

6. DECLARATION AS RESERVE-STOPPED ROAD (WORCESTER STREET, LATIMER SQUARE)

General Manager responsible:	General Manager City Environment, DDI 941-8656
Officer responsible:	Transport and Greenspace Unit Manager
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PURPOSE OF REPORT

1. The purpose of this report is to present to the Council the submissions received regarding the proposal to declare as reserve the stopped road through Latimer Square, the report of the hearings Commissioner and to obtain a decision on the proposed declaration.

EXECUTIVE SUMMARY

2. The section of Worcester Street through Latimer Square has been stopped pursuant to the Tenth Schedule of the Local Government Act 1974. The Council's decision of 28 August 2003 to stop this portion of Worcester Street was confirmed in a decision by the Environment Court dated 9 February 2006. The stopped road is now held by Council in fee simple and comprised in its own title. Work to date to physically close this section of Worcester Street has involved removal of asphalt paving, formation of a footpath and grassing.
3. The portion of road which has been formally stopped has reverted automatically to the zoning shown on the planning maps in the City Plan, which is Conservation 2 Zone.
4. The purpose to which the stopped road is to be put (as publicly notified) is that it be held by Council as a Recreation Reserve under the Reserves Act 1977, so that the land can be managed as part of Latimer Square and able to be administered by the Council under the Reserves Act 1977.
5. As part of the Council's resolution of 28 August 2003 to initiate the road stopping procedure the Council affirmed its intent to commence the process under the provisions of Section 14 of the Reserves Act 1977 (subject to the road being successfully stopped) to declare the land (Section 1 SO 323707) to be recreation reserve.
6. Public notice was given in the Christchurch Press on Saturday 8 July 2006 of the intention to pass a resolution to declare the former road a recreation reserve, in compliance with Section 14 of the Reserves Act 1977. Four written submissions in opposition were received in response to that notice which closed on 11 August 2006.
7. A hearing before Commissioner John Milligan was conducted on 23 November 2006 at which three of the four submitters presented evidence. The reporting officer's report (which includes the written submissions received) and the report of the Commissioner are attached as (*Attachments 1 and 2*) with the further evidence presented by two of the submitters at the hearing attached as (*Attachment 3*).
8. Having regard to the views and reasons of the Commissioner on the relevance and weight to be given to the submissions it is the reporting officer's recommendation that the Council decide to declare the stopped road a recreation reserve and so recommend to the Minister of Conservation.

FINANCIAL AND LEGAL CONSIDERATIONS

9. Section 14(1) of the Reserves Act 1977 ("the act") provides that any local authority may by resolution declare any land vested in it to be a reserve within the meaning of the Act subject to any conditions specified in the resolution, to be held for any of the purposes specified in sections 17 to 23 of the Act. Section 17 deals with recreation reserves. Section 14(2) provides that no such resolution shall be passed before the expiration of one month after notice of intention to pass the same and calling for objections thereto in writing has been published in one or more newspapers circulating in its district, and until it has considered all such objections received within that period.

10. Section 120(1)(c) of the Act states that *“Where the objector or person or organisation making the submission so requests in his or its objection or submission, the Minister or administering body, as the case may be, shall give the objector or that person or organisation a reasonable opportunity of appearing before the Commissioner (in the case of a notice given by the Minister) or, as the case may be, before the administering body or a committee thereof or a person nominated by the administering body in support of his or its objection or submission; and*
- (d) *The Minister or the administering body, as the case may be, shall give full consideration to every objection or submission received before deciding to proceed with the proposal; and*
- (e) *Where the action proposed by an administering body requires the consent or approval of the Minister and is recommended to the Minister for his consent or approval under any provision of this Act, the administering body shall send to the Minister with its recommendation a summary of all objections and comments received by it and a statement as to the extent to which they have been allowed or accepted or disallowed or not accepted”.*
11. There are process costs (estimate \$3,500) associated with having the stopped road declared Recreation reserve (ie public notice in the Christchurch Press, Commissioner’s time, Department of Conservation’s fee and the proclamation notice in the New Zealand Gazette).
12. Once the stopped road is formally made reserve, easements are to be created to protect the existing underground services ie power, telecommunications, gas and water.

STAFF RECOMMENDATIONS

It is recommended that the Council:

- (a) Disallow the objections received to the proposed declaration as reserve of that portion of Worcester street that has been stopped (through Latimer Square).
- (b) Adopt the following resolution:

Resolution

That in exercise of the powers conferred on it by section 14 of the Reserves Act 1977, the Christchurch City Council hereby resolves that the piece of land held by it in fee simple and described in the Schedule hereto shall be, and the same is hereby declared to be a recreation reserve within in the meaning of the said Act.

Schedule

Canterbury Land Registration District - Christchurch City

Section 1, Survey Office Plan 323707, containing 1,643 square metres more or less, being all of the land comprised and described in Computer Freehold Register 279911.

- (c) Refer the resolution with the objections received and the report of the Commissioner to the Department of Conservation for approval and gazettal action if appropriate.

BACKGROUND ON DECLARATION AS RESERVE - STOPPED ROAD (WORCESTER STREET, LATIMER SQUARE)

SUBMISSIONS RECEIVED

13. Four written submissions were received in response to the notified proposal to declare the land comprising the stopped road a recreation reserve under the Reserves Act 1977. Three of the submitters subsequently presented evidence in oral and written form to a hearing before Commissioner John Milligan (appointed under delegated authority of the Council Hearings Panel) on 23 November 2006.

EVIDENCE PRESENTED/CONSIDERED BY THE COMMISSIONER

14. Together with the staff report (Attachment 2), the Commissioner was provided with a copies of the certificate of title to the stopped road, the public notice and the written submissions received. The opportunity was afforded to the reporting officer to speak to the Commissioner and answer questions. The Council's Resource Management Solicitor, Kristy Rusher and Jonathan Cleave, Senior Planner with the City Plan team were present at the hearing and provided additional specialist advice on matters pertaining to the City Plan .

ISSUES AND CONCERNS RAISED BY OBJECTORS

15. The main issues/concerns raised by the objectors were:
 - (a) ICENG (Inner City East Neighbourhood Group Inc)
 - Is concerned that once reverted to Reserve that this designation would be difficult to change;
 - Defer a decision to declare Worcester Street at Latimer Square Reserve until the Traffic/Transport.
 - Strategy within the Four Avenues is more advanced;
 - Questioned the need or reason for urgency over the proposed declaration.
 - (b) Michael Britnell
 - Believes this section of Worcester Street should not be closed off indefinitely;
 - The lack of consultation over design of Latimer Square;
 - Takes issue with the way the statistics on consultation were interpreted, contending that the majority wished the road to remain open;
 - Takes Issue with the process around Resource Consent and RMA 2002470 of 2 June 2006;
 - Considers that in the interest of future planning that the Council should refrain from making this former road Recreation Reserve, as it may be more difficult to reverse in the future.
 - (c) C Flewellen
 - Maintains there are safety issues with children using this land for recreation because of the adjacent one-way system;
 - Considers the security of cars with a clear lit walkway is a safer use of the land;
 - No agreed designation budget or design for this space;
 - Fails to comply with 1.3.1 and 2.2.4 of the City Plan;
 - Decreases access to CBD
 - (d) Englefield Residents Association
 - Considers that the Council's handling of Resource Consent RMA 20022470 is flawed and there is a list of conditions under this consent decision which have not been complied with;

- (e) Plan for the Park has not been publicly notified
- Closing of Worcester Street will cause problems in relation to City Plan policy for business parking traffic flow and safety;
 - Believes there is a probability that this section of Worcester Street will again be needed in the future for traffic purposes;
 - Considers no urgency for the declaration to proceed and that until such time there is either a budget and a plan for the work, or a need to re-open the road, that the land should not become Recreation Reserve.

CONSIDERATION/HEARING OF OBJECTIONS

16. The officer's report to the Commissioner commented on the issues/concerns raised by the submitters. The Commissioner also asked questions of relevant staff on issues raised orally by the submitters. Two of the submitters provided further written evidence to the Commissioner (Attachment 3). In his report, the Commissioner has commented on the extent of his authority and concluded (having consulted with Council's Legal Services Unit) that his role was restricted to listening to whatever it is that the submitters wished to say that is relevant to and in support of their formal submissions and conveying the substance of that to the Council although not making a formal recommendation the Commissioner has expressed his view as to the relevance, weight or appropriate result. This view is not binding on the Council.
17. The submissions and matters in support of them advanced by the submitters in opposition to the proposal in the report author's assessment, can be put in the following categories;
- (a) Information on which the Environment Court authorised the road stopping.
 - (b) Traffic related both in terms of convenience and safety.
 - (c) Final design of Latimer Square and provision of funding.
 - (d) City Plan provisions and resource consent compliance.
18. The Commissioner has concluded that submissions in relation to (a) and (d) are irrelevant in the context of section 14 of the Reserves Act 1977, and need not be given weight by the Council. In relation to category (b) the Commissioner has said that the question as to whether the road should have been stopped is also irrelevant to the present enquiry. As to category (c), the Commissioner considers the arguments are not of sufficient force to outweigh the advantages of reserve status or relevant to the issue of effects on the environment.

STAFF COMMENT

19. The submitters have been afforded the opportunity to be heard in support of their submissions. The decision now before the Council which is the only matter about which the present objectors have a statutory right to object or to make submissions. The Council must give full consideration to every objection/submission received before deciding to proceed with the proposal.
20. The views expressed by the Commissioner can be relied upon by the Council in deciding on this issue, being whether the subject land should take on the status of a Recreation Reserve under the Reserves Act 1977. In the officer's opinion and having regard to the Commissioner's report no arguments have been advanced by the submitters of real relevance or of sufficient weight that should compel the Council not to proceed with the procedure laid out in Section 14 of the Reserves Act 1977 to have the subject land take on the status of Recreation Reserve.

OPTIONS

21. There are only two options:
 - (a) The Council adopts the resolution, or.
 - (b) The status quo ie the subject land is not brought under the provisions of the Reserves Act 1977

22. The Commissioner's report (paragraph 2 page 4) amplifies the consequences of these options. Although the subject land would continue to appear to be physically integrated with the remainder of Latimer Square, it would be undesirable for the land not to be declared as 'reserve', as this would result in future legal management restrictions inconsistent with the balance of Latimer Square.

23. Option 1 is the preferred option.