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Report to the Policy and Finance Committee
from Peter O'Brien, Property Consultant

Proposal to Exchange Land Between the Wellington Regional Council and Hutt City Council

1. Purpose

To report on the matters raised in Report 00.840 dated 20 November 2000 (**Attachment 1**) and relating to the proposal to exchange land between the Wellington Regional Council and the Hutt City Council.

2. Exclusion of the Public

Grounds for the exclusion of the public under section 48(1) of the Local Government & Official Information and Meetings Act are:

That the public conduct of the whole or relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists, (i.e., to preserve commercial confidentiality).

3. Background

3.1 On 7 December 2000, Council resolved to agree in principle with the exchange of land subject to:

- (1) Completion of an asset identification and valuation process.
- (2) Compliance with section 40 of the Public Works Act 1981.
- (3) Compliance with section 230 of the Local Government Act 1974.
- (4) A further report to the Committee providing full details of the land to be exchanged, the value of the land, the financial implications arising from the proposal, and the results of the consultation process.

- 3.2 The exchange proposal has now been negotiated to the satisfaction of officers of both Councils. The agreed position is as set out in the O'Brien Property Consultancy Limited letter of 6 December 2001, (**Attachment 2**), which is endorsed by Hutt City. Reports and recommendations to proceed with the exchange are being placed before each Council.
- 3.3 While it has taken some time, the negotiation process has been very effective with officers from both Councils open, pragmatic and positive.

4. The Current Position

- 4.1 The majority of the work to date on this project has focussed on identifying and clarifying which of the land parcels are to be included in the exchange proposal. Schedules have been compiled of both the Regional Council and the Hutt City land which is to be included. The schedules have been discussed with the Managers to ensure that they accurately reflect the land to be disposed of and to be received.
- 4.2 Inter-council discussions have seen a number of variations proposed, the most significant of which are:
- 4.2.1 Hutt City has advised that the Pencarrow Road is not available for sale. However, Hutt City are offering the Regional Council a right-of-way in perpetuity to be registered against the titles which will cater for use of the road by both the Council and the public. As details of the right-of-way offered have yet to be tabled by Hutt City, agreement is being sought in principle. The right-of-way terms are likely to include vehicle use by the Council, but be restricted to pedestrian and cycle use by the public. Other landowners with frontage to the Pencarrow Road will continue to hold user rights with vehicles, but limited to use associated with the predominant use of their land (rural). The Pencarrow Road will be subject to the Hutt City policy for use which does allow for a limited use by the public with vehicles, but on a permitted and restricted number basis. Hutt City has confirmed that when its new waste water pipeline is installed, it will all be beneath the road surface and will not interfere with continued Regional Council access other than during the period of construction/installation.
- 4.2.2 Those northern portions of East Harbour Regional Park which are presently in the ownership of the Regional Council, were originally proposed to be transferred to Hutt City ownership. They are now to be retained by the Regional Council. Hutt City has signalled that it wishes the Regional Council to have total control and management of all of the East Harbour Regional Park. Hutt City has also had discussions with the Department of Conservation over this proposal as some of the land in the Northern Block is Department of Conservation owned. As such, the Department of Conservation would need to alter the vesting of control and management from Hutt City to Regional Council. The alteration would require a gazette notice. Hutt City advises that the Department of Conservation supports the proposal.
- 4.2.3 Regional Council Parks and Forests will no longer pursue purchase of the Hutt City land within Belmont Regional Park. Hutt City has agreed to:
- (1) retain ownership of its land holdings within the Belmont and East Harbour Regional Parks;

- (2) have almost all its land within the Parks held for the purpose of a Reserve; and
- (3) have the control and management gazetted in favour of the Regional Council.

These matters are expanded below under “Matters Arising”.

- 4.3 Flood Protection has assessed all of its future land requirements for stopbank improvement on the Hutt River, including identifying land which must be retained to facilitate improvements programmed in the Hutt Floodplain Management Plan. As a result the land available for disposal has been identified. Sufficient land is being retained to cater for the stopbank upgrades as well as providing for buffer zones on the outside of the stopbanks in which services of network utility operators can be placed.
- 4.4 To ensure that the exchange was fair, valuers were jointly appointed by the Councils. The valuers have provided a report on their findings. A copy of the spreadsheet detailing the valuers assessment of value of each land parcel to be transferred is appended (**Attachment 2**). The figures can be summarised as:

| | | |
|---|---------|------------------|
| HCC to WRC | | \$467,000 |
| Pencarrow Road - right-of-way only | 5,595 | |
| Southern Esplanade Lakes | 11,050 | |
| Land in Hutt River Corridor | 450,355 | |
| WRC to HCC | | \$560,500 |
| Memorial Park | 379,350 | |
| Taita Drive - Tennis Club facility | 40,670 | |
| Waione Street - regularisation | 90,000 | |
| Harcourt Werry Drive - regularisation | 45,000 | |
| Hutt River Corridor - regularise utility pipes and cater for future pipes | 5,490 | |

- 4.5 The differential in value amounts to some \$93,500, which technically the Hutt City owes the Regional Council. Given that: (a) Waione Street, (\$90,000), should have always been an asset of the Hutt City Council and this portion of the street resides in Regional Council ownership, by quirk of fate only; and (b) Hutt City is to designate as Reserve all its land within the Belmont and East Harbour Regional Parks as well as vesting the control and management of all that land in the Regional Council; we consider that the respective lists of assets do equate in value terms.
- 4.6 From a departmental position, all the Regional Council assets being transferred to Hutt City are Flood Protection assets. Two of the assets being acquired from Hutt City, the Pencarrow Road right-of-way and the southern lakes esplanades, are for the benefit of Parks and Forests. While no inter-council monetary transaction is to take place, it is appropriate that a Regional Council inter-department transaction occur where Parks and Forests will compensate Flood Protection with a payment of \$16,645.

5. Matters Arising

5.1 For Flood Protection

- 5.1.1 For Flood Protection, the exchanges are very close to being in balance if no value is placed on the regularisation of Waione Street. The financial implication for each Council will, if Waione Street is to be ignored, be neutral.
- 5.1.2 Survey work will be required to facilitate the proposed Flood Protection land exchanges. In some instances, whole titles or parcels will transfer, but in many instances parts only will be transferred. Subdivisions will therefore be required.

5.2 For Parks and Forests

- 5.2.1 For Parks and Forests there will be a financial implication as all assets are being received, with none transferred to Hutt City in exchange.
- 5.2.2 Initially it had been proposed to transfer ownership of the Hutt City Council land in the Belmont Regional Park to the Regional Council. Such a transfer would have imposed a considerable financial burden on the resources of the WRC's Reserves Land Purchase Fund. This was of particular concern as, during the exchange process, it emerged as a possibility that the Regional Council may have the opportunity within the next twelve months to consider acquisition of the Turvey property adjoining East Harbour Regional Park.
- 5.2.3 The Turvey property has long been recognised as a most important acquisition for the East Harbour Regional Park. The property provides a crucial link between the Northern and Lakes Blocks of the Park. The property is believed to contain significant environmental and recreational values in itself and will assist to solve many of the access problems faced by the Park at present. The value as a link is far more important now that the Hutt City will be transferring the control and management of its holdings in the north part of the Park over to the Regional Council.
- 5.2.4 Investigations undertaken during the exchange process also highlighted that much of the Hutt City Council land within the Belmont and East Harbour Regional Parks is held as freehold title and not as Reserve. It was therefore appreciated that the concept of those Regional Parks was fragile and had little protection.
- 5.2.5 The value placed on the Hutt City Council land within the Belmont Regional Park totalled \$920,400. It was not feasible for the Regional Council to meet this cost and to preserve funds for the possible Turvey property purchase. The Turvey property may be worth about \$1m to \$1.2m.
- 5.2.6 Discussion with Hutt City on this issue resulted in the Hutt City Council agreeing to:
- (1) retaining ownership of the land within the Belmont and East Harbour Regional Parks;
 - (2) have all the Hutt City land within the Parks designated as Reserve; and
 - (3) have the control and management of all the Hutt City land within the Parks gazetted in the name of the Regional Council.

- 5.2.7 The only exception to the above Hutt City undertakings (in 4.2.6) is Hutt City wish to preserve the right to sell or develop and sell areas of the Kilmister and Sweetacres blocks which are currently zoned residential. Parks and Forests have no objection to this exception. The other Hutt City caveat is should the WRC choose to no longer include the land in Regional Parks, the control and management will be transferred back to Hutt City. Parks and Forests have no objection to this caveat.
- 5.2.8 The benefits to both Councils of this land exchange proposal are considerable. Hutt City Council will gain land which is important for its operations and the Regional Council will rationalise its flood protection land holdings as well as being able to expend capital on both East Harbour and Belmont Regional Parks with certainty. Any threat of loss of the Parks will be removed. All this will be achieved at no cost (other than the transaction costs) to either Council. It is for these reasons that Regional Council officers have no hesitation in recommending transfer of the Waione Street land to Hutt City at no cost.

6. Conclusions

- 6.1 To proceed with the exchange process, in its entirety, is to the mutual advantage of the Regional Council and Hutt City.
- 6.2 Flood Protection will hold control of the land within the Hutt River corridor.
- 6.3 Parks and Forests will hold total control of the land within Belmont and East Harbour Regional Parks.
- 6.4 Use by Parks and Forests of the Pencarrow Road will be protected in perpetuity and planning of the Park can now rely on the availability of that access.
- 6.5 The exchange will be cost neutral to both Councils.

7. The Proposal

- 7.1 As the land proposed to be exchanged is currently held for public work purposes and is to be used for another public work by the purchasing council, it is intended to conduct the exchange pursuant to the provisions of section 50 of the Public Works Act 1981. Section 50 is specifically designed to cater for transfers between Councils where land is held for a public work and which is to be used for another public work.
- 7.2 Transfer of land pursuant to section 50 must be conducted subject to section 40 (offer back to former owner provision). The requirement to offer the land back to the person from whom it was originally acquired is not extinguished but passes to the new owner/council. It is therefore not necessary for the section 40 offer back process to be conducted before the transfers take place.
- 7.3 As with the section 40 process, it is not necessary to have regard to section 230 of the Local Government Act 1974 and for the Councils to publicly advertise the intention to dispose of the land or to resolve to declare the land as surplus to requirements. Section 230 contains an exception clause where land is to be transferred or exchanged pursuant to any Act. In any event these parcels of land are not surplus to requirement of the respective Councils, but rather are required for public work purposes.

- 7.4 It has been established as a principle that where land jointly caters for stopbank and road, that the land should reside in the ownership of the Regional Council so as to protect the ability to alter the height of the stopbank. As a secondary issue, Hutt City will be guaranteed the right to pass a road over the stopbank.
- 7.5 Several areas acquired by the Regional Council by this agreement will be leased back to Hutt City at nominal rent to ensure that the land continues to be used and available to the public for its present recreational purpose.
- 7.6 Each Council holds an equal number of properties which will need to be surveyed and subdivided to facilitate this agreement. It has been agreed to appoint one survey company to undertake all the survey work necessary and for each Council to meet 50 percent of the costs incurred.
- 7.7 All costs, other than survey, will be met by the respective Council on a typical vendor purchaser basis.
- 7.8 There has been a long standing arrangement between Hutt City and Regional Council in respect of the riverbank car park which is located on the river berm behind the Lower Hutt City shopping centre. Hutt City developed the car park with sealed surface and met the cost to install pay and display machinery. Hutt City manages the car park. Regional Council had owned part of the land occupied by the car park and Hutt City owned the balance together with all the improvements. Sixteen percent of the gross income derived from the car park had, by agreement, been paid by Hutt City to the Regional Council. Analysis shows the 16 percent to be disproportionately high relative to the respective inputs. It is intended to leave the 16 percent unaltered despite the Regional Council becoming a 100 percent owner of the land under this agreement. The 16 percent still represents a satisfactory return for the Regional Council relative to its input.

8. Other Matters - The Wainuiomata Tunnel

- 8.1 In May 2001 an agreement was executed between the Regional Council and Hutt City for the use of the Regional Council Wainuiomata tunnel by Hutt City for it to pass a waste water pipe through as part of the Hutt Valley Waste Water Project.
- 8.2 The agreement between the Councils granted Hutt City immediate access to the tunnel for the installation of its pipe. A process to establish the appropriate easement fee is contained within the agreement. That process allows for a negotiated agreement, failing which, mediation is provided for and if mediation fails, arbitration.
- 8.3 Originally it had been proposed to incorporate the value of the wastewater pipe easement into the land exchange proposal. By agreement between the Councils, the formal process to establish the worth of the tunnel easement was deferred. As discussions on the exchange progressed and the Turvey property opportunity emerged, it became clear that it was no longer appropriate to persist with the original idea of incorporating the tunnel easement in with the exchange. By treating the tunnel easement as a separate issue and by having the Park lands control and management vested in the Regional Council, the exchange process, which in the main deals with Hutt River land, became very simple and manageable.

8.4 The assessment of worth of the wastewater pipeline easement through the Wainuiomata tunnel will now proceed as per the contractual agreement.

9. **Actions to Date**

9.1 This report captures the proposal to exchange in its entirety. The Regional Council officers believe it is very important that the matter is viewed as and be dealt with as a whole.

9.2 The Hutt City Council officers have elected to deal with the proposal in two distinct portions. The first portion, which has already been approved by the Hutt City Council, dealt with the exchange of the flood protection land. The second portion, expected to be placed before the Hutt City Council some time between late March and mid May 2002, will deal with:

- (1) The exchange of the Pencarrow Road right-of-way for the grant of utility rights within the Hutt River corridor.
- (2) The declaring as Reserve of all Hutt City land within the Belmont and East Harbour Regional Parks.
- (3) The vesting of control and management in the Wellington Regional Council over all the Hutt City Council land within the Belmont and East Harbour Regional Parks.
- (4) The transfer of management over the Department of Conservation land in the East Harbour Regional Park from Hutt City Council to the Wellington Regional Council.

9.3 The Hutt City Council has written to the Department of Conservation seeking its support to the proposals and seeking confirmation that the department will submit a positive recommendation to the Minister of Conservation to give effect to the proposals under the Reserves Act 1977.

9.4 Initial verbal advice from the Department of Conservation has been positive.

10. **Recommendations**

- (1) *That the report be received and the contents noted.*
- (2) *That the Committee recommend to Council that the exchange proposal, as presented and detailed in the O'Brien Property Consultancy Limited letter dated 6 December 2001, be adopted in its entirety, subject to the Hutt City Council approving the exchange proposal in its entirety. In the event that only part of the proposal are acceptable to Hutt City Council then a further report on the land exchange be submitted to the Committee with an appropriate recommendation.*
- (3) *That the Council's Common Seal be affixed to the necessary documents to give effect to the exchange transactions.*

Report prepared by:

Approved for submission:

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Endorsed by:

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Attachment 1 : Report 00.840 dated 20 November 2000

Attachment 2 : O'Brien Property Consultancy Limited letter dated 6 December 2001 together with schedule of all land to be exchanged and the valuers' assessments