

MEMO

From: Puketāpapa Local Board

To: The Chair, Hearings Panel on Three Kings Reserve land exchange proposal

Subject: Submission to a proposed exchange of reserve land at Three Kings Reserve in response to the Notice of Intention under section 15 of the Reserves Act 1977.

Date: 24 July 2015

Background

The Auckland Development Committee resolved in June 2015 that a statutory Notice of Intention under section 15 of the Reserves Act 1977 was to be issued regarding a proposed exchange of reserve land between Auckland Council and Fletchers Limited at Three Kings Reserve. The Notice of Intention provides an opportunity to submit on the proposed land swap. The Board wishes to object to the proposed land exchange.

Local Board Interest in the Land Exchange

The Puketāpapa Local Board has a significant interest in the proposed land exchange for the following reasons:

- Under the Local Government (Auckland Council) Act 2009, the Board is the body which formally has responsibility for representing the views of local residents in all local government processes.
- Portions of the land involved in the exchange includes land that is formally allocated as a Local Board Park, most notably the area known as the “Western open space”. The Board, as a co-governing entity of Auckland Council, acts as the Administering Body of this space.
- Under Auckland Council’s “Allocation of decision making for non-regulatory activities” (page 289 Auckland Council Long Term Plan) the Local Board has “exclusive” responsibility for “the specific location of new local parks”. The creation of new local parks is a major feature of the proposed exchange.
- The Board has taken significant interest in the planning and development of Three Kings including production of ‘The Three Kings Plan’ to guide development of the Three Kings Precinct, inclusive of land in the exchange area. The Board wishes to see the best form of land exchange to achieve the desired outcomes for the area.

Local Board Views

The Puketāpapa Local Board's views are based on extensive community consultation and consideration, analysis of the proposed land exchange and how well it meets the objectives of the Three Kings Plan, and work recently commissioned by the Board and undertaken by Richard Reid and Associates (RRA) to provide a planning framework that achieves an equitable exchange and meets the Three Kings Plan objectives.

The Board believes that an appropriate land swap will assist in meeting the objectives of the Three Kings Plan. However, the Board opposes the proposed Land Exchange for the following reasons:

- Process issues including a failure to involve the Local Board in determining the location of new park land, and a failure to adequately consider alternative options in line with the principles of the Local Government Act
- A lack of equity in the exchange.
- A failure to meet the objectives of the Three Kings Plan and certain statutory documents.

Process Issues

The Local Board has a number of specific responsibilities in respect of land involved in the proposed land exchange. We believe that the process of developing the proposed land exchange has inadequately included the Board.

In the first instance, Auckland Council's "Allocation of decision making for non-regulatory activities" (page 289 Auckland Council Long Term Plan) states that the Local Board has "exclusive" responsibility for "the specific location of new local parks". A major feature of the proposed land exchange is the creation of new local parks. Put simply, the Board does not agree with the location of the proposed new local parks, and has not been provided with the opportunity to exercise its rights in this regard, during the land exchange investigation. This is a major process failure which means that the proposed land exchange is not consistent with Council's own policies as expressed in the Long Term Plan. Not only is this a process failure, but the Board asserts that the failure of process has led to a materially different outcome owing to the Board's differing views about the location of new local parks.

The Board also believes that the Land Exchange proposal represents a failure to adequately consider appropriate alternatives to meet Council's objectives under Section 77 of the Local Government Act:

77 Requirements in relation to decisions

- *(1) A local authority must, in the course of the decision-making process,—*

- *(a) seek to identify all reasonably practicable options for the achievement of the objective of a decision; and*
- *(b) assess the options in terms of their advantages and disadvantages; and*
- *(c) if any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.*

Via formal resolution, and other forms of representation, the Local Board has made repeated representations seeking for a range of land exchange options to be considered by Council before proceeding with a Notice of Intention. We believe that Council should have considered such options in order to meet its statutory obligations, and in order to meet the most basic principles of good decision-making. We note in particular the significant economic value of land involved in the proposed exchange and consider that this amplifies the need for a full consideration of the options. Further, we note that Council has not actually developed any land exchange proposal to inform its negotiations with Fletchers Limited. The proposed exchange is based solely on the original land exchange proposal tabled by Fletchers.

In our view this represents a major breach of Council's statutory and fiduciary duties, and in light of this the resultant land exchange cannot be considered to be valid.

Equity of Proposed Exchange

Under section 15 of the Reserves Act 1977 an 'equality of exchange' is required. The Board does not accept that the proposed land exchange provides for this. Council will retain a small section of Western park, acquire two new sports fields and a steeply sloping piece of reserve in between, plus a section of roading network to maintain, in exchange for the private development opportunity to build a significant number of the largest apartment blocks on the plan (facing north) and terrace housing on the current park, which is lost as a sports field.

The provision of sports fields increases the capacity by one field only. The two proposed fields will be surrounded by intensive residential development and will face significant reverse sensitivity issues, meaning that full utilization is unlikely. Fletchers Limited has, for example, stated that the fields should not be lit, which will significantly reduce weekly playing and training hours.

In comparing the options of Plan 372 and 373 it would appear that there is very little additional open space provided beyond what would normally be required for residential development on the scale proposed. In other words

the proposed land swap does not create much additional quality open space and comes at the expense of a landscape feature already functioning as a park. The actual benefits to the Council, the public domain and the revitalization of the Three Kings area are not particularly perceptible between Option one (no swap) and Option two (swap). Furthermore we note that the suggestion of a binary choice between Option one and Option two is a false dichotomy. As stated previously, Council has a statutory duty to consider a range of options to meet its objectives. As will be covered later, the Board has in fact developed an alternative option that we believe will achieve greater equality.

The Board rejects a simple “hectare for hectare” method for determining equality of exchange. Plainly, some land can be more valuable than other land. We note that no comprehensive economic analysis has been provided to demonstrate that the proposed exchange is equitable, which is concerning given the large quantum of public land involved. In particular, the Board has concerns that the raised land of the Western sportsfield has significant economic value that will accrue mainly to Fletchers Limited in the Exchange, while the less valuable sunken sportsfield area transfers to Council. We also note that the sportsfield area, while vesting in Council under the Exchange, has economic value to Fletchers Limited for Stormwater management purposes, but this value does not appear to be considered in the Exchange.

As well, areas of land surrounding new buildings remain Council responsibility where rightly they should transfer to the developer. These areas have not been included in the land swap equation.

Failure to meet planning objectives

The Board believes that the proposed Land Exchange fails to meet the objectives of the Three Kings Plan. Independent analysis from Beca indicates that the Exchange provides minimal opportunity to rehabilitate the volcanic landscape, and poor, illegible connections. These failings are a result of a failure to fully consider alternatives and properly integrate a diverse range of land uses including the maunga, sportsfields, the town centre, and residential areas.

The Board also draws Commissioners attention to the “Auckland Regional Policy Statement Change 8: Volcanic Features and Viewshafts” and the “Three Kings Reserve Management Plan 1983”. Both of these are statutory documents that should guide the development of a land exchange in this location, but no evidence has been presented to demonstrate that they have been considered.

Rather than proceed with a land exchange based on deficient process, a lack of equity, and a failure to consider options that will deliver the best outcomes as per certain planning documents, the Board believes that the proposed

Exchange should be rejected and an alternative exchange proposal developed which considers the whole landscape form, provides for a more desirable open space configuration with an improved relationship to the maunga, and alternative development opportunities for the Three Kings Plan area.

The Board has commissioned the attached proposal by RRA and believes that it should be investigated in greater depth to allow for a differently-configured land exchange to better achieve the outcomes of the Three Kings Plan. This should include conversations with other land-holding stakeholders in a more comprehensive approach to how the land can be utilized and exchanged.

The Board explicitly states that the RRA proposal substantially meets the Board's views about the placement of new parks under the provisions of the Auckland Council LTP, whereas the proposed exchange does not.

Key reasons for the Board's support for the RRA proposal over the proposed Exchange are as follows:

- The proposed land swap does not provide sufficient rehabilitation and landscape context for the maunga and in fact reduces it by proposing to build on the western fields. The lack of rehabilitation has been a core concern of the Board. Te Tātua a Riukiuta is an Outstanding Natural Feature and a regionally significant volcanic cone, included in the Tūpuna Maunga of Tāmaki Makaurau. The values and visibility of the mountain will be enhanced by both retaining the descending southern landform of the cone as unbuilt context, and improved, by the positioning of open space and sports fields alongside the cut faces on the eastern side of Big King, instead of adjacent to the town centre. The current land swap proposal concentrates on an east-west axis for the sports fields which does not connect Big King to its surroundings.
- The alternative proposal (attached) for the location of open space and sport fields would ensure that this key landmark and cultural feature has a more integrated, appropriate and enhanced setting and is not merely a small knoll rising above the built form hard up against its quarried faces. Building directly up against the slopes of the volcanic form in both Western Park and the old quarry will detract significantly from the visual perception and appreciation of the features of Big King. The examples of both treatments in relation to other volcanic features on the isthmus are below.



Conclusion

The Board has significant concerns about the proposed land exchange which form the basis of our objection.

We believe that poor process has been followed and that the Exchange proposal has been developed in contravention of the Auckland Council LTP, general principles of consultation, and the requirements of the Local Government Act to consider options. Given the significant economic value of land involved, and the large impact on the community of the resulting exchange, we believe that these process failings should invalidate the Exchange. Specifically we state that had the Local Board been provided with its rightful role in determining the location of new local parks, the Exchange proposal would be different.

In our view, the Exchange proposal does not meet the “equality of exchange” test. Little evidence beyond a “hectare for hectare” calculation have been provided in the proposal, significant areas of land have been left out of the calculation and we have concerns that the net impact of the exchange is in favour of Fletchers Limited.

The proposed Exchange fails to meet a range of planning objectives, both guiding and statutory which impacts the validity of the land exchange proposal. Given the scale of the development and its location in a sensitive volcanic landscape, these failings are serious.

The Board believes that the proposed Exchange should not proceed, and that it would be preferable for the parties to re-engage on a more appropriate exchange. Specifically, we believe that the RRA proposal forms a better basis for an equitable exchange.

The Board wishes to speak to its objection to the Hearings panel.

Attachments:

Richard Reid & Associates Ltd: *Three Kings Town Centre, Maunga & Quarry
Redevelopment Plans, Key Moves 1, 2, 3A, 3B 4, 5.*
