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**REPORT 7**  
*(1215/52/IM)*

## **ACQUISITION OF LAND ADJACENT TO 28 SUNHAVEN DRIVE FOR RESERVE**

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### **1. Purpose of Report**

The purpose of this report is to report back to the Strategy and Policy Committee on negotiations to acquire a portion of Lot 100 DP 335825, located off Sunhaven Drive, Newlands, as instructed by this Committee on 15 October 2009.

### **2. Executive Summary**

This report informs the Committee that agreement in principle to a price to acquire the land has been reached with the owner at \$160,000 (plus GST).

This Committee considered a report on the 15<sup>th</sup> October 2009 addressing a request from the owners of the property at 28 Sunhaven Drive, Newlands for the Council to purchase and/or rezone an area of land adjacent to their property so it can be used to provide public access to future reserve areas.

The subject land was rezoned from Open Space to Residential (Outer) in 1994 when the Proposed District Plan under the Resource Management Act was publicly notified. The reasons for this rezoning are uncertain but the owners of 28 Sunhaven Drive claim that the rezoning was an error and should be rectified to avoid the disadvantages to them that would arise from any future residential development. Regardless of whether there was any error, the zoning of the land took place following due process.

SPC resolved to;

*Agree to officers entering into negotiations with the owner of the land adjoining 28 Sunhaven Drive, being approximately 1120 sq metres (part of Lot 100 DP 335825) with a view to possible acquisition and a change in zoning to a conservation site included in the report back to the Strategy and Policy Committee.*

The report summarises the results of the negotiations with the land owner and proposes terms and conditions for acquisition of the land.

### **3. Recommendations**

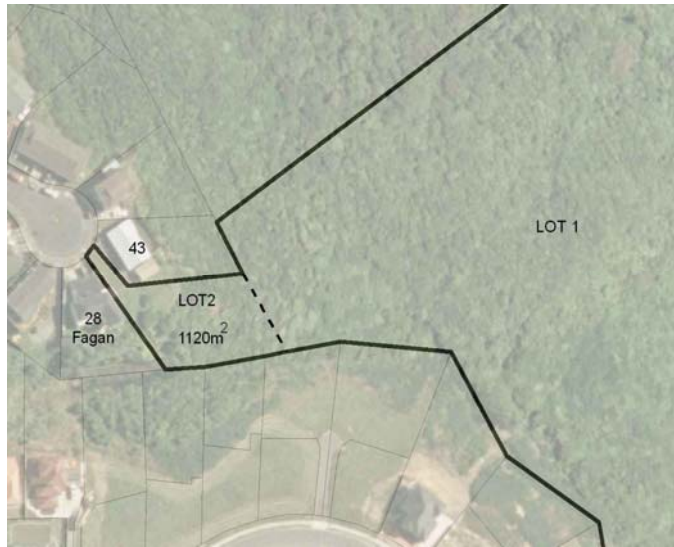
Officers recommend that the Committee:

1. *Receive the information.*
2. *Note the decision of SPC on the 15<sup>th</sup> October 2009 “Agrees to officers entering into negotiations with the owner of the land adjoining 28 Sunhaven Drive, being approximately 1120 sq metres (part of Lot 100 DP 335825) with a view to possible acquisition and a change in zoning to a conservation site included in the report back to the Strategy and Policy Committee”.*
3. *Recommend that Council;*
  - a. *Agree to acquire approximately 1120 square metres of land at Sunhaven Drive and described as part of Lot 100 DP 335825 and contained in Computer Freehold Register identifier 146829.*
  - b. *Authorise the Chief Executive Officer to conclude a contract for the land purchase in the amount of \$160,000 (plus GST).*
  - c. *Instruct officers, following completion of the transfer of part of Lot 100 DP 335825 to the Council, to give public notice under section 119 of the Reserves Act 1977 of the Council’s intention to resolve to declare part of Lot 100 DP 335825 to be scenic reserve for the purposes specified in s.19 (1) (b) of the Reserves Act 1977 and once the period for submissions and objections had closed, report back to Council to consider any objections, and for a resolution on whether or not to proceed with the proposal to declare part of Lot 100 DP 335825 to be scenic reserve for the purposes specified in s. 19 (1) (b).*
  - d. *Instruct officers to rezone the land from outer residential to conservation site.*
  - e. *Agree to an overspend of up to \$170,000 (plus GST) to project CX033 – ‘Property Purchases – Reserves for the land purchase and associated transfer and settlement costs’.*

### **4. Background**

Sunhaven Drive forms part of the Bellevue subdivision in Newlands which has been progressively developed since the 1970’s. The land, the subject of this report, is owned by Bellevue lands Limited.

The land is situated at the end of Sunhaven Drive between the houses at numbers 28 and 43.



**Subdivision of Lot 100 DP 335825 into 2 new lots.**

The site forms part of Lot 100 DP 335825 which has a total area of some 4.5 hectares. Lot 100 is largely steep and covered in regenerating bush that is intended to eventually form part of the existing Gilbert Bush Reserve. The land enjoys an easterly aspect with panoramic views towards Wellington Harbour.



End of Sunhaven Drive with number 28 on the right and 43 on the left. Entrance to the land is along the grass strip in the middle of the picture



Flat area of land between nos 28 and 43 showing views and edge of regenerating bush

The detailed changes in District Plan zoning were outlined in the October 2009 SPC report – in summary:

- In 1979 the subject land was zoned Open Space B and was intended to provide access to a future reserve.
- In 1991 a plan change was initiated (DSC 91/07) to provide for future stages of the Bellevue subdivision and this affected the configuration of the Open Space zoning off Sunhaven Drive.
- In 1994 the proposed District Plan was publicly notified and the Open Space zoning off the end of Sunhaven Drive was changed to Residential (Outer). Following public notification there were no submissions on the rezoning of Sunhaven Drive (the 1120m<sup>2</sup> lot) and the amended zoning became part of the approved District Plan in July 2000.

Mr and Mrs Fagan own the property at 28 Sunhaven Drive which adjoins Lot 100. In July 2004 the Fagan's first wrote to the Council expressing concern about the rezoning adjacent to their property. The key events from this time are detailed in the chronology in appendix 1. This culminated in a formal request from the Fagan's for the zoning issue to be resolved by the Council purchasing a portion of Lot 100 and/or rezoning land to restore the former situation. This request was considered at the SPC meeting on 15 October 2009.

In November 2007 the owner lodged a resource consent application to subdivide the 1120m<sup>2</sup> site off the parent lot 100. This application was approved on 11 September 2009.

On 15 October 2009 SPC considered the request and resolved to:

*Agree to officers entering into negotiations with the owner of the land adjoining 28 Sunhaven Drive, being approximately 1120 sq metres (part of Lot 100 DP 335825) with a view to possible acquisition and a change in zoning to a conservation site included in the report back to the Strategy and Policy Committee.*

Officers have obtained a valuation for the land and negotiated a purchase price with the owner Bellevue Lands Ltd.

#### **4.1 Valuations of Lot 100**

##### **4.1.1 Bellevue Lands Ltd Valuation**

Bellevue commissioned a valuation by Appraisal Property Consultancy Limited in May 2010. The assessed market value is \$168,889 (plus GST).

##### **4.4.2 City Council Valuation**

Property Projects commissioned a valuation by Darroch Ltd in October 2009. The assessed market value is \$130,000 (plus GST). In making an assessment of value, the valuer has indicated that the value of the site if of an even contour would have a value of around \$164,444 (plus GST). As the site has a steep contour and limited flat areas, it will be difficult to build on and will require more house foundation work than normal. Because of these factors the value has been discounted.

##### **4.4.3 Negotiated Position**

The current position is that the owner has agreed to sell the 1120m<sup>2</sup> site to the Council for \$160,000 (plus GST). Officers have agreed to present this to Council.

## **5. Discussion**

The October 2009 SPC paper identified two options for the Council in response to the Fagan's request.

1. Neither purchase nor rezone and allow residential development off the end of Sunhaven Drive in accordance with the current zoning.
2. Purchase the land which would inevitably lead to its rezoning as part of the escarpment reserve.

### **5.1 Neither purchase nor rezone**

With the current zoning the owners would be entitled to construct either a single dwelling or two units as a permitted activity subject to compliance with the residential development standards. It appears that it would be possible to site a fully complying development on the land.

A new development would likely have some impact on the views from the Fagan property towards the Hutt Valley but the full effect of this could not be determined without proper architectural plans. It is noted that the Fagan's primary view is towards the harbour and city to the south and west.

It is understood that the owners have prepared plans of a dwelling that seeks to minimise the impact on nearby properties but the Council would have no ability to influence any design unless there was some breach of the development standards. It is noted that loss of views to a neighbour are not regarded as grounds for Council to decline a building consent application.

It is noted that in lieu of the Council taking no action the Fagan's would have the right under the RMA to make a private application for a zoning change.

However, this would not be a realistic option in view of the potential cost of the process and likely opposition by Council given the implications for public acquisition that would arise. Their only other option would be to seek a judicial review around the process the Council followed for the rezoning to outer residential.

## **5.2 *Purchase of the land and/or rezoning***

With regard to the Council purchase and/or rezoning, the previous SPC paper posed two questions.

1. Whether the rezoning in 1994 was an error which has disadvantaged the Fagan's to an extent that justifies action now being taken to restore the previous zoning situation.
2. Whether public access from Sunhaven Drive is required.

### **5.2.1 Was there a zoning error?**

There is no definitive answer as to why the zone boundary was realigned in 1994. There may have been confusion as a result of earlier mapping deficiencies but it is also possible that it was done deliberately to provide flexibility for the design of the Bellevue subdivision. The proposed new plan in 1994 involved a comprehensive review of the previous zoning structure which resulted in many zoning changes. In the absence of firm evidence it cannot be confirmed or otherwise that there was a zoning error.

It is understandable why the Fagan's have raised the concerns they have. Land that was originally intended to remain as open space gained some potential for development and as a consequence their amenities will be affected to some extent.

### **5.2.2 Is public access from Sunhaven Drive required?**

There was clearly a historical intention to establish a public access way from Sunhaven Drive into the escarpment reserve based on the original zoning. In the October 2009 SPC paper the question of public access from Sunhaven Drive was reviewed and concluded:

*A recent assessment of the Sunhaven Drive area shows that an accessway is not needed at this location to provide access to the Harbour Escarpment Walkway. The current access in Fernhaven Grove and the proposed access on Tamworth Crescent provide surrounding properties with good access to the reserve and walkway within a 200 metres radius. On that basis acquisition of the property or provision of an easement for access is not required.*

### **5.3 Acquisition of the land**

Both parties have agreed a valuation of \$160,000 (plus GST), which is \$38,889 (plus GST) above the valuation received by the Council. The owner, as a developer of residential sections, believes that the market will pay the asking price of \$160,000 (plus GST). While this sum is higher than officers would like to support, it is the amount that the owner will accept. If we decline, the property may not be placed on the open market for sale immediately but sold as a developed land and building package. Declining this offer is likely to see Council being denied the opportunity to secure it at a later time on the same terms. For this reason, if the Council does wish to proceed to purchase, officers recommend that the Council accepts the \$160,000 (plus GST) figure.

### **5.4 Management of the land**

The land comprises approximately 700 square metres of steep regenerating bush with the balance being flat land currently mown adjacent to 28 and 43 Sunhaven Drive. Following acquisition, the steep bush slopes will be managed in conjunction with the adjacent Gilbert Bush Reserve in particular for pest animal and plant control. The flat land has little value as open space for active recreational activities and is not required as a future access to the Harbour Escarpment walkway. Officers will need to assess if the land should be kept in lawn or planted to reduce further maintenance.

There are currently some minor encroachments on this land:

- The driveway to number 43 crosses onto the land in some places
- There is a large flat area to the north of number 43 currently mown and managed as part of their garden
- There is a clothes line on the property

Council officers will ensure these encroachments are resolved prior to acquisition.

### **5.5 Financial Considerations**

If Council approves acquisition of the land, it would be funded from the Reserves Purchase and Development fund (RPDF). The current value of the fund is \$1,368,001. Note any consequential reduction in the RPDF would result in an increase in borrowings of the same amount.

The cost to Council would be up to \$170,000 (plus GST). This includes \$160,000 (plus GST) for the purchase of the land plus costs up to \$10,000 (plus GST) for associated transfer and settlement costs.

In addition to the above acquisition cost there would be interest charges of \$11,050 per annum based on the increased borrowing required. Management of the land and in particular ecological management of the bush area would be managed within existing budgets.

### **5.6 LTCCP Implications**

Acquisition of the land would be funded from the Reserve Purchase and Development Fund (RPDF). There is no funding allocated from the RPDF this year for acquisition. If acquisition was agreed by Council, then it would also be necessary to agree an over spend of the capex project CX033. The subsequent increase in borrowings as a result of purchasing the land can be facilitated within the Council's \$20m new borrowing cap in 2010/11.

## **6. Conclusion**

The rezoning of land off Sunhaven Drive as part of the Proposed District Plan in 1994 has created a situation that permits new residential development. This potentially impacts on the amenities enjoyed by the Fagan's at 28 Sunhaven Drive. While it cannot be established if there was any error by Council, the Fagan's are likely to be affected by any development on the site. SPC instructed officers in October 2009 to enter into negotiations with the owner with a view to possible acquisition. These negotiations have concluded with the owner agreeing to sell Council the site for \$160,000 (plus GST). Officers advise that if the Council does wish to proceed to purchase the above price be accepted.

Contact Officers: *Mike Oates, Manager Open Space and Recreation Planning,  
Jon Muston Team Leader Property Projects*



## **Supporting Information**

### **1) Strategic Fit / Strategic Outcome**

This issue covered in this report has no strategic implications.

### **2) LTCCP/Annual Plan reference and long term financial impact**

A decision to acquire the land would involve the purchase of some 1120m<sup>2</sup> at residential valuation. However, there are no funds allocated this year in the Reserves Purchase Development Fund.

A decision to initiate a rezoning would be covered by existing Policy and Planning budgets.

### **3) Treaty of Waitangi considerations**

The issue has no Treaty of Waitangi implications

### **4) Decision-Making**

This is not a significant decision. The report addresses a localised issue and sets out the options for the future use of the land.

### **5) Consultation**

#### **a) General Consultation**

There has been no consultation

#### **b) Consultation with Maori**

There has been no consultation with Iwi.

### **6) Legal Implications**

The Council's lawyers have advised on aspects of the issue.

### **7) Consistency with existing policy**

There are no significant policy issues.