

Board Decision –Public EXCLUDED

May 2020

Sale of 29 Everton Terrace

Action Required

The Board approve:

- (a) The intention to declare the land at 29 Everton Terrace as surplus to CCDHB requirements.
- (b) The delegation of the sale process to the Chief Executive of CCDHB including execution of all documentation.
- (c) The delegation for declaring the land as being surplus to the Chief Executive if approval to sell is received from the Minister of Health.

The Boards note:

- (a) CCDHB owns a 54 square metre section at 29 Everton Terrace.
- (b) Mr Jenkinson has been negotiating the purchase of the land.
[REDACTED]
- (d) Management recommends the Board declare this land as surplus.
- (e) Sale of land by DHBs must be underpinned by a detailed and prescribed process.

Strategic Alignment	DHB strategies require optimal use of infrastructure and assets
Authors	Thomas Davis, Executive Director Corporate Services Philip Butter, Director Property & Asset Management
Endorsed by	Fionnagh Dougan, Chief Executive
Purpose	The purpose of this paper is to seek approval for the sale of 29 Everton Terrace
Consultation	N/A

Executive Summary

1. CCDHB owns 54 square metres of land at 29 Everton Terrace with a value of [REDACTED] which is considered surplus to requirements.
[REDACTED]
2. Management recommends CCDHB progress a process with the interested parties to obtain the highest value from the sale.
3. The decision relating to the sale process and declaration of the land as surplus be delegated to the CE to allow it to be progressed.

Strategic Considerations

Service	NA
People	NA

Financial	Optimising use of DHB assets.
Governance	Ensure selling process meets all statutory requirements.

Engagement/Consultation

Patient/Family	N/A
Clinician/Staff	N/A
Community	N/A

Identified Risks

Risk ID	Risk Description	Risk Owner	Current Description	Control	Current Risk Rating	Projected Risk Rating
N/A						

Attachment/s

1. Satellite photograph of land
2. Photograph of site

Released under the Official Information Act

1. BACKGROUND

- 1.1 A letter was received from a Mr John Jenkinson (a builder) circa March 2010 enquiring if CCDHB was interested in selling a 54 square metre section it owns situated at 29 Everton Terrace, Kelburn, Wellington.
- 1.2 Over the next 3 years there was considerable correspondence between CCDHB and Mr Jenkinson regarding whether a satisfactory contract could be agreed. The end result was that no contract for its sale was concluded.
- 1.3 In late 2018, Mr Jenkinson again approached CCDHB to see whether this parcel of land was available for sale.
- 1.4 Since this time considerable effort has been applied by CCDHB to firstly understand the legal obligations it has to release the land for sale and whether the quantum of the sale price is aligned with market expectations.
- 1.5 Mr Jenkinson is attempting to purchase the CCDHB owned plot and has an agreement with Victoria University to purchase their small lot which adjoins 29 Everton Terrace. Combining these properties would give him the opportunity for a residential development.
- 1.6 It was noted in historical documentation that the owner of number 27 Everton Terrace (CPF Limited) has been using a portion of our land to gain access to their property. As no formal agreement regarding legal easement was evident it seemed appropriate to also ask this adjoining owner whether they were interested in purchasing this land to maintain their access.

- 1.8 Both Mr Jenkinson and [REDACTED] have been informed that CCDHB would be seeking actual costs associated with the legal and mandated processes required to release this land for sale, on top of a market value

2. LOCATION AND DESCRIPTION OF THE LAND

- 2.1 The land comprises a steep unfenced predominantly grass covered, undeveloped bank being 54 square metres in area. The surrounding area comprises a high cost residential mixture of villas, townhouses, apartments and student accommodation. There are no CCDHB related services within the immediate area.
- 2.2 The adjoining owner to the CCDHB site, 27 Everton Terrace has a residential dwelling built on a large 1,371 m² site.
- 2.3 The owner of the land on the other side of 29 Everton Terrace is Victoria University. The area of this land is approximately 23 m².
- 2.4 For land specific graphic location and description please refer to the attached satellite map.

3. STATUS OF LAND

- 3.1 The land is currently under the ownership of Capital and Coast District Health Board as identified in the Certificate of Title.
- 3.2 The property is “health sector reserve” within the meaning of the Health Sector (Transfers) Act 1993 and “government purpose reserve” within the meaning of the Reserves Act 1977;

and “public work land” for the purposes of clause 3 of schedule 1 of the Health Sector (Transfers) Act 1993.

3.3 It was established earlier, by our Accredited Crown agent, that this land was provisionally cleared of s40 under the Public Works Act (PWA) in February 1996. It was subsequently advertised in the Maori Protection Mechanism. This advertisement would usually only follow when a property was cleared of Public Works Act obligations.

3.4 Obtaining clearance under section 40 of the PWA will vary, dependant on who the successful purchaser is. However, lifting of the reserve status is still required for both potential purchasers.

3.4.1 [REDACTED] This gives Land Information New Zealand (LINZ) the authority to approve the sale this land to an owner of adjacent land where they consider that the land due to shape, size or situation precludes the sale to any other person. This negates the need to offer back to successors [(sec 40(1) and (2)].

3.4.2 If Mr Jenkinson is the successful bidder then legal advice indicates that all processes required under section 40 (1) and (2) will need to be completed.

4. VALUATION

4.1 The land parcel has been assessed by Colliers at a value of \$35,000 excluding GST.

4.2 The valuation was based on the land being acquired as additional land to the site. This would therefore confer benefits as an amalgamated parcel through its greater future development potential, especially given its favourable zoning and height limits, and improvements to the driveway access or possibly for further off-street parking or landscaping enhancements.

4.3 Further investigations revealed that it appears that part of the land is already used as access for 27 Everton Terrace, by way of an informal encroachment. No documentation can be located to formalise this encroachment. As this is the sole vehicular access to 27 Everton Terrace its loss may, on a value reduction basis, be greater than the \$35,000.

5. SELECTION OF PURCHASER

5.1 While negotiations with Mr Jenkinson are at an advanced stage with a draft agreement to sale, legal advice has been received from Greenwood Roche confirming CCDHB does not yet have an agreement to the sale.

[REDACTED] CCDHB is obligated to achieve the highest value from the sale of the property and will achieve this by negotiation with Mr Jenkinson and [REDACTED]

5.2 While we understand that Mr Jenkinson is likely to be unhappy if CCDHB withdraws from negotiations at this stage and may attempt to maintain that CCDHB is now required to sell the land to him, we cannot see that CCDHB is bound to do so at this stage from a legal perspective. Mr Jenkinson has been advised of the process CCDHB must follow.

5.4 Research could indicate that the land was included in the Maori Protection mechanism and part of the Port Nicholson settlement, though it is not registered on the title. This could trigger the Right of First Refusal (RFR) requirements of the settlement and require an offer to sell to Tenths Trust under this RFR.

6. SALE PROCESS

6.1 Before any sale can be concluded [REDACTED] CCDHB must meet the requirements of the Ministry of Health's disposal process, the Public Works Act and remove the current reserve status off the land (a hangover from the parent lot which was sold many years ago). This is specifically:

- The revocation of the reserve status of the land under section 24 of the Reserves Act 1977; and;
- All approvals needed under section 40 of the Public Works Act 1981 to sell the property. Noting that these differ for each of the potential purchasers.
- Minister of Health requirements contained in the "Guidelines for disposal of DHB Land" dated December 2010.

6.2 The "Guidelines for disposal of DHB land" requires the DHB to advertise its intention to dispose of the property and note any public response accordingly, and quantify expected proceeds (include in Annual Planning) and its intended use. Ministerial approval can be given subject to the DHB complying with its statutory sale obligations (e.g. PWA and RFR).

6.3 It is the intention of CCDHB to seek an exemption from this particular requirement given the very small size of the land, its ultimate value and restricted use and interest other than to someone who is an adjoining owner i.e. CPF Ltd or Victoria University. Noting they have both been contacted regarding this proposal.

6.4 If the purchaser is [REDACTED] section 40(4) of the Act should streamline the process by having LINZ approve a sale without going through the formal mechanisms of section 40.

6.5 The other potential purchaser is not an adjoining owner and therefore we envisage there will be more complex approvals required under section 40 such as offer back under our treaty obligations and assessing whether there are any other central agencies interested in acquiring this land for housing or conservation purposes.

6.6 It would be beneficial for the DHB to work with a property professional who is a "LINZ accredited supplier" to assist in the process. The accredited supplier should undertake investigations to consider former owners and likely PWA offer back obligations – these investigations can be completed including consultation on behalf of CCDHB with DOC, HNZ and the Wellington City Council. Note this full requirement may not be required if section 40(4) of the PWA can be used in the event [REDACTED] are the successful purchaser.

7. NEXT STEPS

7.1 Following the declaration by the Board of its intent to declare the property surplus to the DHB's requirements the next steps would be:

- Instruct a property professional who is a "LINZ accredited supplier" to assist with the disposal process.
- Notify the Department of Conservation (DOC) of the proposed intention to sell to determine whether DOC would include a marginal strip notation on the titles to the properties.
 - Ask DOC to confirm whether there are any conservation 'values' related to present on the properties, which would assist in satisfying the Values Protection Policy,
 - Ask DOC to confirm whether a separate public notice will be needed to revoke the "Health Sector Reserve" status if the Minister of Health has approved the revocation under section 24(6) of the Reserves Act 1977.

- Give notice to Housing New Zealand to enable HNZ to consider if the land would be suitable for State Housing.
 - Consult with Council with regard to whether any public walking tracks crossing the properties should be protected by easement and whether the Council wishes to purchase the properties for recreation/heritage/public works purposes.
- 7.2 If the DHB is aware that another government entity (apart from DOC, HNZ and the Council) might want to purchase the properties for public works, consult with that government entity about a possible transfer.
- 7.3 Seek Ministerial approval in accordance with the “Guidelines for DHB Disposal of Land” issued by the Ministry of Health Dec 2010.
- 7.4 Seek approval from the Minister of Health for the revocation of the “Health Sector Reserve” status to allow sale under the PWA, under the RFR or under a market sale. (This could be requested at the same time as the Ministerial approval to sale.)
- 7.5 Obtain the agreement of the Minister of Conservation to the revocation of the “Health Sector Reserve” status. The Minister of Conservation can revoke this status without following the standard reserve revocation process if the Minister of Health has approved the revocation (DOC to advise whether a public notice will be required).
- 7.6 If required by LINZ, supply LINZ with a report and recommendation from the LINZ accredited supplier which contains all relevant information and requests that either the properties be cleared of section 40 PWA offer back obligations or an offer to the former owners (or their successors) be made.
- 7.7 If there is a section 40 PWA offer back obligation, make the offer and await acceptance or non-acceptance within 40 working days.
- 7.8 If required offer the property for sale to the Port Nicholson Block Settlement Trust under the Right of First Refusal provision in its Treaty settlement.

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Attachments



Victoria University Land

CCDHB Land

27 Everton Tce

