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## **Public Excluded**

**Report PE98.128**

25 March 1998

File: G/1 4/4/1

Report to the Policy and Finance Committee  
from Greg Schollum, Chief Financial Officer

## **Shelly Bay Update**

### **1. Purpose**

To review the current position relating to Shelly Bay and to consider the options now available to Council.

### **2. Exclusion of the Public**

Grounds for exclusion of the public under section 48(1) of the Local Government Information Act 1987 are *that the public conduct of the whole or relevant part of the meeting would be likely to result in disclosure of information for which good reasons for withholding exists i.e. to carry on commercial negotiations.*

### **3. Background**

In May 1996 the Council resolved that it has no interest in acquiring the property at Shelly Bay for its own purposes and at the meeting of the Policy and Finance Committee held on 12 December 1996 the Committee further resolved:

*“That officers be instructed to continue discussions with the Port Company with a view to the Port Company making application to the Minister to amend the Port Company Plan to include Shelly Bay.*

*That in the event of the Port Company not wishing to make such application to the Minister, the matter be referred back to the Policy and Finance Committee”.*

These December resolutions were passed on the basis of legal advice which concluded that the Council could not merely purchase the land and facilities on behalf of the Port Company. Since the 12 December 1996 Committee Meeting, officers have been liaising with the Port Company management in an attempt to ascertain if the Port Company was interested in utilising some or all of the Shelly Bay site.

Meanwhile, Land Information New Zealand (LINZ) the entity responsible for disposal of crown property, has continued, along with the NZ Defence Force, to push for a resolution of the Council’s position and intentions.

On 13 June 1997 I wrote to the Managing Director of the Port company with a view to bringing the matter to a conclusion. In that letter I requested that the Port Company advise this Council if indeed ownership of the land and facilities is sought by the company.

I received a reply from Graham Mulligan dated 1 July 1997 which essentially sought to keep the matter ‘on hold’. The letter stated:

“we cannot determine any possible commercial use of the wharves at Shelly Bay at this time. That is to not rule out any possible use, but in the current environment nothing is obvious.

Unless the matter needs to be determined forthwith then I suggest we both sit on the issue for some further time and continue discussions.”

On 21 July 1997, Peter O’Brien (our property consultant) received a call from the property department of the Wellington City Council. It appears that Wellington City Council have been seeking to delay the process of disposal through refusing to uplift the road designation on part of the property. (The existing road that passes through Shelly Bay is not on the designated route, while the designated road currently passes through some buildings. If Wellington City Council agreed to confirm the existing road as a legal street it would assist in the disposal of the property.)

Since July 1997 we have been monitoring developments between NZ Defence and the Wellington City Council, but in essence little has happened in the past 8 months.

Peter O’Brien understands that NZ Defence Force and the Wellington City Council have conflicting objectives (see **Attachment 1**) and that NZ Defence Force are now taking the matter to the Environment Court.

#### 4. Comment


This Council is clearly in a difficult position in relation to this issue. The Council has previously determined that it has no interest in acquiring the property at Shelly Bay for its ~~own purposes~~ own purposes therefore more a question of how should Council dispose of its interest in the land.

To date, we have attempted to assist the Port Company should it wish to utilise the facilities in future and the Port Company has been given ample time to determine its requirements. The Port Company through its response is essentially stating it has no current use for the facilities but would like to keep its options open.

There is clearly disagreement between NZ Defence Force and the Wellington City Council and the Environment Court is now involved. Given the current state of play Peter O'Brien's recommendation of "sit and see" appears eminently sensible. The matter will be reported back to the Policy and Finance Committee once officers have determined the most appropriate means of disposal.

#### 5. Recommendation

*That the report be received and the contents noted*



GREG SCHOLLUM  
Chief Financial Officer

**Attachment 1:** Letter dated 23 March 1998 from O'Brien Property Consultancy

*O'Brien  
Property  
Consultancy  
Limited*

Floor 4  
15 Courtenay Place  
Wellington

Consultancy (04) 801 8951 or 025 521390  
Management (04) 801 8952 01025 521391  
Facsimile (04) 801 8953

23 March 1998

Greg Schollum  
Chief Financial Officer  
The Wellington Regional Council  
Level 5  
The Regional Council Centre  
Wellington

Dear Greg,

re: Shelly Bay

Further to our update on the Shelly Bay issue of 15 January 1998, we report on the current position as we understand it. Our advice mainly comes from information provided by consultants working for the Wellington City Council.

The Wellington **10ths** Trust has an interest in the purchase of both Shelly Bay and Fort Dorset land from Defence. The **10ths** Trust wish to avoid the process of the Waitangi hearings and acquire direct from Defence, with the assistance of the Wellington City Council.

Those negotiations for the **10ths** Trust to acquire land from Defence were not proceeding well. The City Council was **endeavouring** to put in place a zone that would suit the **10ths** Trust future use of the land but which would inhibit the value of the land to being less than it might otherwise have been. Defence was requiring that the zone be such that the value of the land would be maximised.

Defence also was seeking to have the designation for road uplifted and the existing road formation, which follows a different route, to be **legalised** as road. The Wellington City Council was resisting this request as an adopted position to create leverage over the zoning issue. It was for the purpose of obtaining even greater leverage that the Wellington City Council wanted the Wellington Regional Council to transfer its land to the City Council.

In the interim, other **Maori** interests learnt of the **10ths** Trust proposal and lodged a challenge to the actions of the Trust, claiming that the Trust did not represent all Maori interests in Wellington and therefore had no right to negotiate over land which would be nominated as representing part satisfaction of Waitangi Claims. The **10ths** Trust has, as a result, withdrawn its interest.

Defence does not wish to sell the land at Shelly Bay and Fort Dorset to the **10ths** Trust for its stated *educational purposes* and thereby inhibit the land value. Defence has plans to achieve the best possible zone and to then treat with developers to achieve the best possible sale price.

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As a side issue, the Wellington City Council is wanting to enter into a Living Earth Joint Venture for the disposal of sludge from the sewage treatment plant. The land on which the disposal unit was to be established adjoins Maoti land. The Maori owners have objected that human waste will be disposed of onto land adjoining their site.

As a resolve, the Maori owners have offered to sell the land to the City Council. Maori land cannot usually be sold by agreement. It is necessary to have at least 75% of the Maori owners sign the sale agreement and that is almost impossible to achieve. There is an alternative with the provision for the Maori Trustee to agree to an exchange of land with land of an equivalent amenity and value. Wellington City Council are presently following this course of action.

While the two matters are not directly related, we have been told that many of the Maori interests involved are the same and that thereby the matters are all blended into one.

In the interim, the matter of the zone of the land at Shelly Bay has headed to the Environment Court for a ruling. We believe that the Environment Court is being asked to rule on the zone issue, the roading issue and any requirement for esplanade reserve.

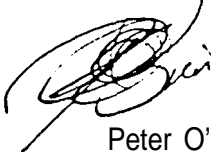
The Wellington City Council is now adopting a sit back and wait position.

**It is our recommendation** that the Wellington Regional Council adopts a sit and see position. The Environment Court ruling will be a major factor in determining the future of the land. If Defence is successful then the Regional Council can declare no interest in the land and subsequently receive a portion of the sale proceeds. If the City Council is successful then the Regional Council can declare an interest and have the land transferred to its name and then sell to the Wellington City Council.

We trust that this comprises an adequate update to the position as we understand it. Please phone if you require us to seek more detail on any aspect.

Yours sincerely

O'Brien Property Consultancy Limited.



Peter O'Brien