

1. REALIGNMENT OF EAST STREAM AND ESPLANADE STRIPS

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The purpose of this report is for the Council to approve an exchange of land within Clearwater Resort following the diversion of the East Stream, and to consider the cancellation of an existing esplanade strip and the creation of a new esplanade strip adjoining the new stream.

BACKGROUND

On 11 April 2000 the Council consented to an initial application to subdivide the relevant part at Clearwater Resort. The consent provided for:

1. The vesting in the Council of land which at the time formed the bed of East Stream; and
2. The creation of a 7.5 metre esplanade strip along East Stream.

Lot 104 DP 302828 (Attachment 1) being East Stream was vested in the Council on 12 October 2000. The esplanade strip along the banks of East Stream was also shown on that plan and created in favour of the Council over adjacent Lot 105 by virtue of registered esplanade strip instrument A477521.13.

At the same time as the above subdivision arrangements were made, Clearwater Resort Limited applied to Environment Canterbury and to the Council for land use consent for the:

“Diversion of East Stream to the north of golf hole 13 and associated cart track and enlarging the eastern portion of Lake L3.”

Environmental Canterbury consented to the application on 11 May 2001 and the City Council on 3 August 2001.

GENERAL

As a consequence of the diversion there are a number matters to be attended to in order to legalise the situation, these being:

1. It will be necessary to exchange, pursuant to Section 107 of the Public Works Act 1981 that part of Lot 104 which has been “reclaimed” or covered by Lake L3 as depicted as parcels A, B, C, D, E and F for the realigned watercourse shown as parcels G, H, J on the attached plan 22556-60. The release of parcels A, B, C, D, E and F will be subject to a compulsory amalgamation condition requiring them to be amalgamated with the adjoining titles by instrument (Attachment 2).
2. The ‘Esplanade Strip’ created on instrument A477521.13 will need to be partially surrendered where it adjoins parcels A-F on the plan. Section 234 of the Resource Management Act 1991 provides that esplanade strips can be cancelled or varied on application by the registered owner of the land so affected. Given that the strip no longer serves any valid purpose and that the diversion of East Stream is a ‘change in circumstances’ which has made the strip ‘inappropriate or unnecessary’ it would seem an application would fall within the provision of Section 34 and could be considered by the Council to be in general accordance with the review provisions. Given the circumstances it is believed the Council could initiate proceedings to rectify the situation. This will be conditional upon a new agreement being entered into with the respective owners to grant, provide and register a new 7.5 m wide ‘Esplanade Strip’ along the banks of the realigned water course adjoining parcels G, H and J.
3. The Council Solicitors, Buddle Findlay, were asked to consider the implication of the offer back provisions of Section 40 of the Public Workers Act 1981 in respect of the Council owned land to be exchanged (Lot 104). The solicitors have advised as follows:

“We are of the view that Council is free to deal with the land comprising of Lot 104 pursuant to its general powers under the Local Government Act 2002. However, in saying this it should be noted that Lot 104 will probably be captured by the definition of “public work” and accordingly the offer-back requirements contained in section 40 of the Act will apply.

However, we believe the Council could argue that there has been a significant change in the character of the land, for the purposes of, or in connection with the public work for which it was acquired and accordingly the offer-back requirements do not apply.”

The above processes will require the respective parcels to be defined by survey together with the creation of a new Esplanade Strip agreement. All costs associated with the survey, proclamation and registration are to be met by Clearwater Resort Limited.

- Recommendation:**
1. That the offer back procedures in accordance with Section 40 of the Public Works Act 1981 be waived in respect of Lot 104 DP 83358.
 2. That the Council resolve to exchange those parcels of land defined in Schedule 1 below for those parcels in Schedule 2 subject to the respective parcels being amalgamated with the adjoining certificates of title.

SCHEDULE 1					
AREA SHOWN AS	PRESENT APPELLATION	PRESENT OWNERSHIP	APPROX AREA (m ²)	TRANSFER TO	
A	LOT 104 DP 83358	VESTED WITH CHRISTCHURCH CITY COUNCIL	930m ²	LOT 9 DP 302828	CLEARWATER GOLF CLUB LTD
B	LOT 104 DP 83358	VESTED WITH CHRISTCHURCH CITY COUNCIL	1380m ²	LOT 9 DP 302828	CLEARWATER GOLF CLUB LTD
C	LOT 104 DP 83358	VESTED WITH CHRISTCHURCH CITY COUNCIL	115m ²	LOT 30 DP 302828	THE ISAAC CONSTRUCTION COMPANY LTD
D	LOT 104 DP 83358	VESTED WITH CHRISTCHURCH CITY COUNCIL	90m ²	LOT 9 DP 302828	CLEARWATER GOLF CLUB LTD
E	LOT 104 DP 83358	VESTED WITH CHRISTCHURCH CITY COUNCIL	90m ²	LOT 51 DP 302828	CLEARWATER LAND HOLDINGS LTD
F	LOT 104 DP 83358	VESTED WITH CHRISTCHURCH CITY COUNCIL	35m ²	LOT 10 DP 302828	CLEARWATER GOLF CLUB LTD

SCHEDULE 2					
AREA SHOWN AS	PRESENT APPELLATION	PRESENT OWNERSHIP	APPROX AREA (m ²)	TRANSFER TO	TRANSFER TO
G	LOT 6 DP 302828	CLEARWATER LAND HOLDINGS LTD	1780m ²	STREAM BED	Christchurch City Council
H	LOT 51 DP 302828	CLEARWATER LAND HOLDINGS LTD	30m ²	STREAM BED	Christchurch City Council
J	LOT 10 DP 302828	CLEARWATER GOLF CLUB LTD	35m ²	STREAM BED	Christchurch City Council

3. That, pursuant to Section 234 of the Resource Management Act 1991, the Council initiate procedures to consider the partial surrender of those parts of the Esplanade Strip created by Document A 477521.13 (Canterbury Registry) adjoining parcels A-F as defined in Schedule 1 above, conditional upon 4. below.
4. That Clearwater Golf Club Limited and Clearwater Land Holdings Limited grant the Council 7.5 metre wide Esplanades Strips adjoining parcels G, H and J as defined in Schedule 2 above.
5. All survey, legal, proclamation and registration costs to be met by Clearwater Resorts Limited.