

12 July 2024

Palmerston North City Council
32 The Square
Palmerston North Central
Palmerston North 4410

Sent by email to: aaron.phillips@pncc.govt.nz

Tēnā koe Aaron

Thank you for your application on behalf of the Palmerston North City Council for the Minister's consent under s15(1) of the Reserves Act 1977, to exchange part of Waterloo Park recreation reserve for private land. More particularly, the application requests consent to exchange 1,300sqm of Waterloo Park being Pt Lot 44 DP 22620 (subject to survey) (the "Existing Reserve Land") for 1,300sqm (subject to survey) of land adjoining Roxburgh Crescent (the "Exchange Land").

The Minister's decision-making power under s15(1) of the Reserves Act has been delegated to me in my role as Director Regional Operations, Lower North Island. Having reviewed the information provided to the Department by both the Council and the public, I have decided to approve the exchange of the Existing Reserve Land for the Exchange Land, subject to the following conditions:

- a) That the Council approve a district plan change which changes the zoning of the Exchange Land to residential; and
- b) That the Land Regulatory Delivery Manager, Department of Conservation, approve the survey plan defining the Exchange Land. Acknowledging that minor amendments may be required, the plan shall substantially reflect the layout shown in Appendix A, as provided with the application; and
- c) That the survey plan gets approved by Land Information New Zealand.

In making my decision, I have considered the objections raised by the public, the Council's consideration of those objections and the process followed by the Council in reaching its decision. A copy of the decision document is enclosed with this letter.

Once the above conditions have been met, the Statutory Land Management team, Department of Conservation will provide me with a gazette notice to sign authorising the exchange. Once the



gazette notice is published, the Council will be able to effect the exchange by arranging the transfer of the respective titles.

In the interests of transparency, I will provide a copy of the decision document to a member of the public who has shown strong interest in this decision.

Nāku noa, nā

A handwritten signature in cursive script, appearing to read 'A Heather'.

ALICE HEATHER

Director, Lower North Island
Department of Conservation
Te Papa Atawhai

APPENDIX A:



Submission**To: Alice Heather, Director Regional Operations, Lower North Island****From: Elizabeth Esson, Statutory Land Management Advisor****MOC Authorisation – Palmerston North City Council - Exchange of Reserve Land - Recreation Reserve – Part Waterloo Park****Proposal**

Your consent is sought, pursuant to section 15 of the Reserves Act 1977 and a delegation from the Minister of Conservation, to exchange part of a Palmerston North City Council (the "Council") recreation reserve for private land to be held as a recreation reserve.

Explanation

The Council is the administering body of a recreation reserve known as Waterloo Park (the "Reserve"). The Reserve contains a 2.85ha parcel of land, described as Lot 44 DP 22620. The Council is proposing to exchange part of Lot 44, being an area of 0.13ha (the "Existing Reserve") for approximately 0.13ha of nearby freehold land owned by a private landowner (the "Exchange Land").

As a result of the exchange, the private landowner will obtain an unencumbered fee simple interest in the Existing Reserve land. The Exchange Land will take on the same status as the Existing Reserve, being recreation reserve vested in the Council¹.

The Existing Reserve comprises a strip of land 11m wide and 120m long with a small stand of wattles and gum trees. The strip is situated between the existing industrial activities in Roxburgh Crescent and five residential properties in Tilbury Avenue.

At the time of the exchange proposal being publicly notified, the Existing Reserve was a dead-end space which the Council considered to have no clear recreational uses. After the proposal to exchange was publicised, a pumpkin patch was established by some of the community.

If the exchange is approved, it is anticipated that the Existing Reserve land would be used for residential housing.

¹ Full Council application ("Application"): [DOC-7551376](#)



Figure 1 – Existing Reserve to be exchanged.



Figure 2 – Existing Reserve to be exchanged – view from eastern/stopbank end.

Intended use of Exchange Land

Council wishes to progress this exchange because they consider the Exchange Land will provide a wider community benefit than retaining the Existing Reserve. Part of the Exchange Land would be used to provide a “wider river entrance space allowing a better vista and sight line to the river. There is likely (dependent on conditions of the plan change – this is based on early engagement) to be some river entrance feature developed by Rangitāne o Manawatū to be incorporated into the space.”

The balance of the Exchange Land, across the road from the river entrance, would be an open space recreation reserve with the intention being to plant trees to add to the amenity value. The Council advise that “This would create a pleasant area for accessing the Manawatu River Park, provide opportunities for sitting e.g. while waiting for others in a group to arrive back from an excursion.”



Figure 3 – Shows proposed reserve exchange. The area in blue is the Existing Reserve and the area in green is the Exchange Land. If the exchange is approved, the green area will become reserve and the blue area will become privately owned fee simple land with no reserve status.

Relationship between the exchange process and Proposed District Plan Change – Roxburgh Crescent Residential Area.

The Exchange Land is located in what is currently a light industrial area. Roxburgh Crescent runs through the middle of this industrial area. The Council are progressing a potential change to the district plan to turn this area into a residential zone (the “Plan Change”). If the Plan Change is approved, the Exchange Land will be within a planned brownfield residential development.

The Council have indicated that they will only proceed with the exchange if the Plan Change is approved. One of the reasons the Council resolved to apply for the Minister’s approval to exchange the land, is because once the residential development is in place, they consider the Exchange Land will have a wider community benefit than retaining the Existing Land. This reasoning only applies if the Plan Change is approved, and the zoning changed to residential. For this reason, if the Minister approves the exchange, such approval should be conditional on the plan change going ahead.

Decision maker

Exchanges of reserve land require authorisation by the Minister, delegated to Operations Manager or Operations Director². It is recommended that this decision be made at the Operations Director level rather than Operations Manager level due to level of public objection and risks associated with allegations made that the Council did not follow the correct process when resolving to approve the exchange. This is explained further on in the submission.

In authorising an exchange pursuant to section 15 Reserves Act 1977, you must be satisfied that the exchange is legally possible (i.e. that the land in question is a reserve, and that it is vested in the administering body), that the process requirements of sections 15 and 120 of the Reserves Act 1977 have been followed, and that the decision overall was one that was reasonably available to the Council.

I recommend that you also consider whether the exchange decision is consistent with the purposes of the Reserves Act, whether it gives effect to Treaty Principles, and all objections received and the comments of the local authority on those objections to ensure the Council has given fair and reasonable consideration to those objections.

The above considerations are analysed further in this submission.

Description & Status

Existing Reserve land³

1,300sqm, being Pt Lot 44 DP 22620.

NZ Gazette 1961 page 959

Recreation reserve vested in Palmerston North City Council⁴.

Exchange Land

1,300sqm approximately, being two parcels of land adjoining Roxburgh Crescent. This area is yet to be surveyed.

As the Exchange Land has not been surveyed, if you consent to the exchange, the consent will be conditional on the survey plan being approved by the Minister's delegate.

Legislation

Section 15(1) of the Reserves Act 1977 provides that the Minister may, by notice in the Gazette, authorise the exchange of the land comprised in any reserve for any other land to be held for the purposes of that reserve.

Section 15 subsections (5) & (6) provide that any reserve land given by way of exchange shall upon exchange be no longer subject to any reservation; and that the land acquired by way of exchange shall automatically adopt the same status to which the reserve land was subject.

Section 15(2) requires that the administering body give public notice of its intention to pass a resolution in support of the land exchange, and forward for the Minister's consideration a copy

² In this particular case the MOC authorisation is not delegated to Council, as Council ownership of the subject reserve was originally derived from the Crown.

³ Land status check: [DOC-7599494](#)

⁴ Gazette notice: [DOC-7599495](#)

of any objections, together with the comments of the local authority on those objections, and subsequent resolution⁵.

Section 120 sets out the public notification requirements.

Public Notice & Objection

The Council publicly notified the proposed exchange in the Manawatu Standard on 11 April 2023, with a correction to the original notice published on 15 April 2023⁶, and the Manawatu Guardian on 13 April, with a correction published 20 April 2023. The closing date for submissions was 17 May 2023.

There were 39 submissions received, including 1 petition. Of the submissions received, 30 oppose the exchange, 1 was neutral and 8 support the exchange⁷.

218 people signed the petition opposing the exchange. The petition read:

"We request that the Palmerston North City Council decline the proposed land exchange of part of Waterloo Park Reserve.

We believe that the retention of the existing green-space reserve area enables the opportunity to develop it as part of an accessible 'orchard' – style community food production zone, which would provide place-making area and a new pedestrian route in the neighbourhood".

The table below summarises into categories the reasons given by the people who submitted in opposition of the exchange. Note that not all these matters are relevant considerations under the Reserves Act⁸.

Matters raised in opposition	# times
Want community garden/park where is	18
Privacy/3 story buildings next to existing houses/housing buffer	11
Loss of reserve/green space	9
Climate change mitigation	5
Create new path connection through	5
Exchange area will be for car parking	4
Loss of birdlife in existing trees	4
Loss of trees	4
Retain as stormwater soak protection for Tilbury Avenue areas	4
Supports developer/new area	4
Green space for small sections in new housing area	3
New reserve will be used for car parking	3
Flooding effects of more housing	1
Housing traffic effects	1
Potential contamination	1
Upgrade Ruahine entrance instead	1

⁵ Palmerston North City Council resolution 18 December 2023 – relevant part starting just above item 221-23: [Minutes of Council - Monday, 18 December 2023 \(infocouncil.biz\)](#)

⁶ Public notification in Manawatu Standard: [DOC-7599502](#)

⁷ Copy of all submissions received by the Council: [DOC-7551384](#)

⁸ For a summary of submissions see pages 68-70 of the above document DOC-7551384.

A second table has been provided in which the Council identify which issues are relevant considerations under the Reserves Act and provided responses to those issues. See pages 9-14 of the Decision Request Report linked below⁹. In this report, the Council also provides responses to questions raised by submitters.

Objector Correspondence to the Minister and Department

The Department and the Minister have received correspondence objecting to the exchange and raising concerns with the Council's process.

Most of the correspondence has been from Rosemary Watson who has expressed strong interest in this decision and has provided the Department with extra information. This correspondence is summarised below with footnotes providing copies of the emails and letters.

To the extent that we consider the information Ms Watson has provided relevant to your decision under the Reserves Act, we have addressed it in the following section titled "Process Issues" [REDACTED]

On 18 December 2023, Ms Watson wrote to the Minister on behalf of herself and a group of concerned citizens seeking information about how the authorisation process works and how she might engage with this process.¹⁰ Ms Watson sent a follow up email to the Minister on 8 January 2024¹¹. On 29 January 2024, Ms Watson wrote a further email to the Minister again expressing concern with the process and asking that the Minister's decision be deferred until suitable investigations of the Council process have been made¹². On 31 January 2023, the Department responded to Ms Watson describing the role of the Minister under section 15 and answering her questions.¹³

Ms Watson wrote further emails to Rachael Jordan, former Principal Advisor Policy and Regulatory Services, Department of Conservation on 1 and 2 February 2024.¹⁴

On 8 February 2024, Ms Watson provided a letter from Tangi Utikere, MP for Palmerston North.¹⁵ The MP's letter states he is writing in relation to a group of his local constituents who have raised concerns with him regarding due process adopted by the Council when it made the exchange decision. He invites the Minister to consider whether it is appropriate to proceed with deciding on the exchange "whilst my local constituents' complaints regarding the issue are under consideration." It is unclear who is considering the complaints, or what the specific nature of the complaints are.

⁹ Decision request report – Palmerston North City Council - [DOC-7551383](#)

¹⁰ Email from Rosemary Watson to Tama Potaka "Palmerston North City Council – upcoming reserve land exchange application" (18 December 2023) CORD-1055 [DOC-7537155](#).

¹¹ A copy of this email is included in the body of Ms Watson's later email dated 12 June 2024 – see footnote 20.

¹² Correspondence – Rosemary Watson (care of-Doug Kidd) – Waterloo Park (29 January 2024) [DOC-7646724](#)

¹³ Letter from Rachael Jordan to Rosemary Watson "Palmerston North City Council – upcoming reserve land exchange application" (31 January 2024) CORD-1055 [DOC-7537210](#)

¹⁴ Mentioned in email from David Griffin to Harry Evans, Tui Arona and DOC Private Secretaries "CORM-1277 – Correspondence – Rosemary Watson (c/-Doug Kidd) – Waterloo Park" (28 March 2024) [DOC-7606558](#).

¹⁵ Letter from Tangi Utikere to Tama Potaka (2 February 2024) CORD-1086 [DOC-7600745](#).

On 18 April 2024, the Department responded to Ms Watson.¹⁶ We re-explained the role of the Minister under section 15 and responded to specific questions raised in her emails of 1 and 2 February 2024.

On 18 April 2024, Ms Watson responded to the Department.¹⁷ In this letter she questions the timing of Councillor Dennison's notice of motion and provides a letter that she wrote to the Council between the release of the agenda for the 18 December 2024 meeting, and the meeting itself. She also urges us to watch the video recording the 18 December 2023 Council meeting where some Council members express concern with how the process was run¹⁸.

On 13 May 2024, Ms Watson emailed the Department again, this time providing the response of the Council to requests she made under the Local Government Official Information and Meetings Act 1987 (LGOIMA).¹⁹

On 12 June 2024, Ms Watson emailed the Department with comments following her receipt of information from the Council following further requests she made under LGOIMA²⁰.

Process Issues - Contains Legal Advice

The correspondence from Ms Watson and Tangi Utikere, MP raised concerns about the Council's process in reaching its decision. While the public's opportunity to engage in the process and raise objections is at the public notification/hearing stage, not at this Ministerial consent stage, [REDACTED]

Having reviewed the information provided by the Council and by Ms Watson, we identified that there were also some Councillors who expressed concern with the process.

In her correspondence to the Minister on 29 January 2023 (footnote 11), Ms Watson advised that she was representing a group of concerned members of the public who are "*investigating options for legal aid to pursue complaints to both PNCC and the Ombudsman, and for a potential judicial review of the PNCC process/procedures involved*".

[REDACTED]

¹⁶ Letter from Stacey Wrenn to Rosemary Watson (18 April 2024) CORD-1086 [DOC-7607701](#).

¹⁷ Email from Rosemary Watson to Barry Ashbridge "Fw: CORD-1086 Correspondence Response" (18 April 2024) [DOC-7631568](#).

¹⁸ Video of Council meeting held 18 December 2023 - <https://youtu.be/542R48q7LHA?t=1274>.

¹⁹ Email from Rosemary Watson to Barry Ashbridge "Re[4]: FW: CORD-1086 Correspondence Response – re PNCC Waterloo Park reserve land exchange application" (13 May 2024) [DOC-7641196](#).

²⁰ Email from Rosemary Watson (care of - Doug Kidd) to Barry Ashbridge (12 June 2024) - Waterloo Park exchange - [DOC-7664595](#)

²¹ Legal opinion on Palmerston North City Council Waterloo Park Reserve Exchange: [DOC-7632464](#)

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In light of the above, I consider the process requirements of the Reserves Act 1977 have been followed by the Council and there are no other process matters preventing the Minister approving the exchange.

Substantive Issues

As noted above, you must consider whether the Council’s decision overall was one that was reasonably available to the Council. You should also consider all objections received and the

²² Aaron Phillips to Elizabeth Esson “RE: Application for land exchange approval” (15 May 2024) and at [DOC-7640445](#).

²³ Email from Hannah White to Aaron Phillips “RE: Application for land exchange approval” (6 May 2024) and available at [DOC-7635399](#) and Aaron Phillips to Elizabeth Esson “RE: Application for land exchange approval” (15 May 2024) and at [DOC-7640445](#).

²⁴ Aaron Phillips to Elizabeth Esson “RE: Application for land exchange approval” (15 May 2024) and at [DOC-7640445](#).

comments of the Council on those objections to ensure the Council has given fair and reasonable consideration to those objections.

Fair and reasonable consideration of objections

Written objections were provided to the Strategy and Finance Committee.²⁵ The Committee received a summary of written submissions from officers.²⁶ The summary provided a table of the matters raised in opposition to the exchange from written submissions. A brief summary of social media comments was also provided. The Committee also heard from seven submitters who were opposed to the exchange and requested to be heard.²⁷ In a further report to the Committee dated 15 November 2023, the table of matters raised in opposition was reproduced, and each matter was addressed in greater detail.²⁸

[REDACTED] we consider the Council has given fair and reasonable consideration to the objections. I note in particular that in the report to the Committee dated 15 November 2023, two additional proposals (in addition to approving or declining the exchange) were considered, based on the objections of submitters.²⁹ This shows the Council has considered and responded to the objections.

Overall reasonableness

[REDACTED]

The reasons recorded in the minutes of the 18 December 2023 meeting for the decision itself (as opposed to Councillor Dennison’s notice of motion) speak solely to the objections and Reserves Act considerations.³⁰ The Standing Orders state that the minutes, once authorised, are the prima facie evidence of the proceedings they relate to.³¹ Reasons a) to d) seek to address the concerns of submitters about other matters, including the impact on the Existing Reserve. Reason e) relates to the advantage that the proposed reserve has over the Existing Reserve, namely that it would have a wider community benefit. The “community benefit” is explained in the report as:

- a) “[B]etter located greenspace that would enhance a river connection”;³² and

²⁵ Strategy and Finance Committee “Agenda Extraordinary Strategy and Finance Committee” (1 August 2023) at 65-124 and available [here](#).

²⁶ Strategy and Finance Committee “Minutes Extraordinary Strategy and Finance Committee” (1 August 2023) at [47-23] and available [here](#). A copy of the summary is available at Strategy and Finance Committee “Agenda Extraordinary Strategy and Finance Committee” (1 August 2023) at 65-124.

²⁷ Strategy and Finance Committee “Minutes Extraordinary Strategy and Finance Committee” (1 August 2023) at 6-8 and available [here](#).

²⁸ Strategy and Finance Committee “Agenda” (15 November 2023) and available [here](#).

²⁹ Strategy and Finance Committee “Agenda” (15 November 2023) at 89 and available [here](#).

³⁰ Strategy and Finance Committee “Minutes” (18 December 2023) at [221-23] and available [here](#).

³¹ SO 3.11.3.

³² Strategy and Finance Committee “Agenda” (15 November 2023) at 105 and available [here](#).

- b) “[B]eing wider and adjacent to a road reserve, there would be options for large tree species to be planted [than if the current reserve were retained].³³

Generally speaking, in the context of this process, it is the reserve administering body, rather than the Minister, which is better placed to assess and meet the needs of the community regarding the provision of areas for reserves, open spaces and community facilities. Further, it is primarily a matter for the Council as to how much it is willing to expend on the reserve, and how much weight to accord public objections.

In light of the above, I consider you can be satisfied that the Council gave fair and reasonable consideration to the objections, and that the overall decision was one that was reasonably available to the Council.

The Minister does not have to agree with the administering body’s decision to approve the exchange. However, the Minister can refuse to authorise it if he comes to a different view, even where all the above requirements are met.

Treaty of Waitangi

The Council advised that “*Rangitāne o Manawatū are our primary mana whenua partners*” and “*Council’s engagement with Rangitāne is structured with the Te Whiri Kōkō monthly hui ensuring Rangitāne iwi leaders get information on specific projects and determine who within their respective organisations will consider anything further, if required...In this case the leaders at Te Whiri Kōkō directed the response should be given by Tānenuiarangi Manawatū Incorporated.*”³⁴

The Council consulted with Tānenuiarangi Manawatū Incorporated who provided a submission supporting the exchange.³⁵

Council has further advised in response to inquiry from DOC that “*Council is not aware of specific interests of other iwi or hapū in this area*” and that they are “*confident that the views of associated iwi and hapū have been sought in regard to this process.*”³⁶

Council note that they have been working with Rangitāne on a number of river entrances and enhancements over the least five years.³⁷ Council intend to work with Rangitāne on a possible river entrance feature to be incorporated into the exchange land.³⁸

I consider you can be satisfied that the exchange decision gives effect to Treaty Principles.

Authority for Approval & Gazettal

Sections 15(1) of the Reserves Act 1977 and Instruments of Delegation from the Minister of Conservation dated 8 September 2015; and the Director General dated 9 September 2015.

³³ Strategy and Finance Committee “Agenda” (15 November 2023) at 105 and available [here](#).

³⁴ Insert doccm reference to email from Aaron Phillips to Elizabeth Esson dated 27 May 2024 “RE: Application for land exchange approval.”

³⁵ Strategy and Finance Committee “Agenda Extraordinary Strategy and Finance Committee” (1 August 2023) at 98 and available [here](#).

³⁶ Insert doccm reference to email from Aaron Phillips to Elizabeth Esson dated 27 May 2024 “RE: Application for land exchange approval.”

³⁷ Insert doccm reference to email from Aaron Phillips to Elizabeth Esson dated 27 May 2024 “RE: Application for land exchange approval.”

³⁸ Insert doccm reference to email from Aaron Phillips to Elizabeth Esson dated 3 April 2024 “RE: Application for land exchange approval 1 / 2”.

Conservation General Policy

The Conservation General Policy only applies to Public Conservation Lands; which, as defined in the CGP, does not apply to reserves administered by other agencies. As the subject reserve is administered by the Council, the CGP is therefore not relevant to your decision.

Financial Implications

The Existing Reserve and the Exchange Land are considered to be of approximately equal value. The Crown retains a reversionary interest in Crown derived reserves vested in an administering body. As the Exchange Land will take on the same status as the Existing Reserve, the Crown's reversionary interest will transfer to the Exchange Land. As such, there are no financial implications for the Crown; and normal cost recovery fees will apply for time and disbursements in considering the application.

Recommendation

It is recommended that you approve the Council's exchange proposal under section 15(1) of the Reserves Act 1977, subject to the following conditions:

- a) That the Council approve a district plan change which changes the zoning of the Exchange Land to residential; and
- b) That the Land Regulatory Delivery Manager, Department of Conservation, approve the survey plan defining the Exchange Land. Acknowledging that minor amendments may be required, the plan shall substantially reflect the layout shown in figure 3 above, as provided with the application; and
- c) That the survey plan gets approved by Land Information New Zealand.

Once the above conditions have been met and the survey plan finalised and approved by Land Information New Zealand, you will be provided with a Gazette notice to sign authorising the exchange. Following DOC publication of the gazette notice authorising the exchange, Council will arrange transfers under the Land Transfer Act 2017.

Decision

RECOMMENDATION: APPROVED / ~~NOT APPROVED~~



ALICE HEATHER

Director, Lower North Island

Date 15/07/2024