16. DISPOSAL OF LAND AT 177 AND 179 MONCKS SPUR ROAD

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Corporate Plan Output: Supply of Water	

The purpose of this report is to obtain the Board's recommendation to the Council for the disposal of land at 177 and 179 Moncks Spur Rd.

BACKGROUND

At the Council meeting of 13 August 1998 the Council considered a report (RR 8178) and adopted the following recommendations regarding the purpose of this land for a reservoir site for the Mount Pleasant Cost Share Area for Water Supply.

1. That the purchase of 183 Moncks Spur Road being Lots 1 and 2 DP 19708 be approved at the settlement figure included in the public excluded section of this report (Clause 26).

2. That part of the site be developed for water supply purposes and the value of that portion be a cost on the Mount Pleasant water supply cost share area.

3. **That other Council uses, or resale after boundary adjustments be investigated for the remaining portion of land.**

Subsequent to the above resolutions, a further report (RR 10212) went before a meeting of the Council on 22 July 1999 to complete resolution 3 above.

The Council has a policy that it publicly tender properties for sale unless there is a clear reason for doing otherwise. Here it is considered the land exchange with Mr Fox, instead of sale of the land by tender, brings benefits to the Council by creating an enhanced reserve.

The essence of that report was that a land swap was approved for equivalent areas of land with the neighbouring land owned by Mr Fox for the past 34 years. This swap enhanced access to the section owned by Mr Fox and provided a reservoir site and reserve adjacent to the road which will help maintain and enhance the rural nature of this portion of Moncks Spur Rd (see attached plan).

SUBDIVISION CONSENT

Although a Resource Consent has been issued for the subdivision relating to the land swap, two neighbours above this land (who have owned their properties two years and 16 years) have advised the Council they believe they are parties affected by the subdivision. The neighbours' objection stems from their belief that as a result of the subdivision a dwelling may be sited closer to the existing neighbour's boundary (not a view shared by Mr Fox) and consequently restrict views from their properties.

The Environmental Services Unit has undertaken an internal review of the resource consent process relating to this subdivision, and has concluded that the issue of the resource consent for the subdivision/boundary adjustment was correct, and under the same circumstances, the consent would still be issued.

The neighbours, however, still believe they are affected parties and are endeavouring to secure covenants on Mr Fox's land, which they believe they would have achieved, had the resource consent been notified.

RESIDENTIAL DEVELOPMENT

Mr Fox is of the view that the residential development of his property is covered by the provisions of the City Plan (7 metre height restriction, 9 metre critical, 1.8 metre side yards) or the Transitional Plan (9 metre height restriction 1.8 metre side yards). Despite these views Mr Fox has indicated his agreement to grant a height restriction to his neighbours of 5.5 metres above ground level commencing some 4 metres from the existing neighbour's boundary and extending horizontally outwards to meet the height controls of the City Plan. Mr Fox has also indicated his agreement to granting a 10 metre rear yard/set back for residential buildings from the neighbour's boundary.

It should be noted that if the land swap was between Mr Fox and a third party rather than the Council, the City Plan height restrictions/building guidelines would apply at a less restrictive level than agreed by Mr Fox.

The neighbours' current position is that they are seeking a 12 metre set back for all buildings with a height restriction of 5.5 metres above ground level at that point.

Although negotiations on this matter have been proceeding for several months now, with a number of meetings between the parties involved, agreement on this matter appears to be at an impasse.

RESERVOIR/RESOURCE CONSENT

As time has moved on, the Council applied for and was granted Resource Consent for the reservoir on the land to be gained from Mr Fox. A contract has been let for professional services to ensure this year's budget is expended in a timely manner.

Because of the lack of progress on this matter it is now proposed to complete the land exchange in order that the reservoir construction may proceed.

Failure to do this will result in the budget for this work needing to be carried over to the next financial year.

If resolution is not achieved and a different site is required for the reservoir then a further resource consent application will be required to construct the reservoir within the land owned by the Council. This application may be subject to objections, which could conceivably be equally as difficult to resolve. However, it should also be noted that proceeding with the disposal of this land by way of exchange may also result in legal action being instigated by the neighbours.

The resource consents have already been issued for this subdivision and reservoir construction, and these resource consents have withstood internal review. Significant effort has been made to facilitate an agreement between the parties over a long period of time with minimal success.

In order for the construction of the reservoir to proceed in a timely manner the Council needs to make a decision either to complete the land exchange with Mr Fox or return to the original proposal. As agreement has not been achieved between the parties, it is proposed that the land exchange be completed, subject to Mr Fox placing a covenant on his land. This covenant would be in line with his agreement for a 10 metre set back for residential buildings, with a height restriction set at 231.5 metres in terms of the Christchurch City Council Datum (see attached plan). (ie 5.5 metres above ground level a that point.)

Mr Fox has indicated acceptance of this and this concession signals to the neighbours the Council's effort to provide some relief to their concerns.

The neighbours sought speaking rights at the Projects and Property Committee meeting on 11 February 2000, however, the report was withdrawn to give more time for an Agreement to be achieved between all parties.

The Council's solicitor, Mr Peter Mitchell has reviewed this matter and advises that the processes followed and the resolutions below have been and are, appropriate.

PROPOSED SETTLEMENT

It is proposed to complete this exchange pursuant to Section 107 of the Public Works Act 1981. However Section 40 Public Works Act requires the land to be first offered back to the former owner unless as provided in Section 40(2)(a) the local authority considers that "it would be impracticable, unreasonable, or unfair to do so." In this case the land does not comply with the City Plan as to minimum size and shape and it is considered unreasonable to offer it back to the former owner. Section 40(4) of the Public Works Act provides that where the local authority believes on reasonable grounds that because of the size, shape or situation of the land it could not expect to sell the land to any person who did not own land adjacent to the land to be sold, the land may be sold to an owner of adjacent land.

To effect the proposed land disposal and exchange, the Council must pass the following resolutions:

1. For the reasons set out above the Christchurch City Council resolves pursuant to Section 40(2)(a) of the Public Works Act 1981 not to offer back to the former owner the land described in the Schedules below.

2. Pursuant to section 230 of the Local Government Act 1974, the Christchurch City Council hereby resolves to dispose of the land described in the following Schedules:

First Schedule

All that parcel of land containing 235m^2 being Part Lot 1 DP 19078 and contained in Certificate of Title 10B/316.

Second Schedule

All that parcel of land containing 430m^2 being Part Lot 2 DP 19078 and contained in Certificate of Title 10B/317.

3. The Council pursuant to Section 107 of the Public Works Act 1981 will exchange the land described in the schedules above for 652m^2 of land being Part of Lot 2 DP 15455 and contained in Certificate of Title 45D/668 on the basis of the owner of Lot 2 DP 15455 agreeing to a 10 metre set back (from the southeast boundary) of Lot 2 DP 15455 for residential buildings with a height restriction of 231.5 metres in terms of the Christchurch City Council Datum for all buildings on that site.

Recommendation: That the above resolutions be adopted.

Chairman's Recommendation: For discussion.