

4 DECISION REPORTS

4.1 FORRESTER HEIGHTS FUTURE USE ENGAGEMENT NEW

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Note: Attachments for this report are being uploaded as a separate PDF to the agenda

RECOMMENDATIONS

That Council:

1. Rescinds item 2 of resolution WDC 2021/116 from the Waitaki District Council Meeting held on 10 August 2021, as follows:
 2. *Instructs Officers to compile feedback from a public engagement process on a range of options and present it to a future Council Meeting to enable a decision to be made on the future of the site;*
 - a) *Options to provide for feedback to include:*
 - i) *Do nothing*
 - ii) *Set aside the land as a greenspace reserve*
 - iii) *Develop the land as a reserve similar to Cape Wanbrow*
 - iv) *Set aside part of the land as greenspace reserve, and develop the remainder*
 - v) *Sell the land "as is" through a tender or similar open market process;*
 - vi) *Seek partners for a joint venture in developing the land;*
 2. Instructs Officers to compile feedback from the public engagement process and present it to a future Council meeting to enable a decision to be made on the future of the site;
 - a) Options to provide for feedback to include:
 - i. Do nothing – continue to hold the land as endowment for capital gains;
 - ii. Sell the land; or
 - iii. Undertake work to establish the land as a Reserve.
3. Notes the difficulties in establishing the endowment land as a Reserve or using it as a park given the obligations of the endowments.
4. Endorses the engagement plan for the Forrester Heights public engagement process.
5. Delegates to the Chief Executive, in consultation with the Communications Portfolio Elected Members, the ability to approve the Forrester Heights consultation document.

DECISION OBJECTIVE

To finalise the options and material for public engagement on the future of Forrester Heights.

SUMMARY

Council must conclude its desired approach to public engagement on the future use of Forrester Heights. This report requests amendments to Council resolution WDC 2021/116 based on parallel works requested of officers through the same resolution to finalise consultation options.

DECISION-MAKING EXPECTATIONS

Governance Decision-Making:	Approve options and approach to engagement
Operational Decision-Making:	Design and timing of consultation materials release
Communications	Media Releases – contributed to by officers and Elected Members Media/public enquiries regarding governance decision-making topics above can be addressed by governance Media/public enquiries regarding operational decision-making topics above can be addressed by officers

SUMMARY OF DECISION-MAKING CRITERIA

	No/Moderate/Key		No/Moderate/Key
Policy/Plan	No	Environmental Considerations	No
Legal	Key	Cultural Considerations	No
Significance	Key	Social Considerations	No
Financial Criteria	No	Economic Considerations	No
Community Views	No	Community Board Views	No
Consultation	No	Publicity and Communication	Moderate

BACKGROUND

At the Waitaki District Council Meeting held on 10 August 2021, Council resolved (WDC 2021/116) as follows:

1. *Instructs Officers to carry out a public engagement process to discern the community’s views on the future of Forrester Heights;*
2. *Instructs Officers to compile feedback from a public engagement process on a range of options and present it to a future Council Meeting to enable a decision to be made on the future of the site;*
 - a) *Options to provide for feedback to include:*
 - i) *Do nothing,*
 - ii) *Set aside the land as a greenspace reserve,*
 - iii) *Develop the land as a reserve similar to Cape Wanbrow,*
 - iv) *Set aside part of the land as greenspace reserve, and develop the remainder,*
 - v) *Sell the land “as is” through a tender or similar open market process,*
 - vi) *Seek partners for a joint venture in developing the land, and*
3. *Instructs Officers to carry out parallel works to determine which approach will provide the best return for the ratepayer on a risk / return basis.*

This report presents the outcome of the parallel works referred to in point 3 of the above resolution and makes final recommendations for Council to approve prior to the commencement of public engagement on the future use of Forrester Heights. The assessment of options focuses on the question of proceeding to engagement.

DISCUSSION

As instructed by resolution WDC 2021/116, Officers have completed an assessment of the options outlined above. Options ii-iv have been considered together as they present the same difficulty in terms of the use of endowment land.

Option i. Do Nothing¹

Risk	Return
Low – Moderate	Current Market Value (CMV) + Growth to point of sale or development – holding costs – cost of future engagement if required

- Council continues to work towards a future sale or development for financial return.
- Council actively manages the site to ensure that its use continues to meet the purpose of the endowments.

The majority of land of Forrester Heights is endowment land (the yellow and green areas in the attached map). The remaining blue portion of the site is former road, now held by the Council in fee simple and not subject to the same restrictions around use as the endowment land. Endowments are a gift of property to be used for a specific purpose. This purpose acts as a binding legal Trust that can only be amended by the donor, which in the case of Forrester Heights endowments is the Crown. The purpose of the Forrester Heights endowments is to generate revenue. Put simply, this means that Council must use the land to generate revenue, or it will breach the Crown’s Trust.

Within the context of endowments, ‘Do Nothing’ is a viable option only if the land continues to be held to generate revenue by way of capital gains (the current state). Selection of this option would suggest that Council considers the option to develop or sell at the moment is not the best result for the ratepayer.

‘Do Nothing’ really means ‘do not change what is happening now’ rather than ‘do nothing ever’. If Council was to choose to do nothing at this current point in time, it would nevertheless still need to develop or sell the land at some point in the future to meet the purpose of the endowments.

It is important to note that the option of ‘do nothing’ is not a zero-cost option as there will still be holding costs associated with the land – eg rates and the ongoing cost of maintenance at a defined level of service.

Options ii-iv. Reserve and Greenspace Options

As Options ii-iv all anticipated the establishment of a Reserve or similar, at least in part, they have been considered together. The discussion below does not apply to the stopped road parcel. However, due to the size, slope, and location of this parcel, it is only considered valuable or relevant as part of the wider site encompassing the two endowments and therefore has been ignored for the purposes of assessing these options.

¹ NB: the cost of consultation is common to all options and therefore has not been factored into returns.

Risk	Return
High	Nil

- Would require an Act of Parliament to remove the endowments.
- The exception is former road parcel which could be converted to Reserve.

Reserves Act

Under the Reserves Act 1977, Council can establish land it owns as a Reserve for a number of different purposes including for recreational purposes. However, this approach is not considered feasible for the Forrester Heights endowment land, as it would not remove the endowments.

Even if Council could technically establish Forrester Heights as a Reserve, the subsequent restrictions on the use and disposal of the land post-Reserve status would almost certainly lead Council to a position where it was in breach of Trust with the Crown. In essence, the use of land as a Reserve and the use of land to generate revenue are antithesis and cannot be reconciled within the same piece of land.

Use as Greenspace or a Park without the Reserve Status

It is considered that locking the land into an open space or similar park-like activity would run counter to the intent of an endowment – ie to use in a manner that generates an income stream for the endowment purposes.

Act of Parliament to Remove Endowments

It is considered that the only way of establishing Forrester Heights as Reserve or similar would be to petition Parliament to remove the current endowment status through enactment of law. The most likely way that this would be achieved is through a Local Members’ Bill.

The current Local Member of Parliament, the Hon Jacqui Dean, took a Local Members’ Bill to the House to clarify the land status as endowment land and not ‘Reserve’ which was enacted in 2013. This was done to facilitate sale subject to a 2006 resolution of Council. Pursuing the establishment of a Reserve on the endowed Forrester Heights land would require reversing the effect of the Act with a new Bill for the greater portion of the land.

Officers could make no commitments as to the cost, timeframe, or success of its delivery. This is not considered to be a viable course of action given the uncertainty of outcome and Council’s current timetable for conclusively deciding the future use of Forrester Heights.

Given the recent community action toward the creation of a Reserve at Forrester Heights, it is considered there is a need to communicate the significant obstacles to proceeding with this option as part of engagement.

Option v. Sell land “as is”

Risk	Return
Low	CMV

- Meets the purpose of the endowments – specifically anticipated through s141 of the LGA 2002.
- Best for Council to indicate a preferred option for the use of sale proceeds.

- Decisions would need to be made on the sale process to be followed at the time a decision to sell was confirmed.

Use of Land Following Sale

Council has indicated its concern that any development of the Forrester Heights site is undertaken in a way that is sympathetic to its environs. Limitation on the development of land is primarily the realm of the District Plan. However, it is possible for a landowner to encumber their land with covenants that further limit the use of land within its planning context. The imposition of further constraints on the land could be considered by Council should it decide to sell.

Use of Proceeds

Given the broad purpose of the endowments, it is considered that funds generated by the Forrester Heights endowments can legitimately be applied to any legal purpose or activity of Council. The attached engagement materials outline this and present some possible uses should Forrester Heights be sold. Given that no analysis or preferred use of funds is being presented to the community this time around, the later decision report to confirm the future use of Forrester Heights should be informed by more specific community engagement on the preferred use of funds in the event of sale.

Sale ‘as is’

Officers have identified difficulty with the phrasing of the previous resolution presenting an option to sell the land ‘as is’. The reference to sale of the land ‘as is’ may lead some in the community to consider that the land would pass from Council ownership in its current configuration of town lots. It is considered that, in order to provide the best return for the ratepayer, Council should be open as to how the land could be sold and it is best to remove this reference from the previous resolution.

Removal of the reference to sale ‘as is’ will mitigate the risk that support from the community is only given on the understanding that there will be no change to the land prior to sale. It will also remove any perceived constraint around the work that needs to be undertaken to provide the best return for ratepayers, balancing financial return with impacts of development post-sale.

Option vi. Seek Partners for Joint Venture

Risk	Return
Moderate – High	Developed Value – Development and Holding Costs

- Permissible under the purpose of the endowments provided the intent is to generate a fiscal return.
- No identified development partner and uncertainty as to nature of joint venture.
- Novel undertaking for Council.

A high degree of trust is required between Joint Venture (JV) partners. This will take time to develop given the need to clarify and align aims, responsibilities and expectations. Council’s desired timeframe for proceeding to community engagement has not afforded Officers the requisite time to identify a partner for a JV to develop Forrester Heights. Furthermore, the implications of a JV for the Forrester Heights endowments are not well understood and would take further time to establish should it be viable.

The recommendation of Officers is that Council does not proceed to community engagement with the option of Joint Venture for the development of Forrester Heights. The question of Council-led development, JV, or a minimal intervention sale can be worked through should the decision to sell be taken by Council.

Based on the information set out above, Officers have developed three modified options being:

- i. Do nothing – continue to hold the land as endowment for capital gains;
- ii. Sell the land; or
- iii. Undertake work to establish the land as a Reserve.

It is proposed that these options form the basis of the of the public engagement process.

ENGAGEMENT PLAN

The attached engagement plan details the engagement strategy, significant risks, and mitigations.

SUMMARY OF OPTIONS CONSIDERED

Option 1 – Retain the original set of options for engagement confirmed through Council resolution WDC 2021/116 and proceed to engagement on this basis.

Option 2 – (Preferred) Adopt the revised set of options being:

- i. Do nothing – continue to hold the land as endowment for capital gains;
- ii. Sell the land; or
- iii. Undertake work to establish the land as a Reserve;

and adopt the engagement process and endorse the consultation material attached to this report.

ASSESSMENT OF PREFERRED OPTION

By revising the set of options for community engagement and proceeding to engagement with the materials attached, Council will:

- (a) undertake a more focused engagement with the constraints of land use made clear to the community;
- (b) more clearly articulate to the community the implications and confidence of success of the options presented; and
- (c) ensure that options for sale to provide the best overall result for the community are not unduly constrained by this engagement should Council eventually decide to sell.

The resulting engagement will be more clearly defined in terms of scope and have a higher chance of delivering meaningful feedback to inform Council's final decision on the future use of Forrester Heights.

CONCLUSION

On 10 August 2021, Council identified options for consultation on the future use of Forrester Heights and asked Officers to undertake a risk versus return assessment of these options. As a result of this assessment, Officers have ruled out one option and condensed three options into one. The reference to sale 'as is' has been removed to alleviate the perception that there will be no change to Forrester Heights land prior to any sale by Council.

This refined set of options focuses attention on the status of the endowment land and the constraints it imposes on the use of the land. Council is now asked to adopt a new resolution confirming the refined options, supporting materials, and timeline for engagement.

Officers will report back on the community feedback following engagement as part of another decision report to determine the future use of Forrester Heights.

ADDITIONAL DECISION-MAKING CONSIDERATIONS

Outcomes

We keep our district affordable

We enable opportunities for new and existing business

We provide and enable services and facilities so people want to stay and move here

We understand the diverse needs of our community

Waitaki's distinctive environment is valued and protected

We maintain the safest community we can