

**IN THE HIGH COURT OF NEW ZEALAND  
HAMILTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
KIRIKIROA ROHE**

**CIV-2023-419-158  
[2023] NZHC 2198**

UNDER THE                      Judicial Review Procedure Act 2016  
  
IN THE MATTER OF            The Local Government Act 2002  
  
BETWEEN                      PRESERVE CORY PARK DOMAIN  
   INCORPORATED  
   Applicant  
  
AND                              THAMES-COROMANDEL DISTRICT  
   COUNCIL  
   Respondent

Hearing:                      18 July 2023

Appearances:                P M S McNamara and Z W Fargher for the Applicant  
   S L Robertson KC and A J Hunt for the Respondent

Judgment:                    16 August 2023

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**JUDGMENT OF POWELL J**

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This judgment was delivered by me on 16 August 2023 at 4.30 pm pursuant to  
R 11.5 of the High Court Rules

.....  
*Registrar/Deputy Registrar*

Solicitors:  
Simpson Grierson, Auckland  
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## **Introduction**

[1] For some 30 years there has been agreement that Tairua needs a skatepark. Despite this apparent consensus it is not yet been built. The appropriate site remains a matter of considerable contention, and in particular whether it should be located within the Cory Park Recreation Reserve (“Cory Park”). Cory Park is a reserve in Tairua, owned and administered by the Thames—Coromandel District Council (“the Council”). It is one of two reserves, the other being the Cory Park Local Purpose (Emergency Services and Community Buildings) Reserve (“the Cory Park Local Purpose Reserve”) that together make up an area known as the Cory Park Domain.

[2] An initial application for a resource consent to put the skatepark in Cory Park was declined by an independent Commissioner in 2002. The applicant in the present proceedings, Preserve Cory Park Domain Incorporated (“the Society”) was incorporated in 2007 for the express purpose of opposing a skatepark facility in Cory Park. After successfully opposing a further application to place a skatepark in Cory Park in 2010–11 the Society was dissolved in 2014.

[3] The dissolution was premature. Commencing in 2016 the District Plan has been changed to the effect that a resource consent is no longer required for a skatepark at Cory Park and this became a precursor for renewed interest in the site as a possible location for the Tairua skatepark.

[4] The Society was accordingly reincorporated in October 2020, in time to oppose a new initiative by the Council, through the local Community Board, to locate a skatepark at Cory Park. This application ended after the Council received advice from its solicitors in April 2021 that “there are serious flaws in the process undertaken by the [Community Board] in reaching its final decision to proceed with the skatepark on Cory Park and in its siting on the Park, both in terms of procedural requirements and the information made available to it”. As a result, in June 2021 the Community Board revoked its decision to proceed with the skatepark at Cory Park.

[5] As a result of these earlier missteps, the Council took a different approach in the process which is challenged in these proceedings. This latest search for an appropriate site for a Tairua skatepark began in August 2021. This time much of the

process to find a suitable location was outsourced to a consultant, Veros Property Service Limited (“Veros”). Following its appointment, Veros developed a structured approach to enable the identification and selection of a suitable site, and this was adopted by the Council. The approach identified by Veros was subsequently actioned and has resulted in Cory Park once more being selected as the site for the Tairua skatepark.

[6] The Society remains implacably opposed to a skatepark being located on Cory Park. Its position is that it is not opposed to a skatepark in Tairua, but that Cory Park is unsuitable and that the Pepe Reserve (Harbourside), a Local Purposes (Esplanade) Reserve (“Pepe Reserve”), would be a better location. The Society has accordingly brought the present proceedings which call into question three of the decisions made by the Council in the course of once more selecting Cory Park over Pepe Reserve as the site for the Tairua skatepark. There is some urgency to the proceedings as construction of the skatepark is now imminent, although following the hearing the Council confirmed that construction would not commence before this judgment was issued.

[7] This judgment considers the statutory framework for the decisions made by the Council before setting out the detail of the site selection process adopted. It will then consider each of the three decisions made by the Council in order to determine whether the skatepark can proceed.

### **Legal framework**

[8] There is no dispute that the statutory framework for the challenged decisions is as set out in Part 6, Subpart 1 of the Local Government Act 2002 (“the LGA”) entitled “Planning and decision—making”.

[9] Within this subpart, s 76 relevantly provides:

#### **76 Decision-making**

- (1) Every decision made by a local authority must be made in accordance with such of the provisions of sections 77, 78, 80, 81, and 82 as are applicable.

- (2) Subsection (1) is subject, in relation to compliance with sections 77 and 78, to the judgments made by the local authority under section 79.
- (3) A local authority—
  - (a) must ensure that, subject to subsection (2), its decision—making processes promote compliance with subsection (1); and
  - (b) in the case of a significant decision, must ensure, before the decision is made, that subsection (1) has been appropriately observed.

[10] Sections 77 and 78 in turn provide:

**77 Requirements in relation to decisions**

- (1) A local authority must, in the course of the decision—making process,—
  - (a) seek to identify all reasonably practicable options for the achievement of the objective of a decision; and
  - (b) assess the options in terms of their advantages and disadvantages; and
  - (c) if any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.
- (2) This section is subject to section 79.

**78 Community views in relation to decisions**

- (1) A local authority must, in the course of its decision—making process in relation to a matter, give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter.  
...
- (3) A local authority is not required by this section alone to undertake any consultation process or procedure.
- (4) This section is subject to section 79.

[11] The requirements specified in ss 77 and 78 are not determinative. Instead local authorities are given a qualified discretion such that compliance is proportional to the significance of the decision being made. In particular s 79(1) provides:

## **79 Compliance with procedures in relation to decisions**

- (1) It is the responsibility of a local authority to make, in its discretion, judgments—
  - (a) about how to achieve compliance with sections 77 and 78 that is largely in proportion to the significance of the matters affected by the decision as determined in accordance with the policy under section 76AA; and
  - (b) about, in particular,—
    - (i) the extent to which different options are to be identified and assessed; and
    - (ii) the degree to which benefits and costs are to be quantified; and
    - (iii) the extent and detail of the information to be considered; and
    - (iv) the extent and nature of any written record to be kept of the manner in which it has complied with those sections.

...

[12] Relevant to where, as in this case, consultation was undertaken, s 82(3) identifies the following principles of consultation to be applied “in such a manner as the local authority considers, in its discretion, to be appropriate in any particular instance”:

## **82 Principles of consultation**

- (1) Consultation that a local authority undertakes in relation to any decision or other matter must be undertaken, subject to subsections (3) to (5), in accordance with the following principles:
  - (a) that persons who will or may be affected by, or have an interest in, the decision or matter should be provided by the local authority with reasonable access to relevant information in a manner and format that is appropriate to the preferences and needs of those persons:
  - (b) that persons who will or may be affected by, or have an interest in, the decision or matter should be encouraged by the local authority to present their views to the local authority:
  - (c) that persons who are invited or encouraged to present their views to the local authority should be given clear information by the local authority concerning the purpose of the

consultation and the scope of the decisions to be taken following the consideration of views presented:

- (d) that persons who wish to have their views on the decision or matter considered by the local authority should be provided by the local authority with a reasonable opportunity to present those views to the local authority in a manner and format that is appropriate to the preferences and needs of those persons:
- (e) that the views presented to the local authority should be received by the local authority with an open mind and should be given by the local authority, in making a decision, due consideration:

...

[13] In this case the obligations on consultation were prescriptive as the Council followed the special consultative procedure set out in s 83 of the LGA. This section sets out a procedure by which a Council prepares and adopts a statement of proposal and which, together with the information on which the proposal is based or a summary of that information, must then be made publicly available. Further, a description of how the Council “will provide persons interested in the proposal with an opportunity to present their views” and a statement of the period “within which views on the proposal may be provided... being not less than one month from the date the statement is issued” is also to be made available to the public. The Council is required to make the statement of proposal “as widely available as is reasonably practical as a basis for consultation” and is then required to “provide an opportunity for persons to present their views... in a manner that enables spoken... interaction” between a submitter and the Council. A person who wishes to present is to be “informed about how and when [the submitter] may take up that opportunity”.

### **The decision-making process up to the first challenged decision**

[14] The decision-making framework proposed by Veros and adopted by the Council in August 2021 was not challenged by the Society. It consisted of six stages subsequently summarised as follows:

1. The first community survey is open to receive stakeholder input into:
  - a. Overall support for a skatepark in Tairua
  - b. Shortlist site selection

- c. Multi criteria analysis criteria
- d. Suitability of current elements to provide a minimal site size requirement for the skatepark.

**Timing: 19 October to 19 November 2021**

2. The second community survey is open to receive formal stakeholder responses on site preference to report on the community preference criteria

**Timing: 22 November to 22 December 2021**

3. Council adopts a Statement of Proposal (SOP). This outlines the preferred option, why it is preferred and how Council reached this decision. The SOP is released for public submissions.

**Timing: 8 February 2022**

4. The community can make submissions in response to the SOP. Any submitter can be heard in support of their submission.

**Timing: 14 February to 8 April 2022**

5. Submitters who choose to be heard at hearings in support of their submission will 'present' to Council.

**Timing: 28 and 29 April 2022**

6. Council considers submissions and what they have heard at hearings alongside the technical reports and evidence and makes a final decision.

**Timing: May 24 2022**

[15] Stage 1, the first community survey, canvassed support for the construction of a skatepark in Tairua generally and consulted with the community on the types of criteria relevant to determining a location for the skatepark. The survey documents explained:

We will be using a multi-criteria matrix to support decision-making on a location for the Tairua skatepark. This approach allows everyone to see how different factors contribute to identifying relative scorings of a site and supporting a decision on a preferred site. We are asking for feedback on the draft criteria to make sure we are testing the right factors.

[16] The survey documents went on to explain the proposed criteria and the feedback sought in the following terms:



## **Mana Whenua and Community Views and Considerations**

*What is the level of community support for each location and why?*

*What is the level of mana whenua support for each location and why?*

Sites with higher support levels will score higher.

### **Location**

Distance from neighbours.

*What do you think is a reasonable distance for the skatepark to be from surrounding neighbours? Other projects across New Zealand have used a setback of 40m. This is also linked to noise and other factors.*

The further from residences the higher the score.

### **Distance from Town Centre**

*How far do you think the skatepark should be from the town or neighbourhood centre?*

The closer to town or a neighbourhood centre the higher the score.

### **Safety: using the Crime Prevention Through Environmental Design CPTED qualities**

...

*Access*

*Surveillance*

*Layout*

*Activity Mix*

The better a site performs against each of these criteria the higher the score.

### **Noise**

*Noise coming from the skatepark will meet the limits of the District Plan in relation to surrounding activities.*

### **Cost and Timing Impacts**

*There are a number of things that add time or cost to a project, the assessment will consider the following factors:*

- **Land availability:** Land that Council owns, or land secured with high certainty of tenure and low or no cost to project, will score higher than land it does not due to the considerable costs related to purchasing land in Tairua.

- **District Plan compliance:** The sites that are more compliant with District Plan requirements will score higher.
- **Reserves Act 1977 compliance:** The sites that are more compliant with the Reserves Act and Management Plans will score higher.
- **Archaeology, flooding, earthworks and other site-specific requirements that will impact on cost and timing:** Sites with fewer issues will score higher.

### **User Needs Met**

A minimal site size is needed to accommodate the elements needed to deliver a fit for purpose skatepark that meets the project objective of ‘a family friendly – well used skatepark for Tairua’.

*Recent designs require around 700m<sup>2</sup> to allow for access, spectator, and parent oversight – a minimum available area of 700m<sup>2</sup> is suggested as a site requirement.*

If the minimum site size cannot be met, then the site is not a viable option.

### **Environmental considerations appropriate for siting a skatepark**

*Consideration to prevailing winds and its impact on users*

[17] Responders to the first community survey were asked if they thought “these criteria are a good basis for making a decision on the location of a skatepark in Tairua”, and were given the opportunity to provide “any other thoughts you have about these or suggested other criteria”.

[18] The first community survey also provided information about the current identified shortlist of sites “developed after assessing the 30 years of project history, considering technical, environmental, financial, statutory and regulatory implications against the potential site longlist”. The shortlist contained three properties:

- Pepe Reserve – on the eastern side of SH 25
- Cory Park Domain – by the tennis courts
- Tairua School – at the playcentre end of the fields

[19] A further 10 properties were identified as being on the skatepark location longlist. The first community survey sought feedback on the potential site shortlist, whether there were one or more of the sites on the longlist that should be shortlisted, or whether there were other suitable sites that had not been identified in the longlist.

[20] The results of the community survey were set out in a report from Veros to the Council entitled “Tairua Skatepark Multi-criteria analysis and Shortlisting Report November 2021 (“the MCA report”).”

[21] The MCA report began by reiterating the staged approach adopted to determine an appropriate site for the skatepark. It then set out how that approach fitted in with the Thames-Coromandel Significance and Engagement Policy adopted by the Council in 2020 in order:

1. To involve the community from the start to provide input into the site shortlisting and criteria for assessing a location for the skatepark.
2. To seek community response to the criteria focussed on community preference.
3. To inform the community of the process of criteria assessment.
4. To consult with the community on a preferred option using the Local Government Act Special Consultative Procedure process informed by a Statement of Proposal including submissions and hearings.

[22] The MCA report went on to compare the criteria used in May 2020 with the new proposed assessment set out in the first community survey, as well as noting where, in the proposed multi-criteria assessment criteria, the key concerns that had been identified by residents in February 2020 could be located.

[23] With regard to the responses to the first community survey, the MCA report noted that the responses received were overwhelmingly in support of building a skatepark in Tairua (93% in favour), that the skatepark needed to contain the elements identified in the first community survey (89% in favour) and that the proposed assessment criteria were “a good basis for decision making on the location of a skatepark in Tairua” (89% in favour). The MCA report did note that while there was a significant level of support there were four recurring themes raised by those who did not agree with the criteria identified. This is set out below, together with Veros’ response:

| <b>Theme</b>         | <b>Response</b>   |
|----------------------|---|
| Noise                | Noise is considered as a discrete criterion. Specific elements of skatepark create more noise than others. This will be considered at the detailed design stage.  |
| Impact on neighbours | Impact on neighbours is considered under two criteria: <ul style="list-style-type: none"> <li>• Community preference: where people can indicate that they prefer a site and the reasons why... they do not a site – which could include impact on neighbours.</li> <li>• Distance from neighbours: where distance from neighbouring residential properties is considered and weighted based on distance and the number of residential properties within each distance zone from the skatepark.</li> </ul> |
| Safety               | Safety was raised mainly in terms of health and safety on adjoining activities. This will be considered at detailed design stage. It is also a consideration in the safety criterion.   |
| Toilets              | Access to amenities including toilets is a discrete criterion.  |

[24] As a result, the MCA report set out the proposed final multi-criteria assessment criteria for approval by the Council.

[25] With regard to the site shortlist selection process the MCA report noted that 74 per cent of responders in the first community survey agreed with the existing shortlist, 23 per cent of responders considered there were one or more sites on the longlist that should be included on the shortlist, with another three per cent identified what they considered to be other suitable sites. With regard to the latter, a further four sites were ultimately identified which were in turn considered by Veros who concluded that “these sites are not appropriate for shortlisting for detailed assessment”. Veros also reviewed the sites on the longlist that had received more than 10 community votes but ultimately did not recommend adding any additional sites to the shortlist noting:

There was no additional information provided with any of the sites that validated their inclusion in the shortlist. The level of respondents support for [the] current shortlist and the analysis of other suggestions do not provide any reasonable rationale for including additional sites.

This recommendation was reviewed by [the Council] and accepted as reasonable.

[26] The MCA report recommended that the proposed final site-assessment criteria be adopted by the Council as the multi-criteria analysis criteria. Under cover of a report from Eileen Hopping, the area manager of the Council's South Eastern Board the MCA report was accepted by the Council on 7 December 2021. In so doing the Council adopted the multi-criteria analysis criteria proposed by Veros, a decision which is not subject to challenge in these proceedings.

**First challenged decision — identification of Cory Park as preferred site and adoption of the Statement of Proposal.**

[27] Once the Council had adopted the multi-criteria analysis criteria and confirmed the shortlist, Veros proceeded to analyse the shortlisted sites against the adopted multi-criteria analysis criteria assessment. Veros' analysis and recommendations were contained in a further report entitled "Site Selection Consolidated Report Statement of Proposed Recommendations January 2022" ("the SSCR report").

[28] The SSCR report is substantial; the report and appendices together total some 259 pages. The Executive Summary provided:

The purpose of the Tairua Skatepark project is to identify a site for a family friendly skatepark in Tairua. The final design of the Skatepark was outside the scope of this stage of the project.

The purpose of this report is to provide information to Council to inform a decision on a preferred site for a skatepark that Thames-Coromandel District Council (TCDC) can then consult the community on through the use of the Local Government Act, Special Consultative Procedure.

Three shortlisted sites were identified for assessment:

- Cory Park Domain
- Pepe Reserve
- Tairua School

Council adopted a set of criteria to use in a multi-criteria assessment of the short-listed sites. The assessment of those criteria was carried out by Veros in an independent capacity. Expert external advice was sought on the noise assessment from Acoustic Engineering Services.

During the assessment a fatal flaw was identified for the Tairua School site. Certainty on tenure for this site could not be achieved. The site is the only short-listed site not owned by TCDC. As a result, this report recommends that the Tairua School site is removed from the short-list. The assessment of the

Tairua School site also showed poor performance across a number of other criteria.

### Summary of Assessment Results

The Multi-criteria analysis (MCA) tool scores on the assessment of the Cory Park Domain and Pepe Reserve are:

Cory Park Domain: 31.87 (Recommended preferred site)

Pepe Reserve: 20.80

*Note that a higher score represents a better performance.*

The MCA summary is provided below.

|                  | 1.0 Mana Whenua and Community Views & Considerations    |  |   | 2.0 Location                    |                                  |                                 |              | 3.0 Cost and Timing Impacts |                                 |                                |                      | 4.0 User Needs Met           |                                     |   | Total        |
|------------------|---|--|---|---------------------------------|----------------------------------|---------------------------------|--------------|-----------------------------|---------------------------------|--------------------------------|----------------------|------------------------------|-------------------------------------|---|--------------|
|                  | 1.1<br>The level of community support for each location | 1.2<br>The level of mana whenua support for each location<br>Ngāti Hei      Ngāti Maru |   | 2.1<br>Distance from Neighbours | 2.2<br>Distance from Town Centre | 2.3<br>Safety (CPTED qualities) | 2.4<br>Noise | 3.1<br>Land availability    | 3.2<br>District Plan compliance | 3.3<br>Reserves Act compliance | 3.4<br>Other matters | 4.1<br>Minimal site size met | 4.2<br>Environmental considerations | 4.3<br>Accessibility to amenities for users |              |
| Cory Park Domain | 1   | 3  | 3 | 2                               | 3                                | 3                               | 2.33         | 2                           | 3                               | 2.71                           | 2                    | 0                            | 2.33                                | 2.5   | <b>31.87</b> |
| Pepe Reserve     | 3   | 0  | 0 | 3                               | 3                                | 2                               | 0.66         | 1                           | 1                               | 1.14                           | 1                    | 0                            | 2.00                                | 3   | <b>20.80</b> |
| Tairua School    | 2   | 0  | 0 | 1                               | 1                                | 0                               | 1            | 0                           | 0                               | -                              | 3                    | 0                            | 2.67                                | 0.5   | <b>11.17</b> |

The comprehensive MCA assessment is provided in the balance of this report.

1. The advantages of the Cory Park Domain option are that *[sic]*
2. The site scores highest across all criteria in the MCA which is the method by which TCDC determined to identify the preferred site. This site scores highest against the following individual criteria:
  - Crime Prevention through Environmental Design / Safety
  - Noise
  - Land
  - District Plan compliance
  - Reserves Act compliance
3. It scores equally highest against the following individual criteria
  - Distance to town

The issues identified by submitters in the community preference survey can be mitigated or evidence is provided in this report reveals that the issues are largely ones of perception and that the reality, in

terms of the assessment approach, is that those issues are not significant.

The disadvantages of this option are that:

1. This site was not the first community preference for the majority of respondents to the Community Preference survey. 257 respondents identified Cory Park Domain as their first preference compared with 523 who identified Pepe Reserve as their first preference.
2. The outdoor exercise equipment will need to be relocated from the current site
3. The site scored the lowest in the following individual criteria

Community support (as an average of first, second, third preference, it was identified as second as 'first preference' only site

Based on the findings in this report, the recommendations are:

- a. Remove the Tairua School site from the short-listed options
- b. Identify the Cory Park Domain site as the preferred site for the purpose of completing the Special Consultative Procedure on the Tairua Skatepark project.
- c. Adopt the Statement of Proposal Attachment of the Council Report that reflects this decision and clearly states the reasons why this decision has been made to support the Special Consultative Procedure.

[29] It is accepted by both parties that the table providing the summary of the scores resulting from applications of the multi-criteria analysis criteria contained an error. Specifically the total for Pepe Reserve was one point less than the substantive analysis set out in the report otherwise shows. The score for Pepe Reserve should therefore have been 21.80 rather than 20.80 as noted in the table.

[30] The SSCR report also contained an analysis of an offer made by the Society to contribute \$250,000 "towards a skatepark located at Pepe Reserve", which it considered to be the preferred option. The Society sought an assurance from the Council that the amount that would be reflected in the assessment of Pepe Reserve in relation to "cost and timing impacts" and "user needs met" sections of the multi-criteria assessment. In the event the Society's offer was considered separately from the multi-criteria assessment with Veros concluding:

As stated above the criteria were not created to take into account factors like the Society's offer. However, on a best-case scenario the offer will remove any additional cost of the project from the community or TCDC for consenting or

relocating the swing set. The timing, in terms of the requirement to obtain a resource consent due to the current District Plan compliance and therefore the uncertainty around gaining a consent or gaining a consent that does not place onerous conditions on the skatepark activity, and the consequential delay in the physical delivery of the project will not be impacted. Therefore, the assessment of impact is that cost only will be affected. With the cost of the Resource Consent process and any other on-site costs to TCDC and the community being significantly reduced or removed due to the offer. Without any previously established guidance the assessed impact of this offer on the Cost and Timing MCA score would be to adjust the score to a 5.64. This is an allocation of 1.5 points for reduced costs.

The total MCA score for Pepe Reserve without taking into account the PCPDS offer is 20.8. The adjusted total MCA score for Pepe Reserve with the offer taken into account is 22.3.

The offer does not make a material difference in terms of the overall outcome.

[31] After noting that publication of the Society's report obtained mixed public reaction the SSCR report continued:

The mixed responses are an indication that the offer does not have universal support. This alongside the scoring implications indicate that the offer should have no final impact on the outcome of the location decision.

[32] As noted in the Executive Summary, a draft Summary of Information and Statement of Proposal ("the statement of proposal") had also been prepared for the consideration of the Council. This was required as a result of the earlier decision by the Council to use the special consultative procedure provided for in s 83 of the LGA.<sup>1</sup> The statement of proposal commenced by explaining the salient features of the special consultative procedure before summarising the multi-criteria site assessment criteria and how they had been developed prior to setting out the results for each of the shortlisted sites.<sup>2</sup> The statement of proposal also set out a brief summary of the advantages and disadvantages of Cory Park Domain and Pepe Reserve, before advising the Council was "proposing to locate the skatepark at Cory Park Domain", and a plan was provided to show that preferred location within the park. It was also noted:

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<sup>1</sup> See [13] above.

<sup>2</sup> It is noted that the draft statement of proposal considered by the Council, as well as containing the error in the Pepe Reserve score noted at [29]–[30] above also showed Cory Park Domain as having a score of 28.87 rather than the 31.87 contained in SSCR report (and set out at [28] above). This was because at the time the draft statement of proposal was completed, the mana whenua score for Ngāti Hei was not available. This was corrected in the final statement of proposal referred for public consultation.



There are a number of residual considerations with this site that will need to be managed if the site progresses as the preferred option. These are:

1. The reduction of the length of the rugby field, this is to achieve wider compliance with World Rugby perimeter standards that are already breached by existing obstacles on Cory Park Domain and a recommendation has been made to reduce the length of the rugby field to comply with those standards regardless of if the final skatepark location is Cory Park Domain.
2. The removal and relocation of the existing outdoor equipment currently at Cory Park Domain.

[33] The remainder of the statement of proposal addressed the requirements of the special consultative procedure contained in s 83(1)(b)–(e) of the LGA. This included advising responders where copies of both the statement of proposal and SSCR report could be considered, and when and how submissions could be made, including whether a hearing was sought in order to present a submission. The question for consultation was clearly stated as being whether the respondent agreed “with the proposed location for the Tairua skatepark”. It provided a space for reasoning as well as further comments.

[34] The SSCR report and the statement of proposal was considered by Council on 8 February 2022, also under the cover of a brief covering report provided by Ms Hopping. The operative part of Ms Hopping’s report simply provided:<sup>3</sup>

The consideration of the site selection and statement of proposal recommendation is the next important step in the consultation process for the Tairua Skatepark project.

Veros Property Services have prepared the comprehensive report (**Attachment A**) which covers the site specific assessments. The statement of proposal is attached as (**Attachment B**).

Each of the shortlisted sites have their own unique challenges and the report clearly identifies the advantages and disadvantages of each site.

Council adopted a set of criteria to use in a multi-criteria assessment of the short-listed sites. Three shortlisted sites were identified for assessment:

- Cory Park Domain
- Pepe Reserve

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<sup>3</sup> It is noted Ms Hopping’s summary shows Cory Park with a score of 25.873 as well as replicating the error for Pepe Reserve. It appears that the score for Cory Park in the drafts had not yet incorporated the results for the mana whenua preferences. For either Ngāti Hei or Ngāti Maru.

- Tairua School

The assessment of those criteria was carried out by Veros Property Services in an independent capacity. Expert external advice was sought on the noise assessment from Acoustic Engineering Services. During the assessment a fatal flaw was identified for the Tairua School site. Certainty on tenure for this site could not be achieved. The site is the only short-listed site not owned by TCDC. As a result this report recommends that the Tairua School site is removed from the short-list. The assessment of the Tairua School site also showed poor performance across a number of other criteria.

The Multi-criteria analysis (MCA) tool scores on the assessment of the Cory Park Domain and Pepe Reserve are:

Cory Park Domain: 25.873

Pepe Reserve: 20.8

A summary of the the MCA, advantages and disadvantages of each sites are available in the comprehensive report attached.

[35] The recommendations proposed by Veros and Ms Hopping were accepted by Council on 8 February 2022: the SSCR report was received, the Tairua School was removed from the shortlisted options, Cory Park Domain was identified as the proposed site for the skatepark, and the statement of proposal was adopted.

[36] This is the first decision subject to challenge in these proceedings (“the first challenged decision”).

*The case for the Society — first challenged decision*

[37] On behalf of the Society, Mr McNamara argued that:

- (a) There were material errors in the SSCR report that not only tainted the first challenged decision but meant that the consultation subsequently undertaken on the statement of proposal breached s 82(1)(a) of the LGA; and
- (b) In any event the Council failed to identify all reasonably practical options.

[38] The errors identified by Mr McNamara were that the SSCR report:

- (a) Wrongly treated Cory Park Domain as a single recreation reserve rather than as two separate reserves, a recreation reserve and a local purpose reserve.
- (b) Wrongly treated Pepe Reserve as a “passive recreation reserve” rather than a local purpose reserve.
- (c) Failed to assess noise effects at both Cory Park Domain and Pepe Reserve.

[39] As a result of the errors identified in [38](a) and (b) above, Mr McNamara submitted that the SSCR report assessment of compliance under the Reserves Act 1977 (“Reserves Act”) was materially inaccurate and that because of that error it is impossible to fit a full size rugby field and a skatepark into the existing Cory Park Recreation Reserve. Conversely, Mr McNamara submitted that there was no basis for treating Pepe Reserve as a passive recreation reserve, which he noted is not a category of reserve under the Reserves Act and instead submitted that its reserve status was entirely appropriate for a skatepark.

[40] Likewise, while the Society accepted that generally the Council was entitled to rely on one expert over another, Mr McNamara submitted the Council’s failure to ensure noise effects as opposed to levels were considered amounted to a fundamental error and this, coupled with the Reserves Act issues, meant that the information provided to the public could not have and did not provide a sufficiently accurate basis to enable informed consultation to occur. At the very least Mr McNamara (and without having attempted a calculation) posited that as a result of the errors identified Cory Park Domain would have scored lower and Pepe Reserve higher on land availability, Reserves Act compliance and noise. He otherwise submitted that Cory Park Domain was potentially unavailable as a site for the skatepark without going through a further process involving further consultation and the possibility of further challenge because if the skatepark proceeded it would affect the viability of the existing rugby field given it is already located across the two reserves that make up Cory Park Domain.

[41] Given that position it was Mr McNamara's submission that the information provided to the public was in breach of the Council's obligations under s 82(1)(c) of the LGA as it was insufficiently accurate for the purposes of consultation.

[42] With regard to the failure to consider options Mr McNamara drew a distinction between Veros' assessment of the appropriate site for a skatepark with the Council's own obligation to assess options. In Mr McNamara's submission because Veros was only looking at what was the most appropriate site the Council thereby overlooked other reasonably practical options including not proceeding, developing the proposal for both Cory Park and Pepe Reserve further before deciding which to consult on, or consulting on both Cory Park Domain and Pepe Reserve.

*Reserves Act issues — Cory Park*

[43] I begin my analysis by considering the Reserves Act issues raised by the Society with regard to Cory Park and the Cory Park Local Purposes Reserve, and whether these provide a basis to impeach the first challenged decision.

[44] There is no dispute that there are two reserves at Cory Park that together make up the Cory Park Domain and both of those reserves are reserves administered under the Reserves Act. The Cory Park Domain originally comprised a single recreation reserve but from 2007 it was subdivided so as to create both the Cory Park Recreation Reserve and the Cory Park Local Purpose (Emergency Services and Community Buildings) Reserve. Cory Park, the Recreation Reserve, is the larger part (1.32ha) occupying the eastern three quarters of Cory Park Domain. It currently contains most of the rugby field, some cricket nets, a playground and tennis courts. The remainder (0.41ha) of the site is the Cory Park Local Purpose Reserve which includes accommodation for the local St John Ambulance, the Tairua Rugby and Sports Club ("TRSC") clubrooms, and a portion of the rugby field itself.

[45] Likewise, there is no dispute that Pepe Reserve is correctly described as a Local Purposes (Esplanade) Reserve.

[46] As reserves administered under the Reserves Act, all three reserves are classified according to their principal or primary purpose and as a result "each reserve

shall be held and administered for the purpose or purposes for which it is classified and for no other purpose”.<sup>4</sup>

[47] In particular s 17 provides that in relation to recreation reserves like that at Cory Park, the appropriate provisions of the Reserves Act have effect “for the purpose of providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, ...with emphasis on the retention of open spaces and on outdoor recreation activities...”.<sup>5</sup> Section 17(2)(a) in particular provides that recreation reserves shall be administered so that “the public shall have freedom of entry and access to the reserve, subject...to such conditions and restrictions as the administering body considers to be necessary for the protection and general wellbeing of the reserve and for protection and control of the public using it”.

[48] In contrast, local purpose reserves are administered for the “purposes as are specified in any classification of the reserve”.<sup>6</sup> For the Cory Park Local Purpose Reserve those purposes are the words in brackets, namely: “emergency services and community buildings”, while the equivalent local purpose identified for Pepe Reserve is an “esplanade reserve”.

[49] Where a local purpose reserve is vested in a Council the purpose for which a local purpose reserve is classified can be changed by gazette notice following public notification of that change of purpose, an objection process and consideration of any objection by the Council.<sup>7</sup> No such process is, however, required if the proposed change of purpose is to bring the specific purpose into conformity with the operative District Plan in force under the Resource Management Act 1991.<sup>8</sup>

[50] As the administering body of all three reserves the Council is charged with:<sup>9</sup>

... the duty of administering, managing, and controlling the reserve under its control and management in accordance with the appropriate provisions of this Act and in terms of its appointment and the means at its disposal, so as to ensure the use, enjoyment, development, maintenance, protection, and

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<sup>4</sup> Reserves Act 1977, s 16(8).

<sup>5</sup> Reserves Act 1977, s 17(1).

<sup>6</sup> Reserves Act 1977, s 23(1).

<sup>7</sup> Reserves Act 1977, s 24A(1) and (2).

<sup>8</sup> Reserves Act 1977, s 24A(3).

<sup>9</sup> Reserves Act 1977, s 40(1).

preservation, as the case may require, of the reserve for the purpose for which it is classified.

[51] The administering body, is required to prepare a management plan for the reserve under its control, management or administration.<sup>10</sup> The management plan is required to be approved by the Minister of Conservation,<sup>11</sup> and is required to be kept under “continuous review” in order that the “plan is adapted to changing circumstances or in accordance with increased knowledge”<sup>12</sup> and the Minister can, in any event, require a review of the plan from time to time.<sup>13</sup>

[52] In this case, there is no dispute that the relevant operative management plan for all three reserves was the Tairua/Pauanui Reserve Management Plan dated May 2014 (“the Tairua RMP”).<sup>14</sup> The Tairua RMP contained the management plan for all of the reserves administered by the Council in Tairua, Hikuai and Pauanui areas. In the introduction and overview the Tairua RMP observed:

Reserve Management Plans provide direction for the day-to-day management of reserves, factors that impact upon these reserves and establish clear directions for future management and development where appropriate. This plan will provide for consistent approach to the management of reserves in the Tairua and Pauanui areas.

[53] Introducing the reserves located in and around Tairua, the Tairua RMP relevantly noted:

The esplanade reserves adjacent to Pepe Stream are a popular stopping place for visitors to Tairua; facilities include a playground, toilets and safe swimming at high tide. Cory Park Domain is the main park for organised sport for both Tairua and Pauanui...

[54] The Tairua RMP reasonably accurately identifies different classifications of reserves in Section 2 and Appendix 2 before setting out detailed objectives and policies applying across the reserves managed under the RMP. As per the Reserves Act the objectives of the management of local purposes reserves were noted to be determined

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<sup>10</sup> Reserves Act 1977, s 41(1).

<sup>11</sup> Reserves Act 1977, s 41(1).

<sup>12</sup> Reserves Act 1977, s 41(4).

<sup>13</sup> Reserves Act 1977, s 41(4).

<sup>14</sup> Since the decisions at issue were made, a new reserve management plan has come into force but the parties are agreed that the relevant one for the purposes of this judgment is that dated May 2014.

by the stated purpose of the reserves, with the purposes and objectives of management of esplanade reserves however, being spelled out in greater detail in the Tairua RMP and specifically referring to the definition contained in s 229 of the Resource Management Act 1991:<sup>15</sup>

#### Esplanade Reserve

##### Purpose

A fixed linear area of riverbank, lakeshore or seashore of at least three metres or greater width (usually 20m) either in a natural or modified state available primarily for conservation and public access.

##### Objectives of Management

###### Primary (one or more; refer s.229 RMA)

- Maintain or enhance the natural functioning of the adjacent sea, river or lake.
- Maintain or enhance aquatic habitats.
- Protect associated natural values.
- Mitigate natural hazards.
- Enable the public access to or along any sea, river or lake.

###### Secondary (s.23)

- Manage and protect scenic, historic, archaeological, biological or natural features.
- Maintain value as a soil, water, and forest conservation area.

[55] Of particular relevance to the three reserves in issue, is Section 4 Recreation and Leisure and Section 5 Recreation, Leisure, and Sports Facilities. Within Section 4 are a number of further Sections including Section 4A General Use and 4B Organised Sport. Section 4A includes the particular of “open access, where possible, will be provided to all Council reserves”, while the objectives and policies for Section 4B are stated to be as follows:

##### Objective

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<sup>15</sup> As discussed with Mr McNamara at the hearing it is clear that while the s 229 definition does not directly apply to the Reserves Act it nonetheless provides a useful description of an esplanade reserve which is otherwise identified in the Reserves Act.

- To encourage organised sport to take place on a reserve or part of a reserve set-aside for that purpose.

#### Policies

1. Where possible, active sports and recreation activities requiring facilities will be grouped to maximise the sharing of facilities.
2. The use of reserve land for the playing of organised sport will:
  1. Consider the appropriateness of the activity to the area and take into account any possible Impact this activity may have;
  2. Only be approved when permission for the sporting activity has been sought and obtained from Council; and
  3. Not be undertaken during such time when maintenance is being carried out on the land area.

[56] Likewise Section 5 relevantly provides:

### **Section 5: Recreation, Leisure and Sport Facilities**

#### Building and Structure

##### Objective

- To allow only those buildings and structures that are required to meet reserve user needs.
- To allow for removal of buildings when no longer required.

#### Policies

1. The provision of buildings and structures on a reserve will be for sporting, cultural and recreation purposes and to facilitate the appropriate use of the reserve.
2. Building and structures will be allowed only where they are necessary to achieve management objectives and policies or are specifically provided for in this plan.
3. Any new buildings or alterations to buildings and structures will comply with required resource and building consents (NZS 5828:2004).
4. Where a lessee owned building is no longer required by the occupier or has become redundant, the occupier may be required to remove the building from the reserve.

#### Development

##### Objective



- To ensure that any reserve development meets the needs of approved use and users without significant adverse effects on other users of the reserve, or on the reserve itself.

#### Policies

1. In evaluating any proposal for a reserve area, Council shall take regard of:
  1. Any cultural, historical or spiritual features of the reserve area;
  2. The scale of the proposed facilities in terms of the reserve use, foreseeable future use, or the foreseeable demand for the particular activity;
  3. The materials, siting, design and colour of the proposed structures; and
  4. The protection of existing recreation facilities, except where their displacement is in the public interest.

[57] The details of the reserves in issue in these proceedings were set out in a separate section which provided details of each of the Tairua reserves. Under the heading “Cory Park Domain” the two separate reserves are correctly identified, but later on the same page the Tairua RMP went on to state that the “land is gazetted a recreation reserve”, both reserves are therefore treated as an “Active Recreation Area”, the assets and users identified are grouped across both reserves.

[58] In contrast Pepe Reserve is correctly recorded in the Tairua RMP as a Local Purpose (Esplanade) Reserve. Its current and future use is identified as “Category A Community Open Space”. The Reserve Management Policy for Pepe Reserve provides as follows:

1. Allow for a community building incorporating the existing public conveniences, for possible use as a combined information Centre/Museum.
2. Allow for Council approved activities and events.
3. Survey foreshore accretion and vest in Thame-Coromandel District Council as esplanade reserve.
4. Allow for the Council approved sculptural art on areas of this reserve.
5. Reserve objectives and policies as outlined under the “Objectives and Policies” section at the front of this document apply.

[59] Against that somewhat lengthy background, it is clear that, as Mr McNamara submitted, the SSCR report incorrectly treated Cory Park as a single recreation reserve

for the purposes of the multi-criteria analysis, rather than identifying Cory Park as two separate reserves, with the management of the Local Purpose Reserve being significantly constrained as the result of its limited classification for “emergency services and community buildings”. It is clear that the source of this statement was the reserve-specific information contained in the Tairua RMP. But as a result, the subsequent analysis, focused as it was on the relevant parts of the Tairua RMP, therefore considered those parts as if the entirety of the Cory Park Domain was a recreation reserve.

[60] Insofar as this is relevant to the site of the proposed Tairua skatepark this issue manifests in one section of the SSCR report, in the analysis of criteria 7.c. namely “Reserves Act 1977 compliance”. That section, after briefly reviewing the Reserves Act framework and the Tairua RMP, went on to note:

Cory Park Domain is an active recreational reserve administered by TCDC and subject to the provisions within the [Tairua RMP] and the [Reserves Act]. Skating and skatepark facilities are recognised as a formal sporting “active recreational” activity, therefore skating and the development of a skating facility on Cory Park Domain is a permissible activity within the reserve.

[61] Despite this, I conclude there is no basis to set aside the first challenged decision.

[62] First, there is no dispute that in the event the Tairua skatepark is ultimately constructed at Cory Park Domain, it will be located entirely on the recreation reserve. To that extent there can be, therefore, no issue taken with the analysis undertaken against the relevant provisions of the Tairua RMP.

[63] Instead the principal issue raised by Mr McNamara is not with the analysis of locating the proposed skatepark on the recreation reserve against the provisions of the Tairua RMP, but rather whether the existing rugby field is appropriately part located on the Cory Park Local Purpose Reserve.

[64] The existing rugby field was in fact considered in the SSCR report in the following context:

Any development would also require the retention of a full-sized rugby and sports field, which can be accommodated with the proposed development site with a small reduction in the current rugby field size.

Reserve Management Policies specific to this assessment include:

- Maintain a full-sized field for the playing of rugby and allow [the] field to be used for a variety of sport and recreation activities.
- Motorised vehicles prohibited on sportsgrounds, except for council approved events.
- Reserve objectives and policies as outlined under the Objectives and Policy section (of the TP-RMP).

As previously stated, the retention of a full-sized rugby field is required when considering any additional uses of the park, including any potential development of a skatepark facility.

The current rugby field dimensions are overlaid on figure 9. The required 5m perimeter is currently encroached by the St John building fence by an estimated 1.5m, by some of the field lights, and by an estimated 3.1m by the proposed skatepark development. The Tairua Rugby and Sports Club have indicated that they will manage the existing encroachments by using padding (not inclusive of any skatepark development). This is not in line with the World Rugby Laws of the game, therefore the field is currently noncompliant.

...

A small reduction in the overall rugby field size would result in maintaining a full-sized rugby field with a higher level of compliance and should be undertaken regardless of the final skatepark development site. The reduction in field size would also accommodate the potential skatepark development on the reserve without perimeter encroachment. The current and potential encroachments are shown in Figure 9, with the reduced full sized field options shown in figure 10.

By reducing the overall rugby field dimensions as proposed below, a full-sized rugby field and the proposed skatepark development can be co-located on the reserve:

- Reduction in the field of play 1.3m (length)
  - From 100.5m to 99.2m
- Reduction in both the in-goal areas by 2.5m each (5m total)
  - From 10m to 7.5m for each in-goal area

The proposed field dimensions are overlaid on figure 10. In total, the proposed field length reduction is 6.3m. This proposed field size would provide the necessary perimeter zone between the St John fence and the proposed skatepark development site. Some of the lights would remain within the perimeter. Works to implement the proposed field dimensions are estimated to

be limited to establishing new lines and relocating the goal posts at the north-eastern end of the field in a south-west direction by 1.3m.

[65] Given these considerations, the statement of proposal adopted by Council also contained the following statement:

There are a number of residual considerations with this site that will need to be managed if the site progresses as the preferred option. These are:

1. The reduction of the length of the rugby field, this is to achieve wider compliance with World Rugby perimeter standards that are already breached by existing obstacles on Cory Park Domain and a recommendation has been made to reduce the length of the rugby field to comply with those standards regardless of if the final skatepark location is Cory Park Domain.
2. The removal and relocation of the existing outdoor equipment currently at Cory Park Domain.

[66] It is therefore clear that the changes to the rugby field identified and proposed in the SSCR report were required in any event. It is not the proposed changes to the field identified in the SSCR that have created any issue but rather it has enabled the Society to seize upon an existing issue of compliance with the Reserves Act caused by the retention of the rugby field after the Cory Park Local Purpose Reserve was gazetted in 2010.

[67] This issue must, however, be seen in perspective. There is no evidence that any person, let alone anyone from the Tairua community, wishes to have their rugby field moved from its current location which is in fact directly in front of the local rugby club. The TRSC clubrooms are in fact one of the community buildings for which the reserve is classified. Equally it is clear the present location of the rugby field otherwise has no impact on the emergency services and other community buildings that are located in the local purpose reserve portion of the Cory Park Domain. Furthermore I do not accept Mr McNamara's submission that approval of the skatepark in the location proposed at Cory Park will "lock" the rugby field in its current "unlawful" location. According to the parties the rugby field appears to have been in its present location for some 80 years. It is difficult to see any basis for objections should the Council choose to follow the procedures available under s 24A(2) of the Reserves Act to regularise the purpose of the reserve to include rugby field within the bracketed classification, or alternatively to use the s 24A(3) procedure once the new District Plan

has become operative, noting that the new zoning across the whole of the Cory Park Domain is already operative.

[68] I am therefore satisfied that the current encroachment of the rugby field onto the Cory Park Local Purpose Reserve does not alter the SSCR analysis of Reserves Act 1977 compliance in respect of locating a proposed skatepark on the recreation reserve portion of the Cory Park Domain.

[69] Even if I am wrong in this conclusion, in the absence of any other substantive ground for review being made out, I agree with Ms Robertson that for the same reasons as set out above it would be appropriate to decline to exercise my discretion to grant relief in response to the Reserves Act issues that have been raised in relation to Cory Park. On the contrary, I am satisfied that those arguments are, in the context of the history and current use of the park, both contrived and technical, and do not provide any substantive basis for granting the relief sought by the Society in this case.

*Reserves Act issues — Pepe Reserve*

[70] As with Cory Park the identified Reserves Act issues in respect of Pepe Reserve manifests in the analysis of criteria 7.c. of the SSCR report, “Reserves Act 1977 compliance”. The problem is that while as noted, Pepe Reserve is classified as a Local Purpose (Esplanade) Reserve the SSCR stated:

[Pepe Reserve] is a passive recreational reserve administered by TCDC and subject to the provisions within the [Tairua RMP] and the [Reserves Act]. Skating and skatepark facilities are recognised as a formal sporting “active recreational” activity, therefore skating and the development of a skating facility on Pepe Reserve is not provided for within the [Tairua RMP]. Development of a skatepark facility on Pepe Reserve therefore requires resource consent.

[71] The use of the term “passive recreational reserve” is problematic. It is not, a term used in either the Reserves Act or the Tairua RMP.

[72] It is clear that Pepe Reserve was marked down in its Reserves Act compliance score as Mr McNamara submitted, “on the basis that a skatepark is an active rather than passive recreational activity”, and this therefore affected the analysis as set out in the SSCR report in relation to Sections 4A, 4B, 5 and 7 of the Tairua RMP.

[73] The question is whether, notwithstanding the misdescription, the analysis of the Pepe Reserve set out in the SSCR Report is otherwise correct. In this regard, while as Mr McNamara submitted the references to the “zoning” of Pepe Reserve as “passive recreation” are clearly wrong with regard to its actual classification as a reserve it is nonetheless equally clear that Pepe Reserve is a completely different type of reserve to a recreation reserve like Cory Park, or indeed the wider Cory Park Domain.

[74] This is apparent from both the definition of esplanade reserve contained in the Resource Management Act and referred to in the Tairua RMP, and in the reserves management policy for Pepe Reserve.<sup>16</sup>

[75] Although Mr McNamara submitted that both the definition and the policy were entirely consistent with the locating of a skatepark at Pepe Reserve, I disagree. The emphasis throughout the policy, consistent with the s 229 definition is that Pepe Reserve is “community open space”. It is not an area for organised sport or “active recreation”, and unlike Cory Park no sporting facilities appear to have ever been constructed. Instead Pepe Reserve is an area for picnics, going for walks and gatherings. It may not have been classified a “passive recreation reserve” but that appears to be a good description of how Pepe Reserve is currently used and managed, and such an approach is clearly not inconsistent with its purpose as an esplanade reserve.

[76] There is nothing to suggest in either the Reserves Act or Tairua RMP that any type of sporting facilities, let alone a skatepark, would be appropriately located on Pepe Reserve. Apart from public toilets the only type of building referred to specifically is the allowance made “for a community building incorporating existing public conveniences, for possible use as a combined information centre/museum”,<sup>17</sup> nor are buildings or sporting facilities envisaged or implied by the provision for Council to “approve events and activities”,<sup>18</sup> as this does not envisage granting approval for any type of permanent structure at all.

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<sup>16</sup> See [54]—[55] above.

<sup>17</sup> Tairua RMP: Pepe Reserve Management Policy 1.

<sup>18</sup> Tairua RMP: Pepe Reserve Management Policy 2.

[77] Overall, I am satisfied that while the Reserves Act 1977 compliance analysis undertaken in respect of Pepe Reserve did use the wrong description, the analysis nonetheless accurately reflected the reserve classification and the nature of Pepe Reserve. From a Reserves Act perspective Pepe Reserve is clearly less suitable than Cory Park as a location for the proposed Tairua skatepark. The misdescription identified therefore provides no basis for either revisiting the scoring of the multi-criteria assessment or otherwise setting aside the first challenged decision. For completeness I observe even if it had effected the multi-criteria assessment score it would have had, at most, a very minor effect on the assessment. Given the assessed differential in scores between Cory Park and Pepe Reserve I am satisfied this would have made no substantive difference to the outcome of the assessment in any event.

*Noise issues — first challenged decision*

[78] There is no dispute that a preliminary assessment of noise issues with regard to each of the three shortlisted sites was carried out by Acoustic Engineering Services Limited (“AES”). The AES report dated 19 January 2022 was summarised in the SSCR and a copy included as attachment D.

[79] As the SSCR report noted:

The members of the Tairua community have outlined noise as a key issue with the development of a skatepark in Tairua. Acknowledging that unreasonable noise would impact on surrounding residential properties, a ‘reasonable’ test has been used to assess and seek advice on how to minimise any noise impact on surrounding activities.

[80] Each of the three shortlisted sites was subjected to the same methodology by AES with Cory Park scoring seven out of a possible nine (leading to a final score of 2.33 out of 3), and Pepe Reserve, two out of nine (a final score of 0.66 out of 3). Although it is accepted by the Society that generally the Council is entitled to rely on an expert report, in this case Mr McNamara submits that AES failed to assess or address “noise effects” rather than simply considering “noise levels”.

[81] The criticism cannot be sustained. As noted, the AES report was prepared in respect of noise issues generally and specifically refers to the need to minimise “noise impact”, i.e. the effects of noise. It is, in any event, noted that the Society’s own

acoustic expert, Jon Styles of Styles Group Acoustics and Vibration Consultants, had previously prepared a report in connection with the 2020 skatepark proposal for Cory Park. This report was entirely focused on the proposed noise levels of the then-proposed skatepark and Mr Styles did not attempt to distinguish between noise levels and effects in that report. It was, in fact, only in Mr Styles second report dated 6 April 2022 which was made available to the Council at the time the Society's submissions were presented on 28 April 2022, (that is after the SSCR report and the statement of proposal had been adopted by Council), that Mr Styles attempted to draw a distinction between noise levels and noise effects. In those circumstances it is difficult to see on what basis the Council was not entitled to rely upon the AES report at the time the first challenged decision was made.

[82] I therefore find no basis to conclude that the noise issues part of the multi-criteria assessment was in error, nor does it raise any basis for otherwise setting aside the first challenged decision. As with the issue regarding Pepe Reserve, it is difficult to see that any adjustment to the noise figures would have had any effect on the overall scores obtained by either Cory Park or Pepe Reserve.

*Were all reasonably practical options identified and advantages and disadvantages assessed when making the first challenged decision*

[83] It is noted the Society contends Council breached its obligations under s 77(1) of the LGA in failing to identify all practicable options for the achievements of its objective, and in failing to assess the advantages and disadvantages of those options.

[84] As Ms Robertson noted at the hearing, the objective of the process adopted by Council in August 2021 was to determine an appropriate site for the skatepark in Tairua. The six-stage approach was developed to achieve that end, and as noted, that approach has not been challenged by this Society in these proceedings. As Ms Robertson also pointed out it was not necessary for the Council to reassess reasons already determined or otherwise previously rejected.

[85] The first challenged decision came within stage three of the mandated approach which was to:



... adopt a Statement of Proposal (SOP). This outlines the preferred option, why it is preferred and how the Council reached this decision. The SOP is released for public submissions.

[86] To get to that point, as has already been noted, the Council consulted on the longlist of identified sites as well as seeking input on any other suitable sites that had been overlooked. The Council then reached a decision confirming the shortlisted sites. A detailed assessment of the shortlisted sites was then undertaken and this was detailed in the SSCR report, which resulted in the Tairua School site being found to be unsuitable.

[87] Given that position, when the requirements of s 77(1) are considered in the light of the stated objective it is clear that not proceeding with a skatepark at all was not an available option. It is equally clear that substantial information had already been obtained about both of the remaining shortlisted sites. It is important to note that Pepe Reserve remained a shortlisted site at this point. What the Council did, as the decision-making process had set out that it would do, was to determine its preferred option and put that out for consultation. It did this through the statement of proposal. To suggest that at this point the Council should have carried out yet further work on both Cory Park and Pepe Reserve or consulted on both sites misunderstands the effect of the earlier decisions of Council with regard to the decision-making process and which are not subject to challenge.

[88] The Society's criticism of the identified advantages and disadvantages identified in the statement of proposal adopted by the Council is also misplaced. As the statement of proposal makes clear the summary contained in the statement of proposal is backed by considerable detail in the SSCR report.

[89] Equally, I am satisfied that there is no need for Council officers to undertake their own analysis separate from that provided by Veros in the SSCR report. There is ample authority to confirm that a Council is entitled to rely on consultants where required.<sup>19</sup> This was particularly apt in the present case given the long and contentious history of the Tairua skatepark issue, as well as the difficulties faced by any relatively small council in a largely rural district having to deal with a project of this nature.

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<sup>19</sup> *Thorndon Quay Collective Inc v Wellington City Council* [2022] NZHC 2356 at [94].

[90] I therefore conclude that there was no breach of s 77(1)(a) and (b) in relation to the first challenged decision.

*Conclusion — first challenged decision*

[91] For the reasons set out above, I conclude there was no issue arising with regard to the Reserves Act classification for either Cory Park or Pepe Reserve, that the Council was able to rely upon the first AES report at the time of making the first challenged decision, and that it did not breach ss 77(1)(a) or (b) in making that decision. I therefore dismiss the Society’s challenges to the first challenged decision.

**Second challenged decision — Adopting Cory Park Domain as the location for the Tairua skatepark and approving the formation of a community-design reference group**

[92] The adoption of the statement of proposal on 8 February 2022 enabled consultation on the preferred site to proceed. A summary of the results of the consultation is set out in a further report undertaken by Veros, this time entitled: “Tairua Skatepark Location Statement of Proposal May 2022 Deliberations Report” (“Deliberations Report”). The executive summary provides:

[The Council] received 1,044 submissions to the Statement of Proposal - Tairua Skatepark Location. Hearings were held on 28 – 29 April where submitters spoke in support of their submissions.

- 92.49% of submitters agreed with Cory Park Domain as the location for the skatepark.
- 7.03% of submitters disagreed with Cory Park Domain as the location for the skatepark.
- 0.48 % were neutral or provided no response.

Two submissions included multiple respondents.

- The students of Tairua Primary School lodged 115 letters and pictures of support for a skatepark in Tairua. These documents are attached to submission number 955 – Students from Tairua School.
- The Tairua Sports and Recreation Trust (TSRT) Submission includes submitters to a petition asking for a show of support for the skatepark being built at Cory Park Domain. 1,087 people signed the petition.
  - A first and last name has been recorded for all signatures, and area of residence recorded for 1,007.

- 162 people signed the petition and made a submission to TCDC.
- This means that 925 people who signed the petition were unique.
- This document is attached to submission number 977 – Tairua Sport and Recreation Trust.

Submitters were asked to provide reasons for their position. Over 86% of respondents provided reasons. The analysis of the themes is included in this report.

Based on the responses from submitters the conclusion of this analysis is that Cory Park Domain is the best site for a skatepark in Tairua.

[93] The Society participated in the consultation process. It made a written submission which it presented at a hearing on 28 April 2023, at which time it also presented two expert reports: a further acoustic report from Mr Styles and a planning report from Mark Vinall of Tattico Limited. Unsurprisingly the Society was critical of the SSCR report, raising in the course of its submission many of the issues already considered in the analysis of the first challenged decision. In summary the Society submitted:

The Society considers there to be significant errors in the scoring used by Veros, and is supported in this view by expert noise and planning assessments. Once a fair and balanced approach is applied to the scoring, Cory Park Domain is shown to have significant disadvantages that cannot be overcome; and Pepe Reserve clearly emerges as the better site for the proposed skatepark.

In addition, the Society has concerns about the process for the Project and the consultation and engagement undertaken, which are set out below.

Accordingly, **the Society opposes the Proposal.**

The Society emphasizes that it supports a skatepark in Tairua. However, it considers Pepe Reserve to be the appropriate site for this skatepark, rather than Cory Park Domain.

In support of this submission, the Society presents refers to and attaches:

- (a) An expert planning assessment prepared for the Society by Tattico Limited dated 28 March 2022, following the release of the Veros Report and SoP; and
- (b) An expert noise assessment prepared for the Society by Styles Group Limited dated 6 April 2022.

The Society wishes to be heard on this submission.

[94] The Deliberations Report summarised the process followed to date before analysing the submissions made. The report contained a high level summary of the reasons submitters supported Cory Park as the proposed location (section 2) and provided a more detailed analysis of the reasons the location was not supported by submitters including the Society (section 3). Section 4 of the Deliberations Report contained an analysis of technical matters raised by submitters not directly linked to location (“technical issues”), which also counted a number of the objections raised by the Society.

[95] The submissions made in opposition to Cory Park, including in particular the submission made by the Society, were recorded in the Deliberations Report as raising the following issues:

- (a) Health and safety issues (18 submissions);
- (b) Access to amenities in town centre (33 submissions);
- (c) Noise issues (27 submissions). The Deliberations Report noted concern about in particular noise effects as well as total levels of noise created by use of the skatepark and recorded in particular that the Society had provided an expert analysis of the AES preliminary acoustic review by Mr Styles. A response to the Styles report was obtained from AES and this was annexed as appendix C to the Deliberations Report and formed the basis of the response provided in the body of the report;
- (d) Issues around rugby field sizing compliance (26 submissions);
- (e) Effects on other users (34 submissions);
- (f) Issues around the size of the skatepark (8 submissions);
- (g) Issue around vandalism, graffiti and anti-social behaviour (19 submissions);

- (h) Issues around application of crime prevention through an environmental design assessment (11 submissions);
- (i) Potential flooding impact issues (3 submissions); and
- (j) Impact upon emergency services (6 submissions).

[96] Of the 10 issues identified above no less than eight of these were raised by the Society. The Society did not raise any issues with regard to the size of the skatepark, nor the impact on emergency services. This section of the Deliberations Report also contained a correction with regard to the calculation of the distance to neighbours of both Cory Park Domain and Pepe Reserve although noting that the multi-criteria analysis was not impacted.

[97] The technical issues identified as having been raised by submitters in Section 4 of the Deliberations Report were as follows:

- (a) Concern at the selection of Veros for its role in the skatepark project (1 submission);
- (b) Concerns raised as to the lack of skatepark design (3 submissions);
- (c) Concern about level of engagement during the COVID-19 pandemic (1 submission);
- (d) Concern about unfair opportunities for some stakeholders to participate in the process (1 submission);
- (e) Concern about extent of rugby field size engagement (13 submissions);
- (f) Lack of Police engagement (2 submissions);
- (g) Lack of proper consideration of Preserve Cory Park Domain offer of \$250,000 (7 submissions);

- (h) Selection of multi-criteria, analysis criteria and scoring in general (17 submissions);
- (i) Scoring of community preference (26 submissions); and
- (j) Mana whenua scoring (14 submissions).

[98] It is noted that of the technical issues identified the Society did not raise rugby field size engagement, lack of Police engagement or the selection of the multi-criteria analysis criteria and scoring, but otherwise raised the other issues set out above, and indeed was the sole submitter on the first three issues identified in this section.

[99] The Deliberations Report concluded with the following recommendations and comments relating to the next stage of the project:

#### 5.1 Recommendations

1. In the next stage of the project, project delivery, a community design reference group be established to provide input into the design and to be able to communicate information to the community at large on the design.
2. To include all recommendations from the report

#### 5.2 Construction / Delivery

The final stage of the process is completing design through a preferred contractor and then delivering the project. Construction programme will be confirmed through the procurement process.

[The Council] have \$405,948 allocated to the Tairua skatepark project in the 2022/ 2023 financial year.

In addition to this, [The Council] requested a \$150,000 contribution from the community. At present the community fund balance is \$115,800. The TRST intend to apply to additional funding providers once project milestones; confirmation of location and project timeline are confirmed. They are confident that these applications will be successful. If they are, the \$150,000 contribution will be achieved.

The decision on the location of the skatepark concludes Stage 1: Location Identification. The project will then shift to Stage 2: Capital Development Project Process. The next stage of the project should include:

1. Appointment of an expert skatepark designer and independent project manager.

2. Formation of a community design reference group with a mix of members from skaters, adjacent residents, a PCPDS member, a TRSC member, a TRST member and others including NZ Police and other park users to work with experts to finalise design.
3. Report to Council on final design, cost and budget confirmation to finalise approval for design specific response. The report should address design brief matters raised during Stage 1 of the project.
4. Procure capital works, construct and complete.

[100] As with the earlier decisions a brief covering report was prepared by Ms Hopping so it could be considered by the Council. This restated the results of the consultation, contained a summary of the site selection multi-criteria analysis including the score, and provided the following option analysis:

**Option Analysis**

Table of project options

| Option  | Pros  | Cons   |
|---|---|--|
| 1. Adopt Cory Park Domain as the location of the skatepark in Tairua        | <p>Was the preferred option in the statement of proposal that was then supported by 92.49% of submitters.</p> <p>The responses to issues raised by submitters to the statement of proposal are largely resolved or explained in the Deliberations Report to the extent that there are no significant issues that cannot be resolved from either a technical or process perspective.</p> <p>Will ensure that the community of Tairua have a skatepark after over 20 years of discussion.</p> | <p>Members of the Cory Park Domain Protection Society have verbalised their intent to continue to oppose the project.</p>  |
| 2. Do not adopt Cory Park Domain as the location of the skatepark in Tairua |   | <p>Inconsistent with the results of the consultation on the statement of proposal on the project. 92.49% of respondents support Cory Park Domain as the site for the skatepark.</p> <p>Will further delay the delivery of the skatepark.</p> |

[101] The Deliberations Report itself was annexed to Ms Hopping’s report as an appendix. Her covering report concluded by recommending a series of resolutions to Council.

[102] The Council Covering Report was considered by the Council on 24 May 2022. At the meeting the Council passed resolutions as follows:

**Resolved**

That the Thames-Coromandel District Council:

1. Receives [the Deliberation Report] dated 2 May 2022.
2. Notes that it has considered all submissions made on the Tairua Skatepark Location, both written and verbal, to the Tairua Skatepark Location consultation process.
3. Notes the analysis and recommendations in relation to submissions on the Tairua Skatepark location consultation contained within this report.
4. Adopts Cory Park Domain as the location of the skatepark in Tairua.
5. Approves Council's Health and Safety team to review the Site-Specific Safety Plan for the construction works of the skatepark project.
6. Approves installation of signage at the eastern end of the park, advising of the toilet location, particularly around the cricket nets and within Code of Conduct signage at the skatepark.
7. Approves that the grass and landscaped bunding is used where possible for acoustic mitigation at the skatepark location as per Acoustic Engineering Services (AES') recommendations.
8. Endorses that the skating surface setback is 14m from Manaia Road, Tairua.
9. Approves Council consult directly with Tairua Rugby Sports Club and Thames Valley Rugby Union and other park users with regards to the preferred dimension reduction to the in-goal and/or field of play areas for the rugby field.
10. Approves that the western side of the skatepark should be designed and constructed with elements that would be more compatible with a rugby field interface.
11. Endorses that the relocation of the exercise equipment on Cory Park Domain should be investigated during the design stage.
12. Approves that the skatepark should include a design that retains access to the tennis courts.
13. Approves that Council ensures reserve safety and risk management objectives and policies are adhered to.
14. Approves that flooding mitigation be addressed in detailed design.
15. Approves that the fire hydrant access is not impeded by the skatepark development.
16. Approves that in the next stage of the project, project delivery, a Skatepark Design Reference Group be established to provide input into the design and to be able to communicate factual information to the community at large on the design.



17. Endorses the request for The NZ Police be invited to participate in the Skatepark Design Reference Group to advocate for matters related to community safety.
18. Approves the next stage of the project to include:
  - the appointment of an expert skatepark designer and independent project manager,
  - the formation of a community design reference group with a mix of members from skaters, adjacent residents, a Preserve Cory Park Domain Society (PCPDS) member, a Tairua Rugby Sports Club (TRSC) member, a Tairua Recreation Sports Trust (TRST) member and others including NZ Police and other park users to work with experts to finalise design and;
  - a report to Council on final design, cost and budget confirmation to finalise approval for the design specific response. The report should address design brief matters raised during Stage 1 of the project.
19. Approves the specific design matters outlined above, form part of the design brief for the next stage of the project.

*The case for the Society — second challenged decision*

[103] In relation to the second challenged decision the Society contends that as with the first challenged decision the Council breached s 77(1)(b) of the LGA in failing to assess the advantages and disadvantages of the options identified, in this case in the covering report for the Deliberations Report.

[104] Specifically, Mr McNamara noted that the cover report had identified two options, to adopt Cory Park as the location for the Tairua skatepark or not, but submitted that the assessment of the advantages and disadvantages of those options was inadequate, being limited to the table set out at [99] above. Although Mr McNamara accepted that Ms Hopping had considered the Deliberations Report provided sufficient detail for that purpose, in Mr McNamara's submission:

Veros' role was to consider submissions on [the Statement of Proposal] and make a recommendation. It was not tasked with considering advantages and disadvantages of *options*. Those were matters for elected members on the *Council*, properly advised, to consider and weigh up.

[105] As a result Mr McNamara submitted that:

This lack of analysis meant other disadvantages of the "adopt" option (such as cost, impact of a skatepark on residents adjoining Cory Park, or the ongoing

division within the community proceeding with this option would create) were simply ignored.

*Discussion — second challenged decision*

[106] It is noted that the Society accepts that by the second challenged decision the only options available were those identified by Ms Hopping in the cover report: to adopt Cory Park as the location for the Tairua skatepark, or not.

[107] The Society also accepts that the issues raised by the Society in opposition to locating a skatepark at Cory Park rather than Pepe Reserve were accurately reflected in the Deliberations Report.

[108] It follows that in essence what the Society is contending is that the Council, or at the very least, a Council officer, had to acknowledge the issues raised by the Society and other submitters in opposition as disadvantages of proceeding with the Cory Park location, and presumably those same factors would then have become advantages of not proceeding.

[109] Such a submission cannot be sustained. It overlooks the detailed analysis undertaken by Veros of the issues identified by the Society and the other submitters in opposition. The Veros analysis was in fact been adopted by Ms Hopping when she noted (as an advantage of proceeding with the Cory Park Location):

The responses to issues raised by submitters to the statement of proposal are largely resolved or explained in the Deliberations Report to the extent that there are no significant issues that cannot be resolved from either a technical or process perspective.

[110] This comment draws from the Deliberations Report the conclusion that there are, in fact, no significant issues remaining from those raised by the Society and the other submitters in opposition. It followed that the matters raised by the Society and other submitters in opposition did not have to be listed as potential advantages or disadvantages. That would have only been necessary had Veros/the Council concluded there was merit in the matters raised by the submissions in opposition. The suggested Council resolutions drafted by Ms Hopping and the Council resolutions

themselves confirm the Council relied explicitly on Veros analysis contained in the Deliberations Report.

[111] Given this position I am satisfied that while the advantages and disadvantages identified in the cover report are limited, there was no breach of s 77(1)(b) of the LGA with regard to the second challenged decisions.

*Conclusion — second challenged decision*

[112] For the reasons set out above. I am not satisfied that there was any failure to assess the advantages and/or disadvantages of the options identified. The Society's challenge to the second challenged decision therefore fails.

**Third challenged decision — Approval of Design and Authorisation to Proceed with Procurement and Construction**

[113] In accordance with Council resolutions 16–19 of the second challenged decision,<sup>20</sup> a community design reference group (“CDRG”) was set up comprising of one representative each from the skating community, an adjacent resident not a member of the Society, the Society, a representative of TRSC, the Tairua Regional Sporting Trust, the New Zealand Police and “other park users”. It is not known when exactly the CDRG was established but its purpose was identified in its terms of reference which provided:

1. Council's health and safety team review the Site-Specific Safety Plan for the construction works of the skatepark project.
2. Signage is installed at the eastern end of the park, advising of the toilet location, particularly around the cricket nets and within Code of Conduct signage at the skatepark.
3. Design deals with acoustic mitigation to neighbouring properties, in particular
  - Acoustic mitigation at the skatepark location with confirmation from an acoustic engineer that the design will meet the Acoustic Engineering Services (AES') recommendations with the Deliberations report
  - The skating surface setback is 14m from Manaia Road, Tairua or achieves the same acoustic level results as achieved by a 14m setback.

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<sup>20</sup> See above at [102].

4. TCDC and its consultants, consult directly with Tairua Rugby Sports Club and Thames Valley Rugby Union and other park users with regards to the preferred dimension reduction to the in-goal and/or field of play areas for the rugby field to achieve the required five-meter dead ball setback to the indicated skatepark area.
5. The western side of the skatepark is designed and constructed with elements that would be compatible with a rugby field interface.
6. Condition assessment of exercise equipment on Cory Park Domain is completed during the design stage including suitable relocation of equipment.
7. Access is retained to the tennis courts.
8. The reserve safety and risk management objectives and policies are adhered to.
9. Stormwater flooding mitigation from the skate park to be addressed in detailed design.
10. During design stage, confirmation from FENZ that the fire hydrant access is not impeded by the skatepark development.

[114] To achieve this, the role of the CDRG was to:

1. Communicate and engage with the organisation or group they represent, to determine their views on the skatepark design prior to attending the Reference Group design review meeting. Two weeks will be allowed for this.
2. Attend the Reference Group design review meeting and engage in discussion to determine the design meets the design requirements.
3. Provide feedback on design requirement matters that they consider are and are not met for inclusion in a report to Council to support Council decision making on the final design.
4. Undertake their role in a timely manner. To support this, three weeks notification of the Reference Group review meeting will be provided, and responses to any correspondence requested within two weeks.

[115] The following steps were identified:

1. Expert skatepark designer will review previous designs and elements and scale (700m<sup>2</sup>) and develop a concept design.
2. The concept design will be tested for fatal flaws.
3. The concept design will be tested with a group of skatepark users to ensure that the form and function requirements are fit for purpose.
4. The concept design will be presented to the Reference Group with a report showing how the design requirements have been met and raising any residual issues (in person meeting).

5. The Reference Group will discuss any residual issues and form an opinion if the design requirements have been met.

6. The concept design will be acknowledged by the Reference Group as having met the design requirements. If necessary, this acknowledgement will have tags regarding particular items of elements that need to be reviewed.

7. The detailed design will be presented to the Reference Group to ensure that the design requirements continue to be met in detailed design (online meeting).

8. The Reference Group will form an opinion if the design requirements have been met.

9. This / these opinions will be reported to Council with the final design, cost and budget confirmation to finalise approval.

[116] The terms of reference also noted:

While consensus is sought, it is not required from the Reference Group. All opinions expressed will be reported to Council, for Council to make the final decision on design and delivery.

[117] On 29 July 2022 Mr McNamara wrote to the Council on behalf of the Society reiterating the Society's concerns with the site selection process and expressing its concerns with the design and implementation process, including taking issue with representation on the CDRG. As a result the Society requested that the design and implementation process be stayed pending an independent review of the site selection process, including the appointment of Veros. Despite this Mr McNamara advised the Society would participate in the CDRG and nominated the Society's representative accordingly.

[118] The Council responded on 23 September 2022. It rejected the issues raised by the Society and declined to stay the design and implementation process.

[119] Further detailed design works were subsequently undertaken. This included detailed design work in which the dimensions of the skatepark were finalised and stormwater issues considered, and a further report from AES was obtained on mitigation of recurring noise issues.

[120] To facilitate the work of the CDRG Veros prepared a discussion document entitled "Community Reference Group Report October 2022". It used as its starting

point the 19 Council resolutions adopted on 24 May 2022, although noting that a number of those resolutions were either not relevant to the CDRG (resolutions 1–3 and 19), had already been completed by the Council or third parties (resolutions 4, 7–8, 10, 12, 15), or related to the establishment of the CDRG itself (resolutions 16–18).

[121] The first meeting of the CDRG took place on 18 November 2022. The minutes recorded that the CDRG had considered the 11 matters outstanding (identified in the minutes as resolutions 5–15 and 18) and eight of those were noted as having been resolved (resolutions 5–8, 11–12, and 14–15). The minutes went on to note:

... three outstanding issues are in progress, all three issues are being progressed by [the Council] and TRSC to close out of. This process is underway and is expected to be resolved mid-December 2022.

[122] The second and final meeting of the CDRG took place on 30 March 2023. The minutes of that meeting recorded that all of the members of the CDRG other than the Society confirmed that the design requirements of the skatepark had been completed. The minutes noted that the Society, in addition to stating that four of the design items approved in in the first CDRG meeting were not in fact complete (resolutions 5, 7, 8, and 13), also confirmed that items 4 (the location of the skatepark) and 18 (approval of the next stage of the project including setting up the CDRG itself and reporting to the Council and final design cost and budget confirmation) were also outstanding. The Society contended that a range of aspects of the skatepark design were outstanding, noting in particular that construction drawings had not been prepared, and design work to address health and safety issues had not been completed.

[123] In response the Veros and Council members of the CDRG noted that the design was complete. They commented that construction drawings and a site-specific safety plan had not been prepared and would not be until a contractor was confirmed, and that the other matters raised were operational.

[124] It appears the report of the CDRG was intended to be considered by the Council on 4 April 2023. On 3 April 2023 Mr McNamara wrote to the Council requesting that it refuse to grant approval of the final design and contractor procurement and otherwise cease work on the Tairua skatepark project, reiterating that if a skatepark was still

required it should be located at Pepe Reserve, which the Society maintained “remains the better location”.

[125] In addition to repeating previous criticisms of flaws in the design process, the Society also raised the cost of the project as a factor before raising issues with noise, “design uncertainties” and health and safety issues which appeared to relate to the operation of the skatepark. A further noise report from Mr Styles, dated 3 April 2023 was annexed to Mr McNamara’s 3 April letter. As a result of the Society’s letter, the Council agreed to defer considering the approval issues until 26 April 2023. The Society was notified of the deferral and was advised that an updated report would be prepared responding to the issues raised by the Society.

[126] A response was subsequently provided by legal counsel for the Council, Alison Hand. On 19 April 2023, Ms Hand responded to the concerns raised by the Society regarding costs and reiterated previous responses around the design process and specific concerns raised by the Society including noting that a further acoustic report had been obtained from AES (dated 17 April 2023) in response to Mr Styles third report.

[127] On 24 April 2023 the Society, through Mr McNamara, confirmed Ms Hand’s response on behalf of the Council did not allay its concerns and it once more urged the Council to “discontinue the [Tairua skatepark] project”, rather than accept Veros’ recommendation to approve the project’s final design and enable the project to progress through procurement and construction. This time the specific issues identified by the Society were costs, noise, consultation, health and safety, and the fact the Society contended there had been “no overall ownership/assessment of community interest”.

[128] Mr McNamara also wrote a separate letter on behalf of the TRSC the same day. TRSC had hitherto been in support of the skatepark at Cory Park, but, through Mr McNamara, now asserted that the TRSC also did not “consider the skatepark design process to be complete”.

[129] Mr McNamara noted that a meeting was planned between the Council, the TRSC and the Thames Valley Rugby Union on 28 April 2023, two days after the Council meeting and advised:

TRSC is deeply concerned that the Council plans to approve the final skate park design to allow procurement and construction to proceed, while health and safety matters are still unresolved. It is also left questioning the point of meeting with the Council on 28 April 2023, if the final design is already approved by then. TRSC therefore urges the Council to defer its decision on the skate park design until after the meeting on 28 April 2023, and there has been a satisfactory resolution of TRSC's concerns.

[130] Despite the correspondence the Council proceeded at its meeting on 26 April 2023 to consider and approve the final design, and approved procurement enabling the project to proceed to construction works (the third challenged decision). As with the previous decisions a brief report from Ms Hopping enclosed a substantive report by Veros, this time the "Finalised Design Report, Thames-Coromandel District Council, Council Meeting April 26 2023 ("the Finalised Design Report"). In addition to annexing the Finalised Design Report, Ms Hopping addressed a number of budget issues, noting that there had been an error in the Council's earlier appropriation which required the Council to consider whether an additional \$150,000 should be committed to the project to enable it to proceed. As a result, Ms Hopping identified two suggested resolutions: first, receiving the Finalised Design Report and second, approving the additional \$150,000 required.

[131] The Finalised Design Report provided details of the final design for approval. The body of the report commented specifically on landscape design and then noted that in addition to a further acoustic report prepared by AES as part of the design process the fourth acoustic report that had been prepared by AES in response to the 3 April report from Mr Styles. It also identified various adjustments made to the skatepark designed to address noise issues. Similar details were provided on aspects of the stormwater design before the report referred to specific consultation undertaken with the Tairua Skatepark Users Group, Fire and Emergency New Zealand, the TRSC, and the Council's operations managers. With regard to the consultation with TRSC a total of three meetings were noted and it was recorded a number of issues raised by the TRSC had been incorporated into the final design. The only matter recorded as unresolved between TRSC and the Council was noted as follows:



TRSC advised the risk of balls entering the skatepark from other park users. The skatepark signage has been developed to make the park users aware of wider park uses. The draft signage pack was provided to TRSC in December 2022, no feedback has been received to date. Further to the signage, TCDC and TRSC are to work together to further manage the risk from an operational level.

[132] The Finalised Design Report also set out details of a safety and design workshop undertaken, and detailed the work of the CDRG, including annexing copies of the CDRG minutes.

[133] The final section of the Finalised Design Report was a budget update identifying a breakdown for the total Tairua skatepark project budget costs of \$1,122,100. The Finalised Design Report concluded with the recommendation from Veros that the Council “approve the Tairua skatepark project final design to enable the project to process through procurement and construction”.

[134] The Council’s consideration of the Tairua skatepark issue at the meeting on 26 April 2023 was undertaken with public excluded, on the grounds that to do so was to maintain legal professional privilege. The third challenged decision recorded that the Council:

1. Receives the 'Tairua Skatepark Finalised Design Approval' report dated 17 April 2023.
2. Approves an additional contribution of up to \$150,000 from the Tairua-Pauanui Land Subdivision Reserve Account.
3. Approves the design plans for the Tairua Skatepark and authorises the project to proceed with procurement and construction subject to any minor design changes required for health and safety purposes within the project budget following the meeting with Tairua Rugby and Sports Club and Thames Valley Rugby Union proposed to take place on 28 April 2023.

*The case for the Society — third challenged decision*

[135] The Society contends that the third challenged decision was made while the Council was still consulting with the Society, the TRSC and others via the CDRC.

[136] Mr McNamara submitted that there were outstanding health and safety design issues which had not been resolved, and placed particular reliance on the meeting

scheduled for 28 April 2023 between TRSC and the Thames Valley Rugby Union, two days after the Council had made its decision to proceed.

[137] As a result Mr McNamara submitted the Council failed to comply with:

- (a) Section 82(1)(d) of the LGA in failing to give the Society and the TRSC “reasonable opportunity to present their views to Council in a manner and format appropriate to their preferences and needs”; and
- (b) Section 82(1)(e) of the LGA in failing to give the Society and TRSC views due consideration.

*Discussion — third challenged decision*

[138] Given the implacable opposition of the Society to any skatepark located at Cory Park and the myriad of issues raised in this phase of the project the fact that the only issue raised in respect of the third challenged decision was a breach of the consultation principles contained in s 82 of the LGA is a testament to the thoroughness with which Veros, Council officers and the Councillors making the decision approached this part of the Tairua skatepark approval process.

[139] As the narrative to this part of the judgment confirms, the Society had continued to challenge every substantive aspect of the proposed skatepark, evidenced by its solicitors ongoing correspondence through to the Council’s decision on 26 April 2023.

[140] It is, however, clear that there is no merit in this last remaining point taken by the Society.

[141] As Ms Robertson has submitted, by the time the third challenged decision was made there was absolutely no doubt, whether on the part of Veros, Council officers or the Councillors, of the Society’s position on any issue, from site selection to noise, and including health and safety issues. In addition to the considerable correspondence, meetings between Veros and/or the Council and the Society took place on at least six occasions:

- (a) Veros met with the Society on 17 September 2021.
- (b) Veros met with the Society on 1 November 2021.
- (c) An online meeting was held with the Galloway family (associated with the Society) on 17 November 2021 and Veros had further email communications with the Galloway Family after that date.
- (d) Veros met with the Society on 6 December 2021.
- (e) The Society, through its solicitor, presented its submission in person at the hearing held on 28 and 29 April 2022.

[142] Furthermore, the Society was part of the CDRG and its position on the issues remaining was clearly noted in both sets of minutes and in the Finalised Design Report. As has been noted the CDRG terms of reference made it clear that consensus was not required of the CDRG but that “all opinions expressed will be reported to Council, for Council to make the final decision on design and delivery”.<sup>21</sup>

[143] The TRSC was likewise represented on the CDRG and in the course of its participation and had, in fact, confirmed that there were no outstanding design requirements. It is also clear that as Ms Robertson also noted, Veros and/or the Council met with the TSRC on two occasions prior to the third challenged decision, namely on 21 October 2021 and 5 April 2022. Both Veros and the Council were aware of the 28 April 2023 meeting, and the remaining matters requiring discussion between the TRSC and the Council, as it was understood by Veros, was set out in the Finalised Design Report. As a result the third challenged decision specifically made provision for “any minor design changes required for health and safety purposes within the project budget following the meeting with TRSC and Thames Valley Rugby Union proposed to take place on 28 April 2023”. Given that position, and indeed the entirety of the process agreed to and followed by the Council from mid-2021 I conclude there can be no basis for suggesting any breach of the consultation principles identified by the Society.

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<sup>21</sup> See above at [116].

[144] Even if I am wrong in that conclusion, on this issue too I would agree with Ms Robertson, that in the context of the decision-making process as a whole and the third challenged decision in particular, any such breach would be both technical and minor in and of itself, and as a result, I would decline to exercise my discretion to grant relief in such circumstances.

[145] It is, in any event, quite clear that changes were made to the design arising out of concerns identified by the Society and other members of the CDRG. Those identified by Ms Robertson include:

- (a) The Council's Health and Safety Partner review the site-specific safety plan for the construction works of the project.
- (b) Introduction of signage advising the location of the toilets.
- (c) Designing and constructing the western side of the skatepark with elements that are most compatible with the rugby field.
- (d) Ensuring Cory Park Reserve's safety and risk management objectives and policies were adhered to.
- (e) The establishment of the CDRG to provide input into the design, including health and safety aspects.
- (f) Ensuring the NZ Police to participate in the CDRG to advocate for measures related to community safety.

*Conclusion — third challenged decision*

[146] For the reasons set out above I conclude there has been no breach of the consultation principles in ss 82(1)(d) and (e) of the LGA and the Society's challenge to the third challenged decision fails as a result.

## **Decision**

[147] The Society's application for judicial review against the Council against the first, second and third challenged decisions is dismissed.

[148] Ordinarily, and having regard to the lack of merit of the issues raised by the Society, the Council would be entitled to costs. Given, however, the location of the proposed skatepark in relation to the properties owned by members of the Society and the need to start to rebuild relationships within the Tairua community there may be good reasons for ordering costs to lie where they fall. Should, however, the Council seek costs and these cannot be agreed between the parties, the Council is to file a memorandum within six weeks of the date of this judgment setting out its position with regard to costs. The Society will then have two weeks to respond following which I will determine on the papers any costs issue arising.

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Powell J