

Catherine Stewart [CCDHB]

From: Philip Butter [CCDHB]
Sent: Tuesday, 26 March 2019 8:49 AM
To: john_j_jenkinson@yahoo.co.uk
Subject: 29 Everton Terrace

Hi John

Thomas Davis asked me to consider your comments contained in an email dated 7 March 2019. We have again asked our legal advisers what in their opinion is the actions that need to be taken if CCDHB was to sell this small parcel of land. We are advised by our solicitors and are prepared to abide by their interpretation that:

1. Mr Jenkinson's email assumes that the land is currently held for a public work and the Public Works Act 1981 (*PWA*) applies. However, the land is not currently held for a public work. The land is vested in the CCDHB for the DHB's purposes. Section 40 of the *PWA* does not apply while the land is held for the purposes of the DHB (see clause 3 of Schedule 1 the Health Sector (Transfers) Act 1993).
2. The omission of the reserve status from the title does not stop the land from being a reserve. In our view, the land is health sector reserve and requires the reserve status to be revoked before it can be sold.
3. CCDHB can seek the revocation of the reserve status under section 24 of the Reserves Act 1977. It requires the approval of the Minister of Health and the Minister of Conservation.
4. Once revoked, the land may be disposed of by CCDHB (following the "public work land" process under clause 3 of Schedule 1 of the Health Sector (Transfers) Act 1993), and provided that the approval of the Minister of Health is obtained in the usual way.
5. *Dunbar v Hurunui DC* was about land vested as a reserve as a condition of a subdivision consent. That is not the case here. In any event, a reserve can be a public work – so land could be subject to both statutes.
6. Section 11E of the Health Sector (Transfers) Act 1993 is an express provision dealing with what happens to land when the reserve is revoked. There is a clear statutory process for the CCDHB follow.
7. Section 11E(6)(c) of the Health Sector (Transfers) Act 1993 provides that, if the health sector reserve status is revoked under the Reserves Act 1977, then, *despite any enactment*, from the date of the revocation the land comprising the former health sector reserve is subject to clause 3 of Schedule 1 if it is "public work land" within the meaning of that clause. In our view, the land will be "public work land" within the meaning of that clause.
8. Clause 3 of Schedule 1 of the Health Sector (Transfers) Act 1993 confirms that sections 40 and 41 of the *PWA* will apply – but only once the land is no longer held for the DHB's purposes or for the purpose of preparing for disposal.
9. Because the Crown is the previous owner of the land, LINZ may recommend that the land is exempt from the offer-back requirement in section 40(1) of the *PWA* and will clear the land for disposal under section 40(2) of the *PWA* as it has done previously in February 1996. However, the section 40 *PWA* clearance obtained in 1996 is historical and obtained in advance of the land being "no longer required". We therefore recommend seeking your accredited Crown Agents confirmation that no other *PWA* disposal obligation is required.
10. Once LINZ has cleared the land for disposal, CCDHB could dispose of the land to anyone.

11. We understand Mr Jenkinson believes that he could be sold the land under section 40(4) of the PWA. Section 40(4) of the PWA only applies in circumstances where the chief executive of LINZ believes on reasonable grounds that, because of the size, shape, or situation of the land, it could not be sold to anyone who did not own land adjacent to the land to be sold. There is no need to have recourse to section 40(4) of the PWA – making an offer under the section is not mandatory, and there's nothing to be gained in referring to it. Clause 3(4) of Schedule 1 of the Health Sector (Transfers) Act 1993 instead allows the DHB to sell the land to anyone.
12. Any disposal of land must be done in accordance with financial requirements. These generally require that the land be sold at market value or on the open market. A sale to an adjoining landowner should be at valuation (as assessed by a registered valuer).
13. In addition, any sale would need the Minister's approval under the NZPHD Act.
14. Finally, CCDHB should ask to see proof of Mr Jenkinson's interest in the adjacent land at 27 Everton Terrace.

As we see it, the process for CCDHB to follow is:

1. Have the reserve status revoked by the Minister for Conservation and Minister of Health under section 24 of the Reserves Act 1977.
2. Clear the land under section 40 PWA (if needed)
3. Obtain a valuation for the land.
4. Obtain the Minister of Health's consent to the sale.
5. Sell the land at not less than valuation to anyone the DHB sees fit.

John it is apparent that the DHB would need to invest considerable funds into getting this small plot of land to a state that it could legally sell on the open market. Further as a Crown Entity we cannot be seen to be giving anyone a pecuniary advantage or subsidy in relation to commercial dealings (as this is the case here). At present this plot of land as minimal holding cost and the DHB could if it chooses to continue with the status Quo, however in the spirit of good faith we are prepared to continue this dialogue on the following conditions:

1. You acknowledge that any sale would have to be an arm's length transaction at true market value to anyone
2. Any market value would have to consider any betterment to your property if the land was sold to you
3. You provide us with what you consider a fair value and would be prepared to pay assuming you are the only interested party following the sites exposure to the market in the normal way.
4. Once his "fair value" is tabled CCDHB will need to consider the costs associated with getting this land to the state where it can be sold, noting if the "fair value" is not sufficient to cover our cost then we could not sell unless these costs were covered. I.e. any sale below what it costs to release the land for sale not covered by the sale would in effect be a subsidy which is not appropriate given our main objective is to fund patient care.

I trust that CCDHB's position is clear.

Finally Thomas and I are quite happy to discuss this with you in person. If you wish to take this offer of a meet up please indicate when would be an appropriate time and I will make arrangements.

Regards

Phil Butter

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“Success is not final, failure is not fatal: it is the courage to continue that counts.” - Winston S. Churchill