

Date: Tuesday 26 April 2016
Time: 1.30pm
Meeting Room: Level 26
Venue: 135 Albert Street
Auckland

Parks, Recreation and Sport Committee

OPEN MINUTE ITEM ATTACHMENTS

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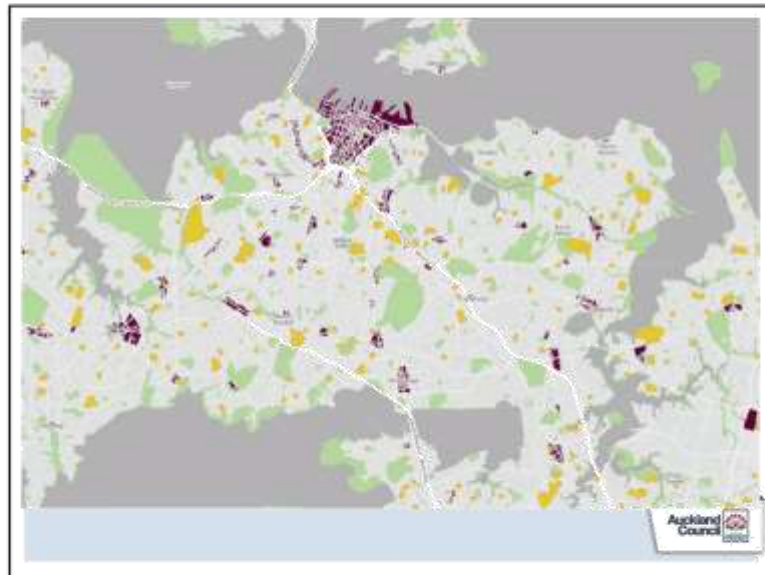




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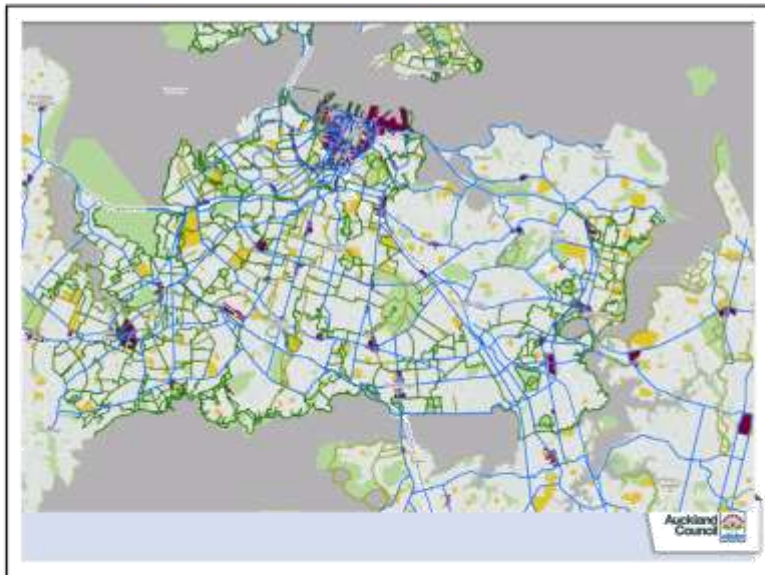
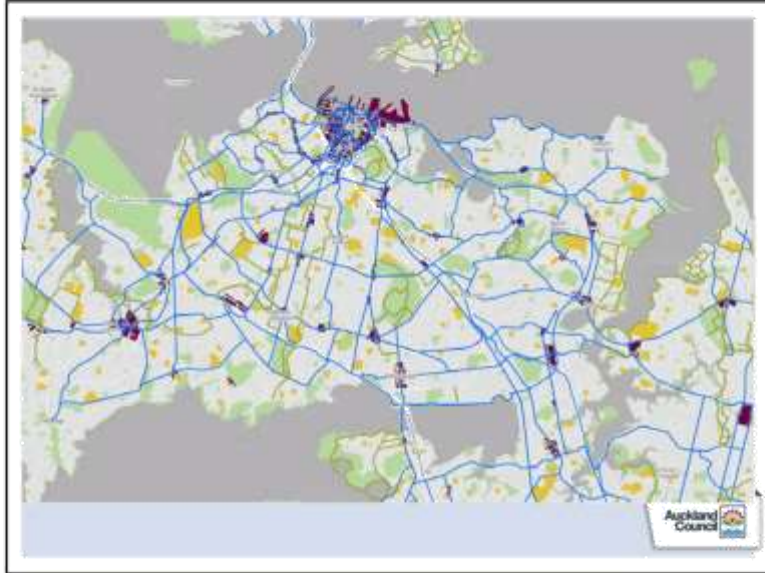
Attachment A



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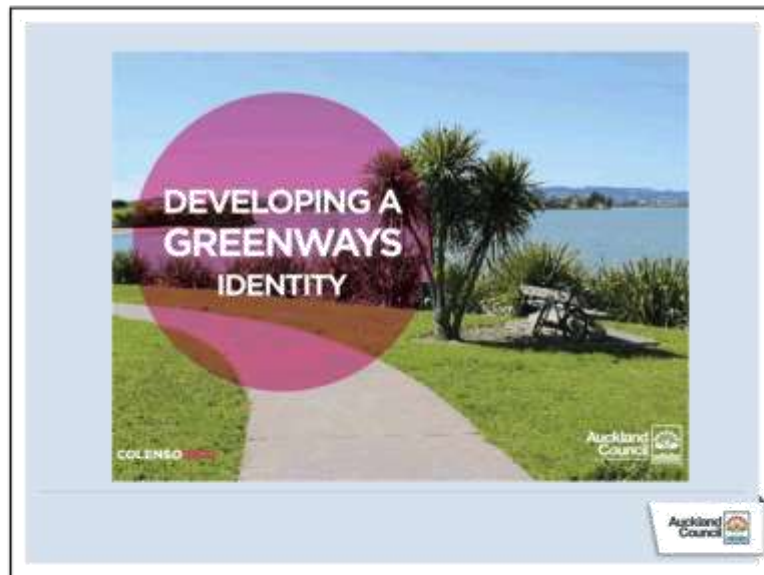
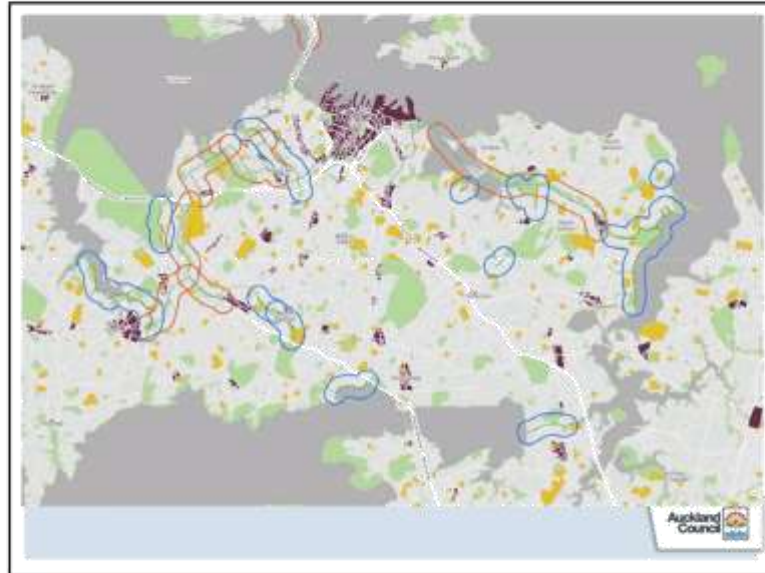
Attachment A



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Attachment A

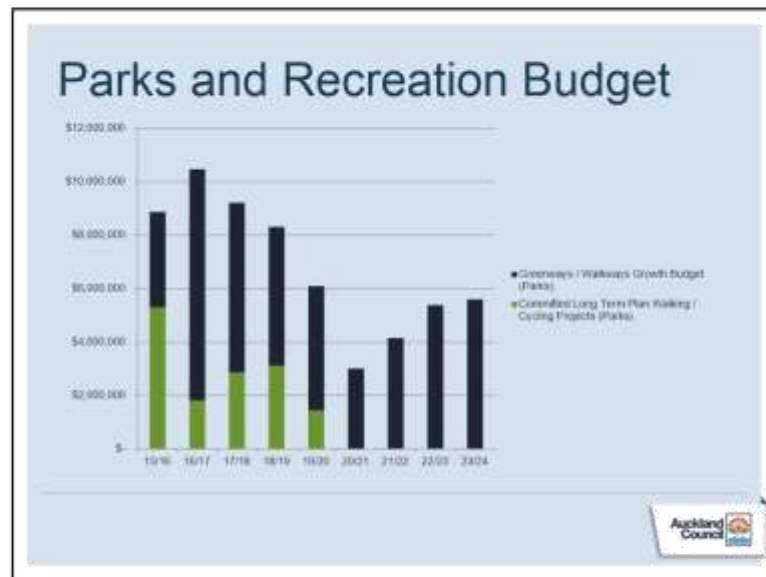


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Attachment A





- ### Interim Funding criteria
- **growth** and the geographic area the route will serve
 - leverage of investment from **other sources**
 - whether the greenway is prioritised in a completed Local Board greenway plan or a priority aspiration in a Local Board Plan
 - the level of improved connectivity to local schools and community facilities and destinations the route will provide
 - alignment and connection with **transport-led walking and cycling projects**
 - state of **readiness** (concept in place, consent and design advanced)

Legally privileged and confidential



Memorandum

22 April 2016

To: Chair Walden and Waiheke Local Board Members

CC: Councillor Fletcher, Chair of the Parks, Recreation and Sport Committee
John Nash, Relationship Manager, Waiheke Local Board

From: Cecilia Tse, Manager Public Law
Nicolette Butler, Senior Solicitor Public Law

Classification of reserves

Purpose

1. This memorandum responds to a request from Chair Walden (Waiheke Local Board) seeking clarification for the need for a further decision from the Parks, Recreation and Sport Committee to reclassify part of Alison Park (the building footprint of a former bowling club) from "recreation" reserve to "local purpose (community buildings)" reserve (the **classification proposal**).
2. The classification proposal is to be considered by the Parks, Recreation and Sport Committee on 26 April 2016, taking into account the Waiheke Local Board's views and preferences.

Summary

3. We consider that a decision from Parks, Recreation and Sport Committee on the classification proposal is required here.
4. This is on the basis that classification of reserves under the Reserves Act 1977 is generally a *regulatory* decision - and regulatory decisions are the responsibility of the Governing Body (or committee or delegate).¹ "Regulatory" decisions are generally "rule-making" functions. Classification is typically a regulatory decision as it has the effect of automatically setting "rules" over the reserve - for example, once a park is classified as a recreation reserve, then it is automatically an offence for a person to damage a tree on that recreation reserve, without approval.²
5. The Governing Body has not delegated to local boards responsibility for making classification decisions.³ Historically, and consistent with this position, Reserves Act classification decisions have been made by relevant Governing Body committees (this term, Parks, Recreation and Sport Committee). Once a classification decision has been made over a reserve, local boards then have an important role in making decisions on the use of, and activities, in that reserve, within the Reserves Act requirements applying to that "type" of reserve. We discuss these matters in detail below.

Background

6. On 24 March 2016, the Waiheke Local Board endorsed a proposal to reclassify part of Alison Park (the building footprint of a former bowling club) from "recreation" reserve to "local purpose (community buildings)" reserve, in accordance with section 24 of the Reserves Act 1977.⁴ The

¹ Section 15(1)(a) Local Government (Auckland Council) Act 2009.

² See sections 42(2), 94(1)(m) and 94(2)(c) Reserves Act 1977.

³ The Council's Long-Term Plan 2015-2025 sets out the list of matters which have been delegated at vol 2, page 288.

⁴ Section 24 of the Reserves Act sets out the process for the reclassification of a reserve. Here, the Committee resolves the classification decision. This is subject to a further step from the Minister (or delegate).

classification proposal is to be considered by the Parks, Recreation and Sport Committee on 26 April 2016.

Comment – Auckland Council decision-making

7. Auckland Council has a unique governance structure comprising the Governing Body and local boards.⁵ Decision-making responsibilities of the Auckland Council are shared between the Governing Body and local boards, so that:
 - a. regulatory decisions are the responsibility of the Governing Body;⁶ and
 - b. non-regulatory decisions are allocated to either local boards or the Governing Body, by decision of the Governing Body.⁷
8. "Regulatory" decisions are generally "rule-making" functions i.e. those functions "under which a local authority controls, governs or directs activity (whether by individuals or by businesses) in its district".⁸ "Non-regulatory" decisions are generally "landowner" type functions, where Auckland Council as the land owner makes decisions on activities it would like to take place on Council-owned land.
9. As noted in Local Government (Auckland Council) Act, "whether responsibility for making any particular decision rests with the governing body or 1 or more or all of the local boards depends on the nature of the decision being made."⁹

Comment - Classification

10. Here, the particular decision to be made by Auckland Council, as an administering body under section 24 of the Reserves Act, is whether to re-classify part of the reserve from recreation reserve to local purpose (community buildings) reserve.
11. There are different classification categories under the Reserves Act, including recreation, historic, scenic, nature, local purpose and government purpose. The type of classification determines which rules (in the Reserves Act) apply to the reserve. Typically this makes classification a regulatory decision, as it has the effect of setting rules over the reserve. Other examples of regulatory decisions include making a decision over what types of activities can occur in a particular area under the Resource Management Act 1991 or the Building Act 2004.¹⁰
12. As the nature of the decision is regulatory, this means that Governing Body (or committee / delegate) is responsible for making the particular decision. The nature of the decision will determine the appropriate committee / delegate.¹¹
13. The classification decision then sets parameters for future Council decision-making on that reserve. For example, if a reserve is classified as a scientific reserve, the Reserves Act prohibits any lease of that reserve (or part of it), and only permits a building to be erected in certain circumstances. When local boards are making decisions on possible activities in a reserve, it is important that local boards consider how the reserve classification (and the requirements of the Reserves Act and any other legislation) affects how the reserve can be used.¹²

⁵ The Local Government Act 2002 anticipates that local boards may be created outside Auckland, this has not yet occurred.

⁶ Section 15(1)(a) Local Government (Auckland Council) Act 2009.

⁷ Sections 15(1)(b)(ii), 16(1)(a) and 17 Local Government (Auckland Council) Act 2009. The allocation is set out in the Council's annual plan and long-term plan with descriptions of the types of activities, and how decisions on fees and charges, service specifications, procurement, and asset renewal are to be made.

⁸ See, for example, <http://www.oag.govt.nz/1999/contracting-out/docs/colarf.pdf>.

⁹ Section 14(2) Local Government (Auckland Council) Act 2009.

¹⁰ Section 15(1)(a) Local Government (Auckland Council) Act 2009.

¹¹ Please refer to the Council's terms of reference for Committee details.

¹² Under the Council's allocation table, local boards have been allocated decision-making responsibility on reserves (local parks) including "the use of local community facilities, including leasing and changes of use" and "the use of and activities within local parks, such as community events and community planting programmes".