

46. EXCHANGE OF LAND WITH CANTERBURY DISTRICT HEALTH BOARD – CONSULTATION PROCESS

General Manager responsible:	General Manager Regulation and Democracy, DDI 941-8462
Officer responsible:	Programme Manager, Strong Communities
Author:	Ian Thomson, Solicitor

PURPOSE OF REPORT

1. The purpose of this report is to provide information to the Council about the consultation process to be used before the Council proceeds with an exchange of land with the Canterbury District Health Board (CDHB).

EXECUTIVE SUMMARY

2. At its meeting on 26 November 2009 the Council confirmed its willingness to consider a land exchange with the CDHB, subject to reaching agreement on the parcels of land and costs involved and to considering the results of consultation on the issue.
3. Councillors couldn't agree on the consultation process to be used and left the matter to lie on the table pending the receipt of further information from staff.
4. That information is contained in this report.

STAFF RECOMMENDATION

It is recommended that the Council resolves to:

- (a) Obtain and consider the views of the community by using the consultation process set out in the Proposed Consultation and Community Engagement Plan **attached** to this report.
- (b) Note the advice from the Council's Legal Services Unit that the level of consultation outlined in the proposed plan complies with the Council's decision-making obligations in the Local Government Act 2002.

FINANCIAL IMPLICATIONS

5. Any consultation process used by the Council will incur cost, particularly in terms of staff time. On top of that there are advertising and publishing costs, the hire of facilities and the cost of providing access to information held electronically.
6. The CDHB has agreed to share these costs and has confirmed this in a letter to the Council, a copy of which is **attached**.
7. If the Council was to use the special consultation procedure (SCP) set out in the Local Government Act 2002 its costs would increase as a result of the requirement to prepare and distribute a Statement of Proposal and Summary of Information and to hold public hearings. Although not quantified, the time spent by staff and panel members on the hearings process would be a cost to be considered.

LEGAL CONSIDERATIONS

8. As indicated earlier the Council, by resolution, has confirmed its willingness to consider a land exchange with the CDHB. If completed, the exchange would mean that Christchurch Hospital could be enlarged and improved on its current site. Land owned by the Council as part of Hagley Park is sought for the development and land owned by the CDHB adjoining the Avon river is offered in exchange. Hagley Park would be extended to include this area and although precise boundary lines have yet to be drawn, it is expected by both parties that there will be no loss of land in the park.
9. The decision to enter into the land exchange is not provided for in the Council's 2009-19 LTCCP, nor does it flow consequentially from anything contained in that document.

46 Cont'd

10. In terms of the Council's significance policy therefore the decision will be a significant one. This means that the Council is required to consider whether or not to use the special consultative procedure before the decision is made.
11. However, whilst the exchange is significant in terms of the Council's significance policy, and will obviously be a matter of interest to Christchurch residents, in fact the transaction will have no adverse effect on the park. Therefore the consultation process in respect of the exchange is likely to attract less interest than might have been the case if the proposal was to simply take land out of Hagley Park to accommodate the development of Christchurch Hospital.
12. Section 78 of the Local Government Act 2002 requires the Council, in the course of its decision-making process, to give consideration to the views and preferences of the persons likely to be affected by, or to have an interest in, the proposed land exchange. Section 79 states that it is up to the Council in its own judgement to determine how to achieve compliance with that requirement, in proportion to the significance of the decision.
13. The Act sets out a number of consultation principles. These include:
 - (a) providing reasonable access to relevant information
 - (b) encouraging people to present their views
 - (c) providing clear information about the purpose and scope of the decision to be made
 - (d) providing a reasonable opportunity to present views to the Council
 - (e) receiving views that are presented to the Council with an open mind and giving them due consideration
 - (f) providing people who have presented their views with information about the relevant decision and the reasons for it.
14. The Council must consult in accordance with these principles, whether or not it uses the special consultative procedure. The only real difference is that an SCP requires the Council to prepare and distribute a Statement of Proposal, and Summary of Information, and to give people who make submissions a reasonable opportunity to be heard by the Council if they request this. How the Council fulfils its obligation to obtain and consider community views is for the Council itself to determine. It may decide (or be required) to use the SCP, or it may resolve to adopt another less prescriptive consultation process. Either way the need to comply with the provisions of the Local Government Act, and to use a process that is in proportion to the significance of the decision, remains the same.
15. The CDHB and Council staff have put together a Proposed Consultation and Community Engagement Plan in respect of the proposed land exchange and development of Christchurch Hospital. They believe that this reflects both the nature of that development and the significance of Hagley Park to Christchurch residents. The Plan involves both parties engaging with the people and organisations that have a particular interest in the project, as well as with the general public. The Council may determine that this process is preferred to an SCP.
16. One of the reasons for this could be that the SCP would require the Council to consult on those matters that are set out in a Statement of Proposal prepared in accordance with the requirements of the Local Government Act. The decision to be made by the Council is in respect of the land exchange only. Therefore there is a risk that the consultation process could be carried out largely in isolation to the process being followed by the CDHB. This appears to be at odds with the aim of both organisations to work together.
17. In fact there has been a high level of collaboration already and the CDHB intends to consult widely with the Council. The Proposed Consultation and Community Engagement Plan includes a list of key Stakeholders. This may be added to once the Plan is completed in its final form.

46 Cont'd

18. The CDHB has advised Council staff that it is prepared to meet with all key stakeholders and sees this as an important part of the consultation process. The process will include workshops, presentations and seminars involving Community Boards, Councillors and groups within the CDHB's own organisation. As much use as possible will be made of existing CDHB and CCC communication channels and networks.
19. For these reasons, it is suggested that a joint approach to consultation may be the better option for the Council to adopt.
20. A further matter to be taken into account is that obtaining and considering the views of the Christchurch community is only one step in the consultation process.
21. The Council can only effect the exchange of land with the CDHB by seeking an amendment to the Christchurch City (Reserves) Empowering Act 1971. This Act controls and protects the land comprising Hagley Park.
22. It would also be necessary for the CDHB to amend the Hospital Act, which controls and protects the CDHB land. If both amendments are enacted, it means that the CDHB land will become a reserve and part of Hagley Park, and the Council land will be available to the CDHB for its development project.
23. The promotion of a local Bill to amend both Acts would require a further more formal consultation process. Once drafted the new Bill will be publicly notified and copies provided to any person or organisation that has a direct interest in the matter. These will include local MPs. It is likely to be several months before the Clerk of the House of Representatives is able to accept the draft Bill.
24. The Bill will be promoted by a local MP who will introduce it to the House. After the Bill is read for the first time it will be referred to a select committee which will seek public submissions and sit as a hearings panel to hear submitters who wish to be heard. Again, depending on the number of submitters, this process could take several months. It is only when the select committee is satisfied that the Bill is in a proper form to be enacted that it is returned to the House for the second and third readings. At each reading there is the opportunity for debate in the House.
25. The consultation process proposed by Council staff and the CDHB is therefore the first step in what will be a relatively long process that could take 18 months - 2 years to complete. Whether or not the draft Bill has a smooth passage through Parliament will depend to a large extent on the quality and the extent of the consultation undertaken locally. It is therefore in the interests of both the Council and the CDHB to ensure that this is dealt with appropriately, not just to comply with the requirements of the Local Government Act 2002, but also so that the parliamentary process goes smoothly.
26. It is the view of the Legal Services Unit that the level of consultation outlined in the attached Proposed Consultation and Community Engagement Plan will achieve both of these objectives
27. It should be noted that using the special consultative procedure would not mean that the Council's decision-making process could not be challenged in the High Court. The Council's decision to fund a new School of Music for the University of Canterbury at the Art Centre, made following an SCP, is currently the subject of an application for judicial review.

OPTIONS

28. The Council has already indicated that it is willing to consider an exchange of land with the CDHB. The matter before it now is a decision on the process to be adopted for obtaining and considering community views on the proposal.
29. The special consultative procedure is a prescriptive process that requires a Statement of Proposal to be prepared and submitters to be given the opportunity to be heard by a Council-appointed Hearings Panel.

46 Cont'd

30. The Council's obligation to consult in accordance with the provisions of the Local Government Act 2002 remains the same, whether or not an SCP is used. The Council must still ensure that the steps it takes to obtain and consider community views are in proportion to the significance of the matter before it. As indicated in this report Council staff believe that the Proposed Consultation and Community Engagement Plan meets this obligation.
31. Sometimes the SCP just isn't the right tool for the job and it is suggested that this is one of those times. The consultation process recommended by the CDHB and Council staff is both sound and appropriate, particularly in view of the fact that there is still another, more formal, process to come.
32. Compliance with the decision-making processes in the Act is the basis on which the Council's process will be judged, whether or not an SCP is used. The use of an SCP will not eliminate the risk of an application for judicial review being filed against the Council.

PREFERRED OPTION

33. It is recommended that the Council approve the attached Proposed Consultation and Community Engagement Plan as the basis for obtaining and considering community views on the proposed exchange of land with the CDHB.