

1. OPAWA EXPRESSWAY – STAGE II – DISPOSAL OF LAND (REPORT 3)

General Manager responsible:	General Manager, City Environment
Officer responsible:	Don Munro, Transport and City Streets Manager
Author:	Bill Morgan, Property Consultant, DDI 941-8581 & Jeff Woodham, Property and Leasing Adviser, DDI 941-8771

PURPOSE OF REPORT

1. To declare surplus the balance of those properties not required for the Opawa Expressway.
2. To grant the Corporate Support Manager delegated power to approve the disposal of the surplus properties in Opawa Road and to purchase Nos 205, 209 and 267 Opawa Road from the Crown.
3. To address the recommendations made by the Spreydon/Heathcote Community Board at its meeting on 7 February 2006, namely:

“That the staff recommendations be adopted, subject to a report initially being made to the Board, but prior to the conclusion of the offer-back process, detailing:

- (a) *The forms of development that could occur on the land involved, given the current zoning; and*
- (b) *The use of land covenants in respect of the affected on sold land.”*

EXECUTIVE SUMMARY

4. The Opawa Road upgrade is currently under way. Land to facilitate this upgrade was purchased by the Council and Transit New Zealand over a number of years prior to the upgrade. The balance of the properties at 203 through to 279 Opawa Road are now surplus to requirements. Three of these are currently owned by Transit New Zealand and are recommended for strategic purchase.
5. The land has been identified for disposal in the Transport and City Streets Capital Programmes in 2005/06 and 2006/07, to offset the Opawa Expressway construction costs. The disposal of the land is therefore in compliance with this objective, but to facilitate disposal it is necessary for the Council to resolve that the properties are surplus to Council requirements.
6. For the reasons identified in both the legal and planning reports, it is proposed that the land be offered for sale unencumbered and that the City Plan be relied upon to control development.

FINANCIAL AND LEGAL CONSIDERATIONS

7. The Legal Services Unit has confirmed the Council is bound by the offer back provisions of Section 40 of the Public Works Act 1981 and is therefore required to go through the offer back process for those properties (detailed in the proposed resolution schedule) as part of the process to dispose of the land.
8. The Legal Services Unit has provided an opinion in relation to the use of covenants. This opinion concludes “it is not considered that the land covenant device is the appropriate method to control land use by the Council” and is included as an attachment to this report.
9. The Legal Services Unit has provided commentary (refer attachment) concerning the forms of development that could occur on the land given the current zoning in the City Plan. In addition to this, the City Plan Team has commissioned a report from Planit R.W.Batty & Associates Ltd (refer attachment) with the purpose of providing an overview of the potential land use options for the blocks of surplus land on Opawa Road.

10. At the date of preparation of this report, Transit New Zealand is awaiting approval from LINZ to offer the three properties they own on Opawa Road to the Council exclusively. It is likely this approval will be given, although if it is not, the Council can still attempt to purchase the land. Transit is also awaiting approval for reimbursing the Council for the cost of the land as a funding contribution to the project. Should the Transit New Zealand Board decline to make the funding contribution it is recommended that the Council still acquire the land as a strategic purchase, such an acquisition to be funded either from Transit New Zealand contribution or from the proceeds from the sale of surplus property.

BACKGROUND ON OPAWA EXPRESSWAY – STAGE II – DISPOSAL OF LAND (EX REPORT 2)

11. At its meeting on 15 December 2005, the Council considered and approved the disposal of 257 and 261 Opawa Road to an adjoining owner, given the land was effectively landlocked. The Council was advised that Opawa Road from Garlands Road towards the Port of Lyttelton is part of the State Highway Network in Christchurch. Transit New Zealand (Transit) is usually responsible for improvements of this network. However, some years ago the residents of Opawa Road raised concerns at the increasing volume of traffic on the road, and the adverse effects of increased traffic noise vibration, local air pollution and accessibility to their properties. Realignment of the road was considered necessary to overcome all of these effects.
12. The Council subsequently reached an agreement with Transit and Transfund where Transfund funds that part of the work it considers economically justified, and the Council pays the costs above and beyond that.
13. The Council subsequently approved funding to purchase the remaining ten properties for the road during the 2001/02 financial year which was subsequently completed.
14. Construction of the road commenced in 2004/05 and has been completed.

SURPLUS LAND

15. The properties acquired for the expressway were purchased over many years by both the former Heathcote County Council, the Christchurch City Council and a number by Transit New Zealand.
16. Being State Highway, Transit has insisted that access to the road from adjacent properties be prohibited (with two exceptions) and as a consequence access to the surplus land is to be provided by rights-of-way running off the side streets. Services i.e. power, sewer, water etc. are also required to be reticulated from the adjoining streets.
17. All of the land on the eastern side of Opawa Road between numbers 201 and 279 (Garlands to Curries Road – as depicted on the attached plan number TP162405) is surplus to requirements with part being zoned Living and part Business. The zoned boundary lies between 261 and 265 Opawa Road with the properties to the north being zoned business and to the south living. Approximately two thirds of the properties are within the business zone.
18. As indicated, the majority of the land is owned by the Council and the balance (205,209,239 and 267 Opawa Road) owned by Transit New Zealand. Before considering a disposal strategy both the Council and Transit have to comply with the offer back requirements of the Public Works Act prior to commencing this process, the Council is required to declare the land surplus to requirements. The offer back on 239 Opawa Road was accepted by the previous owner.
19. Transit was required to offer the land to Ngai Tahu Properties Ltd before it could dispose of the land on the open market. It is understood that Ngai Tahu Properties have now declined the offer on 205, 209 and 267 Opawa Road. In line with the Crown's disposal policy the land will be transferred to Land Information New Zealand to facilitate its sale. The potential purchase of 205, 209 and 267 Opawa Road (209 Opawa Rd bisects the Council's holding) from the Crown will be a strategic purchase given the land would dramatically increase the Council's return on the adjoining properties. A delegation is sought to the Corporate Support Manager to acquire the land providing the purchase price is within 10% of valuation.

20. Transit may make a funding contribution to the Council of the equivalent value. The net effect, if this occurs, will result in the land being acquired at nil cost, however, it will be necessary for the Council to fund the transaction which will be offset by a revenue receipt (Transit funding contribution), these transactions will occur simultaneously.
21. Until the outcome of the Council's offer back process is known, the extent of and the number of properties that may be placed on the open market, cannot be determined. It is anticipated however, that this will be clearer by May/June 2006 on completion of the offer back process. Given, as part of its budgetary provision, the Council had approved in principle the disposal of the land to offset the overall cost of the project, a delegation to the Corporate Support Manager is being sought to approve the subsequent sale of the surplus properties provided they are within 10% of valuation. This will enable the Council to respond quickly to market forces.
22. At the present time strong inquiry has been received from persons interested in purchasing both the Living and Business zoned land. The Council's current policy is to dispose of its surplus property by the tender process. However, it is believed that in this instance a degree of flexibility is required to respond to the market in the most appropriate manner and to keep the Council's options open in the disposal of the land. In some instances it may be more appropriate to sell individual lots by private treaty at a fixed price and in others, if the demand is high, which it is anticipated will be the case for the commercial land, then it may be more appropriate to sell the properties by auction. In the circumstances a delegation is sought for the Corporate Support Manager to determine the most appropriate method of sale having due regard to the respective properties and the demand at the time.
23. The properties situated at 2 Kennedy Place and 255 Opawa Road are being retained by the Council as Local Purpose (Drainage) Reserves. A stormwater basin, appropriately landscaped, is to be created to capture the first flush of water before entering Curries Drain. The Transport and City Streets Unit will be reimbursed for the value of the land by the Greenspace Unit.

LEGAL AND PLANNING COMMENTARY ON BOARD RECOMMENDATIONS

24. The Community Board has sought the use of land covenants. Both legal and planning advice has been sought in this matter with the reports attached for the Board and the Council's information. In summary the reports conclude:
 - (a) *"it is not considered that the land covenant device is the appropriate method to control land use by the Council"*
 - (b) *The primary instrument of control of use is the Christchurch City Plan. Any development on any property must therefore comply with the zoning requirements and the rules of the City Plan before it can proceed. There is, therefore, in existence a compliance system of controlling in respect of land use and development.*
 - (c) *For a land covenant to be created, it is necessary to have another piece of land as the "dominant tenement" (that is another piece of land that has the benefit of the covenant). The "dominant tenement" should also be adjacent to or in the immediate vicinity of the land being proposed to be subject to the covenant. It is improbable, therefore, that the Council can create such a covenant, as there will be no "dominant tenement" available.*
 - (d) *This section of Opawa Road is a State highway, as such Transit New Zealand is the road controlling authority. Transit New Zealand required that on street parking be restricted to improve the efficiency and safety of the road, the only exception to this is an indented parking bay outside the dairy on the western side of the road, with a 10 minute parking restriction.*

To further improve the efficiency of the road, Transit New Zealand has also restricted traffic access to the properties on the eastern side of the road by means of segregation strips. This limits access to the sites from the side streets only, with the exception of the block of land near Garlands Road (shown as Block 1 on the map in the Planit report) where no other access was available. Any developments that could lead to illegal on street parking (as has occurred on Blenheim Road) are undesirable and would affect the integrity of a State Highway.

- (e) *Given the limited depth of the sites (on average 30 metres) the ability to provide adequate landscaped setbacks and more importantly from a commercial perspective, visible and accessible car parks would be severely restricted. This could have a detrimental effect on the marketability of the sections and limit and/or restrict the interest from prospective purchasers given the specialised developments that would be required. Any reduction in the potential return from sale of these sites could mean failure to meet the budgeted capital revenue.*
- (f) *The following are the permitted activities within the respective Business or Living Zones:*
- (i) *The Business 4 zoned land could as of right support:*
- *Offices;*
 - *Commercial Activities (such as Valuers, Banks, Real Estate Agents);*
 - *Retail activity – Up to 2000m² gfa (as a single activity or aggregate group)*
 - *Trade retail activities, food and beverage activities (such as a takeaways/ sandwich bar);*
 - *Light industrial activities, such as distribution, construction, or light manufacturing.*
- (ii) *As the site is zoned Business 4, apart from a plot ratio of 1.0, there are little controls on the height and scale of any building constructed on this land. There are standard setbacks, landscaping and recession plane setbacks from residential boundaries.*
- (iii) *The Living 1 zoned land, south east of the detention swale could support low density, generally single storey, residential activity, with a requisite setback and open space requirement.*

It is believed that the City Plan provides adequate opportunities for a diverse range of activities and that market forces will determine the preferred development.

OPTIONS

25. In approving funding for the road, the Council approved the sale of the surplus land as a line item in the Transport and City Streets Capital Programme in the Property Sales Output with \$847,000 being budgeted in 2005/06 and \$600,000 in 2006/07. The sales therefore are in compliance with the objectives of disposing of the surplus land to offset the roading costs.

STAFF RECOMMENDATIONS

It is recommended that the Board recommend to the Council:

- (a) That the properties described in the following schedule be declared surplus.

Address	Legal Description	Size m2	Zoning	Offer Back
203 Opawa Road	Pt LOT 1~DP 302185 Pt LOT 1 DP 42482	13634	B4	No
203 Opawa Rd	Pt LOT 1 DP 302185 Pt LOT 1 DP 42482	1363	B4	No
207 Opawa Rd	LOT 1 DP 25293	403	B4	No
207a Opawa Rd	LOT 2 DP 25293	433	B4	Yes
211a Opawa Rd	LOT 2 DP 18748	912	B4	No
211 Opawa Rd	LOT 1 DP 18748	487	B4	No
213 Opawa Rd	LOT 1 DP 20219	1054	B4	No
239a Opawa Rd	LOT 1 DP 82941 LOT 3 DP 82941	655	B4	No
241 Opawa Rd	Pt LOT 8 DP 412	710	B4	Yes
243 Opawa Rd	Pt LOT 9 DP 412	710	B4	No
245 Opawa Rd	Pt LOT 10 DP 412	706	B4	No
247 Opawa Rd	Pt LOT 11 DP 412	709	B4	No
249 Opawa Rd	Pt LOT 12 DP 412	719	B4	Yes
251 Opawa Rd	Pt LOT 13 DP 412	566	B4	No
253 Opawa Rd	LOT 1 DP 25769	402	B4	Yes
2 Kennedy Pl	LOT 1 DP 22932 - To Greenspace			
255 Opawa Rd	Pt RS 91 (BM 312) - To Greenspace			
263/265 Opawa Rd	LOT 2 DP 35997	2226	L1	Yes
269 Opawa Rd	LOT 1 DP 19432	585	L1	Yes
269a Opawa Rd	LOT 15 DP 27317	137	L1	No
271 Opawa Rd	LOT 1 DP 13838	596	L1	Yes
273 Opawa Rd	LOT 2 DP 13838	596	L1	Yes
275 Opawa Rd	LOT 3 DP 13838	589	L1	Yes
277 Opawa Rd	LOT 4 DP 13838	574	L1	Yes
279 Opawa Rd	LOT 5 DP 13838	573	L1	Yes

- (b) That pursuant to Section 40(4) of the Public Works Act 1981, the properties be disposed of and the offer back process be followed.
- (c) That following completion of the offer back requirements, the Corporate Support Manager be delegated authority to dispose of the remaining properties at a price not less than 10% of the valuation as assessed by an independent registered public valuer.
- (d) That the Corporate Support Manager be delegated authority to determine the most appropriate method of sale of the surplus land having due regard to the market situation at the time of disposal.
- (e) That the Corporate Support Manager be delegated authority to acquire 205, 209 and 267 Opawa Road provided it is within 10% of valuation as assessed by an independent registered public valuer.
- (f) That pursuant to Section 52(4) of the Public Works Act 1981, the Council hereby resolves to set apart the land detailed below hereto for a Local Purpose (Drainage) Reserve subject to Section 23 of the Reserves Act 1977 and to remain vested in the Christchurch City Council.

All those parcels of land situated in the Canterbury Land Registry being part Lot 1 DP 22932 containing 328m² and being all of the land contained in Certificate of Title 3D/270 together with part Rural Section 91 containing 195 m² and being all of the land contained in Certificate of Title 378/231.

- (g) That the advice of the Legal Services Unit in their commentary "it is not considered that the land covenant device is the appropriate method to control land use by the Council" be adopted, and the land be offered for sale unencumbered.
- (h) The report from Planit be accepted and that the City Plan provisions be relied upon to control development.

BOARD CONSIDERATION

Having considered the officer's report and in particular the accompanying recommendations, the Board recommends to the Council a number of changes to those proposed by the staff as notated in bold in the following recommendations.

BOARD RECOMMENDATIONS

That the Council resolve:

- (a) That the properties described in the following schedule be declared surplus.

Address	Legal Description	Size m2	Zoning	Offer Back
203 Opawa Road	Pt LOT 1~DP 302185 Pt LOT 1 DP 42482	13634	B4	No
203 Opawa Rd	Pt LOT 1 DP 302185 Pt LOT 1 DP 42482	1363	B4	No
207 Opawa Rd	LOT 1 DP 25293	403	B4	No
207a Opawa Rd	LOT 2 DP 25293	433	B4	Yes
211a Opawa Rd	LOT 2 DP 18748	912	B4	No
211 Opawa Rd	LOT 1 DP 18748	487	B4	No
213 Opawa Rd	LOT 1 DP 20219	1054	B4	No
239a Opawa Rd	LOT 1 DP 82941 LOT 3 DP 82941	655	B4	No
241 Opawa Rd	Pt LOT 8 DP 412	710	B4	Yes
243 Opawa Rd	Pt LOT 9 DP 412	710	B4	No
245 Opawa Rd	Pt LOT 10 DP 412	706	B4	No
247 Opawa Rd	Pt LOT 11 DP 412	709	B4	No
249 Opawa Rd	Pt LOT 12 DP 412	719	B4	Yes
251 Opawa Rd	Pt LOT 13 DP 412	566	B4	No
253 Opawa Rd	LOT 1 DP 25769	402	B4	Yes
2 Kennedy Pl	LOT 1 DP 22932 - To Greenspace			
255 Opawa Rd	Pt RS 91 (BM 312) - To Greenspace			
263/265 Opawa Rd	LOT 2 DP 35997	2226	L1	Yes
269 Opawa Rd	LOT 1 DP 19432	585	L1	Yes
269a Opawa Rd	LOT 15 DP 27317	137	L1	No
271 Opawa Rd	LOT 1 DP 13838	596	L1	Yes
273 Opawa Rd	LOT 2 DP 13838	596	L1	Yes
275 Opawa Rd	LOT 3 DP 13838	589	L1	Yes
277 Opawa Rd	LOT 4 DP 13838	574	L1	Yes
279 Opawa Rd	LOT 5 DP 13838	573	L1	Yes

- (b) That pursuant to Section 40(4) of the Public Works Act 1981, the properties be disposed of and the offer back process be followed.
- (c) That for **Block B1**, following completion of the offer back requirements, the Corporate Support Manager be delegated authority to dispose of the remaining properties at a price not less than 10% of the valuation as assessed by an independent registered public valuer.
- (d) That for **Block 1**, the Corporate Support Manager be delegated authority to determine the most appropriate method of sale of the surplus land having due regard to the market situation at the time of disposal.
- (e) That the Corporate Support Manager be delegated authority to acquire 205, 209 and 267 Opawa Road provided it is within 10% of valuation as assessed by an independent registered public valuer.
- (f) That pursuant to Section 52(4) of the Public Works Act 1981, the Council hereby resolves to set apart the land detailed below hereto for a Local Purpose (Drainage) Reserve subject to Section 23 of the Reserves Act 1977 and to remain vested in the Christchurch City Council.

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- (g) **That the Council note** the advice of the Legal Services Unit in their commentary “it is not considered that the land covenant device is the appropriate method to control land use by the Council”, and the land be offered for sale unencumbered.
- (h) That the report from Planit be **received and that the effects of the current City Plan provisions be noted.**
- (i) (new) **That following completion of the offer back process in respect of Blocks 2 and 3, the Council give further consideration to enabling comprehensive development opportunities appropriate to the area, through its disposal process.**

(Note: The above recommendations were carried unanimously.)