



ATTACHMENTS

**Ordinary Council meeting
Separate Attachments 1**

Monday, 4 October 2021

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Deliberations on the proposal to revoke the recreation reserve status for a part of Marine Park (DC 153)

Council

Date of meeting: 16 July 2019

Objective ID: A10271556

CONFIDENTIAL APPENDIX 4

Reason for Confidentiality

To maintain legal professional privilege.

Transfer to Open

Appendix 4 is to remain in the confidential section to maintain legal professional privilege.

Executive summary

Recommendation	<p>That the Council</p> <p>(a) Approves and confirms the actions and resolutions of the Policy Committee to receive and hear all submissions, including those made late, at its meeting on 15 May 2019 (M19/28.3).</p> <p>(b) Pursuant to Section 24(1)(b) of the Reserves Act 1977, and having considered the objections to the proposal, considers that the reserve status of part of Marine Park, Keith Allen Drive, Sulphur Point, being 6,952m² more or less and being Section 1 SO Plan 530292 should be revoked, for the following reasons:</p> <p>(i) The area is not currently being utilised for any significant recreation purposes</p> <p>(ii) The revocation is unlikely to result in an appreciable loss of reserve amenity or level of service for the public</p> <p>(c) Agrees that attachment 4 is to remain in the confidential section to maintain legal professional privilege.</p>
Summary of issue	<p>Council has investigated a number of locations within the city for the potential development of the University of Waikato’s new Marine Research and Educational Facility.</p> <p>Following assessment of landholdings in Tauranga that commenced in May 2017, Council resolved to notify its intention to</p>

	<p>seek the revocation of the recreation reserve status of an area of land upon Marine Park at a Council meeting on 24 October 2018 (M18/93.5).</p> <p>Council publicly notified its intention to revoke the reserve status of part of Marine Park and subsequently heard submissions to the proposal. This report presents the key matters for consideration by the Council, acting as the administering body under the Reserves Act, and recommended next steps.</p> <p>The revocation decision is not a choice as to what is a better use of the land (as reserve, or the possible alternative use) but a decision whether the proposed loss of reserve land is appropriate and can be justified in light of the Reserves Act. However, it is relevant to understand how the land would be used if revocation proceeds, including the public interest in that use and its alignment with the recreation use of the remaining reserve.</p>
Strategic context	<p>Revocation of reserve status would be unlikely to result in an appreciable loss of reserve amenity or level of service for the public. The proposed alternative use, the Marine Research and Educational facility, would enable new educational opportunities, investment in the city and the creation of quality jobs, and, at the same time, will help maintain and enhance our precious coastal environment. It aligns with the Council's intention to enable a city of talent, innovation and economic opportunities, and to enable inward investment in strategic economic assets. This will be New Zealand's only marine research and education facility focused on resilience and restoration of our urbanised coasts, situated adjacent to the country's largest commercial port.</p>
Next steps	<p>Subject to Council approval, next steps involve:</p> <ol style="list-style-type: none"> 1. Notifying the Department of Conservation of the Council's decision that it considers the reserve status of part of Marine Park should be revoked. 2. Respond to inquiries as the Minister considers the proposed revocation and all objections received. 3. If the revocation is approved, develop a conditional long-term lease with the University which will require a separate Council resolution.

Discussion

1. This report presents recommendations for deliberations on the intention to seek the revocation of the reserve status of an area of land at Marine Park. This will enable a potential long-term lease of the land to the University of Waikato in order to establish a new Marine Research and Educational Facility (the "Facility").

Background

2. The University of Waikato currently operates a Marine Research and Educational Facility from a privately leased property at Sulphur Point. Their current Facility has outgrown this leased space limiting the University's ability to respond to the growth potential for education, research and product development partnerships. Furthermore, the leased premises do not provide long-term stability and security for the University.

3. If a new facility is established, it will need to meet the following bespoke requirements:
 - (a) Proximity to a deep sea channel connected to the harbour entrance
 - (b) Proximity to water for boat launch and water intake for the filtration tanks
 - (c) Good water quality to enable world class coastal marine research
 - (d) Approximately 5,000m² of floor space to provide for required functions (generic and specialist laboratories, research facilities, public engagement spaces, and staff accommodation) and external space (yard area and container laboratories)
 - (e) Reasonable proximity to the University's city centre campus
4. Since late 2015 Council has been working with the University of Waikato to assess possible locations where a new Facility could be sited. In May 2017, the Economic Development & Investment Committee endorsed an investigation of the feasibility and implications of the use of Council owned land as a potential location for the Facility (M17/38.4).
5. Report DC164 to the 17 July 2017 Economic Development & Investment Committee analysed 16 separate Council owned properties for suitability. A confidential attachment to DC164 also included a number of other (non-Council owned) sites the University of Waikato had considered. The Committee endorsed the shortlisting of Council-owned sites at Marine Park and northern Sulphur Point as potential locations for the Facility (M17/62.5).
6. In addition to the sites noted above, 65 Cross Road (known as the boat park) had also been considered during the site assessment phase. This site was deemed not suitable due to the proximity to the Port railway line / fumigation area; constraints due to the shape of the site; lack of turnaround space for container pick up and drop off and further distance from, and no direct access to the water.
7. Report DC335 to the 18 December 2017 Economic Development & Investment Committee presented additional analysis of Council owned land at Marine Park and northern Sulphur Point, and staff were subsequently directed to undertake public consultation on the northern Sulphur Point location (M17/119.3).
8. Report DC96 to the 25 June 2018 Economic Development & Investment Committee presented the findings of public consultation on the potential use of northern Sulphur Point location for the Facility. While the Committee agreed in principle to utilise this location, the resolutions from this Committee were referred to the full Council meeting on 19 July 2018 which resulted in northern Sulphur Point being removed from further consideration. Staff were directed to investigate Marine Park for the purposes of the potential development in July 2018 (M18/61.5).
9. Report DC319 to the 16 October 2018 Council meeting presented a possible location on Marine Park that could be suitable for the Facility, as well as the possible processes that may be employed when considering disposal or lease of reserve land under the Reserves Act 1977 (reserve exchange, reserve reclassification, reserve revocation). Council approved in principle its intention to seek a revocation and also directed staff to discuss the provision of replacement land with the Bay of Plenty Regional Council (M18/90.5).
10. Staff held discussions with the Bay of Plenty Regional Council to ascertain whether they hold any land that may be suitable for a reserve exchange. The Regional Council has advised that they don't generally hold land that would be suitable for an exchange – one parcel near State Highway 29 was considered however this property is likely to be impacted in the future by NZTA's Tauriko Network Plans. More importantly, a reserve exchange requires land of suitable amenity value to be exchanged, which this property does not possess. Accordingly, no further action has been taken towards seeking replacement land from the Bay of Plenty Regional Council.

11. Report DC340 to the 24 October 2018 Council meeting sought a formal resolution to notify Council's intention to seek the revocation of the recreation reserve status of part of Marine Park for the development of the Facility. Council supported the recommendation, and directed staff to consult with the Department of Conservation, notify the public, and commence formal public consultation (M18/93.5).
12. Report DC116 to the 15 May 2019 Policy Committee contained copies of all submissions received through the consultation. The Policy Committee resolved to accept all submissions (including those made late) and to hear from those submitters who wished to speak to their submission (M19/28.3).

Marine Park

13. Marine Park is a recreation reserve pursuant to the Reserves Act 1977 ("Reserves Act"), located at Sulphur Point, and is 11.2ha in area. The land is zoned as Active Open Space under the City Plan, and falls within the Iwi rohe of Ngati Ranginui, Ngati Pukenga, and Ngai Te Rangi, and the Hapu rohe of Ngai Tamarawaho, Ngati Tapu and Ngai Tukairangi.
14. Marine Park is reclaimed land that was created by the Bay of Plenty Harbour Board using material dredged from the harbour. It was vested in Tauranga City Council as recreation reserve in 1986, with titles issued in the name of the Council in 1987.
15. The southern half of the recreation reserve is highly utilised by the public for recreational boating with 6 lane and 4 lane boat ramps and an associated area for car and trailer parking. This includes an overflow car park where a BMX track was formerly located. The Tauranga Fish and Dive Club is also located on the southern half of the reserve.
16. The northern half of the reserve is predominately open space (grassed) with large trees around the border. The northern half also includes a Maori navigation circle and is utilised for passive recreation and some events.

The Location of the Proposed Revocation

17. The location of the Marine Park recreation reserve is shown in yellow, and the part of Marine Park where reserve status is proposed to be revoked ("the site") as consulted on is indicated in blue, within Figure 1 below.



Figure 1 – Location of the Proposed Revocation at Marine Park

18. This location in blue was selected as it would maintain as reserve a large area of open space to the north including the Maori navigation circle. It also accommodates the future formalisation of the overflow grass car park (former location of the BMX track) and development of additional boat ramps to the south. These planned developments have been included in the Tauranga Reserve Management Plan ('TRMP') which has recently been adopted – refer to **Appendix 1**.
19. Access by the public to the water's edge would be maintained by the proposed revocation as the area does not extend up to the water's edge. This will maintain a pedestrian link along the coastal edge between the northern and southern portions of the reserve of about 20 metres in width.
20. The area of proposed revocation comprises 6,952m² in area, which is identified on draft survey plan SO 530292 - refer to **Appendix 2**.

Statutory Context

21. The Council can make a decision under s24(1)(b) of the Reserves Act if "*it considers, for any reason, to be stated in the resolution*" that the reservation as a reserve should be revoked. The Reserves Act does not contain any other statutory test for a decision under s 24(1)(b), and nor is there any list of relevant considerations or matters which may or must be taken into account. However, the decision must be made in the context of purpose and principles of the Reserves Act, and the purpose of recreation reserves. Sections 3 and 17 are contained within **Appendix 3**. Legal Advice on this matter has been obtained and is included in **Confidential Appendix 4**.
22. The focus should be on the implications of the loss, as compared to retention, of reserve land. The possible or proposed alternative use of the land (if reserve status is revoked) is not directly relevant to the revocation decision. As noted, the revocation decision is not a choice as to what is a better use of the land (as reserve, or the possible alternative use) but a decision whether the proposed loss of reserve land is appropriate and can be justified in light of the Reserves Act.
23. That said, it is important as part of the wider context to appreciate how the land would be used if revocation proceeds, including the public interest in that use and its alignment with the recreation use of the remaining reserve. That is why this report explains the proposed Facility in some detail.

Consultation Feedback

24. The consultation took place between 12 November 2018 – 14 December 2018 with two open day sessions during this period at the Tauranga Fish and Dive Club adjacent to the proposed site.
25. In total 494 submissions were received during the consultation period. A further 4 submissions were received after the close of the consultation period. All submissions were accepted by resolution M19/28.3.
26. In response to the question "*Would you support the revocation of the reserve status of 6,952m² of land as part of Marine Park (total 112,369m²) for the purpose of the long-term lease to the University of Waikato to enable the development of a new marine research and education facility?*" 58% responded "No" and 42% responded "Yes".
27. Many of the submissions included justification for the respondent's selection. By analysing the responses, common themes and issues could be extracted. These have been tabulated below along with the percentage of responses within which they were highlighted.

Table 1 – Common themes from “Yes” responses

Theme	Percentage of Yes responses that contained the theme (no. of submissions)
Importance of tertiary education and/or marine research	40% (85)
Importance of wider benefit to the growth of Tauranga	37% (78)
Good use of under-utilised space, adequate reserve space to remain	15% (31)

Table 2 – Common themes from “No” responses

Theme	Percentage of No responses that contained the theme (no. of submissions)
Against the loss of Open Space	62% (178)
Find another location	34% (98)
Concerns regarding commercial operation on public land, space only being available to a few	28% (80)
More trailer boat parking and boat ramps required, future proof for growing boating community	27% (77)
Concerns regarding loss of current overflow parking area	8% (24)
More analysis of impact, location options, design and proposal information required.	8% (24)

Key Themes

28. The main concerns raised through public consultation and engagement with stakeholders are outlined below.

Parking and boat ramps for recreational boaters

29. Concerns were raised throughout the consultation regarding the need for more trailer boat parking and boat ramps at Sulphur Point. Feedback indicated that supply does not meet the demand for these facilities on a busy day, and the proposed location of the facility would limit options for expansion in the future. Marine Park is a popular boat launching location as it provides deep water access not affected by tidal movements.
30. An observational study of the Marine Park was conducted, including use of the carparks, between 25 January and 3 February 2019. The methodology selected was to undertake a count of all vehicles using the area and recreational use of the grassed area (between the Fish and Dive Club and the northern boundary of the reserve) during the survey period. This time of year was selected as it was during summer; school holidays; and contained a statutory holiday and two weekends. All of these factors imply that boat use and therefore demand on boat trailer parking can be expected to be higher than normal.

Counts were taken at four separate times on each of the eight days, between the hours of 6am and 7pm.

31. The detailed results are contained in **Appendix 5**. In summary:

- The boat ramps are generally busier on weekends and public holidays than during the week.
- During the observation period demand for vehicle / boat parking did not exceed capacity at Marine Park. During the busiest period observed, demand for vehicle / boat parking reached 90% of the baseline capacity within zone 1 – this zone occupies ~25% of the total land area of Marine Park.
- Boat trailer parking is limited at Marine Park by the informal nature of the parking, with most of it being unmarked.
- There appeared to be little active recreational use of the grassed area between the Fish and Dive Club and the northern boundary of the reserve. People that were counted were generally passing through, walking dogs, fishing, socialising, or gaining access to the beach. During the busiest period observed, 11 people were seen using the area.

32. Based on the observational study, the existing facilities appear to meet current demand. However, it is acknowledged that the observational study is a snapshot in time and may not have captured other potential users who have gone elsewhere to avoid the busyness of the Marine Park facilities.

33. Staff are aware that a sub-regional assessment of Tauranga Harbour access points (including TCC and WBoPDC) is currently being undertaken to better understand what facilities are available, who uses these facilities and what future demand is likely to be from residents and visitors. At this time, the outcomes of this assessment have not yet been confirmed.

34. It is reasonable to assume that demand for boat launching facilities, particularly those with deep water access not affected by tidal movements, are unlikely to decrease over time – particularly given the population growth of the City. At this time, Council has signalled an intention to create another boat ramp and formalise the grassed overflow parking area (former location of the BMX track) via the TRMP. The proposed revocation area has been located north of, and will not interfere with these planned works.

35. Currently there are no other proposals to develop additional parking or launching facilities at Marine Park, however this could change over time. Any such change would need to be prepared in consultation with the community as set out in section 2.4.1 of the TRMP.

36. It is noted that there is a large area of open space to the north of the proposed revocation area where additional boat launching / parking facilities could potentially be established in the future. This area measures approximately 17,000m² excluding the Maori star compass (navigation circle) and northern most (and smallest) carpark – if these are included the area measures approximately 29,000m². When considering the size of the area occupied by the sealed car park and 4 lane boat ramp at the southern end of Marine park (~8,500m²), and the 6 lane boat ramp and sealed car park area next to the Fish and Dive Club (~9,500m²), the area of open space north of the proposed revocation area would clearly be capable of accommodating additional parking and / or boat ramps if so desired in the future. These areas are illustrated in Figure 2.



Figure 2 – Aerial view of Marine Park

37. There is also potential for discussions with the University to explore options for sharing any potential car parks if provided for as part of the development. Peak use of the

University carpark is unlikely to coincide with peak use of the boat facilities, with the University use being predominantly academic year and working hours, and boat facility peak use being weekends and holiday periods.

Loss of Open Space

38. Concerns were raised throughout the consultation regarding the loss of the Open Space area at Marine Park. Submitters wanted to see the land remain available for recreation related activities, be available for events, disagreed with the loss of Open Space in general, or a combination of these.
39. The identified area for the proposed revocation is 6,952m². The remainder of the reserve area (including the formalised car parking at southern end) is 105,417m². Given the population growth of the City, demand for areas of open space is unlikely to decrease over time. Having said this, the observational study noted that recreational use of the grassed area at Marine Park was low, which reinforces that the principal purpose of Marine Park is for recreational marine activities and water access.
40. An assessment of the impacts that the revocation could have on the provision of open space within Tauranga and the values of Marine Park has been prepared by Council's Recreation and Reserves Planner and is attached as **Appendix 6**. The revocation would reduce the quantity of public open space but will not affect the ability of Marine Park to function as (nor decrease the accessibility to) Local Area Open Space and Suburban Area Open Space, as defined in Council's Open Space Level of Service Policy.
41. Our City has a number of passive and active open spaces that offer different opportunities for use by residents and visitors. In the context of the wider city reserve network, it is not considered that the revocation would result in an appreciable loss of open space.

Commercial operation on public land

42. Some feedback through the consultation period indicated some concern about a public space being made available for commercial activities, which would limit the use of this space to only a few. While the revocation would result in restrictions to public access, the University is not commercial operation driven to maximise profits. Rather, it is a Crown entity with responsibilities under the Public Finance Act. The University is required by the Government to operate within a 3-5% surplus and not a profit.

Find another location

43. Many submitters indicated that while they did not support the revocation of part of Marine Park, other locations should be considered for the Facility. These included the original northern Sulphur Point marina location, expansion of the existing coastal marine research station, or finding another Tauranga location outside Sulphur Point.
44. As noted earlier in this report TCC staff undertook a review of Council owned property, and commercial options, and only the northern Sulphur Point and Marine Park locations were found to meet all the requirements for the Facility. There do not appear to be any other suitable locations in Tauranga.

Proposed Marina Expansion

45. The Marina Society tabled an aerial photograph at the hearing of submissions which identified a proposed extension to the Marina within Marine Park. While this expansion has been introduced to Elected Members, Council has not made any formal decisions on whether it would support such a development within Marine Park. The marina expansion would impact approximately 40,000m² of Marine Park and it cannot be assumed that any future extension would be a "public recreation" use. As such, the Marina expansion may also need the recreation reserve status to be revoked.
46. Regardless of whether a revocation is required for the Marina expansion, such a proposal would require significant public consultation and is likely to face consenting challenges under the Resource Management Act 1991. It would also appear to be inconsistent with Policy 13 of the Tauranga Moana Iwi Management Plan 2016-2026 which seeks to restrict further marina development in Tauranga Moana. The revocation currently being

considered would reduce the area potentially available for an extension to the Marina, however it does not appear to prevent an expansion of the Marina from occurring.

Iwi / hapu feedback

47. Council has obtained formal feedback regarding the proposed revocation and the potential development from Ngai Te Rangi, Ngai Tamarawaho and Ngati Pukenga. Ngai Te Rangi supports the proposed reserve revocation, while Ngai Tamarawaho and Ngati Pukenga are both opposed. The formal responses can be found at **Appendix 7** (for Ngai Te Rangi), **Appendix 8** (for Ngai Tamarawaho) and **Appendix 9** (for Ngati Pukenga).
48. Staff have invited comment from other iwi and hapu on several occasions including offering to facilitate a hui - a verbal update will be provided to the Council if any further feedback is received.

Need for Revocation

49. One submitter expressed the view that Council could simply offer a lease to the University without undertaking a revocation of the reserve status. Section 54 of the Reserves Act sets out the leasing powers in respect of recreation reserves which are not available for use in this instance as the proposed use would not be within the scope of "public recreation".

Little Blue Penguin Habitat

50. The presence of little blue penguin habitats within or near the area for revocation was raised by a submitter. Council staff have contacted the regional representative of Birds New Zealand – which is a voluntary and charitable society committed to the study of birds and their habitat use within New Zealand. Birds New Zealand doesn't hold any records of Little Penguins being in, or using this area. It could be that sightings have been unrecorded. Professor Chris Battershill from the University of Waikato previously lived near and regularly walked through Marine Park (for a number of years) and has also advised that he hasn't seen any little blue penguins along this reach of the harbour's estuarine system.
51. As the revocation area will be set back from the coastal edge by approximately 20 metres it is considered that even if there were a little blue penguin habitat the impact would be minimal.

Dog Training / Events

52. A few submitters commented that the grassed area of Marine Park is utilised for dog training / agility events, with two weekend events typically undertaken during winter months. Staff observed the most recent event held on the weekend of 25/26 May which utilised approximately one-third of the grassed area available (not including vehicle parking) at Marine Park. Based on the size of the event observed, there would appear to be sufficient room available between the revocation area and the navigation circle for future events to occur.

Summary

53. All of the areas and sites within Tauranga that have been investigated for this development have their own advantages and disadvantages. There is no one site that meets all Council and University requirements. This includes the area of Marine Park that has been consulted upon.
54. This paper outlines two options to ensure a final decision is reached, and provide clarity for these groups about the proposed Facility and its location.
55. Through the public consultation regarding the revocation of part of Marine Park, responses were 58% in opposition and 42% in support.
56. While not surplus to requirements, the area proposed for reserve revocation is not currently being utilised for any significant recreation purposes, and is unlikely to result in an appreciable loss of reserve amenity or level of service for the public.

57. The staff recommendation is to progress with the notification to the Department of Conservation of Council’s intention to seek revocation of reserve status from this space.

58. An alternative is to return to the previously considered option at the Marina / northern Sulphur Point which is still viable and could be progressed.

Options

Option 1: Agree to notify the Department of Conservation of the proposed revocation of the reserve status of part of Marine Park, for the purpose of a long-term lease to the University of Waikato to enable the development of a new marine research and education facility.

59. This option would direct staff to continue the revocation process as per the Reserves Act 1977. A summary of this process is outlined in **Appendix 10**.

Advantages	Disadvantages
<ul style="list-style-type: none"> • The site is suitably sized and located to meet the requirements for the anticipated University development. • The significant economic opportunity and wider social and environmental benefit to Tauranga City and the region will continue to be pursued. • Reserve revocation would provide the Council flexibility when long-term leasing to the University. • Provides clarity for the University, TCC and the community about the proposed Facility and its location. 	<ul style="list-style-type: none"> • Loss of recreation reserve and open space. However, no appreciable loss of reserve amenity or level of service for the public overall.

Budget – Capex: N/A

Budget – Opex: No new budget sought

Key risks: There is a risk that the Minister of Conservation will not approve the proposal to revoke the reserve status of the site.

Recommended? Yes

Option 2: Not proceed with the revocation but instead agree in principle to support a conditional long-term lease to be developed with the University of Waikato for the Open Space area at the Marina/northern Sulphur Point.

60. This option was removed from further consideration by Council in June 2018. It is presented again as an alternate location to Marine Park.

61. This option progresses with the Open Space area of land at the Marina / northern Sulphur Point, which is identified in **Appendix 11**. It would require Council to discuss and enter into a potential long-term lease conditions with the University, which would be treated as disposal of Council owned land.

62. The long-term lease would be conditional upon any consenting requirements, which will include the requirement for, and may not be limited to, an assessment of the traffic impact and trip generation volume, and assessment of the infrastructure capacity.

Advantages	Disadvantages
<ul style="list-style-type: none"> • No loss of reserve land at Marine Park • The alternative site is suitably sized and located to meet the requirements for the anticipated University development. • The site is held as freehold land by Council and does not have any restrictions relating to reserves. • Shorter timeframe within which certainty can be given to the University and the community. 	<ul style="list-style-type: none"> • If the alternative proceeds, loss of Open Space and its utilisation by Marina users and groups.

Budget – Capex: N/A

Budget – Opex: No new budget sought

Key risks: Given the time that has elapsed since the original consultation, further consultation may be required. There are also concerns that have been raised throughout the original consultation which are unlikely to be addressed with certainty until the consenting stage. These factors could delay the project. The potential for a legal challenge of the grant of a lease was also raised through the original consultation, although the basis of such a challenge is unclear, and staff have not been able to find any information to support the arguments raised by opponents that alleged the use of this land was to be restricted to marina- or boating-related activities.

Recommended? Yes, if Option 1 is not pursued.

63. This site remains a feasible location, after the Marine Park location. During the consultation undertaken between 12 February 2018 – 9 March 2018 in respect of the Marina / northern Sulphur Point location, concerns were raised regarding the impact upon traffic, congestion and parking at the Marina. Further assessment of these matters would allow Council and concerned parties to fully understand the impact of developing this area of Open Space. These matters would also be assessed / considered at the consenting stage. The University is aware that there may be a requirement for them to accommodate car parks upon the proposed site.

Significance and engagement

64. Under the [Significance and Engagement Policy 2014](#), this proposal is of high significance as it involves the potential revocation of reserve status from an area of recreation reserve. Recreation reserves are deemed as strategic assets and have wide public interest. For this reason, and due to the Reserves Act requirements, Council undertook the public notification and community engagement that is summarised above at paragraph 24.

Next Steps

1. Subject to Council approval, next steps involve staff notifying the Department of Conservation of its intention to revoke the recreation reserve status of part of Marine Park.
2. Should Council approve Option 2, next steps involve determining whether further consultation is required, and then developing a conditional long-term lease with the University. The formal approval of the long-term lease would require a separate Council resolution.

