

DRAFT Deed of Agreement for the Nelson-Tasman Regional Landfill Business Unit

NELSON CITY COUNCIL

and

TASMAN DISTRICT COUNCIL

Agenda Version

Dated 13/9/2016

I Parties

- (1) **NELSON CITY COUNCIL**, Civic House, 110 Trafalgar Street, Nelson.
- (2) **TASMAN DISTRICT COUNCIL**, 189 Queen Street, Richmond.

II Background

- A. Nelson City Council (**Nelson**) and Tasman District Council (**Tasman**) are unitary authorities (jointly **the Councils**) under the Local Government Act 2002 (**the LGA**) with territorial responsibilities for promoting effective and efficient waste management and minimisation within their respective territorial boundaries (jointly **the Nelson-Tasman region**) under Part 4 of the Waste Minimisation Act 2008 (**the WMA**).
- B. Nelson owns and operates the York Valley landfill at 34 Market Road, Bishopdale, Nelson. The site includes the current operational area (Gully 1) and two other areas potentially suitable for landfill operations (Gully 3 and Gully 4) (**York Valley landfill**). The legal description of the land and the location and extent of these areas are shown in [Attachment 1].
- C. Tasman owns and operates the Eves Valley landfill at 214 Eves Valley Road, Waimea West, Tasman. The site includes a closed landfill (Stage 1), the current operational area (Stage 2) and a further area potentially suitable for landfill operations (Stage 3) (**Eves Valley landfill**). The legal description of the land and the location and extent of these areas are shown in [Attachment 2].
- D. The Councils acknowledge their respective roles and responsibilities under the LGA and the WMA.
- E. Nelson and Tasman have prepared and adopted a Joint Waste Management and Minimisation Plan dated April 2012 (**the Joint Waste Plan**) pursuant to sections 43 and 45 of the WMA.
- F. The Councils have agreed to jointly make the most effective and efficient use of York Valley and Eves Valley landfill space.
- G. The Councils have reviewed options for the provision of landfill capacity in the Nelson-Tasman region. They intend to jointly share in the management of the two landfills, through a Joint Committee of the Councils appointed pursuant to schedule 7 of the LGA (**the Joint Committee**).
- H. The Councils intend to enable the joint governance, management and use of York Valley Gully 1 and Eves Valley Stages 1, 2 and 3 as regional landfill facilities to accept all municipal solid waste (**waste**) generated in the Nelson-Tasman region.

- I. The Councils also intend the following:
- (i) That the York Valley landfill will be the primary regional landfill facility from 1 July 2017, to accept all waste generated within the Nelson-Tasman region until Gully 1 is at capacity (anticipated to be in approximately 2031), or until expiry of the existing resource consents for the York Valley landfill (being 31 December 2034), whichever occurs first.
 - (ii) That Stage 2 of the Eves Valley landfill to have all necessary consents and approvals to accept up to one years' waste from the Nelson-Tasman region in case of unforeseen temporary closure of the York Valley landfill, and that Stage 3 be retained for future use as a regional landfill facility.
 - (iii) Once the Joint Committee is established, it shall have responsibility for making all decisions on operation and use of the two landfills as regional landfill facilities, and the timing of their use.
 - (iv) That the arrangement between the Councils for a regional landfill facility is intended to be enduring (subject to the cancellation and termination provisions in this agreement) until Gully 1 of the York Valley landfill and Stages 2 and 3 of the Eves Valley landfill have been fully utilised as regional landfill facilities and are at capacity; and then the arrangement be renewed to accommodate a future regional disposal/landfilling facility.
- J. Accompanying this deed of agreement are the terms of reference for the Joint Committee, which are intended to form part of this agreement.
- K. This agreement is conditional on the Councils obtaining appropriate authorisation from the Commerce Commission for entering into and giving effect to the arrangement contained within it and, if any conditions are imposed on the authorisation, confirmation that any such conditions are acceptable to both Councils.

III Agreement

Operative dates

1. This agreement shall come into force on 1 July 2017 provided that before that date:
- (i) the Commerce Commission has granted an authorisation under Part 5 of the Commerce Act 1986 authorising both Councils to enter into and give effect to this agreement to establish a Joint Committee to enable joint governance and management of regional landfill facilities to accept all waste generated in the Nelson-Tasman region (**the authorisation**); and

- (ii) if the authorisation is granted subject to conditions, both Councils confirm in writing to each other that the conditions imposed are acceptable to each Council.
- 2. Where the authorisation is granted after 1 July 2017, this agreement shall come into force on the date the authorisation is granted, subject to clause 1(ii) being complied with.
- 3. This agreement shall remain in force until:
 - (i) the date on which both Councils agree in writing to cancel the agreement; or
 - (ii) Gully 1 of the York Valley landfill and Stages 2 and 3 of the Eves Valley landfill have been fully utilised as regional landfill facilities and are at capacity; or
 - (iii) a unilateral notice of termination is given by either Council under clause 31 below.

Ownership and control

- 4. The land and assets of the York Valley landfill and Eves Valley landfill are and shall remain owned separately by Nelson and Tasman respectively.
- 5. On the coming into force of this agreement:
 - (i) control of all activities and assets used for Gully 1 of the York Valley landfill; and
 - (ii) control of all activities and assets used (or to be used) for Stages 2 and 3 of the Eves Valley landfill; and
 - (iii) operational control of these areas within both landfills;

shall be delegated to the Joint Committee to be used as regional landfill facilities, which shall be known as the Regional Landfill Business Unit (**RLBU**).
- 6. For the avoidance of doubt, and subject to clause 10:
 - (i) The management and operational aspects of this agreement do not apply to Gully 3 and Gully 4 of the York Valley landfill, or land to the south of the Eves Valley landfill that is owned by Tasman; and
 - (ii) the existing forestry assets located in Stage 3 of the Eves Valley landfill remain under the control of Tasman, which Tasman agrees shall not prevent Stage 3 being used as a regional landfill facility.

Principles of agreement

7. Nelson and Tasman agree they will act co-operatively with one another in accordance with this agreement and support the RLBU to operate in accordance with its terms of reference.
8. Nelson and Tasman agree that for the duration of this agreement they will retain ownership of the York Valley and Eves Valley landfills to ensure that they remain available for use as regional landfill facilities for the disposal of waste generated within the Nelson-Tasman region.
9. Nelson and Tasman agree to operate with each other in an open and transparent manner on all matters relating to the York Valley and Eves Valley landfills.
10. In particular, Nelson and Tasman agree that (subject to compliance with all regulatory requirements that may be applicable to operation of the landfills and any operational requirements that may be agreed between the Councils):
 - (i) they will continue to accept all waste generated within the Nelson-Tasman region, subject to compliance with established acceptance criteria for waste to landfills;
 - (ii) they will use either the York Valley landfill or the Eves Valley landfill (whichever is operational) as the primary landfill for the disposal of waste generated in the Nelson-Tasman region; and
 - (iii) they will take all reasonably practicable steps to maintain all designations authorising the use of the York Valley (including Gully 3 and 4) and Eves Valley landfills and shall retain their existing ownership of all buffer land surrounding the landfills so as to avoid activities that are likely to conflict with the landfill operations; and
 - (iv) the operation and use of each landfill, and the timing of such use will be subject to decisions of the RLBU.
11. For the purposes of this agreement, Nelson shall be the administering Council.

Out-of-district waste

12. Nelson and Tasman agree that any regional landfill facility established under this agreement shall accept waste from Buller District until January 2024 (in accordance with the agreement between Tasman and Smart Environmental dated 17 June 2014- as varied by a deed of variation dated 20 August 2015 – **the Buller waste agreement**) and that after the coming into force of this agreement Tasman shall novate the agreement to the RLBU with all benefits received by and obligations pursuant to the Buller waste agreement.
13. Subject to clause 14, Nelson and Tasman further agree that the RLBU may enter into other agreements to accept out-of-district waste on terms and conditions acceptable to the RLBU.

Responsibilities delegated to the RLBU

14. The Councils agree that responsibility for all management and administrative matters associated with the operation of the Joint Committee shall be delegated to the RLBU. The RLBU may without the need to seek any further authority from the Councils:
- (i) operate a bank account for the RLBU.
 - (ii) enter into all contracts necessary for the operation and management of the RLBU in accordance with the approved budgets and intent of the Business Plan and the 'Procurement guidance for public entities' as produced by the Office of the Auditor General.
 - (iii) authorise all payments necessary for the operation and management of the RLBU within the approved budgets and intent of the Business Plan.
 - (iv) do all other things that are necessary to achieve the objectives as stated in the Joint Waste Plan, Long Term Plan, Activity Management Plan or Business Plan approved by the Councils, including setting terms of trade and acceptance criteria for waste to landfills.
 - (v) comply with applicable Health and Safety legislation, and standing orders and administrative requirements of the administering Council.
 - (vi) comply with all regulatory requirements concerning operation of the regional landfill facilities.

Joint decision to disestablish the RLBU

15. In the event that both Councils make a decision to disestablish the RLBU, the Councils shall:
- (i) jointly engage a single entity (e.g. a contractor, company or agency) to undertake a peer reviewed revaluation of the business to establish 'fair value', using an equivalent valuation methodology to that used in the valuation for York Valley and Eves Valley landfills by Deloitte in February 2016, including any new plant, land, consents obtained or works undertaken since that valuation which shall be taken into account in arriving at the 'fair value'. The Councils agree to apportion the 'fair value' arrived at on a 50:50 basis (subject to any equalising payment that may be required) on the basis that the fair value accounts for aftercare costs and liabilities, and any value attributed to the duration of any remaining resource consents for either landfill facility; and
 - (ii) provide sufficient time (being a minimum of five years) for each Council to develop, apply for and obtain all necessary consents and approvals to manage their solid waste activities separately.

Dispute resolution

16. In the event of any dispute arising between the parties to this agreement the parties shall immediately explore in good faith whether the dispute can be resolved by agreement between them using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal, or any other alternative dispute resolution technique that the parties may agree to use.
17. In the event the dispute is not resolved by such agreement within 21 days of written notice by one party to the other of the dispute (or such further period agreed in writing between the parties) either party may refer the dispute to arbitration by three arbitrators, pursuant to the Arbitration Act 1996.
18. The arbitrators shall be agreed between the parties within 10 days of written notice of the referral by the referring party to the other, or failing agreement shall be appointed by the President of the Nelson Branch of the New Zealand Law Society.
19. No person may be appointed as an arbitrator who has participated in an informal dispute resolution procedure in respect of the dispute.
20. The parties agree to co-operate fully in every respect with the arbitration and to endeavour to have all matters that are the subject of the dispute referred to the appointed arbitrators within two months of their appointment. The parties further agree that any decision made by the arbitrators shall be final and binding on them, and hereby waive any right to appeal against the decision, or seek a judicial review of it in any court.

Administrative agreements

(a) Operating account

21. As from the date of coming into force of this agreement, the operating account for the York Valley landfill and Eves Valley landfill will be administered by Nelson (as the administering Council) as a joint closed business account (**the operating account**), with each annual operating year being from 1 July to 30 June in each succeeding year (**the operating year**). Subject to section 52 of the WMA, the operating account shall be used in the following manner:
 - (a) to meet all operating costs (including but not limited to contractor's costs, resource consent charges, other administrative charges including overheads, insurance, government levies, emissions taxes and aftercare costs).
 - (b) annually, the RLBU will agree a schedule of payments at appropriate intervals to each council in the proportions 50% to Nelson and 50% to Tasman to enable them to fund any waste management and minimisation service, facility or activity (either jointly or independently).

- (c) to pay any operating surplus as a 'solid waste rebate' (or to apportion any operating deficit) at the conclusion of each operating year in the proportions 50% to Nelson and 50% to Tasman.

22. The Councils agree to the following treatment of financial matters:

- (a) accounting shall be conducted in accordance with the financial practices of the administering Council, including the calculation of depreciation, repayment of loans and revaluation policies;
- (b) pre-agreement liabilities and after-care costs are to be included in the operational accounts.
- (c) any net surplus income before extraordinary items over budget shall be returned to the Councils on an equal share basis.
- (d) it is agreed that where any contribution is required to be made by the Councils to the ongoing operational costs of the RLBU, each Council shall pay an equal share of any contribution required.

Capital expenditure

- 23. The RLBU shall ensure that all capital assets are appropriately depreciated to enable a fund to be established for the replacement of such assets.
- 24. The RLBU shall have the sole authority to determine what expenditure is made from the depreciation fund so accumulated.
- 25. Any capital expenditure that is required which exceeds the amount held in any depreciation fund or account and is in the way of expansion or major upgrade shall require approval of the Councils (this may be via the normal Business Plan approval process, or separate report and resolution by the Councils).

Value equalisation

- 26. Tasman will pay Nelson \$4,200,000 on the coming into force of this agreement. The purpose of the payment is to equalise the value of the assets of the York Valley landfill with those of the Eves Valley landfill, thereby enabling each Council to have an equal interest in the operation of the RLBU.
- 27. The payment shall be made as a single payment to Nelson.
- 28. All costs associated with the payment shall be met by Tasman.

Monthly invoicing and accounting

29. Invoices for fees and charges for disposal of waste at the York Valley and the Eves Valley landfills and statements of account for payment of the waste rebate will be issued by the RLBU to Nelson and Tasman on a monthly basis. Invoices shall be paid by the 20th of the following month.

Variations

30. This agreement may be varied by joint agreement of the two Councils.

Notice of termination

31. If either Council wishes unilaterally to terminate this agreement and disestablish the RLBU, it may only do so after giving a minimum of 10 years notice, in writing to the other Council and to the RLBU of its intention to do so (or such shorter period as the Councils may jointly agree) and on expiry of the notice, the provisions of clause 15(i) shall apply.

Executed and delivered as a deed the _____ day of _____ 2016

Signed by

NELSON CITY COUNCIL:

Mayor

Chief Executive

Signed by

TASMAN DISTRICT COUNCIL:

Mayor

Chief Executive

Attachment 1: Plan - York Valley Landfill

Current Operational Area – Gully 1



Considered as a preliminary map. It is not intended for use as a legal document. The information on this map is prepared for reference only and is not intended for use as a legal document. The map was produced on 07 September 2016.

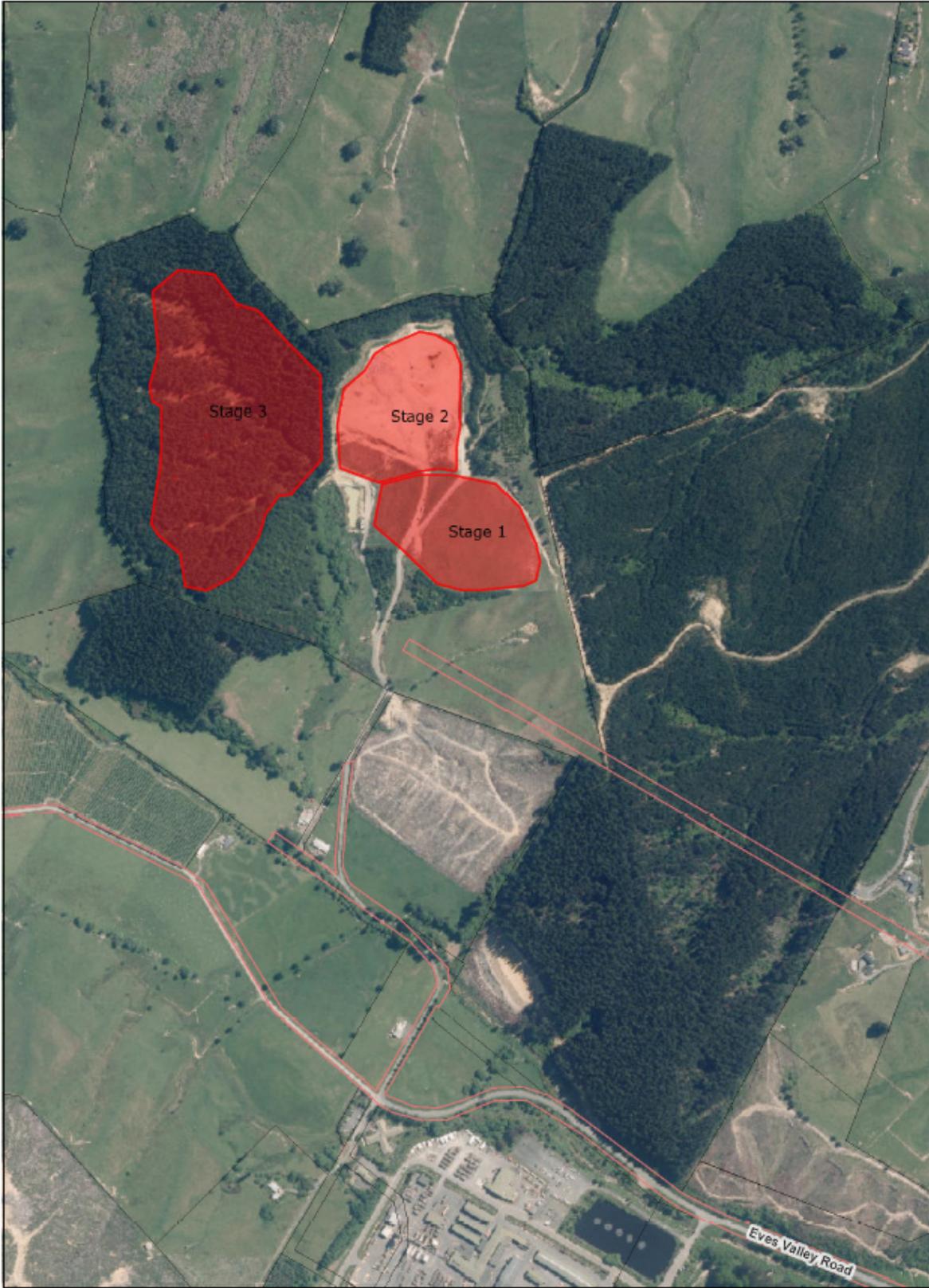


York Valley landfill



Attachment 2: Plan - Eves Valley Landfill

Current operational area Stage 2



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07 September 2016

Eves Valley landfill



1:7,500



Attachment 3: Certificate of Title Eves Valley landfill

NL8B/799



**COMPUTER FREEHOLD REGISTER
UNDER LAND TRANSFER ACT 1952**



Search Copy

Identifier NL8B/799
Land Registration District Nelson
Date Issued 31 March 1988

Part-Cancelled

Prior References

NL5D/918

Estate Fee Simple
Area 42.0430 hectares more or less
Legal Description Lot 1 Deposited Plan 13422

Proprietors

The Richmond Borough Council as to a 1/2 share
The Waimea County Council as to a 1/2 share

Interests

42780 Transfer creating the following easements

Type	Servient Tenement	Easement Area	Dominant Tenement	Statutory Restriction
Right of way	Lot 1 Deposited Plan 13422 - herein	Part herein	Lot 2-3 Deposited Plan 4112 - CT NL107/137	

Subject to Section 59 Land Act 1948

205884.1 Easement Certificate specifying the following easements - 24.7.1980 at 11.34 am

Type	Servient Tenement	Easement Area	Dominant Tenement	Statutory Restriction
Right of way	Part Lot 15 Deposited Plan 10560 - CT NL6D/922	B D DP 10560	Lot 1 Deposited Plan 13422 - herein	

The easement specified in Easement Certificate 205884.1 is subject to Section 309(1) (a) Local Government Act 1974

8323427.1 Gazette Notice (2009 / p 3539) declaring part of the within land, (178 m²) now known as Section 6 SO 15671 to be road and vested in the Tasman District Council - 23.10.2009 at 10:38 am

8323427.1 Gazette Notice (2009 / p 3539) declaring part of the within land, (1415 m²) now known as Section 7 SO 15671 to be severance and amalgamated CT 502027 issued - 23.10.2009 at 10:38 am

9234455.1 Notice pursuant to Section 195(2) Climate Change Response Act 2002 - 26.11.2012 at 1:24 pm

Attachment 4: Certificates of Title York Valley landfill

NL13A/517 and NL7B/1186



**COMPUTER FREEHOLD REGISTER
UNDER LAND TRANSFER ACT 1952**

Search Copy



Identifier **NL7B/1186**
Land Registration District **Nelson**
Date Issued 27 August 1985

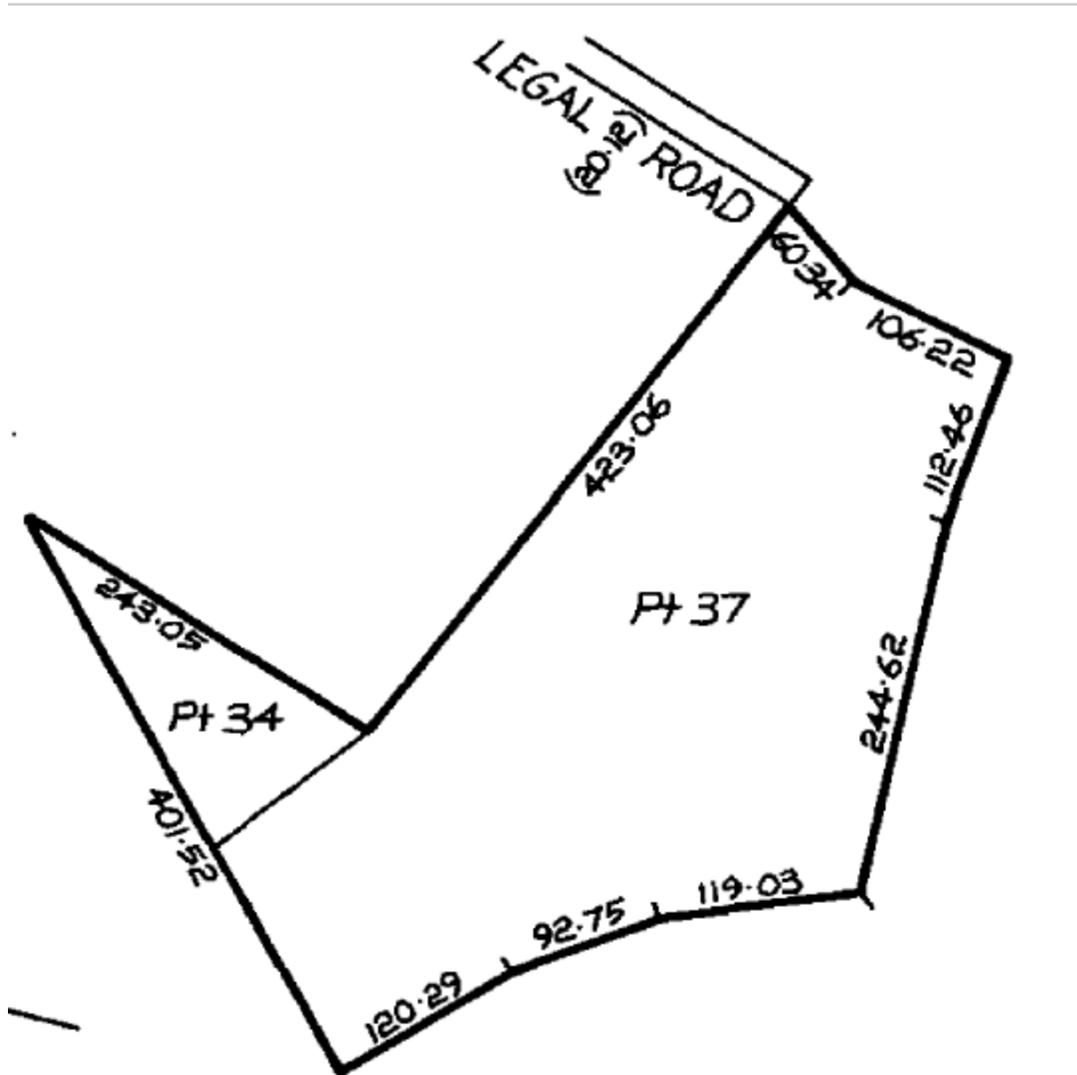
Prior References
GN 245551.1

Estate	Fee Simple
Area	13.4078 hectares more or less
Legal Description	Part Lot 34 and Part Lot 37 Deposited Plan 210
Purpose	Rubbish disposal purposes

Proprietors
The Nelson City Council

Interests

The within land has no frontage to a public road
8932904.1 Notice pursuant to Section 195(2) Climate Change Response Act 2002 - 5.12.2011 at 4:41 pm





**COMPUTER FREEHOLD REGISTER
UNDER LAND TRANSFER ACT 1952**



Search Copy

Identifier NL13A/517
Land Registration District Nelson
Date Issued 21 October 1999

Prior References
 NL8B/81

Estate Fee Simple
Area 27.4308 hectares more or less
Legal Description Part Section 7 Suburban South District

Proprietors
 The Nelson City Council

Interests

K3718 Building Line Restriction

54751 Transfer creating the following easements - 4.10.1956 at 11.10 am

Type	Servient Tenement	Easement Area	Dominant Tenement	Statutory Restriction
Right of way	Part Section 7 Suburban South District - herein	Blue Line Transfer 54751	Section 18, Section 20-21 and Part Section 19 Block D District of Wakatu and Lot 3	
			Deposited Plan 19858 - CT NL13A/518	

Subject to a right (in gross) to convey electricity, telecommunications and computer media over part herein marked A on DP 368568 in favour of Network Tasman Limited created by Easement Instrument 6941556.1 - 11.7.2006 at 9:00 am

8932382.1 Notice pursuant to Section 195(2) Climate Change Response Act 2002 - 5.12.2011 at 4:36 pm

Identifier

NL13A/517

FOR RGL

