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## SUBMISSION ON EMERSON PARK RECREATION RESERVE REVOCATION OF RESERVATION

Department: Parks and Recreation

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### INTRODUCTION

- 1 The purpose of the report is to provide information in relation to the proposed Reserve revocation over part Emerson Park Recreation Reserve in response to a submission on the proposal.
- 2 The decision maker is not bound by advice provided within the report. This report has been prepared on the basis of information available via the submission that was received on 25 October 2017.

### SUMMARY

- 3 In 1984 a small part of Emerson Park Recreation Reserve ("the Reserve") was developed to be used as part of the adjoining property at 18 Emerson Street, Concord, Dunedin. A licence to occupy the Reserve land was granted to the Owner ("the Owner") of 18 Emerson Street.
- 4 The Owner has applied to purchase the licensed land that is legally part of the Reserve. The sale of the land was approved under confidential Report by Council on 28 March 2017. Part of the process to give effect to the sale is that the recreation reservation of the licensed land needs to be revoked. This action is undertaken under section 24 of the Reserves Act 1977 and comes with a public notification process as specified in Section 24(2)(c).
- 5 The notice of proposal to revoke the reservation was notified in terms of sections 119 and 120 of the Reserves Act 1977. The notice was published in the Otago Daily Times for one month asking for submissions and an information pack was provided.
- 6 One submission was received from a submitter who wishes to be heard advising that the area is set aside for off-leash exercise for dogs pursuant to clause 5.6.1(d) of the Dunedin City Dog Control By-Law 2016 (map 54).

## RECOMMENDATIONS

That the Committee:

- a) **Considers** the submission received in relation to the proposed reserve revocation
- b) **Decides** to revoke the Reserve status under Section 120 of the Reserves Act 1977 of that part of Emerson Street Reserve legally described as 0.0550 hectares (subject to survey) more or less being part Section 11, Block XV, Dunedin and East Taieri Survey District, part Computer Interest Register 447977 and shown in the area marked on the plan annexed as Attachment A.
- c) **Notes** that the requirement to publicly notify the intention to revoke the reserve status has been satisfied.

## BACKGROUND

- 7 The area of land proposed to have its reservation revoked has been licensed to the Owner for some 30 years.
- 8 The licence has expired however the Owner continues to occupy the land pending the outcome of this proposal.
- 9 The land now contains part of a relocatable garage, includes part of the Owner's garden and has been developed in such a way that it looks as though it is part of the Owner's property.

## Details of Land for Reserve Revocation

- 10 The area is a relatively small disjointed part (0.0550 hectares) of the Reserve that contains a total area of 2.4867 hectares. The area does not look like it is part of the Reserve as it is physically separated from the reserve by a stream and there is no footbridge to assist with access. The land now includes the Owner's garden and relocatable improvements which are improvements permitted under the prior licences.
- 11 The remaining area of the Reserve contains a playground, bush and open space that can be fully utilised by the public for recreation activities including dog walking. Attachment B shows an aerial photograph of the land in relation to the Reserve.
- 12 The area lies to the southwest of the sports field, separated by a batter slope, a small stream and is a relatively small area of recreation reserve between the stream and the Owner's property. The area is difficult to access from the remaining Reserve.
- 13 The area is not visible from the majority of the Reserve and has no connectivity and functionality for reincorporation with the remainder of the Reserve. It adds little value to the Reserve now or if it was to become part of the Reserve again.
- 14 Since the area was developed it has always been licensed to the Owner. A licence does not exclude the public from using the land but in this case there is limited opportunity because of the separation by a stream, its aspect and functionality.

## Relevant Reserve Management Plans and Other Policies

- 15 The draft Reserves Acquisition and Disposal Guiding document (October 2005) provides a framework to facilitate opportunities for the acquisition and disposal of reserves. It was adopted in its draft form pending development of the final policy.
- 16 Objective 3 advises the intent to consider disposing of reserves that do not add value to the reserves portfolio.
- 17 The section on leased reserves advises that Council has a number of reserves not required for reserve purposes that are leased out. Consideration needs to be given to:
  - The reserve requirement for the future;
  - Whether they need to be enhanced to fill a gap; or
  - Disposed of

The land has little value for recreation, has not actively been used for recreation for a significant period and is a very small area compared with the larger balance of Reserve area. The land is not required for any stream stabilisation or public work to protect or enhance the Reserve. It is also not required to enable or enhance the use of the balance Reserve area.

Overall it is considered that this land is not required to fill any current or future need of the community.

The cost of reinstating the land for it to be made available as a reserve is also prohibitive as it would involve the relocation of the garage. Additionally, the owner has built up the level to match the remainder of their section. The fill includes former building site material that if exposed could include contaminants, and the Council does not wish to accept responsibility for those materials. Reinstatement would therefore require the removal of those materials.

## **CONSULTATION SUMMARY**

### **Reserves Act 1977**

- 18 The land status is Recreation Reserve under the Reserves Act 1977. Part of the requirements to sell the land to the Owner is the revocation of its reserve status under section 24 of the Reserves Act 1977 together with a public notification process as specified in Section 24(b) of that Act.
- 19 The notice of proposal to revoke the reserve was notified in terms of Sections 119 and 120 of the Reserves Act 1977. The proposal was advertised on 8 April 2017 with submissions closing on 15 May 2017. The Dunedin City Council also displayed information on the DCC website for the period of the consultation and provided hard copies at the Civic Centre, Dunedin.
- 20 A copy of the Information Pack in relation to the public notification is attached as Attachment C.

### **Submission Evaluation**

- 21 The scope of the consultation under the Reserves Act 1977 was the proposal to revoke the reservation as the area is surplus to reserve requirements. Submitters need to demonstrate that the area is required for future recreational use.
- 22 The primary reason for the objection to the proposal is in terms of the DCC Dog Control Bylaw 2016. The submitter also cites the lack of any other neighbouring Reserves

- (within two kilometres) for exercising dogs off-leash. A full copy of the submission is included as Attachment D.
- 23 The submission describes this part of Emerson Street Reserve being "set aside" for off-leash dog exercise areas by the bylaw. It identifies areas of land which are in Council ownership and specifies that dogs on that land are not required to be on leash. However, the submitter appears to believe that the bylaw confers a right of entry. This is incorrect. The bylaw identifies that if entry is available, a dog is not required to be on a leash in that location.
- 24 The part of the reserve area to be revoked is not easily accessible from the balance Reserve area as it is separated by a small water course and is built up to the level of the adjoining private land. The area cannot be accessed from the street and forms part of a private backyard. It has appeared this way for some 30 years, and has not practically been accessible for use as a dog walking location for a considerable period.
- 25 The balance of Emerson Street reserve is some 2.4317 hectares (not including the reserve area to be revoked) and is available for dog exercise as there is no change proposed to that area under this proposal.
- 26 The remaining area of the Reserve is available for exercising dogs' off-leash. This contains a large flat area and some small rises and is primarily in grass with trees on the perimeter. The overall assessment is that the balance reserve area is adequate for use by the community, including dog exercise. Revocation of part of the reserve will not detract from the amenity, or the use of the balance reserve. Therefore it is recommended that the objection be declined in this instance.
- 27 The submitter also appears to consider the landowner's prior use of the reserve is unlawful. In reviewing the terms of the licence it is considered that the use of the reserve has been lawful.
- 28 The Dog Control Bylaw 2016 came into effect on 1 July 2016. The submitter has actively opposed the introduction of the Bylaw, and is currently a member of a Council working party that is engaged in identifying how dog control can be better managed in the City. Consideration of improving the operation of the Bylaw is one factor in the matters under consideration by that working party. The provision of dog parks and spaces for dog exercise and training are also under active consideration. Those matters are not able to be taken into account in respect of this decision as they relate to different Council processes. The parts of the submission referring to those factors should therefore be given no weight.
- 29 A copy of the Dog Control Bylaw 2016 is included as Attachment E and the relevant map is included as Attachment F.

## **OPTIONS**

### **Option One – Recommended Option**

- 30 That the Hearing Committee decides to revoke the proposed reserve status as outlined in this report.

#### *Advantages*

- The Council complies with the requirements of the Reserves Act 1977 and its own policy for disposal of reserve land.
- The Council is able to carry out its prior resolution to sell the land to the Owner.

- The Owner is able to occupy the land without the need for a licence.
- There is no need for the continued cost in administration in regards to the monitoring and granting of further licences.
- The Council is no longer responsible for the potential liability of a built-up area that may release contaminants.

*Disadvantages*

- The area proposed for the revocation of the reserve will not be reinstated for use as reserve land at the end of the license period.

**Option Two – Status Quo**

31 That the Hearing Committee does not grant the proposed reserve revocation.

*Advantages*

- The general public have legal access to use the area for walking dogs off leash and any other purpose but will find it difficult to use the area for walking dogs off leash and any other purpose.

*Disadvantages*

- The Council does not comply with its own policy and prior resolution for the disposal of reserve land.
- The Council is unable to sell the land to the Owner.
- The Owner is unable to occupy the land, and will be required to remediate (at significant cost) the site if a licence to occupy is not subsequently granted.
- The Council will incur the cost of maintaining the land.

**CONCLUSION**

Having regard to the above assessment, I recommend that the Hearing Committee receive this report and make a decision on the above options.

**Signatories**

Author:	Maria Sleeman - Leasing Officer
Authoriser:	Robert West - Group Manager Parks and Recreation Leanne Mash - General Manager Infrastructure and Networks (Acting)

**Attachments**

	<b>Title</b>	<b>Page</b>
A	Aerial photograph of the land over which the reservation is proposed to be revoked	
B	Aerial photograph of the land in relation to the Emerson Park Reserve	
C	Information Pack in relation to the public notification	
D	Submission	
E	Copy of Dog Control Bylaw 2016	
F	Map 54 Dog Control Bylaw 2016	

## SUMMARY OF CONSIDERATIONS

### ***Fit with purpose of Local Government***

This decision relates to providing a public service and it is considered good-quality and cost-effective.

### ***Fit with strategic framework***

	Contributes	Detracts	Not applicable
Social Wellbeing Strategy	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Economic Development Strategy	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Environment Strategy	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Arts and Culture Strategy	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3 Waters Strategy	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Spatial Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Integrated Transport Strategy	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Parks and Recreation Strategy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other strategic projects/policies/plans	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The proposed reserve revocation contributes to the outcome of the Spatial Plan by contributing to a liveable city and the Parks and Recreation Strategy by giving clarity in terms of the recreation use of space within the City.

### ***Māori Impact Statement***

There are no known impacts for tangata whenua. The land is not subject to the Ngai Tahu Claims Settlement Act 1998 as the land is not considered to be derived from the Crown.

### ***Sustainability***

The decision on whether or not to undertake the reserve revocation will provide clarity for the occupation and public use of the Reserve.

### ***LTP/Annual Plan / Financial Strategy /Infrastructure Strategy***

No implications.

### ***Financial considerations***

The decision on whether to undertake the reserve revocation will have implications for Council by either ensuring that Council receive funds for the land in the future or costs will be incurred for future management and administration of the land.

### ***Significance***

The proposal has a low level of significance in terms of community interest and engagement under the Council's Significance & Engagement Policy.

### ***Engagement – external***

A public notification process has been undertaken as outlined on page 3 of the Report. Engagement has also been undertaken with the submitter.

### ***Engagement - internal***

The Chief Legal Officer has provided advice on the matter and various Council Parks and Recreation staff and management have been involved with the matter over time.

### ***Risks: Legal / Health and Safety etc.***

There may be Health and Safety implications in terms of dogs and their access to the Reserve land which is proposed to have its reserve status revoked.

<b>SUMMARY OF CONSIDERATIONS</b>
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<b><i>Conflict of Interest</i></b>
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There is no conflict of interest
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<b><i>Community Boards</i></b>
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The Reserve is not within a Community Board area.
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