
REPORT 4
(1215/11/IM)

**Report of the Strategy and Policy Committee
Meeting of Thursday 3 November 2005**

Members: Mayor Prendergast, Councillors Armstrong (Chair), Ahipene-Mercer, Cook, Foster, Gill, Goulden, McKinnon, Morrison, Pepperell, Ritchie, Ruben, Shaw, Wade-Brown and Wain.

THE COMMITTEE RECOMMENDS:

1. **ITEM 260/05P KHOURI AVENUE RESERVE LAND EXCHANGE
(1215/52/IM)(REPORT 2)**

THAT Council:

- 1. Approve the recommendations from the Hearing Commissioners, that Wellington City Council recommends to the Minister of Conservation, the exchange of part of the Recreation Reserve at Sec 1 SO 32138 for part of the fee simple land at Lot 2 DP 52184 under section 15 of the Reserves Act 1977, subject to the making operative of Plan Change 27 to the Wellington City District Plan and the granting of a resource consent for a residential subdivision on part of the existing Recreation Reserve.*

Robert Armstrong
Chair

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WELLINGTON CITY COUNCIL

DECISION OF HEARING COMMISSIONERS

**SUBJECT: KHOURI AVENUE RESERVE
EXCHANGE**

Land exchange of part of the Khouri Avenue Reserve, Karori, with privately owned land adjoining the Reserve

HEARING COMMISSIONERS: Ian Hutchings (chair)
Ngairi Best
Cr Leonie Gill
Judy Siers

DATES OF HEARINGS: 2 April 2004 and 28 July 2005

1. RECOMMENDATIONS

- 1. That Wellington City Council recommends to the Minister of Conservation, the exchange of part of the Recreation Reserve at Sec 1 SO 32138 for part of the fee simple land at Lot 2 DP 52184 under section 15 of the Reserves Act 1977, subject to the making operative of Plan Change 27 to the Wellington City District Plan and the granting of a resource consent for a residential subdivision on part of the existing Recreation Reserve.*

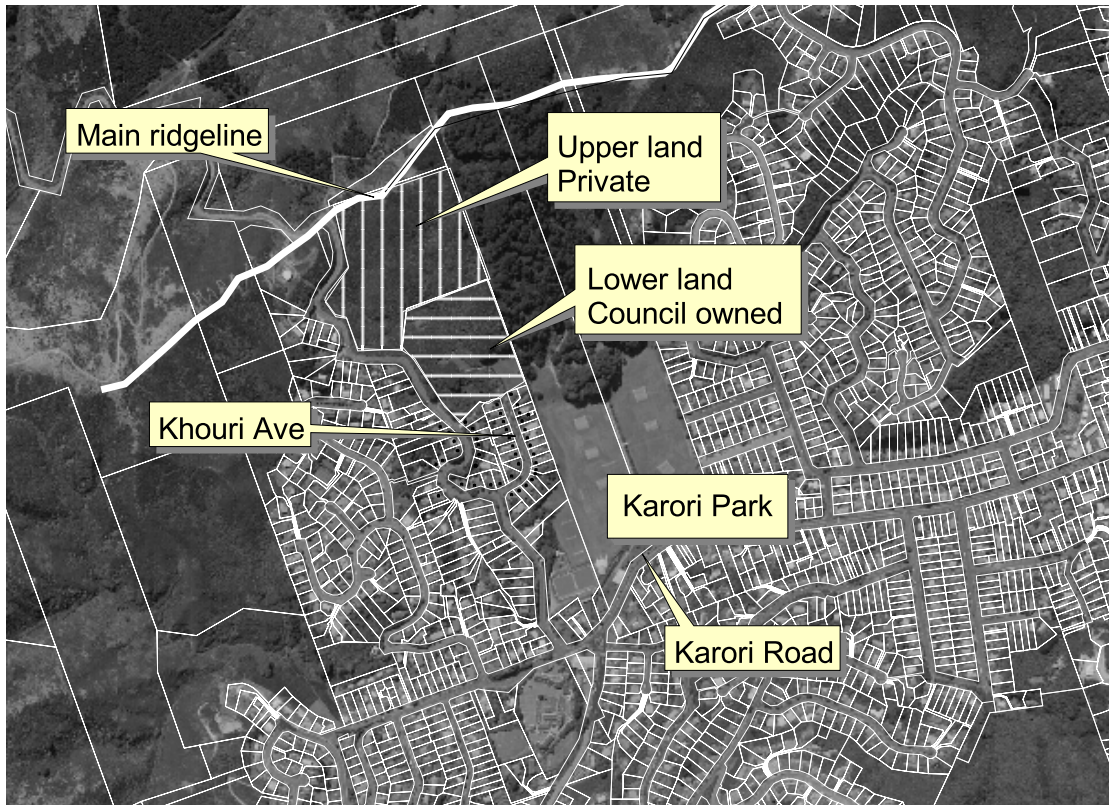
2. BACKGROUND

Introduction

This decision concerns the exchange of Reserve¹ land at and near Khouri Avenue, Karori as shown on the attached plan (Figure One). An associated decision relates to the rezoning of the land under the Resource Management Act. Together they are a part of an overall proposal to rezone and exchange land holdings between the Council and a private landowner. The expectation was that some of the “lower land” which is presently Reserve (and owned by Council) would be used for residential purposes and some of the “upper land” which is privately owned and zoned Outer Residential would become Council land and be suitably protected from development as a Reserve.

¹ The term Reserve signifies land which has formal recognition under the Reserves Act.

Figure One: The two properties of the land exchange proposal



The hearings and considerations for the zoning changes and change of reserve status were held as one overall process, while the commercial considerations were dealt with by Council in a separate process without any involvement of the Hearing Commissioners.

The initial proposal

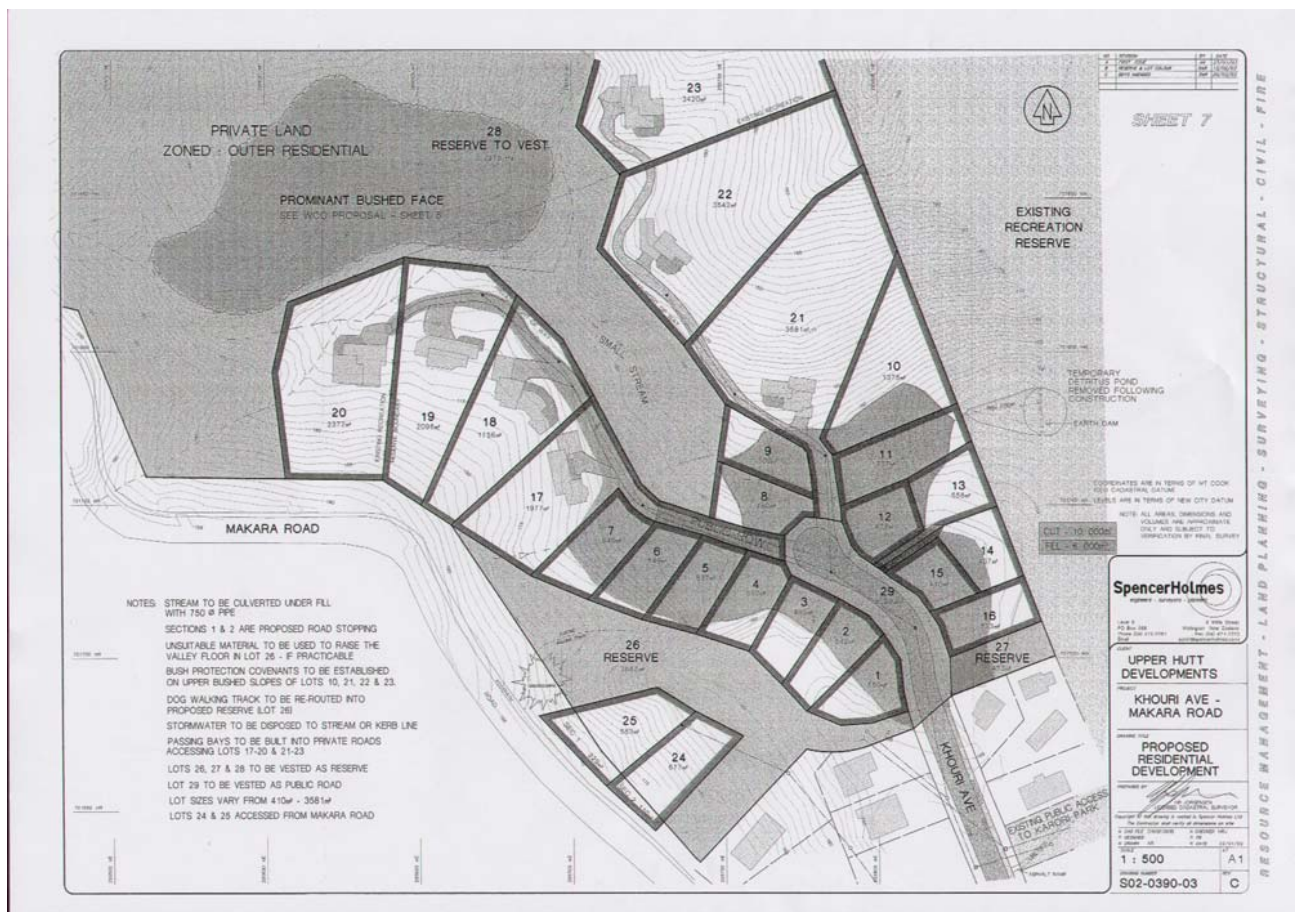
The initial proposal (Figure Two) was to swap the majority of a piece of public Reserve land (the lower land) at the end of Khouri Avenue with the majority of a larger piece of privately owned land zoned Outer Residential land (the upper land) running up to the skyline ridge currently owned by Vinrik Contractors Limited but who have contracted the development rights to Upper Hutt Developments Limited. The upper land was to become Reserve as part of Council's Outer Green Belt, and the lower land would be developed into residential allotments.

The Council proposal was intended to enhance open space values (green belt, landscape) and provide good urban form to the city, whilst recognising a number of other issues including:

- privacy for existing residents;
- traffic management (safety, efficiency); and
- recreation opportunities.

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Figure Two: Initial land exchange proposal



Council undertook a public consultation process in the area. Local residents generally did not support the proposal due to several issues including the loss of local amenity and traffic concerns. The Council however resolved to proceed with seeking the approvals necessary with the land exchange and the associated district plan change.

The proposal involved both changes to underlying zoning of the lands and uplifting of Reserve status of some land. Whilst the actual subdivision of any land would be subject to a separate Resource Consent, the re-zoning sought was based on a potential subdivision plan which formed the basis for the separate commercial agreement on land exchanges between Council and the private land owner.

The proposal was publicly notified, under the Resource Management Act and Reserves Act, on 5 November 2003.

Five submissions were received in response to the Reserves Act notification. A total of 15 submissions and further submissions were received on the District Plan change. Three were in general support of the proposal while the rest opposed the plan change. That matter is dealt with in a separate report.

The Commissioners heard submissions on 2 April 2004 and conducted a visit to the site a few days later. After the visit and initial deliberations they were not convinced of the

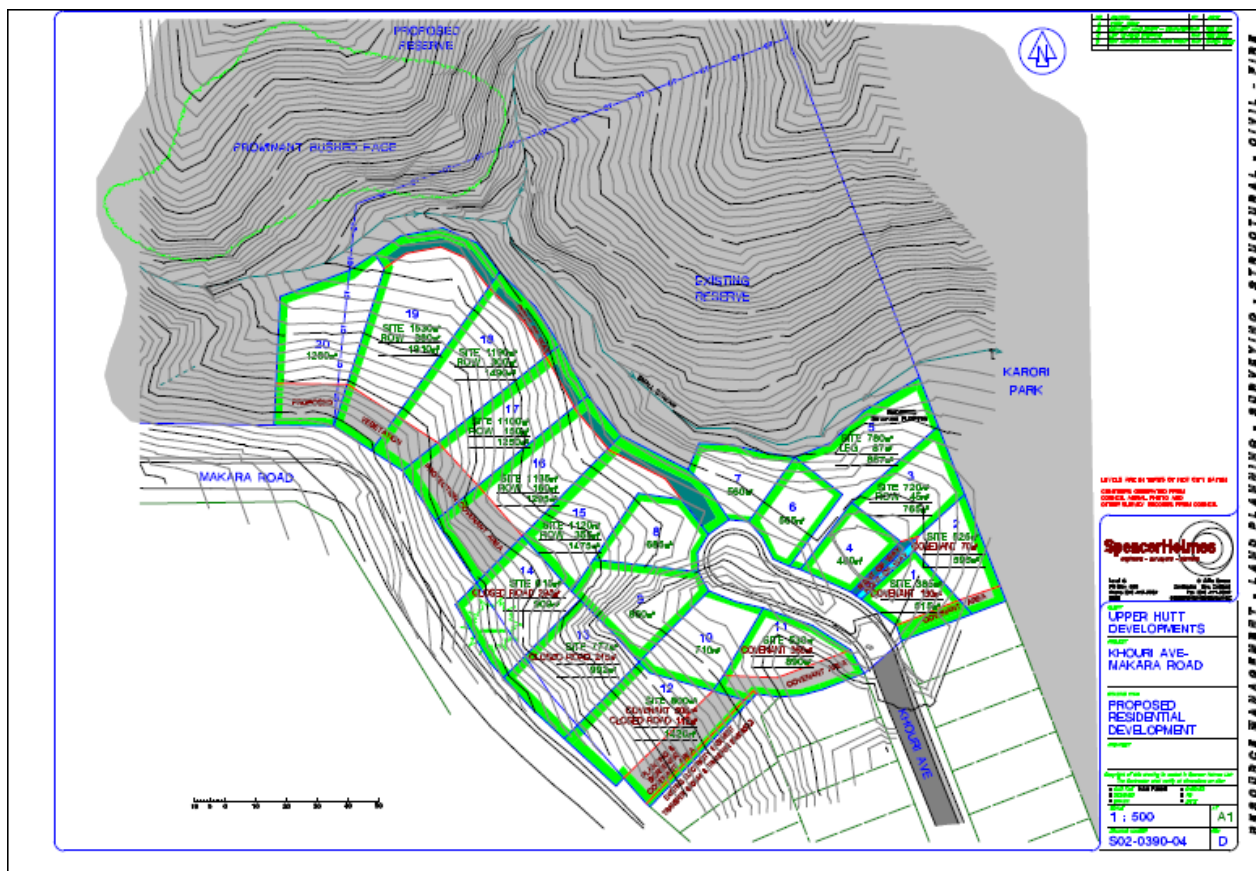
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desirability of the extensive piping of the stream and the extent of loss of relatively mature native regeneration on the ridge on the north-eastern side of the stream. Whilst some use of the land across the stream might have been considered acceptable, the Commissioners considered it inappropriate to attempt to replan the overall proposal and therefore essentially predetermine the nature of any commercial agreement between the Council and other landowner. The Commissioners therefore identified their concerns to all parties and adjourned the hearing so as to allow a revised proposal to be developed. Any such revised proposal would be considered in the light of the concerns expressed by the Commissioners but would not be anticipated to create any further impacts greater than those in the initial proposal.

The revised proposal

A revised proposal (Figure Three) was developed through negotiation between Council officers and the private developer and their consultants. There was a period of several months in working out a new subdivision design and land exchange proposal. It was also necessary for officers to report back to the appropriate committee of Council for it to give its approval to a new financial formula for the land exchange. This contributed to the delay in considering the revised plan change proposal.

Figure Three: Revised land exchange proposal



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The report required under s.32 of the Resource Management Act was provided at the initial hearing and outlined the necessary matters. The revised proposal was considered to have a lesser effect and therefore fell within the scope of the original report. The s.32 report has subsequently been updated to recognise the revised proposal, but the updated report was not relied upon in forming a view on the revised proposal.

The amended land exchange and District Plan change proposal was mailed to all the submitters for their comments on 20 May 2005 (Plan Change 27 requires a separate decision, which is documented in a separate report).

Submitters were invited to provide any written comments on the revised proposal, and were provided with an opportunity to state any views to the Commissioners when the hearing was reconvened on 28 July 2005.

3. CONSIDERATIONS

Submissions

Five submissions were received as a result of the notification under the Reserves Act, three in opposition (one including 57 signatures) and one in support. The submitters are listed in Appendix One to this report. The main Reserves Act issues raised include:

- Financial considerations
- The process adopted by Council and the potential for conflicts to arise.
- Loss of the Reserve and its associated values
- Legitimacy under the Reserves Act
- Comparative values of the Reserve (lower) and the private (upper) land
- Links with the Karori Park upgrade
- Loss of dog exercise area

Financial considerations

There was a strong suggestion in submissions that the Commissioners could not make an informed decision without knowing the valuation figures used to negotiate the land exchange or the sum of money available to Council officers to finalise the commercial arrangements. The argument was that Council would be making a poor decision to proceed with the land exchange, and it should instead be negotiating to purchase the whole area of the upper land. Therefore the Commissioners should not consider or recommend in favour of the proposals.

The Commissioners understand the frustration of submitters in not having the full picture concerning Council's reasons to continue with the land exchange rather than full purchase (the most recent financial decision concerning the land exchange negotiations was made in a public excluded meeting of the Strategy and Policy Committee of Council). The Commissioners were not informed of (or aware of) the nature of these commercial considerations. However The Commissioners want to make it clear that it is not the Commissioners' role, in this particular instance, to examine Council's earlier decision about how Council will achieve its objectives. Council has a variety of mechanisms it can use in pursuing its overall objectives and it is not the role of a hearing to attempt to force Council to revisit which mechanism(s) it should use. The

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Commissioners function is instead to make a decision on the Reserves Act and plan change proposals before it, based on the statutory and policy framework, the submissions before it, and the environmental and recreational merits of the proposal.

The process adopted by Council

The Commissioners accepted that the initial consultation process may have set expectations in people's minds about the extent that residents could radically modify or even stop the land exchange proposal through the consultation process. These expectations do not seem to have matched Council's own expectations as a landowner that the proposed land exchange, resulting in residential development off Khouri Avenue, was a reasonable outcome.

Several of the submissions questioned the fairness of a process where Council negotiated with another land owner and private developer, made policy decisions to proceed with a land exchange and a District Plan change, consulted with local residents and the wider community and then acted in a judicial role to hear submissions and make recommendations or decisions on a new reserve and zonings / rules in the District Plan. The Commissioners acknowledge the perceived partiality but observe that Council has an obligation to fulfil its statutory functions and duties in all its roles. The different roles have been kept separate and the Commissioners are satisfied that the different processes have not been compromised or tainted. They appreciate that it is difficult for people to recognise the different roles that the Council, its officers and its elected members are required to undertake.

The Commissioners noted that several submitters expressed specific concern about the multiplicity of roles they perceived one submitter, an elected Councillor, had adopted in the overall process. There was some confusion, and a degree of suspicion, about the various roles adopted by that person. The Commissioners note that while an elected member of the consent authority has the right to make submissions as a member of the public, it would have led to far less confusion and suspicion if the Councillor had decided to confine participation to either that of an elected member or that of a submitter, but not both.

The Commissioners noted that there was no evidence of adverse influence and are confident that this matter has not inappropriately affected the result of the hearing and decision making process. In addition, the Commissioners are satisfied that the elected member has no financial or business interests in the proposed residential development, as suggested as a possibility by one submitter.

Another issue raised was the fact that the consultation with the community was carried out on the basis that land was being exchanged with no payment of money by either party. The submission seemed to argue that, as Council has changed its position (as the result of the Commissioner request for further information) that the land exchange and district plan change could not legitimately proceed. The Commissioners did not accept this argument as they considered it was reasonable that Council, in its role as a landowner and land manager, could choose to change its commercial position in response to changes in circumstances.

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Another argument was that prevailing Council attitude was weighted toward the residential use (termed “destruction”) of the lower land. This is same issue as the question of which mechanisms Council chooses to employ. The Commissioners recognise that the Council is entitled to take a policy decision to improve its network of reserves. The notification, submission and hearings processes under the Reserves Act, culminating in a recommendation to the Minister of Conservation, provide the proper legal mechanism to test Council’s position and proposal.

Reserves

The Commissioners do not consider reserves are sacrosanct or inviolable for all time. They observe that Parliament has provided the legal process to revoke reserves or otherwise change them around, if the outcome is considered to best serve the purposes of conservation and recreation. The Reserves Act, and in this instance the Resource Management Act as well, provide checks and balances to the proposal to exchange the land. Ultimately the Minister of Conservation is also required to give consent.

Comparative values of the upper and lower land

A main concern of submitters was in the value and utility of the lower land, perhaps in part because the upper land was largely inaccessible, was privately held, and perceived as being unlikely to be developed. Submissions advocated retention of the lower land and purchase of the upper land.

The lower land was, prior to 1990, owned by the Crown (Education) and was intended for a school site. It was acquired by Council as part of a package of several land parcels and has essentially remained as it was since that time. Some mowing of the flat area has occurred. The lower land is delineated by boundaries with Makara Rd in the west, residential land at Khouri Avenue to the south, residential zoned land (the upper land) to the north and Karori Park (Reserve) to the east.

This land can be conveniently treated as four areas:

- Grassed flatter areas
- The stream and immediate surrounds
- Vegetated lower areas, including that fronting Makara Rd
- The higher land north of the stream

Grassed areas

The Commissioners considered submitters concerns about the loss of the mown grass areas on the existing reserve. These included loss of private amenity to adjacent properties, and loss of public amenity. The Commissioners heard that, apart from some walking access, this was the main area accessed and used by the community. They were however satisfied that the adjacent Karori Park more than met any local and wider community need for passive open space for dog walking, personal exercise on level ground or gentle slopes, contact with nature, and so on. They noted that the imminent enhancement of Karori Park and the completed cleanup of pines after the 2004 storms would increase the area available for passive recreation. The Commissioners considered that retention of Reserve status on the existing Khouri Avenue Reserve for

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purely private amenity purposes was not appropriate but noted that private amenity could be addressed through controls on use of the land if the Reserve status was to be uplifted.

The stream, stormwater management and flooding

Protecting the natural character of the main stream (accepting that some small tributaries will be lost during earthworks) was a major concern of the Commissioners. It was the principle reason that they requested further information on the potential for a revised proposal. The revised proposal retains the main stream in its existing state over its length.

The Commissioners accepted the evidence of Kate Taylor, an engineer from Spencer Holmes, on the potential for new and alternative ways to manage stormwater from the developed area to reduce its impact on the stream. This evidence recognised the need for the water to flow freely in the stream channel and that the vegetation on the stream banks will need to be added through planting and otherwise supplemented by “green engineering” techniques.

The Commissioners were advised during the hearings that the reconstruction of the stream channel in Karori Park had been designed to reduce the risk of flooding and the design had anticipated increased runoff from residential development on either the upper or lower land near Khouri Avenue. The Commissioners were therefore satisfied that the development of the residential area would not cause adverse flooding of the park.

Vegetated lower areas

These areas include areas of modest bush, areas of blackberry and other undesirable species. Some areas contain urban litter. Local informal tracks exist beyond what appear to be originally wider originally grassed routes. The Commissioners were not convinced that these areas were of sufficient size, or of sufficient quality, to warrant retention of Reserve status.

Higher land north of the stream

This land has been largely unaffected from urban activities, perhaps because of its steepness. Bush is regenerating over large areas. The initial proposal did affect some parts of this area, but the revised proposal no longer involves any of this area. As such it would retain its present status as Reserve.

The upper land

This residentially zoned land is delineated by Makara Rd, the lower land (presently Reserve) to the south, and Council land or Reserve to the north and east. The upper land is reasonably isolated from development and has large areas of regenerating bush, verging to scrub as it nears the ridgeline.

4. OTHER MATTERS

The Commissioners also considered the terrestrial ecology, the use of present reserve land for walking access and the buffer areas in the revised proposal

Terrestrial ecology

The revised land exchange conserves a larger area of regenerating native vegetation, encompassing almost all the upper land and a good part of the lower land, particularly the areas of taller and more developed regeneration. The revised plan is consistent with the vegetation assessment commissioned by Council from B J Mitcalfe and J C Horne in 2003. The report stressed the value of the native tree fuchsia, kotukutuku, (*fuchsia excorticata*) present on both areas of land. The revised proposal, which retains vegetation along the full length of the principal stream, would permit the retention of most of the fuchsia trees.

The Commissioners noted the additional covenant areas proposed to protect regenerating vegetation on what would be private land, on the larger residential sections below Makara Road. These covenants were considered desirable by the Commissioners as these steeper areas were unlikely to be the subject of high density development.

The verbal submission from Rudi Schnitzler to the first hearing questioned the level of ecological assessment undertaken in that Council had only surveyed plants and marginally birds but had not surveyed invertebrates and reptiles or undertaken a comprehensive survey of birds. It was stated that this work would be the norm with a development of this nature in Europe. However, the Commissioners recognised that an exercise of this type is more difficult in New Zealand due to a lack of knowledge in some areas, a lack of other local data to compare the site against and a lack of widely qualified consultants. No expert evidence, either for or against the proposition was provided at the hearings.

The Commissioners noted that the protection of a greater area, particularly areas further away from urban land use, was more likely to result in the greatest protection of such species. On the information available, and from the perspective of Commissioners as non-specialists, the Commissioners considered that the revised plan change delivers the best outcome for the ecology of the overall lands in question.

The upper land, presently privately owned, was considered to be more suitable as reserve land, both immediately and in the longer term, as it has had less development impact, is contiguous with existing Council owned land on two sides, and a public road on the third side, and contains larger areas of regenerating vegetation than the lower land.

Walking access

The Commissioners considered it desirable to clarify some of the access areas shown in the original land exchange proposal. Given that informal access tracks are presently used, and that much of the Reserve area is to remain, access to and through the area was considered important. The three types of access considered were:

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- Access between the proposed turning head in an extended Khouri Avenue and the remaining Reserve, across or along the proposed residential right-of-way
- Access between Khouri Avenue and Makara Road, where an informal track provides access to residents
- Access between Khouri Avenue and Karori Park

Under the parallel district plan change process an addition has been made to the assessment criteria that will guide the subsequent subdivision, requiring the inclusion of legal access between Khouri Avenue and the residual reserve and consideration of access between Khouri Avenue and Makara Road. The Commissioners did not see the need for access to Karori Park as there is already a good accessway to the park only a short distance from the end of the existing street.

Assessment criteria were also added to the District Plan Change concerning the actual development of walking paths at comfortable grades as an integral part of the development, to give access to the edge of the bush in the reserve, and between Khouri Avenue and Makara Road in order to both compensate for change and improve on the features of the existing reserve.

Planted buffer areas

The original land exchange proposal featured Council owned Reserve areas between the existing houses in Khouri Avenue and the future residential subdivision (this land would have been retained from the existing Reserve). The Commissioners heard that this was largely to retain some amenity value for the existing properties.

The Commissioners noted that the buffer area adjacent to the existing houses in the revised land exchange is now narrower than the one proposed in the original land exchange. They were advised that this was due to the greater difference in land area between the Reserve and residential areas in the revised proposal, which has left less land in which to lay out sections in the future subdivision development.

The revised land exchange also proposed that the buffer areas not be Council owned but have their function assured by restrictive covenants on the titles of the individual private properties. Covenants are a legal instrument which prevents a landowner from doing certain things, such as building a house on a defined area of land. They may also require the landowner to do other things such as controlling the height of vegetation.

The Commissioners understood why Council as a land owner and land manager did not want the buffer area to be an isolated strip of Reserve land, when its sole purpose was to separate two areas of housing.

The Commissioners considered that there are both advantages and disadvantages to the buffer area being either Council owned Reserve or covenanted area on private land.

Given that the function of the land was to maintain or create private amenity, rather than public amenity, the Commissioners considered that a private covenanted solution was preferable. They observed that the right mix of controls on a covenant area is likely to ensure an improved position, given the present seemingly limited ability of Council to maintain the edge of the present Reserve, which is largely an area of unmanaged weeds.

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On the other hand, there would be advantages to having the land as Council owned Reserve if it served additional functions, such as providing the access route between Khouri Avenue and Makara Road. In this regard, the Commissioners noted that there was an electricity easement of about 2 meters wide, in the proposed buffer area below Makara Road.

The Commissioners therefore decided that the Reserve status of these buffer areas should be lifted as in the revised proposal, with private covenants to be considered at the subdivision stage. This does not prevent Council's Property Unit and the developer negotiating to come up with the best mechanism to serve the needs of all the parties. If a decision is made to make one or both of the buffer areas Council owned areas, the land could be added to the reserve network as a new area if deemed necessary or held as undesignated land, but both being a separate process to the proposed land exchange. This approach is also considered desirable to avoid any difficulties about the extent of land being exchanged when Council makes its recommendation to the Minister of Conservation.

5. CONCLUSION

The Commissioners concluded that the revised land exchange proposal represented a significant improvement over the initial proposal and an overall desirable outcome for the City's reserve network. The Commissioners considered that the exchange of 2 hectares of the lower land from the existing reserve, for 5.5 hectares of the privately owned upper land, ensures the protection of a much wider portion of the ridgeline (and its upper slopes). It also allows the completion of the planned Outer Green Belt in this vicinity. The land exchange ensures the protection of a much larger area of regenerating native bush and protection from development of the full length of the principal stream on the land, which is a tributary of the Karori Stream.

Ian Hutchings
Chairperson, Hearing Panel

Appendix One:

Submissions on exchange of Reserve land near Khouri Avenue, Karori

Submissions were received from:

| | |
|---|---|
| 1 | James David Houston |
| 2 | Norman Robert Fraser |
| 3 | Franz-Rudolf Schnitzler |
| 4 | Jutta Humpfer |
| 5 | David James Houston and Mary Louise Houston |
| 6 | Spencer Holmes on behalf of Upper Hutt Developments Ltd |
| 7 | Murray Keith Burns - Khouri Ave Neighbourhood Coordinator on behalf of 57 signatories |
| 8 | Greater Wellington Regional Council |

Further submissions were received from:

| | |
|-----|--|
| FS1 | Franz Rudolf Schnitzler |
| FS2 | Jutta Humpfer |
| FS3 | David James Houston and Mary Louise Houston |
| FS4 | Geoffrey Jones and Laurina Jones |
| FS5 | Peter Herbert Duncan |
| FS6 | Andy Foster |
| FS7 | Murray Burns – Khouri Ave Neighbourhood Street Coordinator |

In most cases the submissions also covered matters concerning the associated zoning changes in the District Plan.