

Minutes of a Hearing of Submissions on an application for a right of way and right to drain water easement over part of the Wānaka Golf Course Recreation Reserve held on Wednesday, 13 August 2025 in the Meeting Room, Wānaka Recreation Centre, 41 Sir Tim Wallis Drive, Wānaka beginning at 10.00am

Membership

Councillor Quentin Smith (Chair), Councillor Barry Bruce, Councillor Niki Gladding

Attendees

Kat Banyard (Senior Parks Advisor), Matthew Judd (Parks Property Planner), Mary Davenport (Legal Counsel, online), Jane Robertson (Senior Democracy Services Advisor), two members of the media, approximately 25 members of the public

Apologies

There were no apologies.

Commencement of Hearing

The Democracy Services Advisor called the meeting to order inviting the elected members to elect a chair.

It was moved (Councillor Gladding, Councillor Bruce):

That the hearing panel resolve that Councillor Smith be elected to chair the hearing.

Motion was carried unanimously.

Councillor Smith assumed the chair.

Declarations of Conflicts of Interest

Councillor Smith acknowledged publicly his involvement previously in discussions about 89 Youghal Street, which was close to the subject site. He advised that this was a separate issue and represented no conflict of interest in relation to the present application.

Confirmation of Agenda

It was moved (Councillor Bruce, Councillor Gladding):

That the hearing panel resolve that the agenda be confirmed without addition or alteration.

Motion was carried unanimously.

Officer Report

Ms Banyard presented her report verbally.

Applicant Presentation

Rosie Hill (Solicitor) presented information on behalf of the applicants. She spoke to written submissions. She was accompanied by Ben Wilson (Surveyor) who also presented written submissions.

Reserve Management Plan

The applicable Reserve Management Plan (RMP) was undated and did not expressly anticipate this type of easement but equally, did not preclude it as an outcome. It was not contrary to the RMP and would still enable the reserve to be used for golf. The easement was on a part of Wānaka Golf Course that was not central to playing golf.

Existing situation

Approval of the application was formalising an existing situation and therefore not changing anything. Most of the right of way (ROW) was already in use and the proposal therefore did not represent a new development. It was not contrary to the principles of the Reserves Act 1977 and the reserve would retain its pleasantness, calmness and cohesion.

QLDC Easement Policy

The Council's easement policy provided guidance, as easements across reserves were only supported if they provided public benefit unless there was no alternative available. In this case, the latter applied because it provided the only practical access way to these properties.

Precedent

In response to submitter concerns that approval of the application would set a precedent by allowing an encroachment on a reserve, Ms Hill disagreed that there was an adverse effect because it was only formalising an existing situation. Further, the easement would create no new or additional safety risks from ball strike.

A resource consent would be required for part (d) and stormwater management would be addressed separately through a resource consent process and would need to comply with the Code of Practice (COP).

Width of Right of Way (ROW)

The existing ROW easement was 3 metres wide but this did not meet the COP for a shared ROW access. A wider legal easement of 6 metres containing a passing bay would be safer than the present arrangement but the actual formation of the carriageway would only be

4.5-5 metres wide with a shoulder. The applicant undertook to provide an indication of the carriage-way width in the Right of Reply.

Councillor Bruce asked if a batter slope would be installed. It was noted that the need for this would only become apparent when detailed design was undertaken.

Hearing of submissions

1. Kim Badger (speaking for Neville Harris)

Mr Harris expressed concern about Councillors' conflict of interest in deciding on this application as they had previously commented publicly about stormwater in Youghal Street.

He had been a member of the Wānaka Golf Club for a long time. He pointed out that the Wānaka Golf Club land was a long-term lease from the Crown but over time it had become generally accepted that it was Queenstown Lakes District Council (QLDC) land although Council was only the administrator of the land.

He believed that the easement should be granted but he was concerned that granting it would set a precedent. He asked that no more easements across Wānaka Golf Course be considered in the future.

2. Phil Page for Burnside Trust

Mr Page's legal submissions were circulated. He described the problems that needed to be resolved as part of this process. He asserted that the access sought was not on Council land but on land belonging to Dr Samson (89 Youghal Street). The easement application should not be declined, but as part of its consideration of this application, the panel needed to resolve the stormwater issues and not leave them to another statutory process.

Dr Samson addressed the hearing panel and circulated photographs to support his descriptions of the situation. He had owned 89 Youghal Street for 35 years and the original ROW had caused no stormwater issues. Subsequently though, soil had been dug out and the ROW moved to a different position with the original survey pegs removed. He had thought this had been the work of the Council.

He referred to a letter from QLDC dated September 2005 in which concern was expressed that the ROW was not constructed to Council standards and seeking feedback from the affected residents to contribute financially to a solution, after which the Council would take over responsibility for maintenance. This letter had been shared with other parties represented at the hearing.

The entire process had been costly and Dr Samson had lost the opportunity to develop 89 Youghal Street as he would have wanted. The ROW needed to be moved to where it should be.

Dr Samson distributed photographs illustrating the stormwater problems and described what each image showed. He believed that the problem stemmed from stormwater coming from the golf course and he pointed out photographs showing the runoff after moderate rain and a later image showing the amount of sediment left. The next image showed scrim that had been installed by the Council to help the stormwater situation. More recently, an unsealed cycling track had been constructed in the vicinity and gravel from this also came down during rainfall. Water was now pouring into the illegal ROW and into 89 Youghal Street.

Dr Samson noted that the stormwater had to go somewhere and unless dealt with as part of this application, would remain a problem.

Mr Page resumed his presentation. He noted that although an easement could be granted, the question remained whether it should in light of the situation described. An easement had been illegally put across Dr Samson's land to form an illegal access and this had caused the current drainage problems. Accordingly, it was not a separate issue and therefore not out of scope. He described the application as 'half-baked', with no draft easement instrument, no stormwater management plan and no details about how the construction would be managed. The panel should not be approving a new access but rather fixing the present one.

Councillor Smith asked whether an easement condition could serve to address rehabilitation. In response, Mr Page suggested that conditions should resolve all the relevant issues but there would only be certainty once detailed plans had been prepared. Without plans, it was not appropriate to approve the easement.

Councillor Gladding asked why the stormwater should be dealt with by this process not via an application for resource consent. In response, it was noted that stormwater flowed into 89 Youghal Street and the QLDC had threatened to prosecute Dr Samson.

3. Huw Davies

Mr Davies advised that he frequently used local recreation reserves. He did not oppose allowing the ROW but was concerned about the precedent set.

4. Roger Gardiner for Friends of Bullock Creek (FOBC)

Mr Gardiner declared that he was a member of Wānaka Golf Club.

He was concerned that the FOBC submission was deemed out of scope. He believed that a lack of research at the beginning had created the present situation, as there had been no thorough investigation of diverting water through the showgrounds and into Lake Wānaka. As a consequence, 500m³ of fill had been informally dumped onto the golf course which had had a material impact on flows.

Mr Gardiner also spoke about a proposed mud tank to be installed in the easement area on Council reserve land.

Mr Gardiner had an email from QLDC engineers dated 2009 saying that site works were damaging a storm drain. The situation was worsening because of minimal oversight and conditions not being enforced. This had been ongoing for 18 years without QLDC doing anything and FOBC had been asking QLDC to fix the situation for a long time. Requests for information had been declined because of the proposed enforcement action against Dr Samson.

He was concerned that Council was prepared to grant an easement and effectively transfer the problem to the property owners. He believed that granting the easement would have unintended consequences upon Bullock Creek.

He considered the panel had a conflict of interest because the members were aware of illegal works being undertaken on Youghal Street. They could not be both a litigant and rule on something that was exacerbating the situation.

5. Kim Badger for Wānaka Golf Course

Wānaka Golf Club had occupied the recreation reserve for a long time, had a membership of 1,600 members and growing, was a well-used resource and in high demand from visitors, all of which indicated a growth in golf. The course had capacity issues but wanted to grow and develop as a golf course.

Wānaka Golf Club was not opposed to the totality of the proposal but had concerns about aspects of it and was particularly interested in the new information that had come to light at the hearing. In the area marked A significant earthworks were proposed and the level of development was not yet clear. It was also unclear whether area B would be added to the easement area. Finally, area C could create vehicle access onto golf course land (parking) which the golf club did not support.

Drainage needed to be installed on both sides of the easement but the main concerns were about the quantum of land encroachment because at area B it appeared the new driveway would be double in width. She questioned why this was necessary as the current driveway (in the wrong place) was only 3m wide but had been satisfactory for the properties to be developed and for the residents to use, so she questioned what had changed.

She had been concerned to learn at the hearing that a batter slope may be required as this would encroach further onto the golf course.

There remained a risk of ball strike with the ROW being on the golf course boundary and the golf course did not want to be liable for this. The Club should not have to realign the hole because of these external factors and it was already a short hole. There were no par 5 holes on the front part of the course and taking part of the boundary away would limit future development because a buffer area would still be needed.

The panel should not approve the application without seeing the design of the new ROW and granting the easement would set a precedent that anyone could apply to encroach on reserve land.

Ms Badger detailed conditions that the Club sought if the application was granted.

- The previous driveway should be removed as there was a risk of the area being used for parking.
- A condition needed to stipulate that no stopping or parking on the ROW was permitted and a barrier should be installed.
- The applicants needed to provide an earthworks plan.
- Wānaka Golf Club to have indemnity against ball strike and signage to this effect to be installed.
- No new access to be granted.

The Chair rejected the claim of additional risk from ball strike. The residents of Youghal Street accepted that this was a consequence of living next to a golf course. Ms Badger disagreed, noting that the loss of the buffer zone heightened the risk of ball strike and acceptance of the situation could change with new owners.

The Chair noted that Wānaka Golf Club had originally taken a neutral position on the easement but the comments at the hearing indicated opposition. Ms Badger confirmed opposition, especially in regard to easement B. The Chair expressed concern about granting an easement over leased land when the lessee did not support the proposal.

The Chair sought confirmation that there was no alternative to the proposed easement. Ms Hill advised that Dr Samson had been approached but had declined to approve a different access.

Right of Reply (Commencement)

Ms Hill addressed the hearing panel.

She acknowledged the challenging position for the panel because of the anecdotal evidence presented at the hearing and the history of past encroachments. Nonetheless, she did not agree that the proposal was half-baked but undertook to respond to concerns about a potential batter or retaining wall in the Right of Reply. She wanted to prepare a written Right of Reply and sought for leave to prepare this outside the hearing.

The Chair detailed some of the matters that the applicant needed to address in the Right of Reply, noting however that no additional comment from submitters would be permissible when the hearing resumed:

- Draft easement instrument (including proposed conditions that would be acceptable).

- Valuation of the easement – is there an independent valuation required and is this part of the proposal?
- Stormwater management: how will the work be contained within the easement and how will it be integrated with ongoing stormwater issues.
- Explanation of earthworks management, sediment management and site control.
- Does the now opposing viewpoint of Wānaka Golf Club, change the situation?
- Consideration of indemnity against ball strike.
- Clarification of the width of carriageway vs. easement width and illustration of the proposal's cross section.
- Allow 10 working days to provide Right of Reply (27 August 2025). Officer review of report/recommendation would take place after the Right of Reply.

The hearing adjourned at 11.56am.

The meeting reconvened in the same location on Tuesday, 7 October 2025 beginning at 10.05am with the same elected members and staff in attendance, noting however that Mary Davenport was now attending in person. Two members of the public were in attendance (Kevin Samson and Kim Badger) with Lucy King (Solicitor) joining online.

Membership

Councillor Quentin Smith (Chair), Councillor Barry Bruce, Councillor Niki Gladding

Attendees

Kat Banyard (Senior Parks Advisor), Matthew Judd (Parks Property Planner), Mary Davenport (Legal Counsel), Jane Robertson (Senior Democracy Services Advisor), three members of the public

Opening

The Chair advised that the Right of Reply had been received on 24 September 2025. This was later than the original deadline but the applicants' legal counsel had made two requests for the deadline to be extended and these had been granted.

Whilst the deliberations were open to the public, no further verbal submissions from submitters were permissible.

Reporting Officer Comment

Ms Banyard and Mr Judd declined to make a recommendation.

Deliberations

Councillor Gladding expressed ongoing concerns about intensification of activity in the area and the long-term impact on future use of the golf course. She therefore wanted to limit encroachment on the reserve.

The panel noted that the Right of Reply presented a revised proposal, reducing the width of the new part of the accessway easement to a width of 4.5m. The panel agreed that this was a positive development as a 6m wide carriageway had been difficult to contemplate. The panel acknowledged that the applicants had gone as far as possible to provide a practical access whilst also limiting its impact.

The Right of Reply contained informal advice from Wānaka Golf Club that it had no issue with the revised proposal. Whilst there were ongoing concerns about management of stormwater at 89 Youghal Street, resolving this was not related to this application.

The Chair suggested that the panel consider granting the easement and should therefore discuss appropriate conditions, some of which would be standard mechanical conditions applied to easements. He also suggested that the panel have regard to the specific conditions sought by Wānaka Golf Club.

There was further discussion about limiting the carriageway to a width of three metres especially over the first 40metres of the easement, prohibiting parking on the easement and installing signage restricting use of the accessway for residents only. Pedestrian and cycle access would also be permissible. Drainage to be provided on the upper side.

Councillor Gladding asked for a condition that would limit use of the easements to the existing three developed units. Councillors Bruce and Smith were sympathetic to her concerns but disagreed that this was practical and the panel needed to consider the present situation and not try to predict the future.

In addition to the specific conditions recommended by the panel there are also a number of standard conditions required by the Lands Transfer Regulations, the Reserves Act 1977 and Council policies. In addition, regard must also be had to the Land Transfer Regulations 2002 (SR 2002/213) (as at 12 November 2018) Schedule 4 Rights and powers implied in easements – New Zealand Legislation

Councillor Gladding expressed concern that the panel had not added conditions protecting against an intensification of activity in the future and the construction of more dwellings. She was also concerned about uncontrolled stormwater having a long-term impact on Bullock Creek. Accordingly, although she supported granting the easement, she could not support the specific resolution.

It was moved (Councillor Smith, Councillor Bruce):

That the hearing panel resolve to:

1. **Note** the contents of this report;
2. **Note** the submissions received;
3. **Recommend** to Council to approve the easement (subject to the following conditions in accordance with S. 120(e) of the Reserves Act 1977:
 - a. The carriageway is to be restricted and should be formed to a width of three metres for the first 40 metres of the easement in general accordance with the cross section at Appendix A.
 - b. No parking shall be allowed on the right of way over the reserve land, within the easement.
 - c. The applicant shall install a sign that the carriageway is for private residence vehicles only and there shall be no restriction to the access of pedestrians and cyclists over the right of way. The signage shall be approved by Council's Parks and Reserves Manager.
 - d. The applicant shall be responsible for all consents, permits or permissions where additional works are undertaken in the recreational reserve.

- e. The construction of the accessway and drainage shall be in accordance with the Resource Management Act 1991, Building Act 2004, Council's Subdivision Code of Practice and all engineering approvals, with any departure from Council's Code of Practice to be approved by Council.

Motion carried with Councillor Gladding recording her vote against the motion.

The meeting concluded at 10.48am.