwelling.

He submitted that any application for an easement to lay sewerage pipes would require a consent for discharge under the Resource Management Act, and that would be the more appropriate time to consider the objections raised by MKT to the Review of the Management Plan. He further submitted that changes to the proposed wording of the Utilities Section in the Management Plan as requested by the Objector sought to place limits on an applicant's rights to apply for consent under the Resource Management Act and that this was unlawful.

The Council had a robust policy in dealing with applications for easements within its reserves and it is an expensive exercise to connect into an existing service within a Reserve. Compensation is assessed on the value of the easement and the money applied to the Council's Reserves Fund. The request from MKT that any easement should be limited as to time is also not acceptable. For example the cost to Orion of purchasing and laying the cables has been assessed to be approximately \$1.6million. He considered it unreasonable for a utility provider to make expenditure like this for a service which would be limited in time. In the event of cables or pipes needing to be replaced it would be envisaged that they follow the path of the existing easement, so to that extent the easement needs to be permanent and compensation is assessed on that basis. The change to the Management Plan was required so that the Council could consider not only the application from Orion but also any future applications for providing services to the eastern communities.

In response to a question Mr Allen advised that the Park was one of the Council's biggest reserves with highly modified landscaping and it is intensively used for various sports. Currently there are nine buildings on the reserve although there are plans for a new building which will provide combined clubrooms and will replace several of the existing clubrooms. The Orion Substation was built on the Reserve under Earthquake Recovery Emergency legislation (by changing the classification of the plot of land on which it sits to Local Utility Reserve). If no change is made to the Management Plan the Council would need to request an Order in Council to enable the appropriate easement to be granted and the Council prefers to avoid such requests if possible.

I then queried the proposed change to Section 7(a) of the Utilities Section of the Management Plan where a new subsection (b) is added referring to effects that are (in the opinion of the Council) no more than minor. This wording was more restrictive than that in the Resource Management Act. He asked what would be the position of the Council if it assessed the effects as being more than minor. Mr Allen responded that if granting the application would have a more than minor effect on the Reserve, the Council would be looking for another solution.

Objection by Mahaanui Kurataiao Ltd (MKT)

Andrea Lobb, Chief Executive Officer of MKT introduced the submission by stressing that the Rawhiti Domain is a significant reserve in an area which is of very important ancestral significance to Ngai Tahu for food gathering. It also contains a number of archaeological sites. The reference to Te Ihutai Reserve in their submission was intended to provide an example of that significance. The area from Horseshoe Lake to the sea was once a fishing reserve until a portion was taken under the Public Works Act by compulsory acquisition in 1956 in order to develop sewage ponds. An alternate reserve was granted to them but is in the in the Waimakariri District. MKT is looking

for assurance that its concerns can be addressed before any easement is granted, rather than afterwards by means of the accidental discovery protocol proposed in the staff report.

Claire Gibb, Planning Adviser MKT, presented the submission and commented on the points raised by Mr Allen in his report.

- The subject site is situated within a cultural landscape that includes travel routes between Kaiapoi to Redcliffs, contains registered archaeological sites, and was an important area for the practice of mahinga kai. Cultural landscapes are what retain the values, identity and relationships of tangata whenua and support their engagement with their tupuna/ancestors.
- MKT has now been satisfied by the Council Officer that Management Plans in general allow what has been proposed for the Rawhiti Domain Management Plan and that the proposed change will therefore not create a precedent. They acknowledge also the economic deterrent of costs imposed for any application for an easement and asked what happened to the money received. (MKT were later advised that the application fees were paid into the General Reserves Fund and not into a specific fund associated with the particular reserve.)
- If easements are to be granted in perpetuity this is further support to the request of tangata whenua to be involved in the determination of appropriate locations for easements as there would be no ability for change in the future status of the designated land.
- The establishment of contaminating utilities through the Rawhiti Domain will contribute to discharges and overflows into waterways including Ihutai and waterways that flow into Ihutai. Concerns about the installation of these utilities cannot be addressed through the RMA as the opportunity to be involved would only arise with regard to an application for a discharge consent, or may already be covered under the Council's global consent for overflows. MKT's concerns are thus better addressed by including a clause for consultation on applications for easements.
- The officer's contention that it would be impracticable to apply a number of the principles of the Mahaanui Iwi Management Plan, especially in the older areas of the city does not mean that it would be impracticable to include the provisions sought by MKT in management plans which cover areas of high cultural significance.
- The amendment sought is "The protection of tangata whenua values will be addressed through a suitable assessment prior to an easement being granted over the reserve and appropriate archaeological authorities using an appropriate layout and an appropriate accidental discovery protocol will be a condition placed upon the applicant/contractor when an easement is granted over the reserve":
- If the concerns raised are recognised then it is likely that the establishment of non-polluting services can be progressed, but until these points are adequately dealt with Ngai Tuahiriri continue to object to the change to the Management Plan.

I clarified with the submitters that what they were seeking was to be notified of any application for an easement through a reserve before a decision is made, that they would then assess what kind of utility was involved – polluting or non-polluting, consider whether an assessment has already been carried out in the area and if not whether such an assessment needs to be carried out.

Mr Allen advised that he had no objection in principle to the additional amendment being sought.

Consideration of Submission from MKT

I am satisfied that Rawhiti Domain is in an area that was of high importance to Maori, both for travel purposes and mahinga kai (food gathering). I note that the Management Plan records that two middens have been discovered on the Domain already. Therefore there may well be more evidence of occupation and use that have not been discovered.

MKT did not pursue the aspects of their submission relating to precedent. In regard to the duration of easements they note that if these are to be in perpetuity it strengthens the case for preliminary

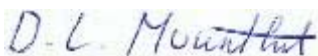
consultation. They indicated that following consultation they would probably not continue to oppose non-polluting services being laid across the Reserve. Non-polluting services do not include sewers and stormwater pipes. Mr Allen considered that this is something that needs to be dealt with under the Resource Management Act 1991 (the RMA), but Ms Gibb responded that that only applied to applications for discharges. I am not sure that is correct, as the Regional Council's Natural Resources Regional Plan has provisions relating to laying of underground pipelines. That is because should such pipelines break or leak, there could be a discharge of contaminants. Therefore I consider Mr Allen to be correct on this aspect and that the RMA does apply. Certainly there is not much in the Reserves Act that enables direct consideration of direct environmental effects, except opportunities for consultation and submission.

In the end both MKT and the submitter seemed to be in agreement that this submission can be resolved by the addition of an additional clause in the management plan requiring consultation with the tangata whenua before easements are granted to lay underground services across this reserve. That seems a reasonable approach to me. I note that MKT are seeking this only in the case of reserves such as this one where there is a high degree of likelihood of Maori use and occupation of the area. I also consider that Rawhiti Domain is probably an archaeological site under the Historic Places Act. Laying of underground services would probably trigger the requirement for an archaeological authority from the Historic Places Trust to be obtained. It would be prudent to also advise the Historic Places Trust of any application to lay services across this domain.

In the decision which follows I have altered the order and the wording of the amended policies which were recommended to me by the Council and submitter slightly. The new clause fits better after the new clauses (a) and (b), and the wording suggested by both Mr Allen and MKT did not refer to early consultation with the Runanga, although I believe this was what was intended.

COMMISSIONER DECISION

In exercise of the powers conferred by Section 41 of the Reserves Act 1977, and under delegated authority from the Christchurch City Council, I **resolve** that the Rawhiti Domain and Thomson Park Management Plan be amended in the manner set out in the attached schedule, and that the submission by Mahaanui Kurataiao be allowed in part accordingly.



David Mountfort

18 June 2013

SCHEDULE OF AMENDMENTS TO THE MANAGEMENT PLAN

1. Delete existing policy 7.10 (a).
2. Insert new Policies 7.10 (a) and (b) as follows
 - (a) Where applications for easements in gross through the Rawhiti Domain are received that they be processed in accordance with the requirements of section 48 of the Reserves Act 1977, or in accordance with any subsequent legislation which is prevailing at the time.
 - (b) Where in the opinion of the Council, the effects on Rawhiti Domain of any structure proposed to be erected within the easement are no more than minor, the Council may approve the granting of an easement in gross in accordance with any Council policy prevailing at the time and with any conditions the Council considers necessary.
3. Insert a new clause (c) as follows
 - (c) Prior to consideration by Council of any application for an easement in gross through the Rawhiti Domain, consultation shall be carried out with Te Ngāi Tūāhuriri Rūnanga and any response from the rūnanga shall be considered. The protection of tangata whenua values through the use of an appropriate layout and accidental discovery protocol will be a condition placed upon the applicant/contractor when an easement is granted over the reserve. Note Archaeological Authority may be required from the NZ Historic Places Trust and therefore it would be prudent to advise the Trust of any such application.
4. Renumber existing clauses (b) and (c) as (d) and (e) respectively.