

5. OWLES TERRACE

Officer responsible
Property Manager

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The purpose of this report is to outline the future options for an under-utilised parcel of land at Owles Terrace, New Brighton and to seek a resolution from the Council on the adoption of an option(s) to maximise use of the site and/or benefits for the Council.

CONTEXT

The Council owns a block of land at Owles Terrace, New Brighton that comprises 7.95 hectares.

The use of the site for a works yard significantly reduced following the rationalisation and consolidation that occurred with the amalgamation of Councils in 1989. In anticipation that the property might not be required for operational purposes in the future a rezoning of the site was sought and promoted by the Burwood/Pegasus Community Board when the new City Plan was proposed. This new concept attracted some submissions that were heard by an independent commissioner whose decision resulted in amended living/open space boundaries to accommodate the concerns of the submitters. The zoning plan that resulted and was adopted by the Council is attached as Appendix 1. The portion zoned Living 1 comprises 4.88 hectares whilst the balance 3.07 hectares is zoned open space.

The site has continued to be utilised as a yard albeit not intensively and is leased around the northern fringe to a number of mixed groups (detailed later in this report). Generally both the Living 1 and Open Space zoned areas are currently significantly under-developed and under-utilised and are generally an eyesore.

In May 2000 the Burwood/Pegasus Community Board proposed the development of an "Eco Village" for the Living 1 zoned portion of the site. Although a number of resolutions were passed that supported this as a possible option, it was subsequently agreed that "*as a potentially contaminated former land fill site it is not suitable for this purpose*". This report therefore considers other options to better utilise or maximise the benefit to the Council from this parcel of land.

EXECUTIVE SUMMARY

This report considers what the Council should do with the under-utilised and under-developed portion of its site at Owles Terrace zoned Living 1. The options considered are:

1. Retention and development for open space/recreation purposes.
2. Sale as a single block.
 - (a) "As is" ie. in its current state.
 - (b) Fully rehabilitated.
3. Subdivision by the Council and sale of residential sections.
4. Retention in Council ownership for social housing initiatives.

In summary, the report recommends tendering the block for sale "as is" ie 2(a) and in the event that there is no market support in the form of acceptable and viable tenders then the remaining options are reconsidered.

In tendering the property consideration will need to be given to relocation of the community and other groups, as well as developing a partnership for rehabilitation of the whole site, ie. the Living 1 portion offered for tender and the open space portion retained by the Council.

RELEVANT CURRENT POLICY

Council Policy

There are three policy issues relevant to this project:

- (i) Future use of properties that are no longer required for operational purposes must be determined in accordance with the "property decision making flow chart". The main steps in this process are:
 - Step 1 Identifying that a property asset is no longer required for operational purposes or is under utilised.
 - Step 2 Assessment of the property, ie features, legal status etc.

- Step 3 Internal circularisation for the purpose of establishing whether there are other Council/public uses.
- Step 4 Property Unit assessment of internal/public submissions and preparation of an Options Report.
- Step 5 Council resolution on future use or sale.

- (ii) Should the Council resolve to sell the property this will need to be conducted in a public manner, ie.
 - “That, in principle, the Council should publicly tender properties for sale unless there is a clear reason for doing otherwise”.*
- (iii) As a former landfill that adjoins the Avon River there are known risks of contamination and liquefaction. Therefore, these issues are now noted on the Council’s property files and will be detailed on any future PIMS (Property Information Memorandum) and LIMS (Land Information Memorandum).

There are no Council policies governing the principle of the Council as an owner facilitating the development of such sites, either through sale or undertaking the project. Issues of health, safety and suitability will be appropriately attended through the Council’s regulatory and consent processes.

Statutory Obligations

- (a) Councils are enabled to sell land under Section 230 of the Local Government Act. This statute contains an obligation for Councils to publicly notify when they are considering selling a property. This must be done 14 days before the Council meeting. Public notification of the Council’s intention to consider this resolution was (will be) made no later than 11 September 2002.
- (b) Under Section 40 of the Public Works Act any property declared surplus to requirements may be subject to an offer-back obligation with the previous owner. Whether this obligation exists depends on the circumstances surrounding its initial purchase and consequent use. Councils are required to rationalise why a property should or should not be offered back and pass a formal resolution to do so or not.

A legal opinion obtained for Owles Terrace provides advice that the property need not be offered back to the previous owner(s) for the following reasons:

The New Brighton Borough Council originally purchased the land in 1930 from the residuary beneficiaries of Mr Charles Withell who died in 1916. At the time he died 12 children (eldest 57, youngest 34), survived him. Whether any children predeceased Mr Withell leaving grandchildren surviving is unknown; such persons would also be classed as successors under the Public Works Act.

It is very unlikely that any of Charles Withell’s children remain alive today and although there is the possibility of a living successor being either the testamentary or intestacy successor of a child of Mr Withell it may be a difficult, time consuming and expensive task to ascertain this. In any event there may be no such successor who would wish to purchase this land. Whilst this issue does not absolve the Council for any obligations under the Public Works Act it is a matter of consideration.

If the land was held in some sort of trust for recreation or other reserve purposes the issue of offer back obligations might arise. However, there is no evidence that this is the case. In support, during 1972 sale of part of the site including a portion that had become Crown Reserve was considered for industrial development. Public notification of various aspects at the time produced no opposition or objections. Normally these matters receive a vociferous response, therefore this fact alone casts considerable doubt on any theory of the Council holding the site, or a portion, in a trust for reserve or recreation purposes.

Rationalisation of boundaries between 1972 and 1984 coupled with changes to the site in terms of river diversion and roading now make it impractical to create separate titles for land originally part of the Withell Island title and the former Crown Land. Therefore, on this matter alone offer back is impracticable under Section 40(2)(a) of the Public Works Act.

DESCRIPTION OF PROPOSAL

In terms of the property decision making flow chart summarised above the Council is currently at Step 5. This report serves to complete Step 4.

Officers have considered four options for the Living 1 zone portion of the Owles Terrace site, as follows:

1. Retention for incorporation and development with the adjoining open space owned portion

The Parks and Waterways Unit have advised that they have no immediate demand to justify incorporating the Living 1 zoned portion with the adjoining open space area. There is not an identified demand for, or shortage, of open space in the area.

In addition the Parks and Waterways Unit advise that they have \$96,600 budgeted in 2002/03 and \$30,000 in 2003/04 for development of the area currently zoned open space. Their initial preliminary plans incorporate a cycle/pedestrian path, potential waterway enhancement, junior rugby fields and landscaping. This provision is not adequate to provide for redevelopment of the Living 1 zone portion; nor are there any other provisions for its redevelopment as reserve or for ongoing operating costs.

Although conversion of land of this nature into reserve/open space represents a good easy cost effective solution, for the reasons outlined above we are not recommending this option at this stage. The Senior Parks & Waterways Planner comments that, *"the Parks and Waterways Unit would still be interested in the Living 1 area if it fails to attract a suitable tender. Whithells Island Reserve has considerable recreation and tourism potential being close to the Avon River and New Brighton. If a suitable tender is not obtained the Parks and Waterways Unit would like to retain the Living 1 area as park to investigate other land use options."*

2. Sale as a Single Block

This option proposes selling the Living 1 zoned area, probably by way of tender, without any intensive subdivision or development.

Any purchaser would then be free to develop the site in accordance with the City Plan rules and regulations.

We have considered this option in two forms.

- (a) Sale of the block "as is", ie without rehabilitation.
- (c) Sale of the block following rehabilitation by the Council.

There is no budget provision to undertake the rehabilitation, it is therefore a matter of whether the costs of rehabilitation can be covered through the increased value of the property. We are not certain that this would occur.

In terms of Option 2(a) it is possible that there are prospective purchasers, who because of the nature of their business have the appropriate expertise and resources so that they can attend to rehabilitation and redevelopment of the site in a more cost-effective manner than Council.

In addition, different future uses may necessitate different levels of rehabilitation. Therefore undertaking such work prior to determining the end use may prove deficient or excessive in terms of price and/or solution.

Irrespective of any financial analysis we believe there is no harm in attempting to sell the block "as is". This involves minimum risk/cost, would be revenue generating and the least cost option in terms of development.

Electing this option would not preclude the development of a joint venture/partnership through the tender process eg social housing in conjunction with Housing New Zealand, land swaps etc.

3. Subdivision and Sale of Residential Sections

This option suggests that the Council itself subdivide the property into residential sections which are then sold individually over time. To analyse this option a number of assumptions are necessary. One of these assumptions is to establish a hypothetical subdivision; an example showing 42 sections is attached as Appendix 2. This is simply for the purpose of analysis and comparison, it is not intended to portray the final solution.

Fundamentally this option should provide a greater net return in comparison with Option 2 above. The net margin between the two options after allowing for the cost of developing the subdivision is essentially the profit and risk margin. Although the issues of contamination and liquefaction cloud the analysis of the options the choice of Option 3 over 2 comes down to whether the profit (financial margin) and other intangible benefits (advantages) outweigh the risks and disadvantages.

Unlike Option 2 above it appears at this stage that it would not be prudent or practical to embark down the path of subdivision without fully rehabilitating the site. Some level of rehabilitation will certainly be required.

4. Retention and Council Ownership for Social Housing Purposes

This option has been discussed at a conceptual level only by officers through some informal discussions with Housing New Zealand. No financial or other analysis has been undertaken, these aspects would need to be canvassed further if there was a political will to pursue this option.

Although anecdotal evidence from the Housing Team indicates a demand for social housing in the New Brighton area, there is no specific research or budget provision. Normally a project of this nature would be funded from the Housing Development Fund and it is important to note that this fund is currently being reviewed in terms of its adequacy to meet future asset planning requirements. Preliminary indications are that project expenditure that does not provide for future renewals and replacements could significantly compromise the fund.

ISSUES FOR CONSIDERATION

Contamination

The site is an old landfill that generally comprises a thin capping layer of topsoil of approximately 100-200mm underlain by inert fill of approximately 1.5 to 2.0 metres over sand and peat. The fill can be classified as uncontrolled but substantially comprised of gravel and demolition rubble, some biodegradable refuse was however discovered in some of the test bores. As a result some gas monitoring was undertaken.

The results of the contamination testing indicate slightly elevated levels of a few contaminants with minor to negligible land fill gas activity evidenced.

In summary these issues are considered to pose a negligible risk to human health and with site specific management do not preclude residential or recreational development of the site. In addition the site is slightly below the level requirements that would be imposed upon residential development through the City Plan and would therefore require some filling for this use.

Any developers faced with subdividing the property into residential sections and subsequent development of improvements will be faced with attending to the issues of contamination, liquefaction and filling the site through the various resource consent processes. It is not possible to be definitive about the requirements that will arise or the cost implications of those without actually going through the consent process.

Although it might be possible to attend to rehabilitation in a minimalistic way through just capping the site without any further rehabilitation works it is questionable whether this would prove acceptable in terms of the resource consent requirements and in any event, even if it were possible such an approach is likely to be unsuccessful in practical terms as it devolves the cost and liabilities of attending to the contamination and liquefaction to the individual house developers.

It is most probable that any development for residential purposes will result in full rehabilitation of the site. These cost issues are outlined in the financial analysis contained in the Public Excluded section of this Agenda.

Options Evaluation

The Financial Analysis of the options is contained in the public excluded section of this agenda. Tabled below is a summary of the advantages and disadvantages of each option.

Option 1 - Retention and Development for Open Space

| Advantages | Disadvantages |
|--|---|
| <ul style="list-style-type: none"> • Good long term future use of former landfill. • High amenity value • Compatibility with existing groups (tenants). • Filling of the site will probably not be required. | <ul style="list-style-type: none"> • No budget provision. • No creation of population growth. • Triple cost ie. lost revenue potential, capital cost for development and ongoing operational costs. • No identified need or demand. |

Option 2 - Sale as a Block Evaluation

| Advantages | Disadvantages |
|---|---|
| <ul style="list-style-type: none"> • Council does not expose itself to the risks involved in residential development. • Income from sale credited to the Council's books as unbudgeted revenue. • Leaves rehabilitation to someone with the appropriate expertise and potential to do it most economically • Least cost option if site tendered "as is" ie without rehabilitation. • Expedient in terms of process time. • Should achieve Council's objectives in terms of rehabilitation and redevelopment without Council's direct involvement. • Best financial outcome when balanced with risk. • Revitalisation benefits for New Brighton. • Increases rateable value. • The tender process could be designed to allow for the development of joint venture/partnership arrangements | <ul style="list-style-type: none"> • Potential resistance from the market due to specific site costs and issues. • Council through current ownership, encouraging residential development on ex landfill. • Unknown liability issues given that the site is mildly contaminated (although would obtain an indemnity). • Need to relocate existing groups. • No budget provisions for Option 2(b) nor is it cost effective to rehabilitate. • Site requires filling for development. |

Option 3 – Subdivision and Sale of Section

| Advantages | Disadvantages |
|--|--|
| <ul style="list-style-type: none"> • Highest revenue potential option. • Council has control of the site development. • Increase in the city's rateable value. • Revitalisation benefits for New Brighton. | <ul style="list-style-type: none"> • Council exposes itself to the risks in residential development. • Unknown liability issues given that the site is mildly contaminated. • Highest cost option. • Need to relocate existing groups. • Low margins in comparison to risk. • No budget provisions. • Site requires filling for development |

Option 4 – Retention for Social Housing Initiatives

| Advantages | Disadvantages |
|---|---|
| <ul style="list-style-type: none"> • Social housing opportunity • There is anecdotal demand. • Partnership opportunities | <ul style="list-style-type: none"> • No current budget. • Council exposes itself to the risks in residential development. • Unknown liability issues given that the site is mildly contaminated • Could compromise the Housing Development fund and future asset planning. • Site requires filling for development |

Current Occupiers

Around the northern fringe of the property are an eclectic group of buildings that are currently utilised by a number of community and other groups, ie

- PEEPS (Project Employment and Environment Enhancement Project).
- Environment Canterbury – a well monitoring site.
- Water Services Unit – A telemetry room
- Canterbury Surf Lifesaving Association Inc – storage of boats and equipment.
- Canterbury Dragon Boat Club – storage of boats and equipment.
- Te Runanga O Nga Maata Waka – storage of boats and equipment.
- Te Awa Haku Outrigger Canoe Club – storage of boats and equipment.
- New Brighton Power Boat Club – clubrooms and equipment storage (on reserve area).

The tenure for these groups is temporary, with all of them either on casual or monthly occupancy agreements at nominal rents.

Retention of the buildings and occupants would generally be incompatible with any future development for residential purposes and could devalue those options. Therefore their removal or relocation before sale or development is necessary. Although there has been some discussion with the groups in the past this has not been finalised.

Other

A decision for the future of this property that encourages residential development could in some small way assist the revitalisation of New Brighton, in particular the retail precinct, which suffers predominantly because of a limited local population.

Offering the property for sale “as is” ie. in its’ current state without undertaking any rehabilitation would be no different than what occurred at Lyttelton Street with the old works yard purchased by the Ministry of Education for the Kura Kaupapa. This resulted in a good solution for all parties and the community, with responsibility for the risks and issues associated with the site passing to the purchaser/developer.

Irrespective of the option elected it would be financially prudent and practical to facilitate rehabilitation of both the open space and Living 1 zoned areas at the same time. This could occur through either the Council contracting for both, or a partnership if the Living 1 zoned portion is sold.

Although the Living 1 zoned portion has legal frontage, in terms of its zoning it is land locked. (Refer plan at Appendix 1). We do not anticipate this to be significant, but it could create some resource consent issues and is a level of detail to be dealt with in the tender documents.

Budget Provisions

The Council’s Annual Plan contains the following budget provisions in relationship to this property:

| | | | |
|----------------------|---------|---|----------|
| Parks Unit | 2002/03 | - | \$96,600 |
| | 2003/04 | - | \$30,000 |
| Property Unit | 2002/03 | | |
| Operating Expenses | | | \$27,500 |
| Operating Revenue | | | \$2,000 |
| Development Expenses | | | \$60,000 |
| Development Revenue | | | \$0 |

It is also important to note that other than the Property Unit's provision for development expenses there is no specific provision to assist the relocation of the groups or for site rehabilitation of the Living 1 zoned area.

Previous revenue budget provisions for the sale of land at Owles Terrace have been removed from the current Annual Plan. The reason for this is that over the last few years the Council has moved towards being conservative in establishing budget provisions for the sale of property. Adopting the rationale that it is better where there is not a high degree of certainty, to realise a "windfall" rather than compromise the Annual Plan with over optimistic assumptions.

RESULTS OF CONSULTATION

There was an extensive consultation process undertaken with the community during the Annual Plan process that resulted in the current zone boundaries.

CONCLUSIONS

The main issues affecting what the Council decides to do with this site in the future are:

- The costs associated with rehabilitating the site to attend to the contamination and the uncontrolled fill. These are unable to be specifically determined at this stage, though are anticipated to have a significant affect on the financial viability of all options.
- The existence of community and other groups on the site would be incompatible with the development options, ie. 2, 3 and possibly 4. Although their tenure could easily be terminated through providing a months notice the Council has a moral obligation to work with these groups to facilitate and explore a mutually beneficial outcome for their relocation.
- There are no budget provisions for the development options, ie. 1, 2(b) 3 and 4. Only Option 2(a) can be accommodated within the Council's current Annual Plan provisions.

Weighing up the financial analysis provided in the public excluded section of this agenda with the intangible benefits and disbenefits above we have drawn the following conclusions:

- (a) Retention and development for open space/recreational purposes is not necessary, desired or budgeted for.
- (b) Development through subdivision and the sale of sections by the Council is not recommended, primarily because:
 - There are no budget provisions to accommodate this option.
 - Balancing the risks and returns appears unfavourable for a Council venture.
- (c) An attempt to sell the block "as is" is recommended as the most favourable option because:
 - It is cost effective.
 - It can be achieved within current budget provisions.
 - It should produce good outcomes in terms of rehabilitation and redevelopment.
 - The realisation of some revenue to the Council in the short term will be achieved if there is good market interest.
 - There is no harm in trying to sell the property in the first instance.
 - It is a good cost effective way of determining if there is market interest and if it proves unsuccessful Option 1 can be revisited, either as a short to medium term solution as a holding pattern until the market changes, or as a long term permanent solution.
 - In resolving to pursue this option we would recommend the tender documents be developed in such a way that relocation of the groups is a condition precedent and that this be achieved in partnership with the successful tenderer. Moving the groups prior to tender may be unnecessary in the event that there is no market interest and Option 1 ultimately proves to be the only viable alternative.

NATURAL + PEOPLE + ECONOMIC STEP ASSESSMENT

| # | CONDITION: | Meets condition ✓✓0* | HOW IT HELPS MEET CONDITION: |
|--------------------------|---|-------------------------|--|
| The Natural Step | | | |
| N1 | Reduce non-renewable resource use | ✓✓ | Productive use of a potentially unproductive site |
| N2 | Eliminate emission of harmful substances | ✓✓ | Site rehabilitation containing contamination |
| N3 | Protect and restore biodiversity and ecosystems | ✓✓0* | N/A |
| N4 | People needs met fairly and efficiently | ✓ | <i>Open Space lost, housing gained and will be the catalyst for the retained open space development.</i> |
| The People Step | | | |
| P1 | Basic needs met | ✓ | Will ultimately produce some local revitalisation |
| P2 | Full potential developed | ✓ | Should provides work opportunities ie on the development |
| P3 | Social capital enhanced | * | Community and other groups removed/disrupted |
| P4 | Culture and identity protected | | N/A |
| P5 | Governance and participatory democracy strengthened | | N/A |
| The Economic Step | | | |
| E1 | Effective and efficient use of all resources | ✓✓ | Benefits out weigh costs |
| E2 | Job rich local economy | ✓✓ | Significant new job numbers created and local population growth |
| E3 | Financial sustainability | ✓✓ | Yes, can be achieved in current budget provisions and could produce unbudgeted revenue |

Staff

- Recommendation:**
1. That the Council resolve pursuant to Section 40(2)(a) of the Public Works Act 1981 not to offer back to the former owner all that parcel of land containing 4.874 hectares being Lot 2 DP 47330, Certificate of Title CB 26B/576, on the grounds that it would be impracticable, unreasonable or unfair to do so.
 2. That the Community Board recommend via the Property and Major Projects Committee that the Council resolve, pursuant to section 230 of the Local Government Act, to tender for sale the Living 1 zoned portion of land at Owles Terrace as a single block without further rehabilitation or significant development work.
 3. That the tender documents provide for:
 - (a) Appropriate consultation and negotiation for relocation of the community and other groups.
 - (b) A partnership with the developer/prospective purchaser for rehabilitation of the entire site i.e. the portion offered for sale and the open space area to be retained and developed in the future by the Council.
 4. That officers report back to the Council on the outcome of the tender process.

Burwood/Pegasus Community Board Recommendations

The Burwood/Pegasus Community Board considered this report on Monday 2 September 2002 and proposed the following alterations to the wording of the above recommendations:

3. That the tender documents provide for:
 - (a) Appropriate consultation and negotiation for relocation **or retention** of the community and other groups.
4. That officers report back to **the Community Board and** the Council on the outcome of the tender process **and that the community groups be kept informed.**

Chairman's

Recommendation: That the staff recommendation be adopted.