

8. 711 JOHNS ROAD, AGREEMENT TO EXCHANGE – ORION NZ



General Manager responsible:	General Manager, City Environment Group, DDI 941-8608
Officer responsible:	Unit Manager, Transport and Greenspace
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PURPOSE OF REPORT

1. The purpose of this report is to update the Board and to seek its approval under the delegated authority of Council to request the Minister of Conservation to exchange an area of Part Reserve 323 at 711 Johns Road for land held by Orion NZ at 300E Mairehau Road (refer **Attachments 1 and 2**) pursuant to Section 15 of the Reserves Act 1977.
2. To seek the recommendation of the Board to the Council to consent under Section 114 of the Public Works Act 1981 to the taking of some 581 square metres of Part Reserve 323 for road (State Highway).
3. Subject to the successful outcome of 1, to recommend to the Council that it request the Minister of Conservation to classify as Scenic Reserve, the property at 300E Mairehau Road.

Note: The Burwood/Pegasus Community Board is aware and supportive of this proposal.

EXECUTIVE SUMMARY

4. At its meeting on 27 August 2009 the Council resolved to:
 - (a) Declare as surplus to its requirements that part of Reserve 323 comprising approximately 14.7 hectares (subject to survey) being part CT 6771 shown as Sec 1 on drawing 500423-02 (refer **Attachment 3**) and pursuant to Section 24(1)(b) of the Reserves Act 1977, make written application to the Minister of Conservation to revoke the reservation for gravel purposes, for a subsequent Crown disposal process between the Department of Conservation and Ngāi Tahu subject to:
 - (i) A right of way easement in gross and an electrical easement being created over Section SO 14256 and part Reserve 323 shown as Sections 3 and 4 respectively on drawing 500423-02 to provide access and underground electrical cables from Waimakariri Road to the main site and the Orion Substation site.
 - (ii) Full compliance with the provisions of the Reserves Act 1977.
 - (b) Authorise staff to:
 - (i) Further negotiate with Orion NZ Limited to work out the terms for an exchange of Land under the provisions of Section 15 of the Reserves Act 1977 in relation to that parcel of Part Reserve 323 shown as Section 2 on Drawing 500423-02 as a site for an electrical substation.
 - (ii) Proceed to publicly notify the proposed exchange.
 - (c) Subject to recommendations (a) and (b), authorise the Corporate Support Manager to enter into agreements and do all things necessary to create the easements described in recommendation 4(a) and 4(a)(i).
6. Since the Council's August 2009 resolution, ongoing discussions have been held with Orion NZ to reach agreement on the terms of the exchange and the Department of Conservation over process. Progress with implementing the exchange and the reserve revocation has been delayed with the New Zealand Transport Agency (NZTA) identifying land parcels from Reserve 323 as required for road (State Highway) along the Johns Road frontage.

7. To provide for NZTA roading requirements for both current and future stages for the widening of Johns Road, it was necessary to revise the scheme plan to provide for a repositioning of the proposed substation (Refer **Attachment 1**). While the revised scheme, which will mean a resurvey does slightly alter the areas for revocation and exchange, the principles and objectives of the proposal remain the same and all parties are now in agreement to proceed on the basis of the new scheme. A formal agreement with Orion to the proposed exchange was signed on 14 May 2012. This agreement provides that land swap can take place without any equality payment to the other and is conditional on Council approval and full compliance with the exchange procedures under the Reserves Act 1977. The agreement also provides that the Minister of Conservation's consent be obtained and separate computer freehold titles be issued by 14 February 2013.
8. Sections 4 and 5 on **Attachment 1** (surveyed as Section 2 SO 426835, 581 square metres) are to be taken for road pursuant to Section 114 of the Public Works Act 1981, The Department of Conservation has already consented to this action and Council's consent is required for legalisation to be completed. The compensation payment by NZTA will be split 50/50 between the Department of Conservation and Council. Future road widening requirements from Part Reserve 323 will be for negotiation between NZTA and Orion and the new owner of the balance block.

FINANCIAL IMPLICATIONS

9. To date, costs to the Council have been related to survey, process and staff time. The exchange agreement provides that the Council will be responsible for the costs in completing the exchange procedures, survey and the creation of the associated easements. NZTA have agreed to meet the cost of the revised scheme plan and the resultant resurvey. At the time of writing this report further cost to the Council (if any) in relation to preparation of the site for the proposed substation is unknown and dependant upon joint agreement yet to be reached with Orion on the cost of providing the bund (as part of the Hearing Commissioner's recommendation to Council), refer paragraph 25.

Do the Recommendations of this Report Align with 2009-19 LTP budgets?

10. Not applicable.

LEGAL CONSIDERATIONS

11. Part Reserve 323 is vested in the Christchurch City Council as a Reserve for a Gravel Pit with title to the reserve having come from the Crown. The reserve is not formally classified but if it were it would be deemed to be a Local Purpose (gravel) Reserve. Note the adjoining the property fronting Waimakariri Road (Section 1 SO 14256) is classified for Local Purpose (public utility) and is vested in the Council. This reserve, while affected by Right of Way and service easements is being retained by the Council.
12. Section 15 of the Reserves Act 1977 provides that the Minister of Conservation may by notice in the Gazette, authorise the exchange of land comprised in any reserve or any part or parts thereof for any other land to be held for the purpose of that reserve. The land received from Orion at Travis Wetland will in the first instance assume the status of gravel pit, with a classification process to immediately follow to have this land gazetted as scenic reserve, the same status as the surrounding wetland reserve. The Department of Conservation supports the exchange in principle on the basis that there will be greater value to the reserves' network by having this land as reserve at Travis Wetland rather than Johns Road.
13. Section 15(2) provides that the Council shall not pass a resolution requesting the exchange before the expiration of one month after notice of intention to pass the resolution and calling for objections has been published in one or more newspapers circulating the district and until considering all such objections received in that period (if any). The offer back provisions of the Public Works Act and the first right of refusal rights of Ngāi Tahu do not apply to this process.
14. The Department of Conservation has given Notice to Ngai Tahu that the exchange is an exempted transaction and requesting that the parcels required for road (SH) also be exempted in accordance with Section 50(e) of the Ngai Tahu Clams Settlement Act.

15. Section 48 of the Reserves Act 1977 allows for the grant of easements over reserve for the purposes proposed.
16. Section 16(1) of the Reserves Act 1977 provides for the classification of reserves by the Minister of Conservation when the reserve is derived from the Crown's title. Orion's property at 300E Mairehau Road after the exchange will be deemed to have come from the Crown's title as it is being exchanged for reserve that did.
17. The Board has the delegated authority of the Council to approve the exchange of Reserve land for other land pursuant to Section 15 of the Reserves Act 1978. The Board does not have the authority of Council to consent under Section 114 of the Public Works Act 1981 to the taking of land for road. Also, subject to the successful completion of the proposed exchange it is considered expedient that the Board recommend to the Council that it requests the Minister of Conservation to classify, as scenic reserve the land at Mairehau Road being received from Orion to fulfil the intent of the exchange. The Board does not have this delegation.

Have you considered the legal implications of the issue under consideration?

18. As above.

ALIGNMENT WITH LTP AND ACTIVITY MANAGEMENT PLANS

19. Not applicable.

Do the recommendations of this report support a level of service or project in the 2009-19 LTP?

20. Not applicable.

ALIGNMENT WITH STRATEGIES

21. The proposed exchange with Orion is aligned with Section 6 of the Biodiversity Strategy.

Do the recommendations align with the Council's strategies?

22. To obtain control of Orion's Title at Travis Wetland aligns with the objective of protecting and restoring ecosystems, sites and habitats supporting biodiversity.

CONSULTATION FULFILMENT

23. The notice of intention to pass a resolution requesting the exchange was published in the public notices column of the Christchurch Press newspaper on Wednesday 9 May 2012 closing 5 pm Wednesday 13 June 2012. The immediate adjoining owner of the land intended for exchange at 4 Waimakariri Road was written to on 7 May 2012 giving advance notice of the public notice and copies of the scheme and site plans inviting any queries. In response to an offer to informally discuss the neighbour's submission in opposition prior to a hearing Orion's network Asset Manager and the author meet with the neighbour on 16 July 2012 with a view to explain the proposal further and if possible answer any queries/concerns. The Orion Network Asset Manager and the author had previously met with the neighbour in late 2009 to initially consult on the exchange proposal.
24. In response to the notice, a total of three written submissions including the immediate neighbour opposing the proposed exchange were received – refer **Attachment 5 (separately circulated to Board Members)** for copies of the submissions.
25. A Reserves Act hearing was conducted on 7 August 2012 with Commissioner David Mountfort presiding. Refer **Attachment 4** for the Commissioner's report. The Commissioner's recommendations to the Board are:
 - (a) That the Fendalton/Waimairi Community Board recommends to the Minister of Conservation that the land exchange proposal described in this report proceed, subject to Orion NZ and the Christchurch City Council having first entered a formal agreement to ensure the following is implemented:
 - (i) A bund of at least 2 metres in height is built and landscaped along the north-western boundary of the property at 4 Waimakariri Road prior to the construction of the proposed substation, and

- (ii) Orion obtains a report from a qualified acoustic engineer as to the design and placement of the bund, including any planting and, if necessary, acoustic fencing along it, and agrees to carry out the recommendations of that report. The purpose of the bund is to screen the substation site from the property at 4 Waimakariri Road, and to mitigate any noise generated by the substation itself and any increased road noise due to the removal of any established trees.
 - (b) That the submissions be allowed in part by the provision of the bund, landscaping and fencing (if required), and be otherwise rejected.
26. The recommendation has been worded in such a way that the Board can make its decision whether or not to recommend the proposed exchange to the Minister of Conservation and that (if Board decides to accept the Commissioner's recommendation) the approach to the Minister seeking consent will not be made until the conditions relating to the binding agreement have been satisfied.
27. At the time of writing this report, Orion had requested the acoustic engineer's report (25(a)(ii) above) and when this is available the design plan will be finalised on which to base the agreement intended under recommendation 25(a) above.

STAFF RECOMMENDATION

It is recommended that the Fendalton/Waimairi Community Board resolve to:

- (a) Adopt the recommendation of the Hearings Commissioner given at paragraph 25;
- (b) Recommend to the Council that it consent, pursuant to Section 114 of the Public Works Act 1981 to the taking of the land described in the Schedule below for road (State Highway)
- (c) Recommend that the Council, subject to recommendation (a) above, request the Minister of Conservation pursuant to Section 16 (1) of the Reserves Act 1977 to change the purpose from gravel pit and classify as scenic reserve under Section 19 (1) (b) of the Reserves Act 1977 that land situated at 300E Mareihau Road, Parklands being Section 1 Survey Office Plan 15905 and being all of the land comprised in computer freehold register 231659 containing 5739 square metres more or less.

Schedule

- (a) Part Reserve 323, shown as Section 2 SO Plan 426835.
- (b) Area: 581 square metres

BACKGROUND (THE ISSUES)

28. Orion approached the Council in 2005 requesting an exchange of land from their portfolio of land assets for a portion of Reserve 323. Lot 2 DP 45936 which is sited within the Travis Wetland and is the only site not held by the Council, was identified as the most appropriate parcel of land held by Orion for exchange. This will afford the Council the opportunity to enhance the Council's control of the Travis Wetland, an ecological heritage site. Currently the Council holds title as scenic reserve to all other portions of the wetland which is zoned C I in the City Plan as is the Orion property.
29. The exchange of land benefits Orion's strategic goals of securing a site in the north-west of the city for the purpose of establishing a power substation. The advantages for the Council are the ability to extend the Scenic Reserve held in Travis County giving the Council the control of all the parcels of land that make up the Travis Wetland.
30. Following the successful completion of the exchange, a separate process will be promulgated to classify the Orion Title received as scenic reserve under Section 19 (1) (b) of the Reserves Act 1977. This classification, which is recommended by the Network Planning Greenspace Team is "for the purpose of providing, in appropriate circumstances, suitable areas which by development and the introduction of flora, whether indigenous or exotic, will become of such scenic interest or beauty that their development, protection, and preservation are desirable in the public interest". The Travis Wetland is a listed Ecological Heritage Site in the City Plan and it is intended that by separate action this wetland also be classified for this purpose so that all the titles that make up the wetland are held under the same classification
31. City Care have a cleanfill consent to back fill the existing exhausted quarry using hard fill including soil, rock and concrete. This operation is nearing its completion with the backfill now at the face of the proposed substation site. Orion and the Council are in discussions with City Care on preparation of the proposed substation site including the development of a bund in accordance with recommendation 1(a) of the Hearing Commissioner's report.

THE OBJECTIVES

32. To implement Council's resolution to achieve the exchange of Pt Reserve 323 for Orion's title at Travis Swamp to be held as a scenic reserve along with the Council's adjacent land holdings and to allow release of the balance of the reserve to the Department of Conservation for revocation of the gravel pit reservation and subsequent disposal.