

9. NO 2 SUMNER ROAD LYTTELTON- BOUNDARY ADJUSTMENT /REALIGNMENT

General Manager responsible:	General Manager City Environment, 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 obtain the Board's recommendation to the Council to approve proceeding with negotiations and the conclusion of a proposed sale and purchase of land by way of a boundary adjustment/realignment with the owner of the property at 2 Sumner Road Lyttelton (AM & BM Stanaway Family Trust) which adjoins Council's land at 4 Sumner Road, the former site of the now demolished Lyttelton Plunket building.

EXECUTIVE SUMMARY

2. The property owner adjoining Council's Lyttelton Plunket site (Lot 2 DP 307398) has requested consideration be given to having a small area of Council's site, between 20-30 square metres, subject to survey, on which the former MED substation and transformer pad existed, incorporated into their title. They have submitted that the amalgamation of this area would considerably ease and enhance the rebuilding of their residence which did not survive the 2010/2011 earthquakes and has been demolished.
3. Currently within the Council's title are retaining walls along the north wall of the former substation site with Sumner Road and the east boundary of the applicant's property including a disused toilet that is partly set back into this wall. In discussions with the owner it has been agreed, without prejudice to the Council approval, that the boundary realignment would draw a straight line along the eastern boundary from Sumner Road to include the former substation and transformer pad within the owner's property (Lot 1 DP 51886). This would mean that the new boundary would dissect the disused toilet with that part falling into the Council's title being incorporated within Lot 2 DP 307398. Refer **Attachment 1** (Topographical survey by Davie Lovell Smith). The proposed new boundary is shown marked red.
4. The proposed boundary adjustment has raised the issue of responsibility for the existing retaining walls. Refer **Attachment 2** (Photographs showing the footprints of the transformer pad, substation and disused toilet). The owner has indicated he is agreeable to a new eastern boundary as described in paragraph three above and has instructed his engineers as to how he can take responsibility for and adequately retain both north and eastern boundaries. Staff consider that both these walls should, after the realignment, lie within the applicant's property.
5. The applicant's structural engineers (Structex Lyttelton) have advised that new primary retaining measures will be constructed while leaving the existing wall in place. It is proposed to backfill the disused toilet (which on realignment will be partly in Council's title, an area of approximately five square metres) using well graded hard fill or flowable concrete and whichever material is used, suitable packing put in below existing toilet roof to ensure bearing on backfill material. The applicant's engineers also state that while the design of the engineering approach to the existing retaining walls as part of the applicant's new building is still in development, it is intended that retaining of the east wall with the Council's land and the north wall along Sumner Road be provided by new concrete walls adjacent to the new building and where not adjacent by the building on the east boundary, to have a new retaining wall constructed against existing (likely to be gabion basket construction). The work it is understood can largely be carried out from within the site and without significant excavation with minimal disruption to the public or property outside the site boundaries.
6. Mr and Mrs Stanaway purchased Lot 1 DP 51886 on subdivision in 1985 of the Plunket site from the Lyttelton Borough Council which contained the old Lyttelton library building and at that time carried out as part of the purchase agreement extensive seismic strengthening to the building. At the time of the purchase there existed in the north east corner a MED substation and transformer. They consider along with their architect and structural engineers that it would not be appropriate to undertake rebuilding on the site without obtaining ownership of the area on which the former MED substation and transformer pad was located.

7. The nature of the Council's small holding as will be evident by the photographs at Attachment 2 could present a potential health and safety risk to Council. The subject land has not been used for a community purpose for many years (if ever) and if disposed of (which could only be to the adjoining owner) will not restrict any future use of Council's site for a community or other use.

FINANCIAL IMPLICATIONS

8. There are no financial implications of any significance for Council. The applicant has agreed to meet all costs associated with implementing the boundary realignment. A purchase price has yet to be negotiated. It is considered it would be reasonable to base this price on a value that reflects the added value to his property while having regard to the onerous nature/size of the Council's land, the area of the disused toilet the Council is to receive and the potential cost relief to the Council in terms of contribution to the redevelopment and maintenance of the retaining walls.

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

9. Not applicable.

LEGAL CONSIDERATIONS

10. The Council holds the Lyttelton Plunkett site (a total area of 3359 square metres) in fee simple title without any trusts, restrictions and reservations. Section 138 of the Local Government Act 2002 (Restriction on Disposal of Parks) does apply as this area is part of a site that was originally acquired "upon trust as and for sites for Public Buildings for the use and benefit of the Inhabitants of the Borough of Lyttelton and upon trust to use and occupy the same when and so long as the same or any part thereof shall not be built upon for general municipal purposes". This notation on the title was removed on 12 December 1994 pursuant to an application under Section 14 of the Banks Peninsula District Council Rates Validation, Empowering and Trust Removal Act 1994.
11. Having established that consultation is required, the question that needs to be asked is whether there is any person or party apart from the adjoining owner who is the applicant, to consult with who could reasonably claim that they would be affected by or have an interest in the proposed sale of this area. Given that the area proposed to be sold is not and will not detract from any future Council use of the Plunkett site, it is the view of staff that the Community Board could recommend the proposal to the Council without seeking wider views of the community.
12. The Council's land has been in the name of the local authority since the first title was issued to the Lyttelton Borough Council on 9 March 1928. While ownership prior to the Council owning this site has not been investigated, the provisions of Section 40 (4) of the Public Works Act 1981 (Disposal to former owner of land not required for a public work) allow the disposal of land to a neighbour without the need to offer the land back to a person from whom the land was originally acquired or their successor. Section 40(4) of the Public Works Act states: "Where the chief executive of the department within the meaning of section 2 of the Survey Act 1986 or local authority believes on reasonable grounds that , because of the size, shape , or situation of the land he or 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 at a price negotiated between the parties." Clearly this situation applies. The subject area is not a complying lot and cannot be sold as a separate title.
13. The Board does not have a delegation to approve the proposed sale/purchase but does have a recommendatory power to Council as the decision maker.

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

14. Yes, as above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

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

15. Not applicable.

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

16. Not applicable.

CONSULTATION FULFILMENT

17. Reference is made to consultation in paragraphs 7 and 11. Section 79 of the Local Government Act 2002 allows a local authority to tailor the level of consultation having regard to all relevant matters in proportion to its significance. In this situation it is considered that this matter is of low significance and extensive consultation is not required. Orion has confirmed it has no interest in terms of its network requirements for this former electricity substation site which has long been decommissioned and removed. The Council's controlling asset unit, Transport and Greenspace has no issue with this proposal.
18. The New Zealand Historic Places Trust advise that there still remains archaeological potential within this area of Lyttelton and that an Archaeological Authority would be required for any removal of foundations or earthworks which would cause ground disturbance.

STAFF RECOMMENDATION

It is recommended:

1. That the Council approve the sale of land shown marked "A" and the purchase of land shown marked "B" on **Attachment 1** by way of a boundary alignment/adjustment subject to definition by survey between Lot 1 DP 51886 and Lot 2 DP 307398 delineated as a straight red line on **Attachment 1** subject to:
 - (a) The owner of Lot 1 DP 51886 taking ownership and responsibility for all structures and retaining walls on the north and eastern boundaries of Lot 1 DP 51886.
 - (b) Any demolition and construction of retaining walls next to the boundary not adversely compromising the support of the ground and buildings in Lot 2 DP 307398.
 - (c) The applicant obtaining all consents and approvals required including an for work on or associated with the retaining walls and construction on the area proposed for disposal.
 - (d) All costs in implementing the realignment be the responsibility of the applicant.
 - (e) The Corporate Support Manager being given a delegation to further negotiate the terms and conditions including the consideration between the parties, to conclude a contract that gives effect to the proposed boundary adjustment/realignment on terms and conditions acceptable to her.
2. That, given the situation as discussed in paragraphs 7, 11 and 17, that no further consultation in terms of Section 138 of the Local Government Act 2002, be required.
3. That pursuant to Section 40 (4) of the Public Works Act 1981 the Council determine that the Councils land may be sold to the owner of the adjacent land (Lot 1 DP 51886)