

# Options Report

## Parks and Reserves General Policies Review and Development

### 1 Purpose

This report identifies and assesses options for the review and development of general policies that relate to parks and reserves management and makes recommendations for a preferred option.

### 2 Context and Situation

On 15 May 2020 Council resolved to create a bylaw for the management of Parks and Reserves. The background analysis included the review of the relationship of a new bylaw to the content of Council's Reserves Policy.

The current Reserves Policy (the Policy), adopted in 2017, is an amalgamation of nine former reserve-related policies. It provides for:

- Reserves and Parks Management and Preservation
- Tree Management
- Reserve Management Committees
- Encroachments on Council-Owned Land
- Voluntary Rubbish and Litter Collection
- Smoke-free Reserves, Parks and Playgrounds.

While, on the face of it being a comprehensive policy, the following discussion demonstrates that the content and intent does not correspond to the purpose of policy, does not distinguish between classified reserves and non-classified reserves or parks, includes regulatory provisions and standard operating procedures, which do not align with operational practices. A review of the amalgamation process further highlighted the omission of content, unavailability of supporting operational guidance and lack of public consultation, which is not only considered a considerable shortfall when considering the wellbeing communities and individuals derive from the use of parks and reserves but has also been assessed as being inconsistent with Council's Significance and Engagement 2018.

### 3 Problem Definition

#### 3.1 High Significance Requiring Public Consultation

The process of the 2017 policy amalgamation was reviewed to better understand the intent and outcome. The March 2017 Council report stated that the amalgamation of nine reserve-related policies did not result in content updates or changes which would be deemed significant; as a result, public consultation was not undertaken at the time. The present review, however, indicated that in the amalgamation several content changes (additions and removals) should have been deemed significant. Examples include detail about the acquisition of reserves to protect the coastal environment, areas of outstanding natural features and landscapes, maintenance and public access to waterbodies, protection of indigenous flora and fauna, and areas that have significant cultural importance to Maori (ancestral lands, water, waahi tapu and other taonga). It is considered that the public would have an interest in the management approach of such matters. Therefore, it is considered that public consultation should have occurred.

### 3.2 Policy Title omits Parks/Lands that are not Legal Reserves

The 2017 Council Report stated that the amalgamated Policy document would relate to both reserves and parks; this is not reflected in the current Policy title. From a management perspective, it is important to distinguish between reserves and parks:

- Reserves are classified under the Reserves Act for their primary purpose;
- Parks, which may be used or programmed like reserves, are not classified and may be held in freehold title.

Different management approaches are required for classified reserves and parks, which from a user perspective is not obvious. Classified reserves comprise approximately 25% of Council's open space lands, and therefore a significant proportion, i.e. 75% of the open space suite, are considered parks and currently not adequately captured by the Policy.

Conversely, the amalgamated Policy includes council-owned land that is not a park or reserve. Council-owned land includes roads (active and stopped), commercial lands, other land held in freehold title but not for reserve purpose. These lands should not be captured in a 'Reserves Policy'.

### 3.3 Unavailability of guidance documents

The 2017 Council report stated that relevant content from the nine underlying policies would be captured in new guideline documents instead of in the body of the amalgamated Policy. Such guideline documents could not be located in Council records; effectively that content is currently unavailable and therefore operations may have inconsistent process or outcomes.

### 3.4 Content Appropriateness

Some content of an operational nature as well as governance matters is contained in the Policy, mixing policy, standard operating procedures as well as regulatory provisions. For example, Section 2, which discusses Tree Management, provides that 'removal of trees shall be turned into firewood to obtain a return', or that '*No person shall prune, fell or otherwise take action on any trees without the authority of a Council staff member*'. It is understood that this is not currently a Council practice, and that such a return cannot be demonstrated.

To ensure adequate and consistent application of policy, regulation and operating procedures, appropriate distinction of provisions is recommended.

### 3.5 Ambiguous Terminology

Reference to *Council*, *Council staff*, *Council officers* are used interchangeably throughout the document. It is often unclear whether this terminology refers to Elected Members, Council staff and officers or in some instance's others such as Management Committees. This results in a lack of clarity in the application of this Policy and associated processes.

## 4 Objectives

General policies to guide the management of parks and reserves must be developed in accordance with correct legislative powers and provisions. This includes:

- The Reserves Act 1977, Section 3 and 41;
- The Local Government Act 2002, Sections 3, 4, 11A, 145, 146 and 149;
- The Resource Management Act 1991, Section 57;
- Heritage New Zealand Pouhere Taonga Act 2014, Section 3.

Therefore, the review and development of parks and reserves general policies must align with and provide for:

- legislation and Council plans;
- the purpose of a policy document;
- both reserves and parks lands under Council's control;
- current best practice, while being locally relevant with public input;
- relevant issues;
- Council's bylaws;
- transparency and direction for staff, Council and the general public.

The objective of general parks and reserves policies therefore is to create well-developed statements of position on an ongoing or recurring matter, and to provide direction for responses or actions of staff, or for decisions of Council or a Committee."

## 5 Options

While the above problem definition has outlined the shortfalls of the current amalgamated Policy, two options have been considered to manage Council's current parks and reserves assets.

### 5.1 Option One: Do nothing/maintaining the status quo

Under this option, policies for management (including some internal and governance operations) of reserves and some other public places are set by the current Reserves Policy 2017. The Reserves Policy is not aligned with and in some instances is contrary to the Reserves Act 1977, Local Government Act 2002, the Resource Management Act 1991 and other relevant legislation.

The Policy does not promote the consistent use of land classifications subject to relevant legislation and therefore confuses management options, while stretching the application of the Policy to lands which are neither parks or reserves but may be more appropriately termed 'public places'. Public places are generally subject to the provisions of the Local Government Act 2002 and the Resource Management Act 1991, or where road corridors are concerned the Land Transport Act 1998.

In addition, the Policy contains provisions which should not form part of an external policy, including standard operating procedures or regulation; the latter should be contained in respective regulation such as relevant zone rules in the District Plan or local bylaws. Examples includes requirements to seek formal approval from elected members for operational activities such as tree felling. To avoid undue and costly time delays and the need to resource the required reporting of what should be an operational decision, staff would be in breach of the current Policy.

Use of language has potential to create confusion and misalignment in Council processes. For example, wording as it relates to the issuing of licences to occupy confuse approval requirements by classifying several structures as minor and for which licences subsequently may be approved by Council at no cost, whereas under related legislation, such as the Resource Management Act 1991, the development of such structures would likely trigger a resource consent, depending on permitted activity standards. Lack of cross-reference has in the past resulted in insufficient consideration of the quality and acceptability of such structures, while Council will have to maintain such structures for the future or remove them.

The current, amalgamated Policy may restrict Elected Members in exercising their delegations or oversight of reserve management. This relates to the election of committees but also to the formation of governance bodies for reserves, depending on their purpose and program and wider community use and value.

Lack of public consultation on the current Policy means that this Policy is not reflective of the values and community aspiration for parks and reserves. Several policy statements in the amalgamated Policy reflect the wording and intent of previous policies dating back as far back as 1989, in effect not providing for sustainable

management, climate change resilience or adaptation, protection of indigenous biodiversity and pest management initiatives, public access or cultural values.

It is considered that *Option One: Do nothing/maintain the status quo* does not correspond to the purpose of policies, including providing statements of position on ongoing or recurring matters. It does not address or remedy the problems identified or demonstrate consistency with legislation and Council plans or bylaws.

Therefore, Option One is not considered an appropriate option to achieve the objectives.

## 5.2 Option Two: Develop a new General Policies Document for Parks and Reserves

Option Two considers the repeal/revoking of the current Policy and the development of new general policies for the management of both reserves and parks in Council ownership and administration.

New policies would be created under the correct legislative powers and provisions, including sections 3 and 41 of the Reserves Act. The policies would also consider sections 94-105 which provides select enforcement powers to Council (at its discretion) on legally classified reserves. A new policy would be developed in accordance with relevant provisions of the Local Government Act 2002 to allow the appropriate management of Council-owned lands used for reserve purposes but not classified under the Reserve Act, while current reference to public places would be removed. A new policy would also appropriately consider the requirements of the Resource Management Act 1991 as it relates to the management of reserves and parks, including National and Regional Policy Statements on indigenous biodiversity, liveable communities and development capacity, the New Zealand Coastal Policy Statement on protection of indigenous biodiversity, preservation of natural character, public open space and walking access etc. The Heritage New Zealand Pouhere Taonga Act 2014 would also be incorporated into new policies. Compliance with legislation will ensure recognition of and provision for the principles of Te Tiriti o Waitangi – The Treaty of Waitangi in the development process of the Policy and its content.

A new policy would be provided using current best practice to guide Council's actions and processes and matters that impact on our communities, while not replicating provisions already available through legislation or other Council regulation, including bylaws or the District Plan. Creating a new policy however will not remove the need to standardise staff operating procedure and processes, and reconsideration of democratic governance and delegation of decision-making.

Option Two has been assessed as meeting the objectives and purpose of policy development, including providing a *well-developed statement of position on ongoing or recurring matters and direction for responses or actions of staff, or for decisions of Council or a Committee*. Option Two would demonstrate consistency with legislation and Council plans and provides for all Council-owned and administered open space (parks and reserves). In addition, the development of a new policy would benefit the review and development of Reserve Management Plans by reducing duplication of provisions while allowing the development of locally relevant policies. New policies would be subject to public consultation in accordance with Council's Significance and Engagement Policy 2018.

Therefore, Option Two is considered an appropriate option to address the objectives.

## 6 Recommendation

That the Committee agrees and recommends to Council that new general policies for the management of parks and reserves be developed.