

29. 3. 2007



**REPORT BY THE CHAIRPERSON OF THE  
BURWOOD/PEGASUS COMMUNITY BOARD**

**PART A - MATTERS REQUIRING A COUNCIL DECISION**

**1. PURCHASE OF CROWN LAND - PORRITT PARK**

<b>General Manager responsible:</b>	General Manager City Environment, DDI 941-8656
<b>Officer responsible:</b>	Transport and Greenspace Manager
<b>Author:</b>	Lewis Burn, Property Consultant

**PURPOSE OF REPORT**

1. The purpose of this report is to seek the Council's approval for the purchase of Crown land adjoining the Avon River Loop for formal addition to Porritt Park. The report also seeks a resolution from the Council to change the purpose of two of the Council's titles to the park as part of a rationalisation process that will result in one title being held by the Council to all the land that is established and occupied for the purposes of a recreation ground.

**EXECUTIVE SUMMARY**

2. Staff negotiations have been concluded with the Crown's accredited agent for the sale and purchase of 1.9120 hectares of Crown land ("Part Avon River Bed") shown as Section 6 on SO Plan 302696 (**attached**) as part of a land status rationalisation exercise to consolidate the administration and control of Porritt Park.
3. Consolidated vegetation, sealed paths, vehicle access, sealed car parking, playing fields, barriers and buildings all overlay to varying degrees this strip of Crown land.
4. A survey has been completed by the Council. This survey was initiated to stop those parcels of unformed legal road (old tow path of the Avon River) shown as Sections 1-5 on SO Plan 302696 to facilitate development of the second all weather surface hockey field. The road stopping was completed in October 2001 and the land comprised in the former road is held by the Council in a separate fee simple title.
5. The agreement for sale and purchase (subject to Council approval by 31 March 2007) provides for acquisition by a declaration from the Crown under Section 20 of the Public Works Act 1981 upon payment of current market value (\$48,000 plus GST) and reasonable costs (estimated \$3,500) five working days from the date of the proclamation notice in the New Zealand Gazette.
6. When acquisition is completed, steps can then be taken to have one amalgamated title issued in the Council's name for the purposes of a recreation ground to the stopped road, the Crown land acquired (Section 6) and the existing Council titles to Porritt Park so that Council control and management of the established park to the river boundary is formalised thus tidying up a long standing irregular situation. The new amalgamated title will exclude Kerrs Reach which is part of the redefined riverbed.

**FINANCIAL AND LEGAL CONSIDERATIONS**

7. The purchase is provided for in a line item in the Transport and Greenspace 2006/07 budget (restricted assets, new reserve purchase, district sports parks). Sufficient funds are held to cover the purchase price and costs of purchase.
8. The Board does not have delegated authority to authorise the purchase of this land, such a decision needs to be made by the full Council. The Board has, however recommendatory powers to the Council.

**1 Cont'd**

9. Land Information New Zealand has approved the disposal to the Council pursuant to Section 50 of the Public Works Act 1981 (transfer of existing or public work) as a recreation ground under the Local Government Act 2002. The Crown has obtained a waiver from Ngai Tahu to allow the transfer of this land to the Council. An exemption from the marginal strip provisions of Section 24 of the Conservation Act 1987 (reserving from sale a strip of land 20 metres wide abutting a waterway) has also been approved by the Minister of Conservation.
10. Porritt Park is presently held by the Council in title as a recreation/pleasure ground within the meaning of Section 601 of the Local Government Act 1974 (repealed) and for river works. For one amalgamated title to issue for the purposes of a recreation ground all underlying titles need to be held for the same purpose. The resolution proposed under recommendation 2 is necessary to achieve that intent.

**STAFF RECOMMENDATIONS**

That the Council:

1. Approve the purchase of 1.9120 hectares of Crown land described as Section 6 SO Plan 302696 for purpose of a recreation ground as an addition to Porritt Park on the terms outlined in this report.
2. Adopt the following resolution:

**Resolution**

The Council hereby resolves pursuant to Section 52 (4) of the Public Works Act 1981 to set apart as a recreation ground, the land described in the schedule currently held for the purpose shown in brackets.

**Schedule**

- (a) That parcel of land being Part Lot 3 Deposited Plan 14075 containing 4.3314 hectares more or less being all of the land comprised and described in CB2A/1322 (Section 305 of the Municipal Corporations Act 1954).
- (b) That parcel of land being Part Rural Section 185 and Part Lot 3 Deposited Plan containing 5.7543 hectares more or less being all of the land comprised and described in CB13K/1017 (river works).
- (c) Those parcels of land being Sections 1-5 Survey Office Plan 302696 containing 1.7242 hectares more or less being all of the land comprised and described in CIR 19337 (stopped road).

**BOARD RECOMMENDATION**

That the staff recommendations be adopted.

**BACKGROUND**

11. In 1950 the stretch of waterway called "Kerrs Reach" was formed by the Council under the Public Works Act 1981. The resulting loop was an ideal site to deposit overburden from the dredge cut but also to establish a rowing venue, recreation and sports (hockey) ground facility to cater for development and expansion in Christchurch.
12. In December 2000 the Council granted the Canterbury Hockey Foundation Trust a new lease of the then existing facility and further land on which to construct a new artificial hockey turf. The Council at that time also agreed that steps be taken to rationalise the titles for Porritt Park, redefine the banks of the Avon River and stop the unformed legal road that was the tow path of the river. The second turf crossed over the legal road (now stopped) and encroached on land legally defined as riverbed (Crown land).

**1 Cont'd**

13. To allow the development to go ahead while rationalisation of the titles proceeded the Crown granted the Hockey Foundation Trust a licence to occupy some 380m<sup>2</sup> that the south west corner of the pitch occupied. This was intended as an interim solution pending Council and the Crown agreeing on a transfer of control of the Crown riverbed.
14. A valuation was prepared by DTZ New Zealand on behalf of the Crown for the purpose of assessing the compensation payable. This valuation was referred to the Council's valuer, Ford Baker who after considering the land's irregular shape, its close position to the river and its utilisation factors recommended accepting the valuation of \$48,000 plus GST as being fair and reasonable.

**OPTIONS**

**Option 1**

15. Status Quo. This option would mean declining to purchase and leaving the strip of land in the ownership of the Crown notwithstanding the long established use and occupation as part of Porritt Park. This option leaves the situation in limbo which is not desirable now that this irregularity has been identified.

**Option 2**

16. Approve the recommendation to purchase to allow the legalisation of the current development and consolidation of this important city asset for the long-term benefit and clarity of administration and management of Porritt Park.

**PREFERRED OPTION**

17. Option 2 is the preferred option. The opportunity to "tidy up" this situation should now be taken.

**2. CITY PLAN CHANGE - 488 PRESTONS ROAD**

<b>General Manager responsible:</b>	General Manager Regulation and Democracy Services, DDI 941-8549
<b>Officer responsible:</b>	Environmental Policy and Approvals Manager and Resource Management Manager
<b>Author:</b>	David Mountfort, Team Leader City Plan

**PURPOSE OF REPORT**

1. This report describes an application to the Council for a change to the City Plan and the process which must be followed under the Resource Management Act 1991 (RMA).

**EXECUTIVE SUMMARY**

2. The application is to create a new Residential 1F zone in the City Plan for an elderly persons' housing complex on 7 hectares of land at 448 Prestons Road, Burwood.
3. The purpose of this report is not to consider the application on its merits. Rather, it is to recommend which of several options under the RMA is to be used in processing the application.
4. The Council has the option of declining this application on the grounds that the City Plan has not been operative for two years, of accepting the application as a private application and publicly notifying it for submission and hearing at the cost of the applicant, or of adopting the change as the Council's own change and accepting the responsibility and costs of processing it. The Council is obliged to consider this request under the due process set out in the RMA.

**FINANCIAL AND LEGAL CONSIDERATIONS**

5. The financial considerations will differ depending on how the Council chooses to handle this application. Should it reject the application it is possible that the applicant would challenge this decision in the Environment Court, which would be a costly process for the Council regardless of the outcome. Costs cannot be predicted accurately but could be in the vicinity of \$50,000 for this preliminary step.

## 2 Cont'd

6. Should the Council accept and notify the change at the expense of the applicant there will be a no direct costs to the Council as the Council's costs would be recovered. However, there would be an impost on staff time.
7. Should the Council adopt the change as its own then the Council will need to absorb all the costs, likely to run to at least \$50,000.
8. There is a legal process set out in the RMA which must be followed. It includes initial consideration of what process to follow, then notification, submissions, reporting, hearings, decisions and possible appeals. It is a process which is very familiar to the Council and should create no particular risks or liabilities if followed correctly.

### STAFF RECOMMENDATION

It is recommended that the Council agree to accept the plan change pursuant to Clause 25 of the 1st Schedule to the Resource Management Act 1991 and publicly notify it accordingly.

### BOARD RECOMMENDATIONS

1. That the staff recommendation be adopted.
2. That the Council take note of the concerns of the Board in relation to the traffic issues, such as a no right-hand turn into Prestons Road and speed limit.

[Carmen Hammond voted against the Board recommendations.]

### BACKGROUND AND DISCUSSION

#### The Application

9. A copy of the application was circulated separately to Board members. It is for a 7 hectare site in Prestons Road, Burwood, adjacent to The Limes subdivision. It is zoned Rural 3, and has Rural 3 land to the north, west and south and is adjacent to residential development to the east at Waitikiri Park and The Limes.

#### RMA Timeframes

10. The application was received on 22 September 2006. Further information was requested and the RMA timeframe for considering it was extended. Under the RMA the Council was due to make a decision whether to accept the application or otherwise by 6 March 2007.

#### Description of Proposal and Site

11. The proposal is to create a new Living 1F zone, tailored to the requirements of large elderly persons' housing complexes, and apply this zoning to the site at 448 Prestons Road, Burwood. This would allow for the construction of approximately 165 independent living units, and 45 apartment units, a health facility and associated facilities. A 10 metre landscaped setback is proposed all around the site, widening to 25 metres adjacent to the Snellings Drain corridor. The Marshlands Drain passes through the middle of the site draining land further to the west to the Snellings Drain. This is proposed to be retained and upgraded as a landscape feature within the complex and vested in the Council.
12. The site is part of a much larger block considered for rezoning under the City Plan Review for Living 1B (large lot) zoning but rejected by the Environment Court. The Court found that the then proposal would not meet many of the objectives and policies of the City Plan for urban growth, in particular because it was not well-integrated with surrounding lands and possible future urban growth in the area and required to be more comprehensively planned. The applicant considers that the much more restricted form of development now proposed is in accordance with the objectives and policies of the City Plan and is compatible with future development in the area if that should eventuate. This aspect will need to be considered carefully by the Council at later stages of the process.

2 Cont'd

**Processing of Private Plan Changes**

13. The processing of private plan changes is set out in clauses 21-29 of the 1st Schedule to the RMA. In summary this provides:
  - Clause 21 - Any person may make an application for a change to an operative district plan. The City Plan is operative.
  - Clause 22 - Request to be in writing, with reasons, Assessment of Environmental Effects and assessment under section 32 of the RMA.
  - Clause 23 - Further information may be required. The Council has done this in this case.
  - Clause 24 - The Council may modify the proposal but only with the consent of the applicant.
  - Clause 25 - The Council must consider the request, and make a decision to either:
    - "accept" it and proceed to public notification, or
    - "adopt" it as if it were its own proposal, and publicly notify it, or
    - treat it as if it were a resource consent, or
    - reject it.
  - Clause 26 - Where the Council accepts the change it must publicly notify it within four months.
  - Clause 27 - The applicant may appeal the decision under clause 26.
  - Clause 28 - Applications may be withdrawn.
  - Clause 29 - Unless rejected, the application is put through the standard process of public notification, submission, hearing, decision, and appeal (if any).
14. There is a significant difference between "accepting" and "adopting" the application. If the application is accepted, the Council retains its independence and is able to consider it impartially at a hearing later in the process, rather like a resource consent process. The entire cost of the process can be charged to the applicant. If it adopts the application the Council would be effectively supporting the application as if it had decided to propose the change itself. The Council would also be unable to charge the applicant for the costs.
15. There are very narrow grounds in the Act for rejecting an application. The only relevant one in this case is that the City Plan has been operative for less than two years. The Council has a formal policy on this matter, which is attached as **Appendix 1** to this report. In summary, the Council's policy is to accept such applications and allow them to proceed through the process unless:
  - The subject matter of the application affects an important strategic or policy issue the Council is currently investigating and may preclude options being considered.
  - The proposal is for rezoning of a significant amount of land for urban growth and would pre-empt options for urban growth, being considered under the Metropolitan Christchurch Urban Development Strategy.
  - The proposal is for rezoning of land for urban growth and the site is within a Priority 1 Area Plan currently under investigation by the Council. As at August 2005 Priority 1 Area Plans include Belfast, Memorial-Russley-Hawthornden, Southwest and Upper Styx-Harewood.
16. The area is not affected by any strategic or policy study the Council is carrying out.
17. The land concerned has not been identified for urban growth in the draft UDS. The wider Burwood area was considered as a possible growth option but not pursued, largely due to lack of roading and sewerage capacity in the networks. Therefore it could be argued that the application would be inconsistent with the UDS, and rejected. This is not recommended because:
  - The UDS is planning for a predicted 33,000 additional households in the next 35 years. The current application, for about 200 units of a very specialised type is very small scale in relation to the UDS.
  - The UDS has not been finalised and adopted and will have no legal effect until it is implemented through the City Plan and Environment Canterbury's Regional Policy Statement.
  - There are submissions against the UDS from Burwood landowners.
  - Even if the Council did reject the application, the applicant could either appeal this decision or simply wait until November and resubmit it.

**2 Cont'd**

18. Although there is a Burwood Area Plan on the Area Plans Programme it is not a Priority 1 and is not being actively pursued at present. The application should not be rejected on this ground.

**OPTIONS**

19. The Council's options are:
- (a) Reject the application.
  - (b) Accept the application, proceed to publicly notify and decide the application at the expense of the applicant.
  - (c) Adopt the change at its own and assume the responsibility for putting it through the process outlined in the RMA including all costs.

**PREFERRED OPTION**

20. The preferred option is Option B. There is no status quo, ie do nothing option. The application must be considered and either accepted, adopted or rejected. It is not a matter the Council has identified as a priority it wishes to pursue for itself. The Council has an adopted City Plan programme and this item is not on it. There is no reason known for the Council to adopt it as its own priority. There do not appear to be valid reasons for rejecting it, therefore the application should be accepted and considered on its merits, following public notification and the receipt of submissions.