

Recommendations following the hearing of the proposed recreation reserve land exchange at Margan Avenue, New Lynn under the Reserve Act 1977

Site address:	Margan Avenue, New Lynn
Hearing commenced:	Friday, 8 March 2019 at 9.30am
Hearing panel:	David Hill (Chairperson)
Appearances:	<p><u>Submitters:</u> Raela Inglis Suzanne Caron Clark Thomborson Catherine Farmer Sandra Coney</p> <p><u>For Council:</u> Emma Golightly, Team Leader Parks and Recreation Larissa Rew, Hearings Advisor Julie McKee, Hearings Team Leader</p>
Hearing adjourned	Friday, 8 March 2019 at 11.30am
Commissioners' site visit	Friday, 8 March 2019
Hearing Closed:	Thursday, 14 March 2019

Introduction

1. On 14 August 2018 Auckland Council's Environment and Community Committee received a report seeking approval to publicly notify a proposed exchange of 295m² of reserve land between Margan Reserve, New Lynn (Pt Lot 1 DP 122011) with 295m² of land at 5 Clinker Place (Pt Lot 2 DP 122011). The developer concerned, Avanda Group, is presently engaged with the adjacent West Edge New Lynn development.
2. The report advised that Margan Reserve¹ is classified as a recreation reserve under the Reserves Act 1977 (the Act) and that there is no management plan in place. Margan Reserve comprises two lots, the larger linear strip being 3,486m² (i.e. c.200m long by 17.5m wide) and the smaller being 100m² (i.e. c.20m long by 5m wide). The two reserve strips are separated by a c.20m piece of private land, being part of the land to be included in the proposed exchange.
3. The principal benefits of the exchange were expressed in that report as being to:

¹ In this recommendation report unless otherwise indicated I use the singular "reserve" to refer always to both parcels of Margan Reserve.

- provide a road, pedestrian and cycle connection from Margan Avenue to New Lynn centre and the train station, in accordance with the New Lynn Precinct Plan; and
 - enable a fragmented piece of Margan Reserve to be incorporated into a larger strip along Margan Avenue.
4. The report noted that the Whau Local Board resolved (WH/2017/140) on 22 November 2017 to conditionally support notification.
 5. On 14 August 2018 the Environment and Community Committee resolved (ENV/2018/102) to approve notification under section 15(2) of the Act.
 6. Following public notification, the Act's statutory 1 month (minimum) submission period ran from 16 October 2018 to 16 November 2018. Eighty three (83) submissions were received - 6 in support and 77 opposed – and I note that while section 120 of the Act invites objections and submissions, section 15(2) (which sets out the Minister's powers with respect to reserve land exchange) only calls for *objections*. While nothing turns on the matter, I have disregarded those submissions in support.
 7. On 14 February 2019 Auckland Council's Regulatory Committee resolved (REG/2019/5) to appoint independent hearings commissioner David Hill to hear submissions on and make a recommendation to the Environment and Community Committee on the proposed land exchange.
 8. The hearing of submissions was duly scheduled for and held on Friday, 8 March 2019 at the Whau Local Board Office, 31 Totara Avenue, New Lynn. The hearing was formally closed following receipt of some further information requested at the hearing on 14 March 2019.

Background

9. I was told that, upon subdivision of the neighbouring land, the land was vested in the New Lynn Borough Council as *recreation reserve* pursuant to Section 306 (4) of the Local Government Act 1974, and on the deposit of DP 122011 on 22 August 1988.
10. The land is described as Lots 1 and 3 DP 122011 comprising 3,662² and 100 square metres respectively and both remain retained within their parent title as NA1186/91 (Cancelled).
11. Contrary to the earlier advice, the land is held by the Auckland Council as *unclassified* recreation reserve, subject to the provisions of the Act.
12. In other words, the formal reserves classification process through the Minister was not and has not been undertaken – but is a necessary requirement prior to reserve land exchange under s15 of the Act. Notwithstanding that technical point, the land is held and administered as recreational reserve under the Act and the relevant provisions apply accordingly.

²² This is a slightly different m² figure than is shown for Lot 1 on the approved 2015 Rankin Property Development Ltd Title Plan SO 485697 – and which excludes the 0.0176ha corner Section 3.

13. Section 17 of the Act specifies the general purpose of recreation reserves as:

(1) ... providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of open spaces and on outdoor recreational activities, including recreational tracks in the countryside.

(2) It is hereby further declared that, having regard to the general purposes specified in subsection (1), every recreation reserve shall be so administered under the appropriate provisions of this Act that—

...

(b) where scenic, historic, archaeological, biological, geological, or other scientific features or indigenous flora or fauna or wildlife are present on the reserve, those features or that flora or fauna or wildlife shall be managed and protected to the extent compatible with the principal or primary purpose of the reserve

(c) those qualities of the reserve which contribute to the pleasantness, harmony, and cohesion of the natural environment and to the better use and enjoyment of the reserve shall be conserved:

14. Background reports provided include an Arboricultural Report by Peers Brown Miller Ltd (PBM) dated 31 May 2018, and a Transport Memorandum from TDG Ltd dated 14 February 2018.

PBM

15. The PBM report notes that the Margan Reserve is presently zoned Open Space – Conservation under the Auckland Unitary Plan – Operative in Part (AUP(OP)), under which all vegetation greater than 4m in height and 400mm girth is “protected” – although vegetation removal is available by means of a restricted discretionary activity resource consent.

16. In summary the PBM report notes that the pohutukawa are in generally good condition; that there is a moderately dense understorey of variable quality but which includes natives and young totara; and that the proposal would likely require the removal of some 12% of the total existing reserve – being between 4 and 6 Pohutukawa and 13 Mexican Pines. PBM concluded³ that:

The area of mature trees to be removed, at 12%, is not an insignificant amount in terms of visual amenity and ecological value, and these two attributes would inevitably be reduced as a result of the proposed activities.

17. Furthermore, PBM noted⁴ that:

Margan Reserve is considered an area of arboricultural merit. In addition to the Pohutukawa, there are a number of healthy and vigorous Totara emerging, up to 8m in height, and a vigorous understorey. The mature Pohutukawa and Mexican Pines, moderate biodiversity and emergent climax species contribute to the arboricultural value of the area. However to counter this, the bush is still young in terms of maturity, and will be expected to increase in biomass for some time yet.

18. The PBM report then continues to discuss the proposed removal and to recommend mitigation planting and management options – particularly to avoid edge effects

³ PBM, section 7.3 page 10

⁴ PBM, section 7.6 page 12

created by opening the continuous canopy cover. PBM was not asked to evaluate the merits of the proposal.

TDG

19. The TDG letter report confirmed that the proposed linear continuation of Crown Lynn Place to Margan Avenue is an appropriate alignment – noting also that Margan Avenue, being an arterial road, operated at about half of its capacity. TDG does not appear to have been asked to consider wider issues.

Issues

20. Submissions / objections made raised a number of concerns - not all of which are matters that fall within the jurisdiction of the Act relating, rather, to planning and traffic matters under the Resource Management Act 1991 (RMA). I do not address those latter aspects of the submissions. The submissions were tabulated in Attachment H to the Hearing Report. I have also been provided with full copies of all original submissions.
21. Of the many matters raised, the common threads can be summarised as:
 - The considerable amenity afforded by this somewhat rare (in the urban New Lynn context) stand of greenbelt vegetation;
 - The local value and importance of green space however small both for passive recreation reasons as well as for birdlife, as a green corridor, and the streetscape contribution made, particularly with the Christmas-time explosion of colour as Pohutukawa bloom;
 - The inappropriateness of exchanging like land area for like rather than based on the values contributed by this reserve;
 - The importance of retaining open space for all, especially in areas planned for higher density development;
 - The inappropriateness of swapping recreation reserve and removing mature trees for a road of the proposed size – and the poorly vegetated land proposed; and
 - Photographs of the area post 1950s – showing three distinct and “regimented” rows - suggest that there could be a commemorative (possibly WW1) aspect to their original planting.
22. These matters were discussed further with the submitters who appeared.

The reserves’ natural / amenity value

23. Little background is provided on the transaction in 1988 when the land was accepted as recreation reserve. However, the physical dimensions of the reserve suggest that it was never intended as anything other than passive recreation reserve, primarily serving an amenity and green space function. That is essentially its function today as confirmed by both written and oral submissions made – with a number stressing

that the failure by Council (as they perceive it) to actively manage the maintenance of the reserve, so that the community can better engage with the reserve, should not count as an argument for exchanging part of it.

24. Furthermore, and while the PBM report was not commissioned to assess the merits of the proposal, it is clear from that report that the natural values of the reserve are positive and potentially at risk from reduction by the proposed road (albeit mitigation measures are considered).
25. I am satisfied that the reserve continues to fulfil its recreation purpose and that there is a risk of that purpose being diluted with the proposed exchange, notwithstanding any alleged benefit arising from the consolidation of the smaller reserve parcel on its eastern side (but which at a mere 5m width has limited value other than as screening vegetation).

Section 15AA Reserves Act 1977

26. Section 15AA of the Act provides a pathway for recreation reserve land exchange when concurrent application is made under the RMA for a resource consent, or a private plan change is requested. Furthermore, that section places two limitations on granting as follows:

- (5) *The administering body must not grant the application unless—*
 - (a) *it has had regard to any submissions that were made on the application during the public notification process under the RMA and that relate to the exchange; and*
 - (b) *it considers that the exchange would result in a net benefit for recreation opportunities for the community that uses, benefits from, or enjoys the reserve.*

27. I understand that no such concurrent application or request has been lodged with the present proposal and that this section and the prescribed criterion in section 15AA(5)(b) – although raised in submissions - therefore does not apply.

New Lynn Precinct Plan

28. I note that earlier documentation indicated that the proposed c.20m wide road, which is the effective driver for this proposed land exchange, is” *in accordance with the New Lynn Precinct Plan*”. That is not correct.
29. The New Lynn Precinct Plan 1 (Auckland Unitary Plan I607.10.1) shows only one proposed road, and that is between Totara Avenue and Crown Lynn Place. The connection between Margan Avenue and Crown Lynn Place through sub-precinct A is shown as “*proposed lane (vehicle and pedestrian)*”.
30. While the width of the proposed lane is not indicated, clearly that would generally be understood as being significantly less than a 20m wide road – and certainly not intend to carry the same level of traffic. Furthermore, a lane would appear to be readily accommodated within the private land fronting Margan Avenue. The proposed road is, therefore, not in accordance with the Precinct Plan and will require approval through the requisite RMA processes in due course (if pursued).

The status of “the road”

31. As noted above, the effective driver for the land exchange is not in accordance with the New Lynn Precinct Plan 1.
32. I understand that while plans and discussions have been held between the developer and Council (including with Auckland Transport) with respect to the possible roading network across West Edge, no formal application process has yet been entered into. For present purposes then the road (and its intersection with Margan Avenue) has no formal status - and whether it attains formal status can neither be presumed nor predetermined.
33. As the road has no formal status, properly assessing the need for the exchange is problematic. As section 15AA of the Act contemplates, the more usual situation is effectively for a grant in principle to be in place or in process, against which the merits of a proposed exchange can be considered. In this case the argument as to whether the road could be angled to avoid the reserve proper or narrowed, as suggested by some submitters, without consequence to traffic safety, has neither been rehearsed publicly nor determined. Those options could avoid the need for land exchange.
34. I also note that the trees that would be involved in routing a lane or road through the Avanda private land (edge effects aside) are all identified as privet/acacia⁵ in the PBM report – clearly that would be a relevant consideration in any RMA-related process.

Conclusion

35. It seems clear that the values for which the land was taken and has been held since 1988 still hold good and, indeed, have been enhanced as the vegetation has matured. The arboricultural report confirms that the mature trees are generally in good health with continued growth expected. It is also clear that more active management of understorey weed species would further enhance those values.
36. At the same time, there are those in the immediate and wider community who are able to articulate the values it has for them.
37. This, then, is not a case where the reserve under consideration has lost or changed its character or values.
38. On the other hand the principal driver for the exchange, a notional road, has no formal status.
39. The question then as to whether the reserve values of part of the land should yield, at this point in time, to what is little more than a draft intention seems somewhat rhetorical. Clearly it should not.
40. Furthermore, the reserve is not yet classified; a step that is apparently necessary before an exchange under the Act can occur. While that may not be an onerous

⁵ Trees 66, 67 and 69 on the Margan Reserve Tree Location Plan, Hearing Report page 25, and PBM page 9

process since, on the face of it, section 16(5) of the Act would seem to apply, it may still take some time.

Recommendation

41. I make the following recommendations:

- (a) That the proposed exchange of Margan Reserve land not proceed at this time for the reasons discussed but principally because the values for which the recreation reserve is held are not diminished, and the road that is the main driver for the exchange has no formal status and is not, as yet, the subject either of a resource consent application or a private plan change request under the Resource Management Act 1991; and
- (b) That Council initiates formal classification of Margan Reserve under the Reserves Act 1977 so that, should a formal road application or plan change request subsequently be lodged, Council is in a position to proceed in the event that such is determined to be appropriate.



David Hill
Chairperson

22 March 2019