

**MINUTES OF THE MEETING OF THE
HEARING PANEL FOR THE PROPOSED REVOCATION OF THE RESERVE
STATUS OF 2R TI RAKAU DRIVE, PAKURANGA
HELD ON WEDNESDAY, 27 NOVEMBER 2024
VIA MSTEAMS AT 9.30am**

| | |
|-----------------------|--|
| HEARING PANEL: | Kitt Littlejohn (Chairperson) |
| FOR COUNCIL: | Gary Jackson, Principal Property Advisor, Eke Panuku Gulina Monroe, Strategic Property Specialist, Eke Panuku Michael Wood, Legal Nicky Hall, Legal Chris Ryan, Legal Bevan Donovan, Hearings Advisor |

Hearing Advisor's Note:

The following persons attended the meeting in order to present evidence to the hearings panel:

| Name | Evidence No. |
|---|-----------------------------|
| Pakuranga Plaza Limited represented by: - Mike Doesburg, Legal - Jaki Recchia, Operations - Eunice Lee, Corporate - David Bigio | EV1, EV2, EV3 EV5 EV4 |
| General Distributors Limited represented by: - Allison Arthur-Young, Legal | EV6 |

That the Policy and Planning Committee:

- a) **whakaae / approve Auckland Council notifying the Minister of Conservation that it considers the reservation of the land as reserve should be revoked;**
- b) **tuhi tīpoka / note that in accordance with the process in the Reserves Act 1977, Auckland Council gave public notice on 18 October 2023 of its proposal to revoke the reserve status of reserve land at 2R Tī Rākau Drive, Pakūranga;**
- c) **tuhi tīpoka / note that objections to the proposal, together with submissions and evidence, have been heard and considered by the Independent Commissioner appointed by the council, who has recommended that Auckland Council proceed to seek the Minister**

of Conservation's consideration of the reserve revocation proposal;

- d) whakaae / accept the Commissioner's recommendation;
- e) whakaae / agree that the reasons for the reserve revocation are that;
 - i) the land does not have any or sufficient value as reserve land and holding it under the Reserves Act is not necessary or appropriate;
 - ii) the community benefit is better served by holding the land free of the Act's restrictions and using it as part of the urban regeneration programme to take place alongside the Eastern Busway development;
 - iii) the provision of the reserve land for car parking for (mainly) private benefit is not a justifiable Reserves Act purpose;
 - iv) the revocation of the reserve status will not result in any appreciable loss of reserve amenity or value of the type intended to be protected by the Reserves Act.

CARRIED

Kitt Littlejohn (Chairperson)

Proposed revocation of the reserve status of 2R Ti Rakau Drive, Pakuranga

File No.: CP2024/20890

Item 8

Te take mō te pūrongo

Purpose of the report

1. To seek approval for Auckland Council to request the Minister of Conservation to revoke the reserve status of the land at 2R Ti Rākau Drive, Pakūranga.

Whakarāpopototanga matua

Executive summary

2. The council-owned land at 2R Ti Rākau Drive, Pakūranga is reserve land subject to the Reserves Act 1977. It is mostly local purpose (utility) reserve, although there is one small parcel classified as recreation reserve.
3. The land surrounds the Pakūranga Plaza and is comprised of sealed carparks and accompanying accessways. The carparks are available to anyone wanting to park their car in the area but this will predominantly be people who work and shop at the Plaza. Auckland Council is the administering body of the reserves which are managed and maintained at public expense.
4. Auckland Council considers that:
 - holding the land under the Reserves Act is no longer necessary or appropriate, primarily because the land does not have any or sufficient reserve value when assessed in terms of the Act;
 - the community benefit of the land is better served by holding the land free of the Reserves Act restrictions, and in particular using it as part of Eke Panuku's urban regeneration programme to take place alongside the Eastern Busway development.
5. In May 2022, the Finance and Performance Committee approved the disposal of the land subject to the conclusion of any required statutory processes ([FIN/2022/25](#)). In this case, the necessary statutory process is the revocation of the land's reserve status.
6. The council has followed the Reserves Act process for reserve revocation. It has given public notice of the proposed revocation and sought submissions or objections in relation to it. An Independent Commissioner was appointed to consider the submissions received, hear those submitters who said they wished to be heard in support of their submission, and provide recommendations to the council. A public hearing was held in November 2024.
7. The Independent Commissioner has provided his hearings report, which recommends that the council proceed to seek the Minister of Conservation's consideration of the reserve revocation.
8. Approval is now sought from the Policy and Planning Committee to submit a request to the Minister of Conservation to revoke the reserve status of the land.

Ngā tūtohunga Recommendation/s

That the Policy and Planning Committee:

Item 8

- a) whakaae / approve Auckland Council notifying the Minister of Conservation that it considers the reservation of the land as reserve should be revoked;
- b) tuhi tīpoka / note that in accordance with the process in the Reserves Act 1977, Auckland Council gave public notice on 18 October 2023 of its proposal to revoke the reserve status of reserve land at 2R Ti Rākau Drive, Pakūranga;
- c) tuhi tīpoka / note that objections to the proposal, together with submissions and evidence, have been heard and considered by the Independent Commissioner appointed by the council, who has recommended that Auckland Council proceed to seek the Minister of Conservation's consideration of the reserve revocation proposal;
- d) whakaae / accept the Commissioner's recommendation;
- e) whakaae / agree that the reasons for the reserve revocation are that;
 - i) the land does not have any or sufficient value as reserve land and holding it under the Reserves Act is not necessary or appropriate;
 - ii) the community benefit is better served by holding the land free of the Act's restrictions and using it as part of the urban regeneration programme to take place alongside the Eastern Busway development;
 - iii) the provision of the reserve land for car parking for (mainly) private benefit is not a justifiable Reserves Act purpose;
 - iv) the revocation of the reserve status will not result in any appreciable loss of reserve amenity or value of the type intended to be protected by the Reserves Act.

Horopaki Context

9. Auckland Council owns the land at 2R Ti Rākau Drive, Pakūranga (**the land**). The land has the status of reserve, held subject to the Reserves Act. The council is the administering body for the reserve under the Reserves Act. Seven of the eight lots that make up the land are classified as local purpose (utility) reserve, and one parcel classified as recreation reserve. The property details are contained in Attachment A.
10. The land is predominantly used for car parking. It surrounds the Pakūranga Plaza shopping centre. The car parks are available to anyone needing to park their car in the area, but this will mainly be shoppers at the Plaza and people who work at the Plaza.
11. The council considers that holding the land under the Reserves Act is no longer necessary or appropriate, because the land does not have any or sufficient reserve value when assessed in terms of the Reserves Act. The land will provide greater community benefit by being held free of the Reserves Act restrictions.
12. The council's retention of the land as reserve, at public expense, is out of step with its aspirations for Pakūranga, principally those connected to the [Pakūranga Town Centre Masterplan](#) adopted by the Howick Local Board in 2015 and [Eke Panuku's programme of urban regeneration](#) that is running alongside the Eastern Busway.
13. Eke Panuku's urban regeneration programme aims to deliver strategic, high-quality, sustainable residential, commercial and public realm development integrated with the rapid transit project.

14. The [Strategic Regeneration Overview \(SRO\)](#) produced by Eke Panuku details the vision, strategy, outcomes and key strategic opportunities for the urban regeneration programme. The work proposed aims to support and stimulate the region's economy, enable sustainable city growth, and be a major opportunity to create amazing places. It will also maximise the council's investment in the busway.
15. Pakūranga has been identified as a key strategic opportunity within the programme. The main opportunity at Pakūranga is for mixed-use development across the council's landholdings, integrating the proposed Pakūranga bus station, and where able partnering with other Pakūranga Plaza landowners to facilitate regeneration.
16. On 5 May 2022 the council's Planning Committee approved the urban regeneration programme and endorsed the disposal of the land, subject to the conclusion of any required statutory processes, with the objective of contributing strategically and financially to the outcomes of the urban regeneration and renewal of the neighbourhoods in the Eastern Busway corridor ([PLA/2022/49](#)).
17. On 19 May 2022, the council's Finance and Performance Committee approved the disposal of the land subject to the conclusion of any required statutory processes ([FIN/2022/25](#)).
18. This was preceded by the Howick Local Board's endorsement of the urban regeneration programme for Pakūranga and the disposal of the land on 21 April 2022 ([HW/2022/41](#)).

Reserve Revocation Process

19. If the land is to be disposed of, its status as reserve must first be revoked. This requires the grounds for reserve revocation in the Reserves Act to be satisfied, and the process in section 24 of that Act to be used.
20. Auckland Council has followed the prescribed process:
 - a) On 18 October 2023 the council gave public notice (both to the public generally and to mana whenua) of its proposal to revoke the reserve status of the land, in order to enable future divestment and development of the land as part of the urban regeneration proposed for Pakūranga.
 - b) A total of 34 submissions were received from the public, one in support and 33 in opposition to the proposal. One objection was subsequently withdrawn. The bulk of the objections were made by the owner and tenants of Pakūranga Plaza. The most common matter raised by objectors related to the loss of parking for customers visiting the businesses at the Plaza. There were no objections/submissions from mana whenua.
 - c) The Reserves Act requires that the council consider any objections made to the proposed revocation. Given the level of interest in the proposed revocation, on 9 April 2024, the council's Regulatory and Community Safety Committee approved the appointment of an Independent Commissioner with Reserves Act experience to consider the submissions and provide recommendations to the council on whether or not to proceed with the reserve revocation process ([RSCCC/2024/28](#)).
 - d) On 13 August 2024, the council's Regulatory and Community Safety Committee approved the appointment of Kitt Littlejohn as Independent Commissioner ([RSCCC/2024/57](#)).
 - e) Two objectors, namely Pakuranga Plaza Limited (PPL), which owns most of the Plaza, and the owner of Woolworths, General Distributors Limited (GDL), wished to have their objections heard by the Independent Commissioner. That hearing was held on 27 November 2024.
21. The Independent Commissioner was delegated responsibility for considering the submissions/objections received on the proposed revocation, and providing a recommendation to the council. This recommendation informs the council's decision whether to request the Minister to revoke the reserve status.

22. The Commissioner has now recommended that the council pursue the proposed revocation by notifying the Minister. Should the Policy and Planning Committee agree to request that the reserve status of the land is revoked, a final decision will be made by the Minister.

Tātaritanga me ngā tohutohu

Analysis and advice

Public Hearing

23. In addition to considering the written submissions/objections received on the proposed revocation, the Independent Commissioner held a hearing on 27 November 2024. All information is available on [Council's website](#).

Council hearing report and legal submissions

24. In advance of the hearing, Eke Panuku prepared a report on the matters raised in objections. That report was supplemented by legal submissions filed on the council's behalf, which addressed matters that arose during the hearing.
25. The hearing report set out:
- the history of the land and its vesting as reserve
 - detail of the current use of the land
 - assessment of the reserve value of the land against Reserves Act criteria
 - information on the potential use of the land should the reserve status be revoked
 - the process followed by the council to progress the proposed revocation
 - a summary of the objections received, and the council's response to those objections
26. By way of summary, Auckland Council's position was that:
- a) Holding the land under the Reserves Act is no longer necessary or appropriate, primarily because the land does not have any or sufficient reserve value when assessed in terms of the Reserves Act.
 - b) The provision of car parking for (mainly) private benefit is not a justifiable Reserves Act purpose.
 - c) The revocation of the reserve status will not result in any appreciable loss of reserve amenity or value of the type intended to be protected by the Reserves Act.
 - d) The community benefit is better served by holding the land free of the Reserves Act restrictions, and in particular freeing it up for use as part of the urban regeneration proposed for Pakūranga, as informed by the Pakūranga Town Centre Masterplan and Eke Panuku's Urban Regeneration Programme in connection with the Eastern Busway.

Objectors' submissions

27. Legal submissions were filed in support of the objections made by PPL and GDL. The key matters raised in those submissions, and which are discussed in more detail in the Independent Commissioner's report, were:
- a) An alleged lack of consultation in advance of the notification of the proposal to revoke the reserve status of the Land.
 - b) That the council had failed to specify the reasons for the proposed revocation in the public notice and therefore failed to comply with the requirements of the Reserves Act.

- c) That since the land was originally vested as 'utility' reserve for car parking, the revocation of the reserve status was not appropriate because the land was still being used for this car parking purpose. This was the basis for arguments by PPL and GDL that the land still had value as reserve, and that revocation could not be justified.
- d) The lack of a sufficiently concrete proposal as to the future use of the land.

Independent Commissioner's conclusions and recommendations

- 28. The Independent Commissioner considered all matters raised by the council and objectors. The full report from the Independent Commissioner is attached (Attachment B). The Independent Commissioner concluded that:
 - a) The process followed by the council was in accordance with the Reserves Act.
 - b) The land was classified as local purpose (utility) reserve, and not "carpark reserve". In the context of the revocation process, little weight can be given to the current use of the land for carparking, because that is not the specific purpose for which it was vested.
 - c) On balance the land has neither intrinsic community value when assessed by reference to the purpose of the Reserves Act nor warrants its continued status as reserve.
 - d) There is a sound legal and factual basis for the council to seek to revoke the reserve status of the land.
- 29. The Independent Commissioner has therefore recommended that the council proceed to seek the Minister's consideration of revocation of reserve status.
- 30. Accordingly, staff recommend that the Policy and Planning Committee approve the council requesting the Minister to revoke the reserve status of the land, for the reasons set out in paragraph 26 above.

Tauākī whakaaweawe āhuarangi Climate impact statement

- 31. Revocation of the reserve status of the land is only a change in legal status and would not have any immediate climate impacts. If the reserve status of the land is revoked, the land would be held by the council as freehold land and not subject to the Reserves Act.
- 32. However, revocation of the reserve status by the Minister would enable the land to be considered for urban regeneration and future development. If the land was to be used for urban regeneration purposes, and in line with Eke Panuku's Climate Change Strategy, future development on the land can be designed to ensure new communities are sustainable, low carbon and climate resilient. Sustainability and climate change adaption objectives and requirements would be embedded within masterplan design and development agreements. The development of the land, which is located in close proximity and to and integrated with the Eastern Busway transport infrastructure (Pakūranga bus station and accompanying cycleways and footpaths), would build communities with less dependence on driving and which are more climate friendly.
- 33. Emissions associated with any potential redevelopment can be reduced through development standards agreed through a future development agreement, application of Eke Panuku's Homestar 6 policy and requirements to reduce carbon emissions in commercial developments.

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera

Council group impacts and views

34. Prior to the Independent Commissioner's consideration of the revocation proposal, the Council's Land Advisory Services team (under Parks and Community Facilities Department) carried out an assessment of the reserve value of the land against the purpose of Reserves Act. That assessment informed the report that was prepared for the Independent Commissioner. The Land Advisory Services team support the revocation of the reserve status of the land.
35. Revocation of the reserve status of the land would not have any immediate consequences for other parts of the council group, as the council would continue to own the land, albeit free of the restrictions under the Reserves Act.
36. If the reserve status is revoked, the land provides an opportunity for regenerative development integrated with the transport infrastructure. If that was to occur, Eke Panuku would deliver this in alignment with the work being undertaken by Auckland Transport and the Eastern Busway Alliance at Pakūranga and along the length of the busway.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe

Local impacts and local board views

37. The Howick Local Board has endorsed the urban regeneration programme for Pakūranga and, if the reserve status of the land is revoked, the disposal of the land. The local board has been updated on actions and progress throughout the revocation process during workshops, officer meetings with the Chair, and through memos. Subject to being able to successfully revoke the reserve status, local board input will be sought in a masterplanning exercise for the land at Pakūranga
38. In line with the urban regeneration programme's communications and engagement plan, there is ongoing engagement with the Mayor, Howick ward councillors and the Pakūranga MP.

Tauākī whakaaweawe Māori

Māori impact statement

39. No issues of cultural significance were raised in objections/submissions on the revocation proposal, and as noted above, mana whenua did not object to the proposed reserve revocation.
40. Through Eke Panuku forums, mana whenua have been updated on revocation process actions and progress.
41. If the reserve status of the land is revoked, mana whenua input will be sought as a part of a masterplanning exercise for the land.

Ngā ritenga ā-pūtea

Financial implications

42. Revocation of the reserve status of the land would not have any immediate financial consequences as the council would continue to own and maintain the land.
43. It is the council's understanding that the land has been used as car parking since the shopping centre opened in the 1960s. The council has been responsible for the costs of maintenance and upkeep since this time. The full cost of this work is not known but Eke Panuku has incurred costs of \$60,000 in FY25 alone. The land mainly benefits commercial operators (the shopping centre owners and their tenants) and the council does not accrue any financial benefit.
44. The council receives no payment of rates for the land. The rates bill for FY25 is \$125,000.

45. Revocation of the reserve status would enable the land to be considered for urban regeneration and divested. If that occurred, it would result in:
- capital sale receipts for the council;
 - maintenance costs being transferred to a third party; and
 - receipt of rate payments from the new owner (or owners) of the land.

Ngā raru tūpono me ngā whakamaurutanga Risks and mitigations

46. Revocation of the reserve status of the land is at the discretion of the Minister after receipt of a request to do so from the relevant local authority or administering body. There is a risk that the Minister will not revoke the reserve status of the land. In those circumstances the land would remain in council ownership subject to the Reserves Act. It will mean that the opportunity is lost for the council to leverage its investment in the Eastern Busway.
47. To mitigate this risk, Eke Panuku will work to address any issues raised by the Minister should the Policy and Planning Committee agree to request that the reserve status of the land be revoked.

Ngā koringa ā-muri Next steps

48. Subject to Policy and Planning Committee approval, officers will request that the Minister revoke the reservation status of the land. The request to the Minister will include all relevant council resolutions, objections and submissions received, and the Independent Commissioner's report and recommendation.
49. If the Minister approves the request, a notice will be published in the New Zealand Gazette revoking the reserve status of the land under section 24 of the Reserves Act.
50. Any development or disposal is contingent on the revocation of the reserve status. In the event the Minister revokes the reserve status, Eke Panuku will explore further the opportunities for divestment and development of the land in alignment with the council approved urban regeneration programme.

Ngā tāpirihanga Attachments

| No. | Title | Page |
|-------------------|---|------|
| A | Property Details (Titles & Aerial Images) | |
| B | Hearing Panel recommendation report 19.2.2025 | |

Ngā kaihaina Signatories

| | |
|-------------|---|
| Authors | Gulina Monroe - Strategic Property Specialist, Eke Panuku Gary Jackson - Principal Property Advisor |
| Authorisers | Marian Webb - General Manager Assets and Delivery, Eke Panuku Megan Tyler - Director Policy, Planning and Governance |

Attachment A

Property Details: Reserves at 2R Ti Rakau Drive, Pakuranga, Record of Titles and Aerials

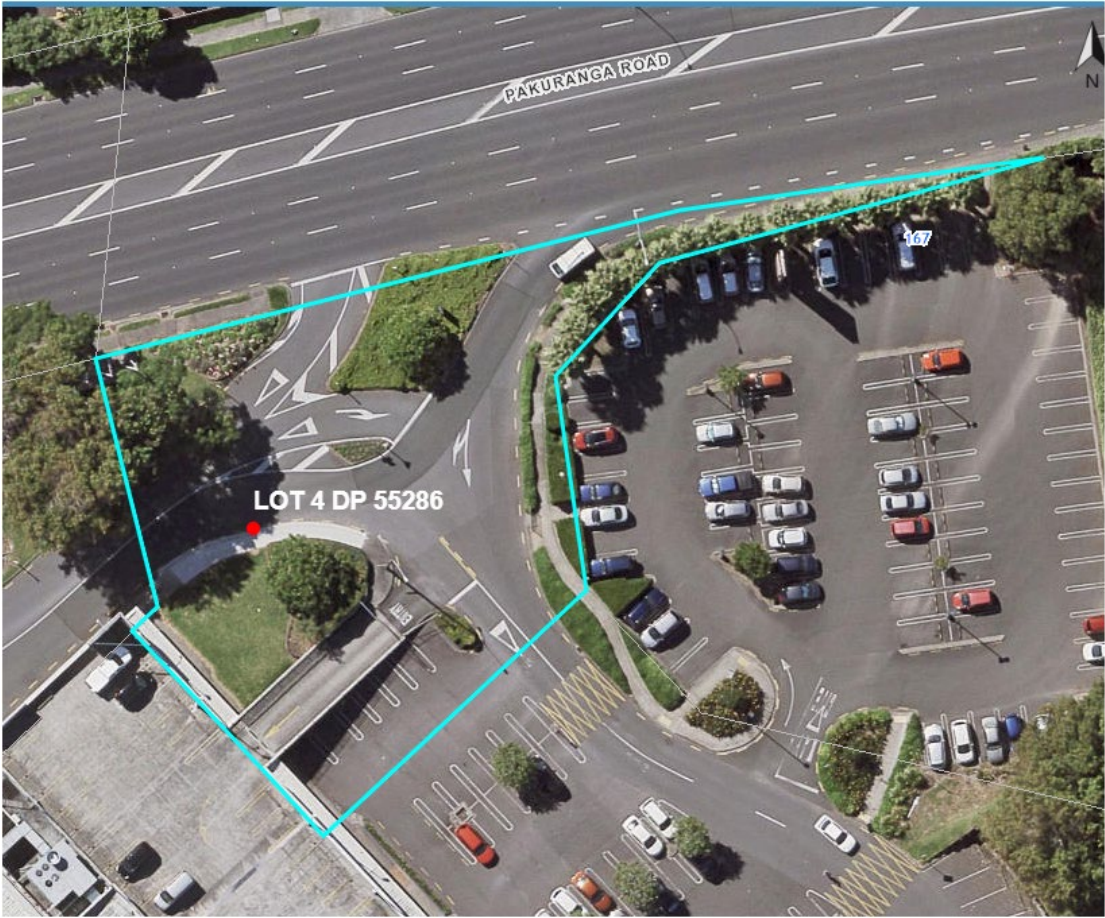
Image 1 (below): Geomaps aerial view of the reserves – the subject areas are outlined in red.



Table 1 (below): Property details with land areas

| No | Legal Description | Current reserve classification | Land Area (Ha) | Record of Title |
|----|-------------------|---------------------------------|----------------|----------------------------|
| 1 | Lot 4 DP 55286 | Local purpose (utility) reserve | 0.2003 | NA50B/76 |
| 2 | Lot 6 DP 55286 | Local purpose (utility) reserve | 0.0003 | NA1814/78 (part-cancelled) |
| 3 | Lot 9 DP 55286 | Local purpose (utility) reserve | 0.0344 | NA49C/1325 |
| 4 | Lot 12 DP 55286 | Local purpose (utility) reserve | 0.6318 | NA49C/1326 |
| 5 | Lot 2 DP 53672 | Local purpose (utility) reserve | 0.7841 | NA50B/73 |
| 6 | Lot 3 DP 53433 | Local purpose (utility) reserve | 0.7783 | NA97B/90 |
| 7 | Lot 11 DP 47737 | Recreation reserve | 0.0200 | NA5C/242 |
| 8 | Lot 1 DP 55585 | Local purpose (utility) reserve | 0.0002 | NA1814/80 (cancelled) |
| | | | 2.4494 | |

#1. Lot 4 DP 55286





RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
Search Copy



R. W. Muir
Registrar-General
of Land

Identifier **NA50B/76**
Land Registration District **North Auckland**
Date Issued 02 July 1981

Prior References
NA1856/77

| | |
|-------------------|---------------------------------|
| Estate | Fee Simple |
| Area | 2003 square metres more or less |
| Legal Description | Lot 4 Deposited Plan 55286 |
| Purpose | Utility Reserve |
| Registered Owners | |
| Auckland Council | |

Interests

Subject to a right of way over part marked B on Plan 93910 created by Transfer B067896.7 - 24.5.1982 at 10.10 am
(Limited as to duration)

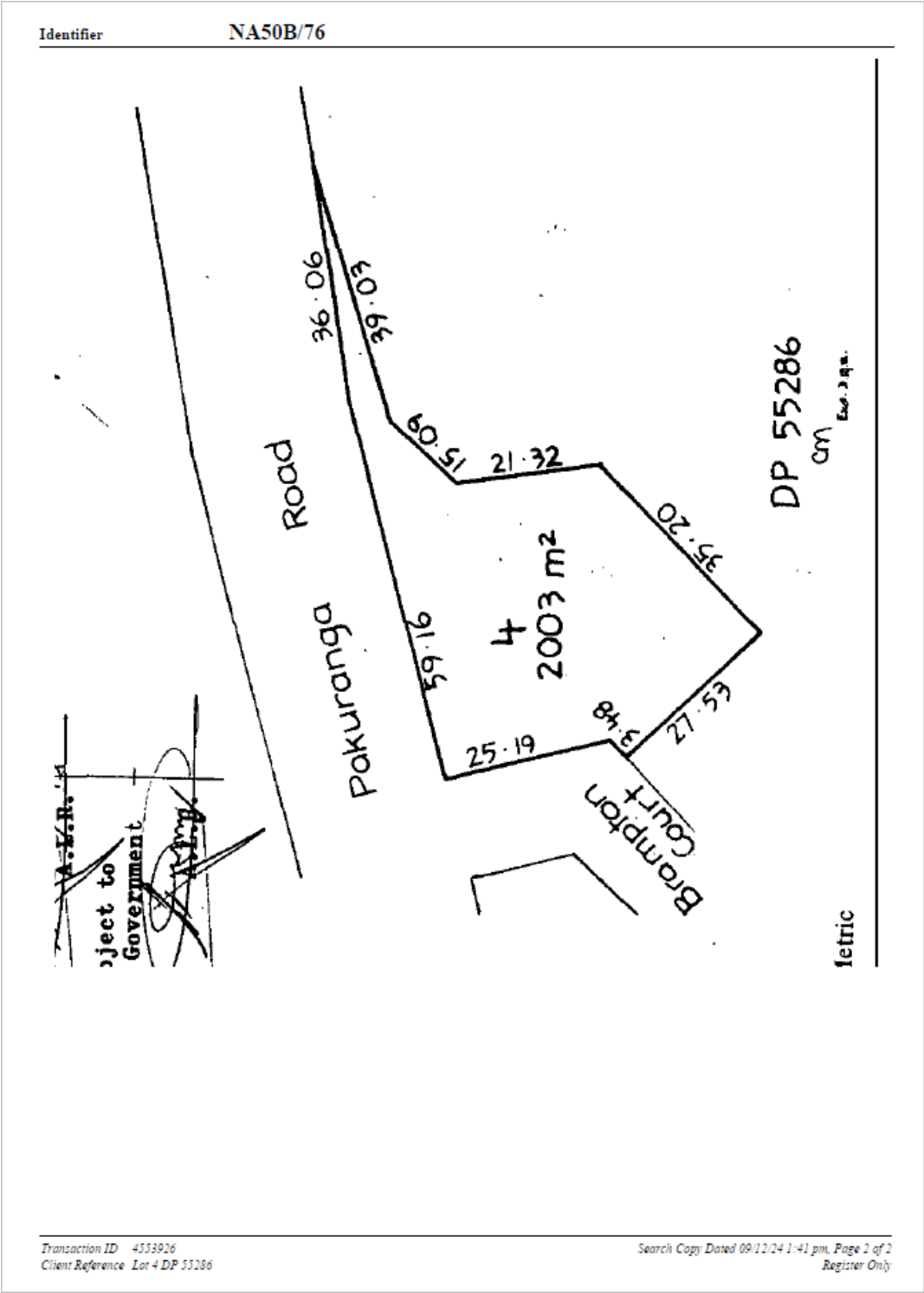
The easements created by Transfer B067896.7 are subject to Section 309 (1) (a) Local Government Act 1974

Subject to an electricity right over part marked C on Plan 159172 for the term of 100 years from 10.12.1993 created by
Transfer C588324.2 - 13.4.1994 at 2.27 pm

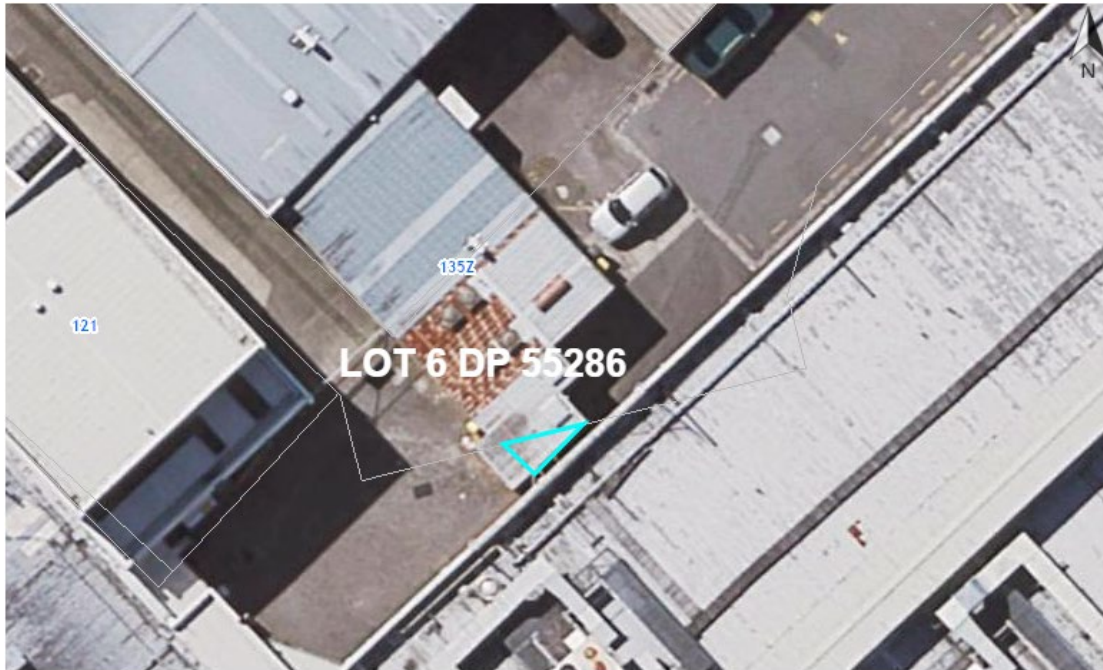
Subject to a right to supply electricity (in gross) over part marked A, and an electricity cable access and supply easement
(in gross) over part marked B on DP 326750 in favour of Vector Limited created by Transfer 6293333.1 - 28.1.2005 at
9:00 am

Transaction ID 4553926
Client Reference Lot 4 DP 55286

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Register Only



#2. Lot 6 DP 55286



Item 8

Attachment A



**RECORD OF TITLE
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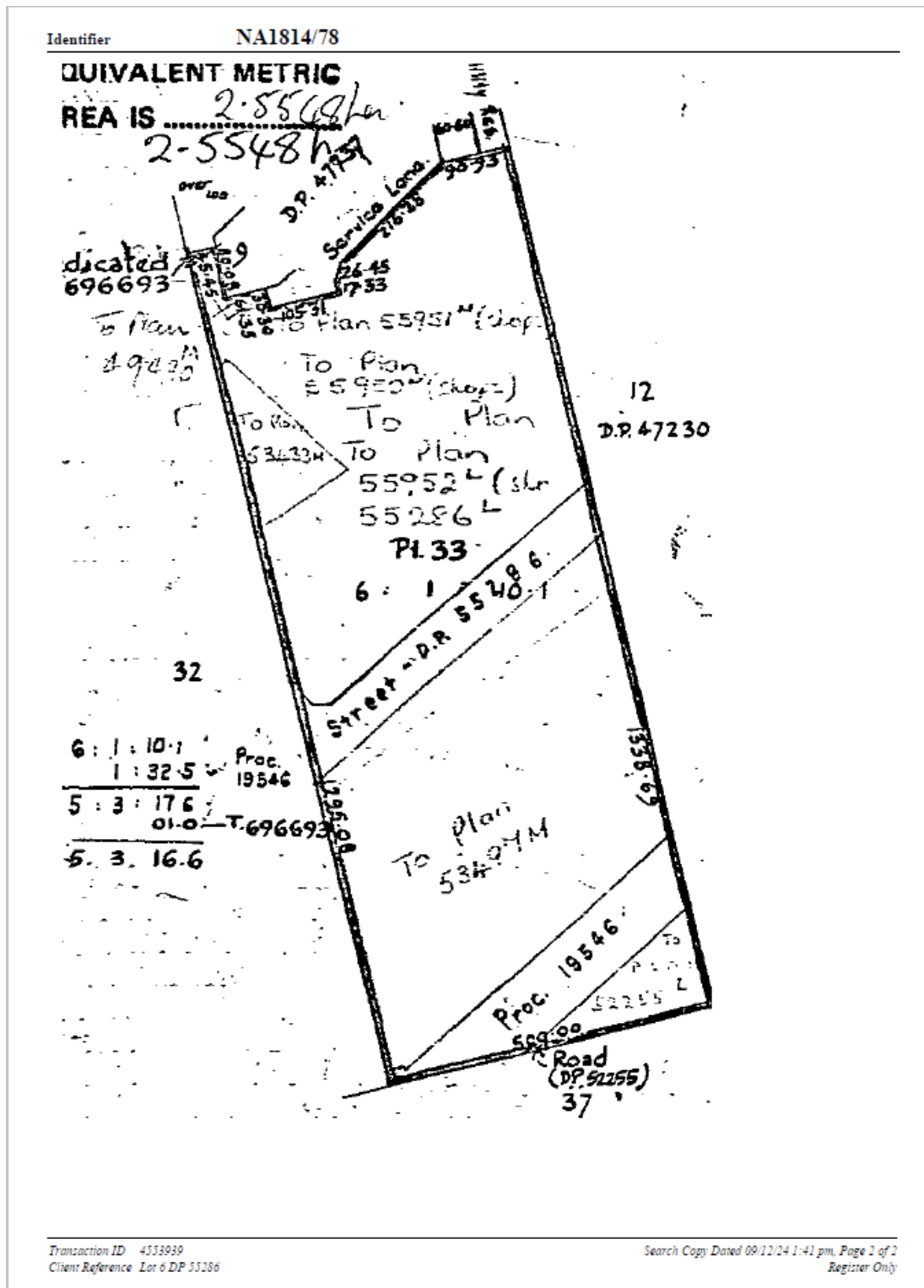
Identifier NA1814/78
Land Registration District North Auckland
Date Issued 13 July 1960
Prior References
NA662/259

Part-Cancelled

Estate Fee Simple
Area 2.5548 hectares more or less
Legal Description Part Lot 33 Deposited Plan 14882
Registered Owners
The Fletcher Trust and Investment Company Limited

Interests

Pursuant to Section 352(4) Municipal Corporations Act 1954 Lot 6 DP 55286 is vested in the Mayor, Councillors and Citizens of the City of Manukau as utility reserve subject to Reserves and Domains Act 1953 (Residue)
For historic memorials see paper image of title.



#3. Lot 9 DP 55286





RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
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Identifier **NA49C/1325**
Land Registration District **North Auckland**
Date Issued 18 January 1982

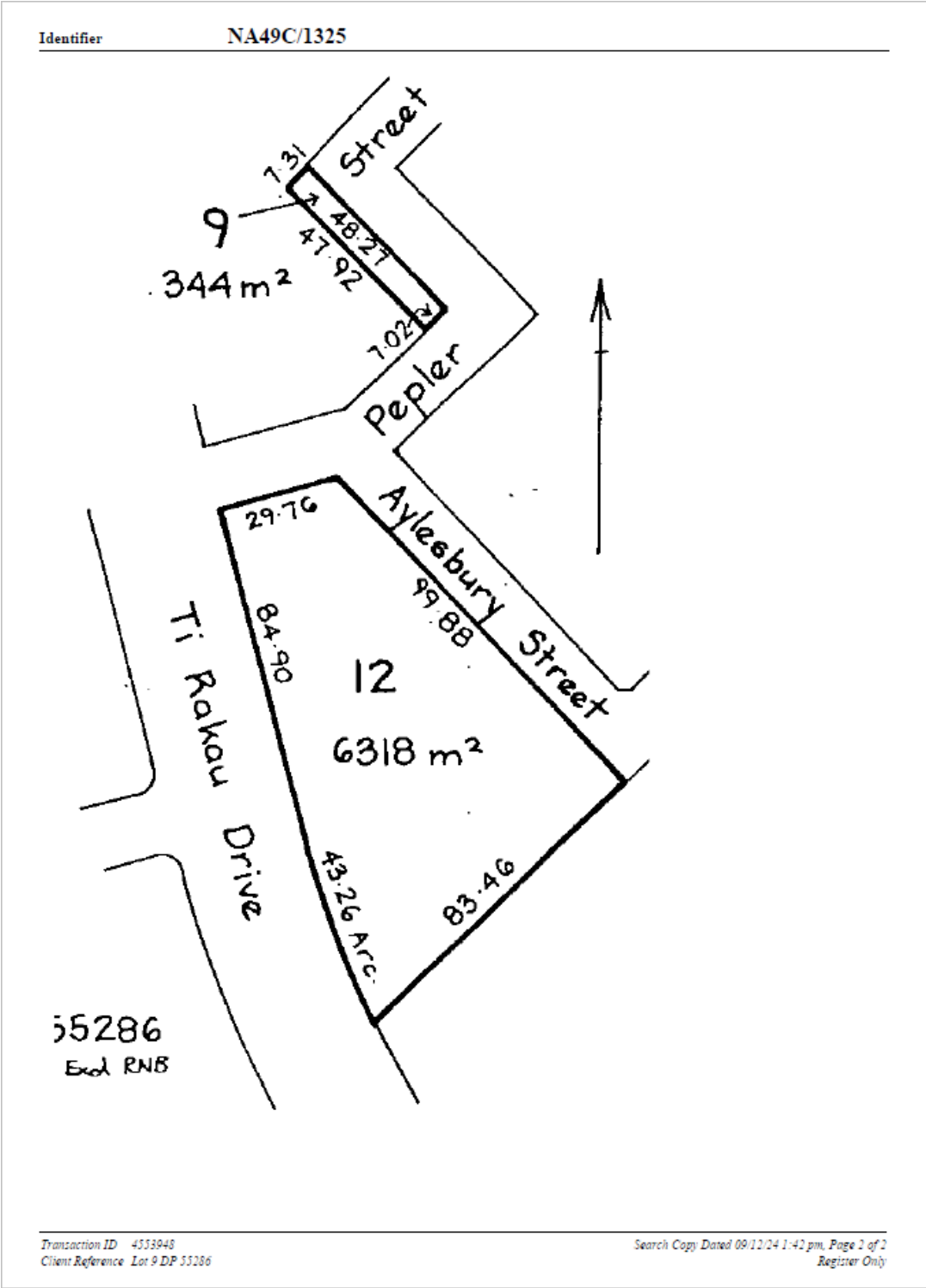
Prior References
NA5C/97

Estate Fee Simple
Area 344 square metres more or less
Legal Description Lot 9 Deposited Plan 55286
Purpose Local purpose utility reserve
Registered Owners
Auckland Council

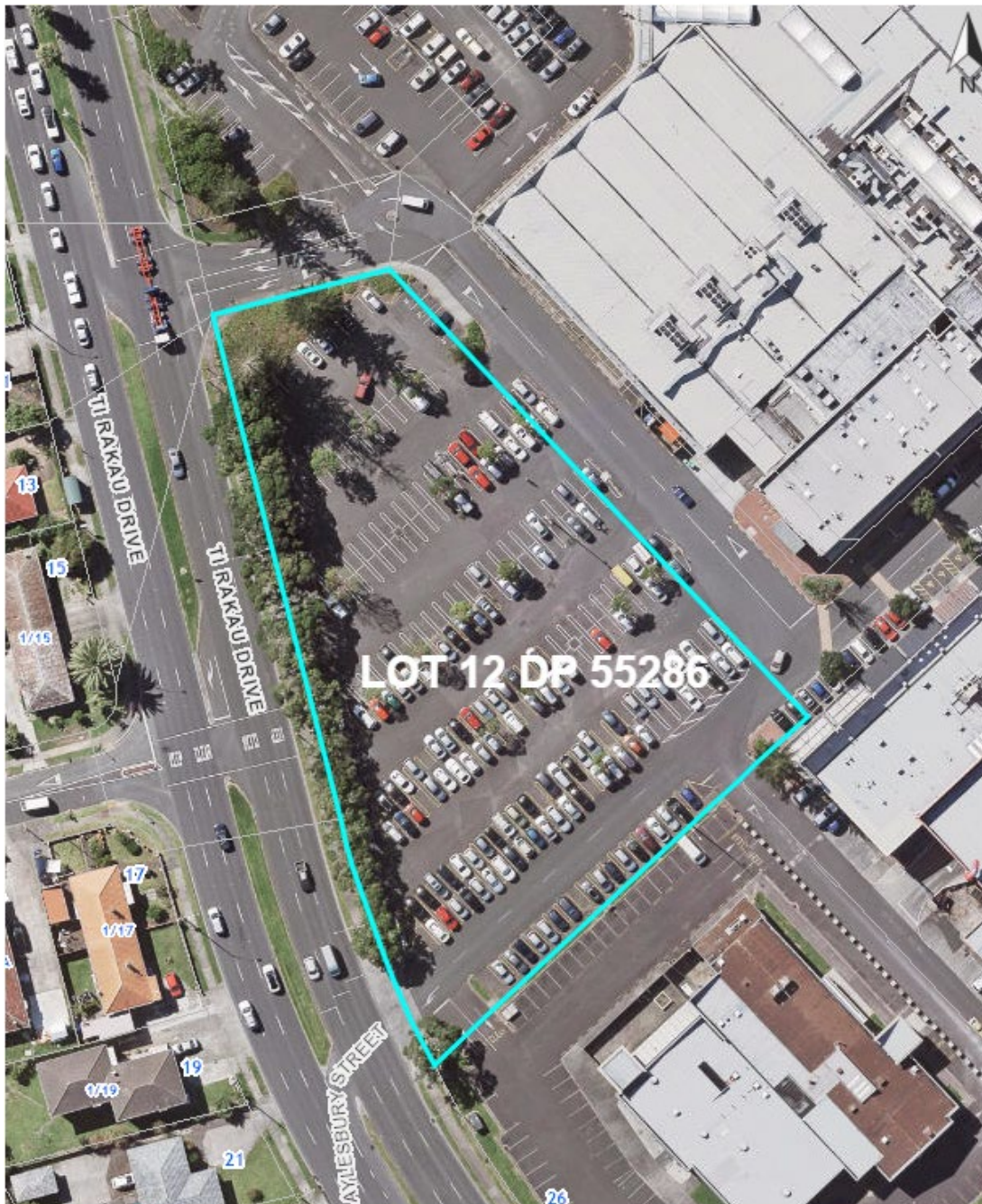
Interests
SUBJECT TO THE RESERVES ACT 1977

Item 8

Attachment A



#4. Lot 12 DP 55286



Item 8

Attachment A



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UNDER LAND TRANSFER ACT 2017
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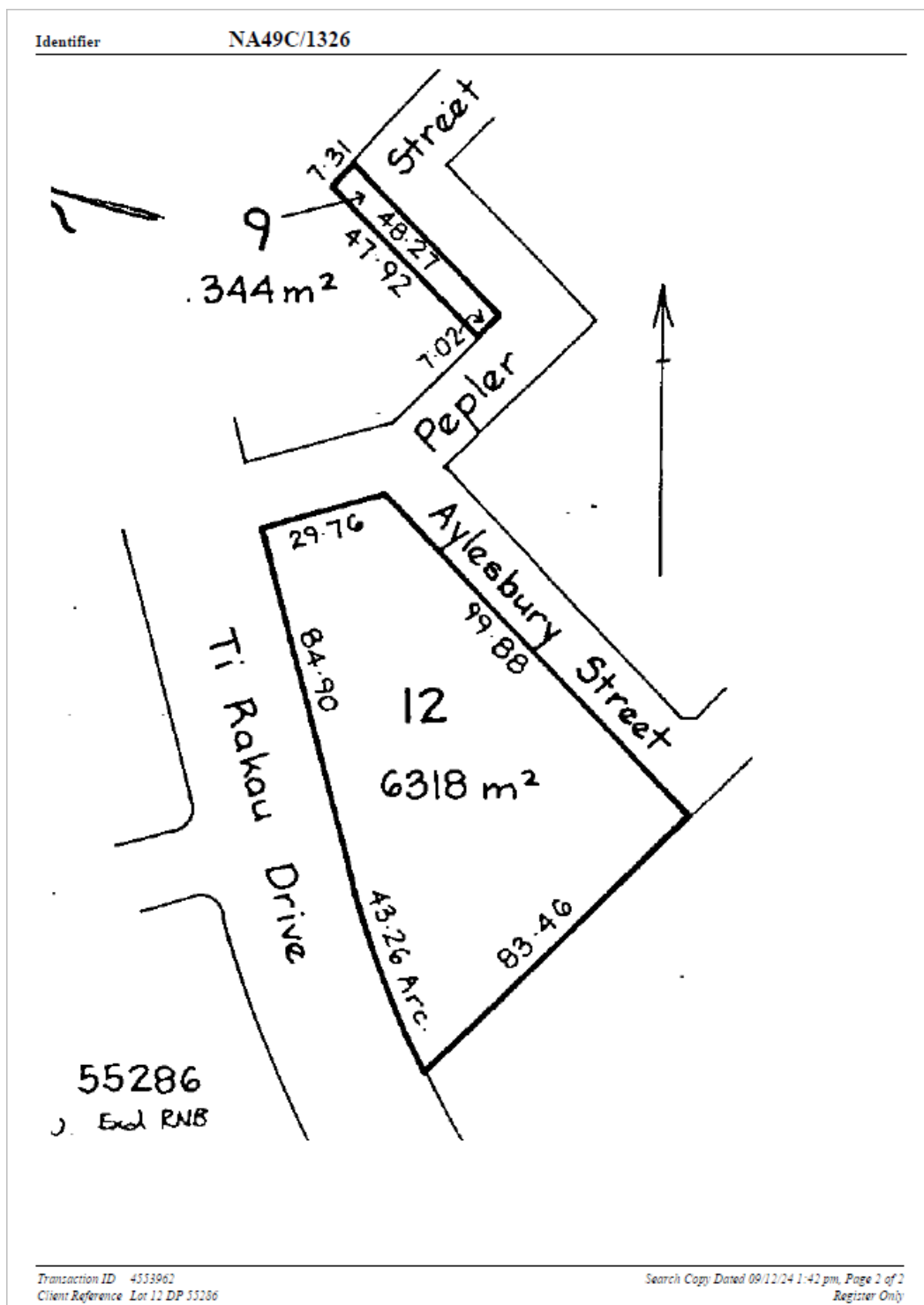
Identifier NA49C/1326
Land Registration District North Auckland
Date Issued 18 January 1982
Prior References
NA5C/97

Estate Fee Simple
Area 6318 square metres more or less
Legal Description Lot 12 Deposited Plan 55286
Purpose Local purpose utility reserve
Registered Owners
Auckland Council

Interests
SUBJECT TO THE RESERVES ACT 1977
Subject to a right of way (limited as to duration) over parts marked C and D on Plan 156314 created by Transfer C553688.1 - 21.12.1993 at 3.00 pm
Subject to an electricity right over part marked D on Plan 159172 for the term of 100 years from 10.12.1993 created by Transfer C588324.2 - 13.4.1994 at 2.27 pm
Subject to a right of way over part marked C on Plan 156314 for the term of 200 years from 16.6.1994 created by Transfer C620233.1 - 1.7.1994 at 2.40 pm

Transaction ID 4553962
Client Reference Lot 12 DP 55286

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Register Only



#5. Lot 2 DP 53672





RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
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Identifier **NA50B/73**
Land Registration District **North Auckland**
Date Issued 01 July 1981
Prior References
NA1856/77

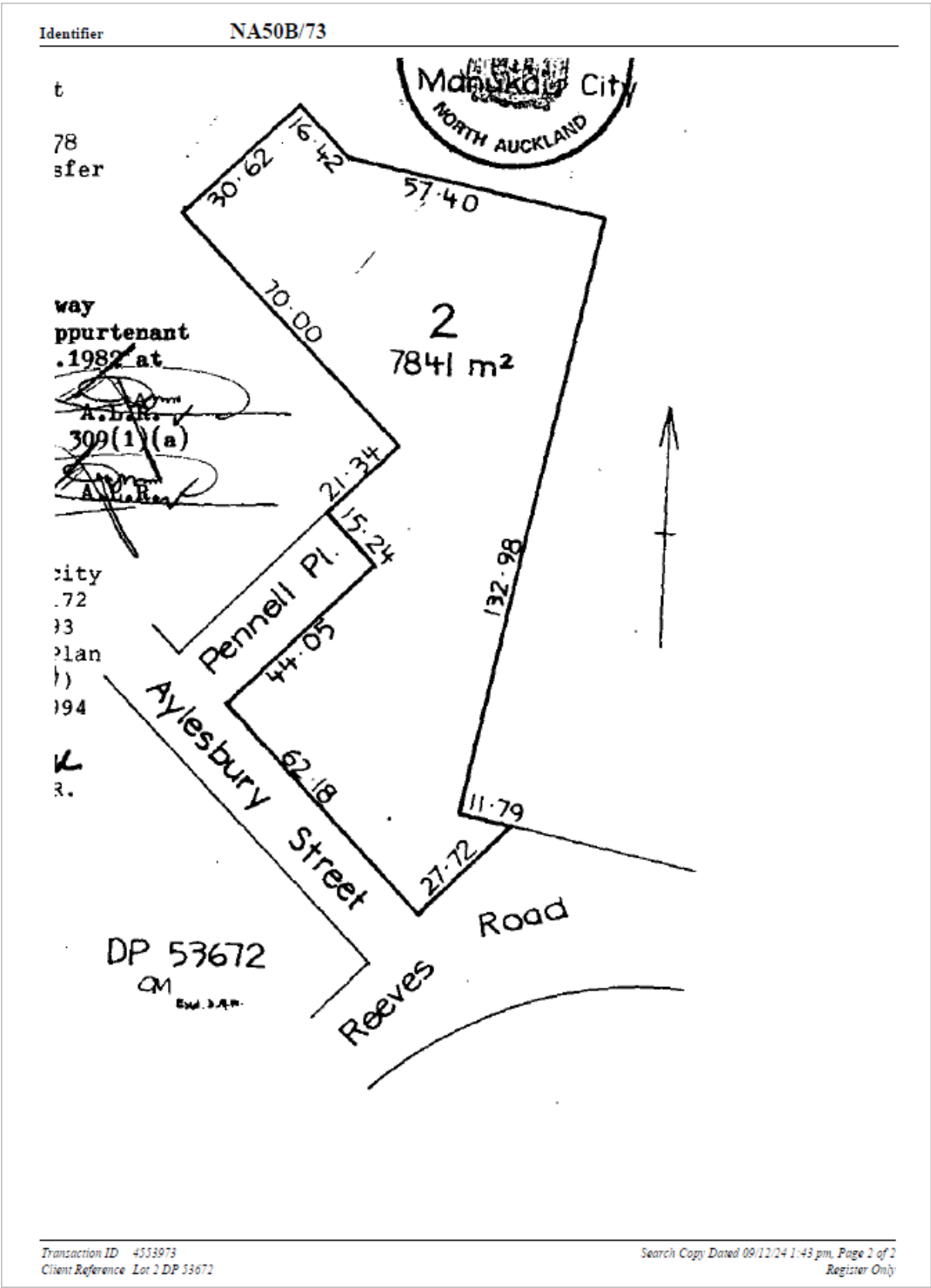
Estate Fee Simple
Area 7841 square metres more or less
Legal Description Lot 2 Deposited Plan 53672
Purpose Utility Reserve
Registered Owners
Auckland Council

Interests

Subject to a drainage right over part coloured yellow on Plan 47230 created by Transfer 642425
Subject to a right of way over part marked A on Plan 93910 created by Transfer B067896.7 - 24.5.1982 at 10.10 am
(Limited as to duration)
The easements created by Transfer B067896.7 are subject to Section 309 (1) (a) Local Government Act 1974
Subject to an electricity right over part marked F on Plan 159172 for the term of 100 years from 10.12.1993 created by
Transfer C588324.2 - 13.4.1994 at 2.27 pm

Item 8

Attachment A



#6. Lot 3 DP 53433



Item 8

Attachment A



**RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
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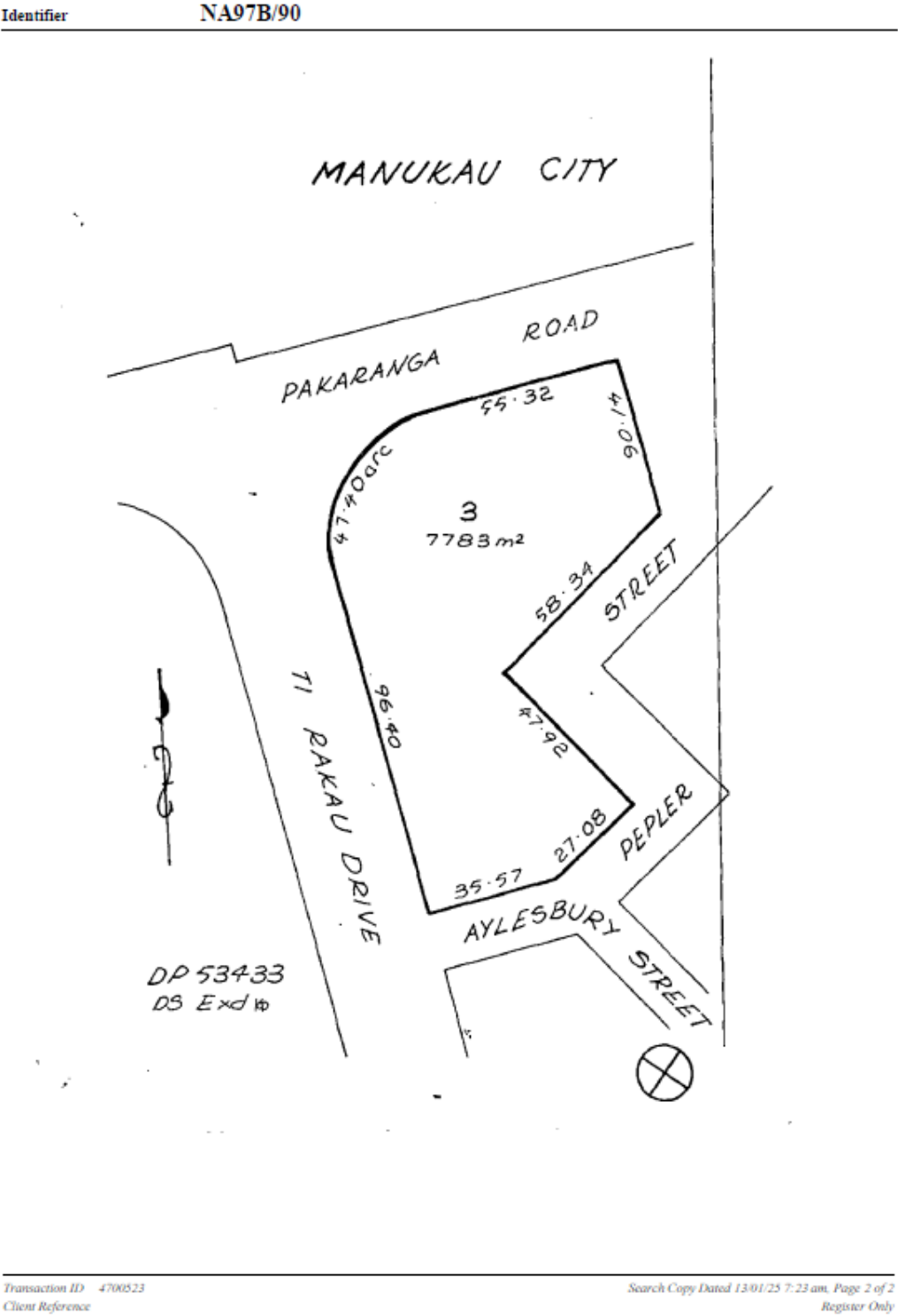


R. W. Muir
Registrar-General
of Land

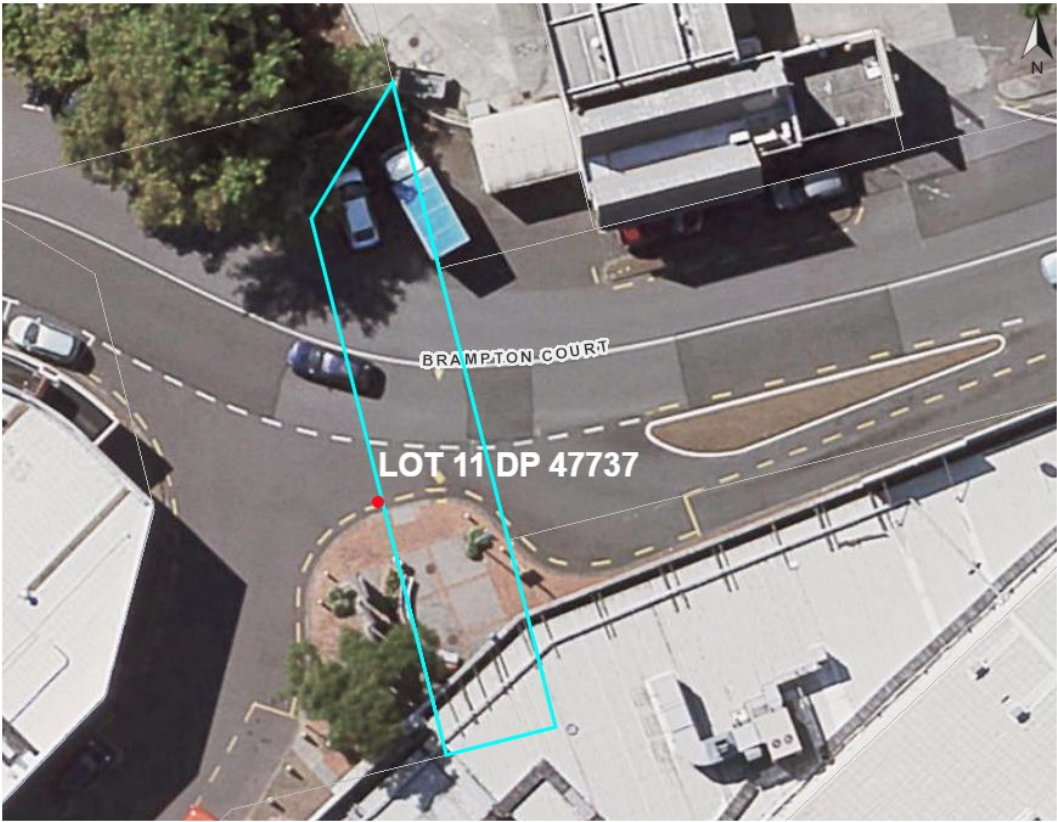
Identifier NA97B/90
Land Registration District North Auckland
Date Issued 13 April 1994
Prior References
NA2057/24


Estate Fee Simple
Area 7783 square metres more or less
Legal Description Lot 3 Deposited Plan 53433
Purpose Local purpose (Utility) reserve
Registered Owners
Auckland Council

Interests
SUBJECT TO THE RESERVES ACT 1977
Subject to an electricity right over part marked A on Plan 159172 for a term of 100 years from 10.12.1993 created by
Transfer C588324.2 - 13.4.1994 at 2.27 pm




#7. Lot 11 DP 47737





RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
Search Copy



R. W. Muir
Registrar-General
of Land

Identifier NA5C/242
Land Registration District North Auckland
Date Issued 17 March 1965

Prior References
GN 18673 NA662/259

| | |
|--------------------------|---------------------------------|
| Estate | Fee Simple |
| Area | 200 square metres more or less |
| Legal Description | Lot 11 Deposited Plan 47737 |
| Purpose | Reserve for recreation purposes |
| Registered Owners | Auckland Council |

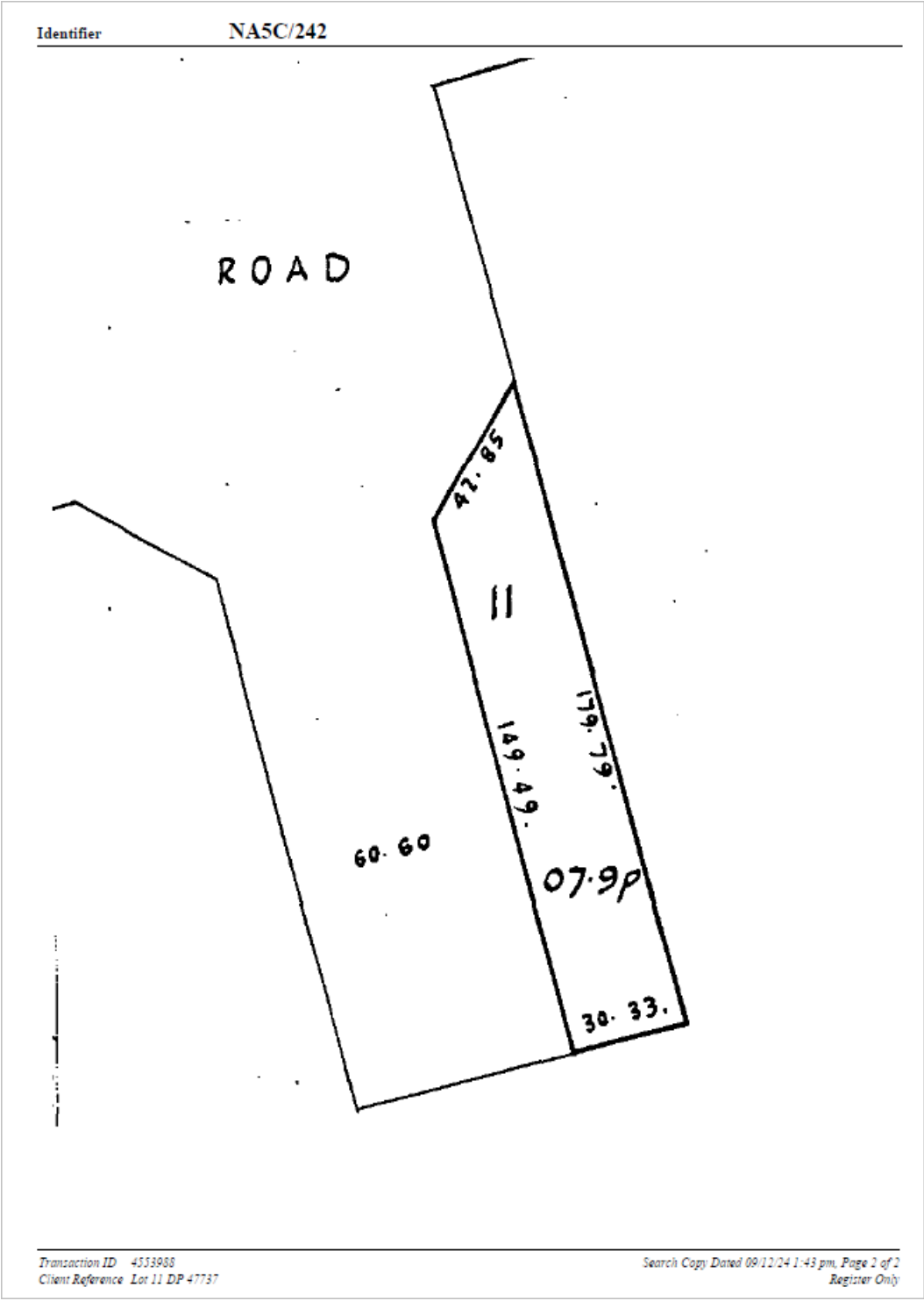
Interests
Fencing Agreement in Transfer 218297
Fencing Agreement in Transfer 269066
SUBJECT TO THE RESERVES AND DOMAINS ACT 1953
Appurtenant hereto is a drainage right created by Transfer 216092

Transaction ID 4533988
Client Reference Lot 11 DP 47737

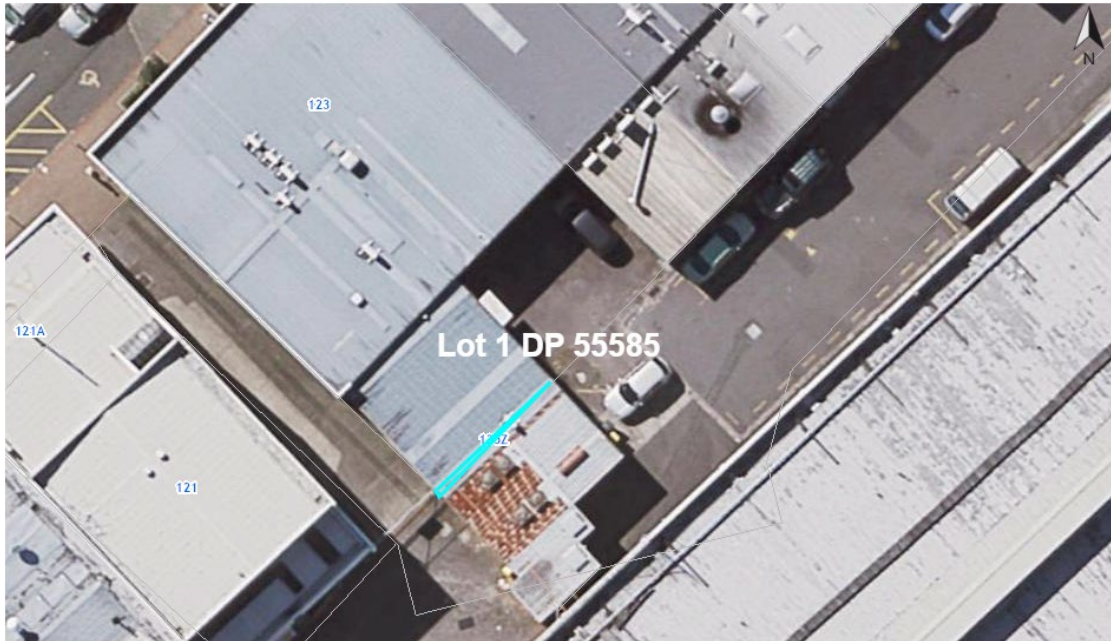
Search Copy Dated 09/12/24 1:43 pm, Page 1 of 2
Register Only

Item 8

Attachment A



#8. Lot 1 DP 55585



Item 8

Attachment A

Item 8

Attachment A

CANCELLED

Land and Title FORM No. 2

REGISTER NORTH

Vol. 1814, Folio 65

Reference: Transfer No. 643341
Order for N/C No.

NEW ZEALAND

Vol. 1814, folio 80

1814/80

CERTIFICATE OF TITLE UNDER LAND TRANSFER ACT

This Certificate, dated the twenty-eighth day of July, one thousand nine hundred and sixty
under the hand and seal of the District Land Registrar of the Land Registration District of AUCKLAND WITNESSETH that
LINDSAY WINTERSON SCHUBERT company manager, DESMOND BYRON SCHUBERT company manager, ALLAN GALEY
WINTER solicitor and LINDSAY CUTHBERT WINTER public accountant all of Auckland are

seised of an estate in fee-simple (subject to such reservations, restrictions, encumbrances, liens, and interests as are notified by memorial under
written or endorsed hereon, subject also to any existing right of the Crown to take and lay off roads under the provisions of any Act of the General
Assembly of New Zealand) in the land hereinafter described, as the same is delineated by the plan hereon bordered, EXCERN be the several
admeasurements, a little more or less, that is to say: All that parcel of land containing 17.7 PERCHES, more or less, being Lots 6
7 and 8 Deposited Plan 47737 and being part Fairburns Old Land Claim 2698

EQUIVALENT METRIC
AREA IS 447 m²
Il Olahuhu S.D.

Image Quality due
to Condition
of Original

Lot 1 55585

Total area: ~ 0 : 0 : 17.7
Scale: 50 links = 1 inch

Appurtenant hereto are drainage rights created by
Transfer 216092

Subject to mortgage of the land hereon created by
Agreement as to Pencil containing in Transfer 63341

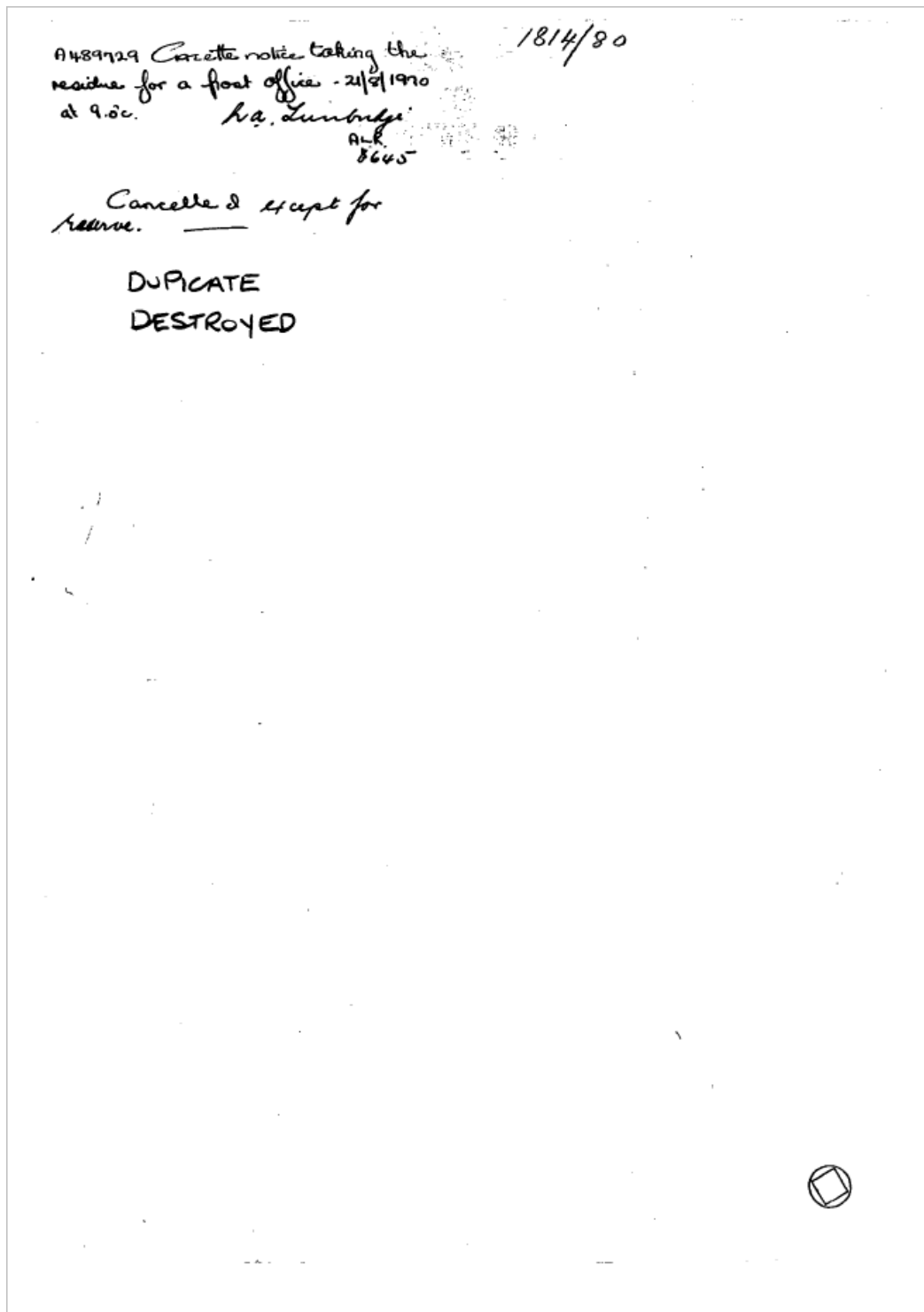
Transfer 63281 to Wendy Thelton subject
of Auckland company manager and Desmond
10.7.1962 at 11.60 p.m.

Transfer 64056 to the Fletcher Street
and Investment Company Limited
11.12.1962 at 11.30 p.m.

46950 company manager and Desmond
10.7.1962 at 11.60 p.m.

Transfer to Section 252(2) Municipal
Corporation Act 1954 (1954) 1954
is vested in the Mayor and Citizens of the City of Auckland
as Utility Reserve, subject to the
Reserve of Domain 625 1954

THIS REPRODUCTION ON A REDUCED SCALE
CERTIFIED TRUE A TRUE COPY OF THE
ORIGINAL REGISTERED FOR THE PURPOSES OF
THE LAND TRANSFER ACT 1952



Item 8

Attachment A

UNDER

the Reserves Act 1977 ("Act")

IN THE MATTER

of a proposed revocation of the reserve status of land at 2R Ti Rākau Drive, Pakuranga under section 24 of the Act by the Auckland Council

RECOMMENDATION OF INDEPENDENT COMMISSIONER FOLLOWING A
HEARING OF A RESERVE STATUS REVOCATION PROPOSAL AND
SUBMISSIONS RECEIVED

I recommend that the Council proceed to seek the Minister's consideration of the proposed reserve revocation.

REASONS

INTRODUCTION

1. By resolution number RSCCC/2024/57,¹ I have been appointed by the Regulatory and Community Safety Committee of Auckland Council (**Council**) to consider public submissions received regarding Auckland Council's proposal to revoke the reserve status of 2R Ti Rākau Drive, Pakuranga and to make a recommendation, in accordance with the Reserves Act 1977, for consideration of the Planning, Environment & Parks Committee.
2. Although not expressly stated in the minutes of my appointment resolution, I have assumed that the recommendation to be made is whether or not the Council should proceed with the reserve revocation process it has commenced.

Procedural matters

3. I conducted a hearing of the reserve revocation proposal and submissions received on 27 November 2024.
4. In advance of the hearing, I was provided with a report dated 1 November 2024 (**Hearing Report**), prepared by Gulina Monroe and Gary Jackson, both of whom are employed by Eke Panuku Development Auckland, the Council controlled organisation charged with progressing the reserve revocation proposal. The Hearing Report was comprehensive and included a number of relevant attachments all of which I read prior to the hearing. The Hearing Report was also provided to all submitters who had indicated that they wished to be heard in advance of the hearing.
5. In accordance with pre-hearing directions I issued on 19 September 2024, submitter Pakuranga Plaza Limited (**PPL**), filed evidence from the Development and Property

¹ Hearing Report, Attachment 16.

managers of its parent company (Eunice Lee and Jaki Recchia, respectively) on 20 November 2024. This evidence set out in detail the background to PPL's relationship to the reserve lands and its concerns with the proposed revocation of that reserve status.

6. Legal submissions by Mike Doesburg on behalf of PPL, and by Alison Arthur-Young, on behalf of General Distributors Limited (**GDL**), another submitter on the proposed reserve revocation, were also provided to me in advance of the hearing.
7. At the hearing, assisted by counsel Michael Wood, Mr Jackson summarised the key aspects of the Council's revocation proposal set out in the Hearing Report and responded to questions. Mr Doesburg, assisted by David Biggio KC, then presented PPL's detailed legal submissions in opposition to the proposed revocation. Finally, Ms Arthur-Young presented legal submissions for GDL.
8. After hearing from submitters, Mr Wood for the Council replied to a number of points made, but also sought leave to file more detailed reply submissions. After considering concerns raised by the submitters, leave was granted, subject to submitters being entitled to respond to any new matters raised in those reply submissions.²
9. A detailed written reply was received from the Council on 11 December 2024, and further submissions, responding to new matters raised in those submissions, were received from PPL and GDL on 18 December 2024.
10. The hearing was formally closed on 13 January 2025.
11. I record that I have considered in detail all the evidence and submissions presented in relation to the proposed reserve revocation. I also record that I undertook a visit to the site, to familiarise myself with the various parcels of reserve status land affected by the proposed revocation.

Collateral civil proceedings

12. The Hearing Report brought to my attention the fact that PPL has brought proceedings against the Council in the High Court seeking a declaration that it has the benefit of an equitable easement across the Council's land, rights to the land under the Public Works Act 1981, and that the Council is estopped from denying that the land is to provide ongoing public car parking to service the Plaza. The Council is defending those proceedings.
13. No injunctive relief preventing the reserve revocation process from proceeding has been sought by PPL. At the hearing both the Council and PPL accepted that the private rights claimed in respect of the land by PPL are not affected by, and are independent of, the reserve status. That is, if established, those rights would exist even if the land was no longer classified as reserve under the Act.
14. These concessions helpfully made, I do not intend to comment further on the High Court proceedings.

² Minute to the parties dated 27 November 2024.

THE PROPOSAL

15. The Council owns the land at 2R Ti Rākau Drive, Pakuranga. The land consists of eight lots, with a total area of 2.4494 hectares, seven of which are classified as local purpose (utility) reserve, and one as a recreation reserve. All of the lots are held as reserve and are subject to the Reserves Act 1977. The location of the lots is shown on Plan 1.



Plan 1 – Location of Local Purpose Utility ReserveS & Recreation Reserve – 2R Ti Rākau Drive

16. The land was vested as reserve in predecessors of the Council (Manukau County Council prior to 1965 and Manukau City Council between 1965 and 2010), when the Pakuranga site was developed in the 1960s. The vestings occurred on the deposit of survey plans of subdivision at different stages of that development, pursuant to section 35(4) of the Counties Amendment Act 1961 or section 352(4) of the Municipal Corporations Act 1954 (depending on the relevant date of deposit), with one lot vested by section 13 of the Land Subdivision in Counties Act 1946. All the allotments were vested subject to the Reserves and Domains Act 1953.
17. Apart from the small area of recreation reserve, all of the parcels were vested for the purpose³ of “utility reserve” and were subsequently developed for use as public car

³ See section 12 of the Reserves and Domains Act 1953.

parking by the developer of the land. These parcels became re-classified as “local purpose (utility) reserve” on the enactment of the Reserves Act 1977, by reason of section 16(11)(b)(iv) of that Act. The area of recreation reserve was deemed to be classified for recreation purposes by section 16(11)(b)(i) of the Act.

18. The Council proposes revoking the reserve status of the land parcels because it considers that they do not have any or sufficient value as reserve land when assessed in terms of the Act and that holding them under that statute is therefore no longer necessary or appropriate. Instead, the Council contends that community benefit will be better served by holding the land free of the Act’s restrictions and using it as part of programme of urban regeneration, which it says will be taking place alongside the development of the Eastern Busway.

RESERVES ACT 1977 – RESERVE REVOCATION PROCESS

19. Revocation of reserve status is governed by section 24 of the Act. Ultimately, revocation is at the discretion of the Minister of Conservation after considering a request to do so from the relevant local authority or administering body. In making that request, the relevant local authority or administering body is only required to notify the commissioner appointed by the Director-General of Conservation that it considers the reserve status should be revoked and the reasons for that view.
20. Before the Minister can consider the revocation request, the following process must be completed:
 - (a) The administering body of the reserve must publicly notify the proposed revocation of reservation, specifying the reason or reasons for the proposal (section 24(2)(b));
 - (b) Persons claiming to be affected by the proposed revocation may make objections to the proposal and set out the grounds for those objections (section 24(2)(c));
 - (c) The administering body must consider the objections, make a resolution in relation to them, and then forward copies of both the objections and its resolution thereon, to the Commissioner (section 24(2)(c)); and
 - (d) The Minister must then consider the revocation proposal, the objections made to it, and the administering bodies’ resolution in relation to them (section 24(2)(e)).
21. Section 24 of the Act is silent as to the threshold or test to be met to justify revocation of reserve status, and I was not referred to any case law directly on point. In this situation, I agree with counsel that when a revocation proposal is advanced under section 24, the relevant legal context to assess that proposal is the purpose of the Act as set out in section 3.⁴ That is, to provide a sound basis for revocation the proponent administering body ought to be able to establish that neither the land, nor the use to

⁴ PPL Legal Submissions, 27 November 2024, at [3], [15] and [16]; Council Reply Submissions, 11 December 2024, at [4.4].

which the land is being put, have the characteristics of reserve warranting continued protection in terms of the purposes in section 3 of the Act. Section 3 provides:

3 General purpose of this Act

(1) It is hereby declared that, subject to the control of the Minister, this Act shall be administered in the Department of Conservation for the purpose of—

(a) providing, for the preservation and management for the benefit and enjoyment of the public, areas of New Zealand possessing—

(i) recreational use or potential, whether active or passive; or

(ii) wildlife; or

(iii) indigenous flora or fauna; or

(iv) environmental and landscape amenity or interest; or

(v) natural, scenic, historic, cultural, archaeological, biological, geological, scientific, educational, community, or other special features or value:

(b) ensuring, as far as possible, the survival of all indigenous species of flora and fauna, both rare and commonplace, in their natural communities and habitats, and the preservation of representative samples of all classes of natural ecosystems and landscape which in the aggregate originally gave New Zealand its own recognisable character:

(c) ensuring, as far as possible, the preservation of access for the public to and along the sea coast, its bays and inlets and offshore islands, lakeshores, and riverbanks, and fostering and promoting the preservation of the natural character of the coastal environment and of the margins of lakes and rivers and the protection of them from unnecessary subdivision and development.

22. Because the land areas subject to the proposed revocation exhibit few, if any, of the biological or physical characteristics described in section 3 (i.e., they are predominantly hard paved and used for car parking and manoeuvring areas), it follows that their ongoing preservation and management as reserve must be because they possess “community ... value” for the purposes for which they have been reserved (i.e., “utility”).

THE COUNCIL’S REASONS FOR REVOCATION

23. In the Hearing Report, the current use of the land is described as follows:

22. *All the parcels classified as local purpose (utility) reserve are zoned Business-Town Centre under the Auckland Unitary Plan. The parcel classified as recreation reserve is zoned as road.*

23. *The land mainly comprises sealed car parks and accompanying accessways. As*

the location map ... shows, the land is bisected by legal road...

24. *The carpark is available to anyone needing to park their car in the area, but this will mainly be shoppers at the Plaza and people who work at the Plaza.*
25. *As Council land, the Council manages and maintains the car parking. Parking is subject to a 180-minute time limit, enforced by Auckland Transport on behalf of Council.*
26. *Apart from the car parking, an area of Lot 4 DP 55286 in the north-east of the site contains the easternmost extent of Brampton Court and a vehicular access point from Pakūranga Road. Most of Brampton Court is legal road.*
27. *Lot 4 DP 55286 and Lot 2 DP 53672 contain ramps providing access to and from an area of above-structure car parking owned by PPL.*
28. *An area of the recreation reserve, Lot 11 DP 47737, is traversed by Brampton Court and used as road, however this is not legal road.*
29. *Lot 1 DP 55585, Lot 6 DP 55286, and an area of Lot 11 DP 47737 have been built over. The overlying structures are either Plaza owned or within the footprint of legal road.*
30. *The Council's understanding is that the land has generally been used as described above since the shopping centre was opened in the 1960s.*
24. The Hearing Report also notes that the Eastern Busway and accompanying transport improvements are being constructed on areas of the land, and that the areas required permanently for the Eastern Busway will be taken under section 114 of the Public Works Act 1981 regardless of whether their reserve status is revoked or not.
25. The Hearing Report states that the reserve revocation is being pursued because, by reference to section 3 of the Act, the Council does not consider that the land has any or sufficient "reserve" value to justify continuing to hold it subject to the Act. It says that neither the land, not its use for car parking, exhibit any characteristics or attributes of reserve land warranting protection in terms of that statutory purpose, and that its proposed revocation is consistent with the Department of Conservation's Reserves Act Guide (2006) which advises that: "*Revocation can take place for any reason considered advisable and consistent with the purposes of the Reserves Act.*"
26. While the Council accepts that the land presently provides a benefit in the form of car-parking areas for staff and customers of the Pakuranga Plaza shops, and users of associated public services, it says that this does not mean it has 'local purpose reserve' or 'utility reserve' value.
27. In relation to the allotment that is classified as recreation reserve, referring to section 17(1) of the Act, the Council considers that use of that land for car parking or road is not fulfilling a recreation purpose.
28. Finally, the Hearing Report notes that even if a utility reserve developed for car

parking purposes was considered appropriate when the land was originally vested in the Council in the 1960s, "... the Council does not now believe it to be necessary, or in the public interest, to retain land as reserve, or use public funds to provide reserves whose main purpose is car parking. This is especially where the car parking mainly benefits commercial operators and their customers (the Plaza owners and their tenants). The reserve status of such land is somewhat of an historical anomaly, which would not occur today".⁵

29. In conclusion, the Hearing Report summarises the Council's position as:

"In the absence of any intrinsic Reserves Act attributes, the Council considers that it can better "promote the social, economic, environmental, and cultural well-being of [its] communities in the present and for the future", in accordance with its statutory purpose, if the land is held free of the Reserves Act restrictions".⁶

and

"In the Council's view, it is no longer necessary for the land to have the special status of reserve (if it ever was). The provision of car parking for (mainly) private benefit is not a justifiable Reserves Act purpose, and comparable land is not held subject to the Reserves Act."⁷

SUBMISSIONS IN OPPOSITION

30. The Council received 33 objections to the reserve revocation proposal from the public by the November 2023 deadline, and one submission in support of the proposal. Most of the objections were made by the owner and tenants of Pakuranga Plaza. A number of those objections were similar and pro-forma in nature. There were no objections from mana whenua.
31. A detailed summary of the objections received was included in Table 2 of the Hearing Report. Having read the submissions, I agree with the observation in the report that the most common matter raised by objectors in opposition to the proposed revocation is the assumption that it will lead to a loss of car parking for customers visiting the businesses at the Plaza, and this would adversely impact those submitters' reliance on those car parks for their business activities.
32. Two submitters elected to accept Council's invitation to present their objections to an independent commissioner hearing, namely PPL and GDL. The case for PPL was fulsome and included evidence and detailed legal submissions. GDL also presented legal submissions, generally aligning with and supporting the case in opposition presented by PPL.
33. PPL helpfully summarised four issues it considered I needed to determine in order to make my recommendation to the Council. I therefore propose to discuss these issues as put forward, summarise Council's reply to them, and then set out my findings in

⁵ Hearing Report, at [41].

⁶ Hearing Report, at [43].

⁷ Hearing report, at [61].

relation to them. As GDL's submissions raise the same arguments as PPL, I do not propose to comment separately about them.

Procedural Issue: Has the Council's process complied with the Act?

31. PPL contends, first, that the Council failed to specify the reason or reasons for the proposed revocation in its public notice and has thus breached section 24(2)(b) of the Act, which requires reasons to be given.
32. The reason for the proposed revocation set out in the public notice dated 18 October 2023 is that the reserve land the subject of the notice is "*largely used as car parking and as road*" and the Council intends "*to revoke the reserve status to enable future divestment and development of the land as part of urban regeneration proposed for Pakuranga*".⁸
33. After concerns were raised by submitters that the public notice did not contain sufficient reasons for the proposed revocation, the Council provided further information.⁹ This information eventually explicitly stated that the Council's reason for revocation was that it no longer considered the land to have reserve value under the Act and was better used for other activities.¹⁰ However, this information was only sent to persons who had already made a submission and did not form part of the public notice.
34. Second, PPL contends that the Council had a broader obligation to consult with potentially affected parties about the proposed revocation, and that it failed to do so, or do so properly, before notifying it for public submission.
35. In reply, counsel for the Council submits that my role is confined to considering the substantive matters raised in the objections and then making a recommendation on the merits of the proposal: it is not to conduct a review of the Council's processes. It says that if PPL has an issue with the Council's process to this point its remedy lies in the High Court by way of application for judicial review. Notwithstanding this submission, in response to the procedural complaints raised, the Council (in summary) says:¹¹
 - a. That the notice complied with section 24(2)(b) of the Act by providing reasons why the land did not have sufficient 'reserve' value to justify continued use for car parking, and this was clearly understood by submitters;
 - b. It was implicit in the notice that the Council did not consider the continued use of the reserve land for car parking and road was required;
 - c. The public notice requirements in the Act were met;

⁸ Hearing Report, Attachment 10.

⁹ Hearing Report, Attachments 13 and 14.

¹⁰ Hearing Report, Attachment 14, at [5].

¹¹ Council Reply Submissions, 11 December 2024, Section 7.

- d. The Act does not require 'pre-consultation' with potentially affected parties before a section 24 notice is given: the objections process is the means of engaging with the public about proposals to revoke reserve status.

Finding

36. There is some force in the Council's submission that my role is confined to considering the substantive matters raised in the objections and then making a recommendation on the merits of the proposed revocation, and that I have no power to conduct a review of the Council's processes. However, to the extent that the Council has requested me to make a recommendation as to whether it should proceed (or not) with the revocation process, my assessment of whether it has followed due process to this point is relevant. For example, there would be no benefit in recommending that the Council proceed with the revocation on the merits, if the evidence demonstrated that its process was procedurally flawed and susceptible to challenge. For this reason, I intend to address the procedural challenge rather than disregard it on a jurisdictional basis as suggested by the Council.
37. After considering all the evidence and legal submissions, I am satisfied that the revocation process to date has been lawfully progressed. Although the initial public notice could have been drafted better and explicitly refer to "reasons", I consider that the notice clearly expressed the Council's intention. That is, that it wanted to use this land for an activity other than car parking and proposed to revoke the reserve status of it to allow that outcome. This interpretation of the notice is supported by a review of the many submissions that were made against the proposal, which clearly understood that the Council wished to revoke the reserve status of the land and discontinue its use for car parking so that it could use the land for other purposes.
38. With respect to PPL's contention that the Council owed a broader public law duty to consult with potentially affected parties prior to advancing the public notification and submission process, I agree with the submission for the Council. Section 24 of the Act is a code which does not require 'pre-consultation' (as it was referred to). While it does not preclude an administering body from undertaking such an exercise, it does not require it. There is therefore no basis to criticise Council's process to this point for failing to consult prior to giving public notice of the proposed revocation.
39. Based on these findings, I see no grounds to recommend to the Council that it conduct the pre-Ministerial revocation process over again, but in a different way.

Substantive Issue 1: is the original purpose of the utility reserve for car parking relevant?

40. PPL submits that the original purpose of the reserve classification as "utility reserve" for car parking is relevant to the issue of whether the land still holds value as reserve and thus whether it is appropriate to revoke its status. It says that because the utility reserve classification was specifically for the purpose of car parking, and the land is still used for that purpose, it still holds value as reserve and its status as such should not be revoked. After referring to the original classification of the reserves as "utility reserve" under section 12(1) of the Reserves and Domains Act 1953, and its evolution

into a “local purpose (utility) reserve” under section 23 of the Act, via section 16(11) of that Act, PPL argues that nothing has changed to alter the original purpose of the reserve for car parking.

41. In response, the Council says that PPL’s argument is premised on a false assumption, namely that the original classification of the land was for “car parking”. Rather, it notes that apart from the small area of recreation reserve, all vestings were as “utility reserve” and that was the purpose shown on the plans that were deposited. As such, that established the reserve purpose in terms of section 35(4) of the Counties Amendment Act 1961 and section 352(3) of the Municipal Corporations Act 1954. For the purposes of section 12 of the 1953 Act “utility reserve” was therefore the purpose for which the land was required to be held and administered and the fact that it was subsequently developed and used for public car parking, a use that was within the classified purpose of the land, is not relevant to the issue of whether the reserve status should be revoked. In the Council’s submission, the documents referred to by PPL in support of its position are simply part of the factual background, and do not, and cannot, affect the content of the subdivision consent or the approved plans that were deposited, which make no reference to “car parking”.
42. In response to PPL’s argument, the Council further submits that there is no power to look behind the reserve classification which was in fact given. There is nothing in either the Reserves and Domains Act 1953 or the Act for identifying a “specific utility” for which the land was vested as reserve. To the contrary, it says, adding a car parking “gloss” to the utility purpose of these parcels is precluded by the statutory provisions under which the land vested, which provide that land vesting as reserve does so free of encumbrances. It follows, in the Council’s submission, that the land must also vest free of any qualifications to the express reserve purpose.
43. Turning to the 1977 Act, the Council notes that the parts of the land vested as “utility reserve” became “local purpose (utility) reserve” on the enactment of the Act, by reason of section 16(11)(b)(iv) of that Act and the area of recreation reserve is deemed to be classified for recreation purposes by section 16(11)(b)(i) of that Act. In respect of the areas of local purpose reserve, section 23 of the Act provides that *“the appropriate provisions of this Act shall have effect, in relation to reserves classified as local purpose reserves, for the purpose of providing and retaining areas for such local purpose or purposes as are specified in any classification of the reserve”*. Based on this language, and relying on case law,¹² the Council observes that the “specific purpose” being referred to here is “utility”, not “car parking”, and that PPL’s argument cannot therefore be sustained. Any change of the reserve classification from “utility” to “car parking” would require a change in classification under section 24A of the Act, and that has not occurred.
44. In its rejoinder on this response, PPL argues that the Council’s reading of predecessor legislation is unduly narrow and that a broader contextual approach ought to be taken. On that approach, the use of the reserve land for public car parking is relevant to the issue of whether the reserve status should be revoked.

¹² *Friends of Turitea Reserve Society Inc v Palmerston North City Council* [2008] 2 NZLR 661 at [4].

Findings

45. In my assessment this issue is more about the weight to be given to the historic factual matrix, rather than its relevance. The historical factual matrix is undoubtedly relevant as it explains how the parcels in question are “utility” and “recreation” reserves that are used for car parking and vehicle maneuvering. However, in the context of the section 24 revocation process, I find that the car parking use can be given little weight. This is because, for the purposes of the relevant statutes, the classification and purpose of the parcels is as “utility” and “recreation”; it is not for “car parking”. Its use for car parking has not and cannot operate, effectively, to reclassify the parcels to a different purpose. While the historical circumstances may have given rise to private law rights (about which I express no view), they are of limited weight in determining whether the parcel ought to be retained with a reserve status under the Act.

Substantive Issue 2: Do the reserves hold ‘reserve value’ under the Act?

46. Under this issue, PPL contends that “car parking” is a “reserve value” because it is a “functional activity” that falls within the concept of “community...features or value[s]” in section 3 of the Act and within “local purpose” in section 23, on the same basis as described in the case of *Friends of Turitea*.¹³ It says that the reserve has served a local community purpose for 59 years and continues to do so. This is a value, it submits, that was integral to the purpose of its vesting and a value that remains relevant under the Act.
47. In response, the Council says that the purpose of the Act “*has very much a conservation and public recreation emphasis*”¹⁴ and that there is nothing special about the land per se that provides such a community or other special feature or value as to warrant continued reservation under the Act. Similarly, although the historical (and continued) use of the land as car parking provides various benefits to the public, bearing in mind the purpose of the Act, that is not sufficient to warrant its continued protection as reserve.
48. In its rejoinder, PPL submits that the Councils reliance on a ‘broad purpose’ interpretation of the Act as being for conservation and public recreation purposes is misplaced and that the Act identifies a range of qualities that areas of New Zealand might possess. As use of the reserve land for car parking has community benefit, it is therefore land that falls within the section 3 purpose of the Act.

Finding

49. I find PPL’s argument as to the “reserve value” of the land relies too heavily on the use to which the land is being put (i.e., car parking). I accept that this use is longstanding, but it is not the use (or purpose) for which the land is classified under the Act. While there is no dispute that car parking is a use that can fit within the “utility” purpose of the reserve, so too could other uses. As the Council points out, the car

¹³ PPL Legal Submissions, 27 November 2024, at [57].

¹⁴ Council Reply Submissions, 11 December 2024, at [4.2].

parking use could be disestablished tomorrow¹⁵ and a different utility activity established without further public process under the Act. In my mind this means that the land in question needs to have some intrinsic community value due to its size, features and location, assessed independently of the use that has been allowed to take place on it, that warrants its continued public ownership and reserve status for it to have “reserve value”. On balance, I find that it does not.

50. Nor do I find *Friends of Turitea* to be of assistance in the current case. There, the court found, obiter, that an energy generating use could foreseeably take place lawfully in a “local purpose reserve (water supply and protection of indigenous flora and fauna)” because the activity had a broad community purpose. The case provides little guidance in determining the current “reserve value” of land on a revocation proposal under section 24 of the Act.

Substantive Issue 3: Is the revocation of the reserve status justified?

51. PPL submits that the reserve status of the land may only be revoked where the purpose for which it was vested is no longer relevant,¹⁶ or where there is a clear benefit “that trumps the current benefit”, and so in this case the mere fact of the land continuing to be used for car parking means that revocation is not appropriate.¹⁷ On the first point, it emphasises that the continued use of the land for car parking and the reliance on that use by persons using the retail and community services at the Pakuranga Plaza, mean that the car parking purpose (and thus reserve status) remain relevant. On the second point, it notes that the Council’s plans for the land post reserve revocation (if achieved) are unclear and thus incapable of being relied on as a concrete proposal with clear community benefits that outweigh the current use of the land for car parking. In the absence of a certain future, which it accepts might justify revocation, there is no appropriate basis to do so.
52. The Council submits that PPL’s approach to assessing whether a revocation is appropriate or justified is without statutory justification or support. In its view, appropriateness should be assessed solely by reference to the purposes of the Act and the continued reservation of this land for utility purposes no longer achieves, or sufficiently achieves, a relevant purpose under the Act.
53. With respect to the argument that there must be a “sufficiently concrete proposal” as to the future use of the land if the reserve status is revoked, the Council submits that there is no such statutory requirement to put up an alternative, better use of the land to justify a revocation. The focus of the Act is on the reserve value of the land.¹⁸

Finding

54. I agree with the Council’s response on this issue. PPL’s asserted ‘pre-conditions’ to justify reserve revocation find no support in the statutory scheme. If adopted as the prerequisites for a reserve revocation to be appropriate, it would be impracticable, if

¹⁵ Absent any private law actions.

¹⁶ PPL Legal Submissions, 27 November 2024, at [42(a)], [44] and [49].

¹⁷ PPL Legal Submissions, 27 November 2024, at [60].

¹⁸ Council Reply Submissions, 11 December 2024, at [6.1] and [6.2].

not virtually impossible, for any reserve status to be revoked. That outcome would defeat the purpose of the process in section 24 of the Act, as well as the wider statutory purpose of ensuring that land remains reserved only for purposes prescribed by the Act.

55. Without question, on the evidence, the land is being used for car parking, and the community, which includes PPL, GDL and their tenants, derive a benefit from that use. But that is not the test for whether the land continues to hold value as a reserve under the Act. That value is to be assessed by reference to the purpose of the Act. Having found that the land has no intrinsic value to the community, assessed independently of the use that has been allowed to take place on it, I find that there is no justification for its continued reserve status. Consequently, there is an appropriate basis for the Council to proceed with the revocation of that status under section 24 of the Act.

RECOMMENDATION

56. I have considered the proposed revocation of the reserve status of the land parcels at 2R Ti Rākau Drive, Pakuranga and the objections made to that proposal following public notice. I have conducted a hearing of the proposal and heard evidence and legal submissions from the revocation proponent (the Council) and two parties opposed to that revocation (PPL and GDL). After considering these matters and deliberating on them, I have found that:
- a. The process followed by the Council to this point has been lawful and procedurally appropriate; and
 - b. There is a sound legal and factual basis for the Council to seek to revoke the reserve status of the land in question.
57. Accordingly, I recommend that the Council proceed to seek the Minister's consideration of the reserve revocation proposal.

Dated 19 February 2025



Kitt R M Littlejohn
Independent Commissioner