



**AGENDA FOR A MEETING OF THE COUNCIL TO BE HELD IN THE CIVIC CENTRE,  
6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY, ON WEDNESDAY,  
20 APRIL 2005 COMMENCING AT 9.30 AM**

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**1 APOLOGIES**



**2 URGENT BUSINESS**

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 provides that where an item of business is not on the agenda, it may only be dealt with at the meeting if:

- (i) the Council by resolution so decides; and
- (ii) the Chairperson has explained at the beginning of the meeting (when open to the public) that the item will be raised for discussion and decision, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting.

The Council may make a decision on a matter determined to be urgent.

**NOTE:** Urgent Business need not be dealt with now and may be delayed until later in the meeting.



**3 STATEMENT OF PROPOSAL - TRANSFER OF SHARES OR ASSETS OF  
AUCKLAND REGIONAL TRANSPORT LIMITED**

**PURPOSE OF THE REPORT**

The purpose of this report is to inform Council that the proposed transfer of shares or assets in Auckland Regional Transport Limited as signalled in the draft Annual Plan 2005/2006 is subject to a separate special consultative procedure process as required by the Local Government Act 2002. The Council needs to approve the form and content of the summary of the Statement of Proposal.

**BACKGROUND**

As part of the change in transport governance arrangements in the region, it is no longer appropriate for Auckland Regional Transport Limited to be controlled by local authorities. The Auckland Regional Transport Authority is now responsible for determining passenger transport infrastructure improvements and additions. Negotiations are underway for a transfer of shares or assets of Auckland Regional Transport Limited to Auckland Regional Holdings Limited or the Auckland Regional Transport Authority. This is subject to Council's approval.

## STRATEGIC CONTEXT

Council owns 13.66% of the shares in Auckland Regional Transport Limited. When the transfer of shares or assets is effected the Council will receive some re-imburement for its investment. This has been included in the draft Annual Plan 2005/2006.

## ISSUES

A1

The Council's Significance Policy lists the shareholding in Auckland Regional Transport Limited as a strategic asset. The Local Government Act 2002 requires any divestment of an identified strategic asset to be consulted upon using the Special Consultative Procedure process. A summary Statement of Proposal must be prepared and advertised. The summary Statement of Proposal is attached at page A1.

The Council must approve the form and content of the summary Statement of Proposal. There is no material impact on Council's Long Term Community Plan, so no amendment to that Plan is required.

The draft Annual Plan 2005/2006 has also included this issue as an item for consultation. An amount of \$400,000 has been included in the draft Annual Plan as potential income from the divestment process. Any submissions on the Statement of Proposal can be heard concurrently with submissions on the draft Annual Plan.

## CONCLUSION

A special consultative procedure is required before divestment of the Council's investment in Auckland Regional Transport Limited can be formally considered. Once the special consultative procedure has been completed the Council can then make a final decision on the divestment of the strategic asset.

## RECOMMENDATIONS

1. That the Statement of Proposal - Transfer of Shares or Assets of Auckland Regional Transport Limited report be received.
2. That the form and content of the Summary Statement of Proposal as attached in the Agenda report be approved.
3. That any submissions received on the Statement of Proposal be heard by the Long Term Council Community Plan and Annual Plan Special Committee concurrently with submissions on the draft Annual Plan 2005/2006.

Report prepared by: Bob Preston, Group Manager: Financial Management.



#### **4 FDU1 AND FDU2 DP 205998B - CORNER WAIPAREIRA AND MOSELLE AVENUES**

##### **PURPOSE OF THE REPORT**

The purpose of this report is to obtain direction with respect to the “offer back” Agreement for Sale & Purchase now tendered to Council by the registered proprietors of the above land comprised in Certificate of Title NA134D/528, consistent with their legal obligation so to do.

##### **BACKGROUND**

In June 2000 the Council, as the then owner of the substantial site opposite the Civic Centre being all the land then associated with its Vehicle Testing Station development, transferred that landholding to Waitakere Properties Limited under the usual Declaration of Trust mechanism.

A2-A5

Waitakere Properties Limited had a brief to secure the continuation of the Vehicle Testing Station operation under the terms of an agreed lease, whilst re-titling the property under the provisions of the Unit Titles Act to create a number of separate Principal Units, and the associated Accessory Units required to be attributed for car parking purposes, as indicated on Plans 205998A and 205998B respectively, attached at pages A2 to A5, and to realise the asset to Council’s best advantage.

The concept involved achieving a staged development consistent with that unit plan and other indicative material. In the intervening period the development has been completed other than as to FDU1 (Principal Unit D) and the associated FDU2 (AU4). Because of the significance of that particular corner site immediately opposite the Civic Administration Building the actual conveyance to Waitakere Properties Limited contained a restrictive covenant providing for development at that location to occur strictly in accordance with certain plans endorsed by Council.

While the original proposal for this Principal Unit was for a specific tenant who intended to establish a café and training facilities for the hospitality industry that party was unable to proceed and the property was remarketed to the present owners who intended to establish automotive type uses via two workshops, with a third area (nearest the corner) set aside for commercial use, either retail or café, with offices and residential apartment above.

This alternative proposal was the subject of specific consultation in August 2002 when the initial concept plans were endorsed in principle subject to the development of final plans and specifications for approval by Council, with the subsequent legal settlement to be on the basis that the purchaser be bound to implement the built outcome so identified. This was consistent with Council’s broad requirement in regard to this prominent corner site that a facility be established with a commercial appeal rather than an industrial facade and the design outcome envisaged, if implemented in appropriate specified materials, represented an acceptable outcome.

Although capable of occupation as three self-contained tenancies, the building would remain with a single owner under the Body Corporate structure. Resolution 2657/2002 arising required Waitakere Properties Limited to ensure through the Agreement for Sale & Purchase that the purchaser committed by registered covenant to the development being established in accordance with such detailed plans and specifications (and landscaping outcome) as finally approved, and to retain a “buy back” option in the event that the proposal demonstrated was not achieved within two (2) year period from the date the contract was made unconditional.

## CURRENT

Subsequently the purchaser sought and obtained the necessary resource consents to undertake the development envisaged under RMA 20030187 (land use consent) and ABA20023946 (building consent) based upon the approved plans and the contract became unconditional. The contract arrangement included a number of further stipulations as follows:

- (a) No external signage was to be established upon or fixed to the walls of the proposed building facing either Waipareira or Moselle Avenues (with the exception of reasonable sign writing on any windows facing Moselle Avenue) nor should any signage be affixed to the building roof. Signage identifying the building uses was to be established at the Waipareira Avenue entrance, and otherwise be consistent with the Body Corporate Rules applicable to the larger development.
- (b) No canopies were to be constructed affixed to the proposed building, but an awning could be provided.
- (c) External colour schemes were to be approved from time to time by Council's representative, and otherwise be consistent with the Body Corporate Rules.
- (d) The ground level area closest to the corner, shown as lunch/café, was to be maintained as retail space or used as commercial offices (i.e. not be used as a workshop or for any other industrial type use).
- (e) The first floor area shown as a living apartment would be maintained for residential use or as commercial office space.
- (f) The "proposed store" area was to be maintained for use by all tenantable areas/premises within the proposed building.

Accordingly, as part of the sale transaction the current owners (HJ & GJ De Leeuw as trustees of the De Leeuw Family Trust) agreed not to further transfer or dispose of the land prior to completion of the development of the property in accordance with the above consents without first giving Council the first right of refusal to purchase the property in the sum \$180,000 plus GST. This price is identical with the purchase price originally paid by the Trustees to acquire the land. The recent rating valuation attributed is \$380,000 (up from \$210,000).

A formal Agreement for Sale & Purchase consistent with that obligation has now been tendered and Council must communicate acceptance not later than 5.00pm, Wednesday, 27 April 2005 or the entitlement lapses. Settlement would be due on 5 May 2005.

Following receipt of this offer discussions have been held with Waitakere Properties Limited which has expressed the desire to either undertake development consistent with the current consents (which have lapsed or require to be extended) or dispose of the property on a commercial basis in manner which continues to meet Council's concerns and objectives. As previously, Council's prior consent would be sought and obtained to any specific proposed transaction.

## CONCLUSION

It is considered Council should accept the current offer, and reacquire the property in the sum \$180,000 plus GST funded from the Strategic Land Acquisition Loan. Thereafter, the property should be transferred to Waitakere Properties Limited under the usual Declaration of Trust mechanism for development as a public work and/or disposal to an approved purchaser. Concurrently the existing Memorandum of Encumbrance in Council's favour should be discharged, as a fresh encumbrance can be placed on the title in conjunction with an disposal action if appropriate with terms and conditions updated to reflect the then current situation.

Unitec would be consulted as one potential interested party given that it will succeed Council as owner of the Civic Centre site.

In addition, this corner Principal Unit will continue to be a sensitive location because of its proximity to Council's Vehicle Testing Station operation. In particular, and to ensure that the Testing Station business is not compromised, the following possible uses will be restrained in conjunction with any actual development or disposal, namely:

- (a) The issue of warrants of fitness.
- (b) Agency services for the Land Transfer Safety Authority and/or Vehicle Testing New Zealand including vehicle registration, changes of ownership, driver licensing and re-licensing, and road user charge collection.
- (c) Vehicle emission testing.
- (d) Vehicle compliance testing.
- (e) Formal incomprehensive inspection of vehicles for other purposes including pre-purchase, safety or fault detection other than carried out in conjunction with vehicle servicing or maintenance work undertaken on the property.

There are also issues with landscaping and footpath construction along the Waipareira Avenue frontage that Waitakere Properties was to cost share with the present owners over and above the expected developer commitment, and regard will continue to be had to these matters.

Notwithstanding, it is anticipated that development/disposal will ultimately result in a surplus available for distribution back to Council in the normal manner, initially to reimburse the particular loan account funding the acquisition, with the further balance to be applied at Council's discretion.

### **RECOMMENDATIONS**

1. That the FDU1 and FDU2 DP 205998B - Corner Waipareira and Moselle Avenues report be received.
2. That the Chief Executive Officer be authorised to complete the Agreement for Sale & Purchase as now tendered by the registered proprietors, to purchase FDU1 and 2 DP205998B, comprised and described in Certificate of Title NA134D/528, in the sum \$180,000 plus GST as a charge against the Strategic Land Acquisition Loan.
3. That authority be given to convey the said FDU1 and 2 DP 205998B to Waitakere Properties Limited subject to the usual Declaration of Trust, with the terms and conditions of that document to be to the satisfaction of the Legal Services Manager in all respects.
4. That Council execute a release and discharge of the existing Memorandum of Encumbrance 5637958.2 in conjunction with the conveyance to Waitakere Properties Limited.

Report prepared by: Denis Sheard, Legal Services Manager and Graham Wakefield, Consultant.



**PUBLIC EXCLUDED MATTERS**

**5 NEW LYNN INTEGRATED TRANSPORT PLANNING**

**6 PAID PARKING FALLS PARK**

These items will be considered in the Confidential Supplement of the agenda, and have been circulated to members separately with this agenda.

**PROCEDURAL MOTION TO EXCLUDE THE PUBLIC**

That the public be excluded from the following part of the proceedings of this meeting, New Lynn Integrated Transport Planning and Paid Parking - Falls Park

The general subject of the matters to be considered while the public is excluded, the reason for passing this resolution in relation to the matters, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of the matters to be considered.	Reason for passing this resolution in relation to the matters.	Ground(s) under Section 48(1)(a) for the passing of this resolution.
<ul style="list-style-type: none"> <li>• New Lynn Integrated Transport Planning;</li> <li>• Paid Parking - Falls Park</li> </ul>	<p>The withholding of information is necessary in order to:</p> <ul style="list-style-type: none"> <li>• enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).</li> <li>• enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).</li> </ul>	<p>That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.</p>

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 7(2)(i) of that Act which would be prejudiced by the holding of the relevant part of the proceedings of the meeting in public as follows:

- *These reports contain information which if released could affect the Council's negotiations.*

