



APPENDIX C

**Waipa District Council / 3Ms
Correspondence**

Matt Smith

From: Scott Beaumont <Scott.Beaumont@waipadc.govt.nz>
Sent: Friday, 13 December 2019 9:53 am
To: Matt Smith
Cc: Richard Bax
Subject: Property acquisition discussion - C2, 3M's

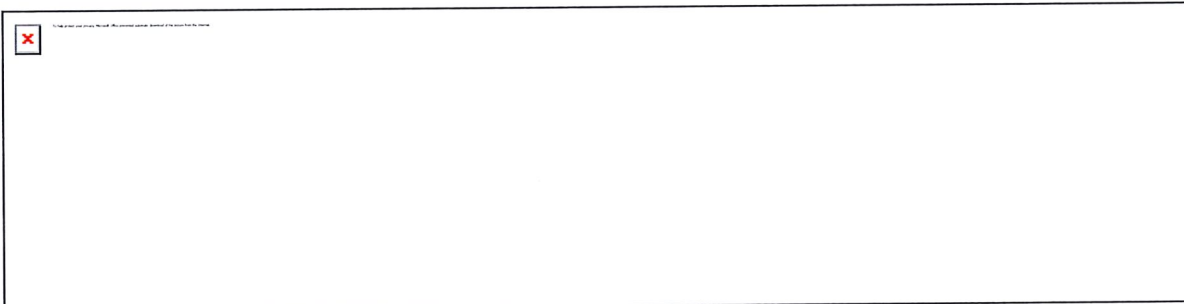
Hi Matt

Would you be available sometime Monday (16th) morning after 9.30am to have a meeting with Richard Bax and myself at the Cambridge Council office?

This is regarding the acquisition of land from 3M's for the new C2/C3 & Cambridge road intersection. I understand the discussion will also include the 'bigger picture' regarding land to be acquired/vested from 3M's for other Waipa District Council infrastructure.

Thanks

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scott.beaumont@waipadc.govt.nz | www.waipadc.govt.nz
DDI: 07 872 0061 | MOB: 027 423 0790 | FAX: 07 872 0033



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Matt Smith

From: Scott Beaumont <Scott.Beaumont@waipadc.govt.nz>
Sent: Friday, 13 December 2019 3:38 pm
To: Matt Smith
Cc: Richard Bax; Wayne Allan
Subject: RE: Property acquisition discussion - C2, 3M's

Hi Matt

No worries. I have to be in Te Awamutu Thursday morning but can meet in Cambridge in the afternoon. Would 3.30pm work ok for you?

Thanks

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Sent: Friday, 13 December 2019 10:34 AM
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Cc: Richard Bax <Richard.Bax@waipadc.govt.nz>; Wayne Allan <Wayne.Allan@waipadc.govt.nz>
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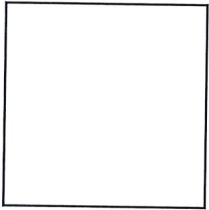
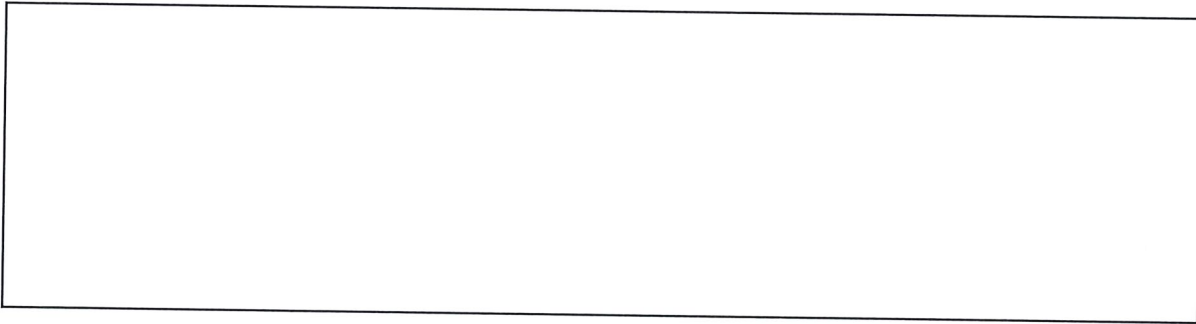
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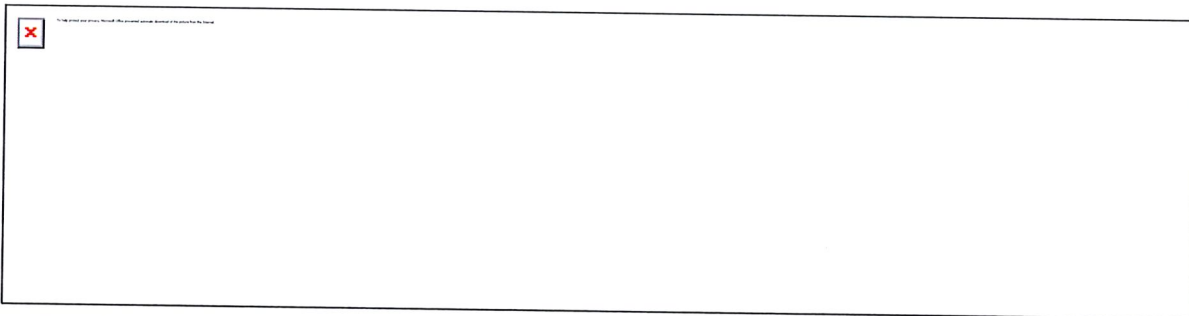
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To: Matt Smith
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Attachments: 20191217142049425.pdf

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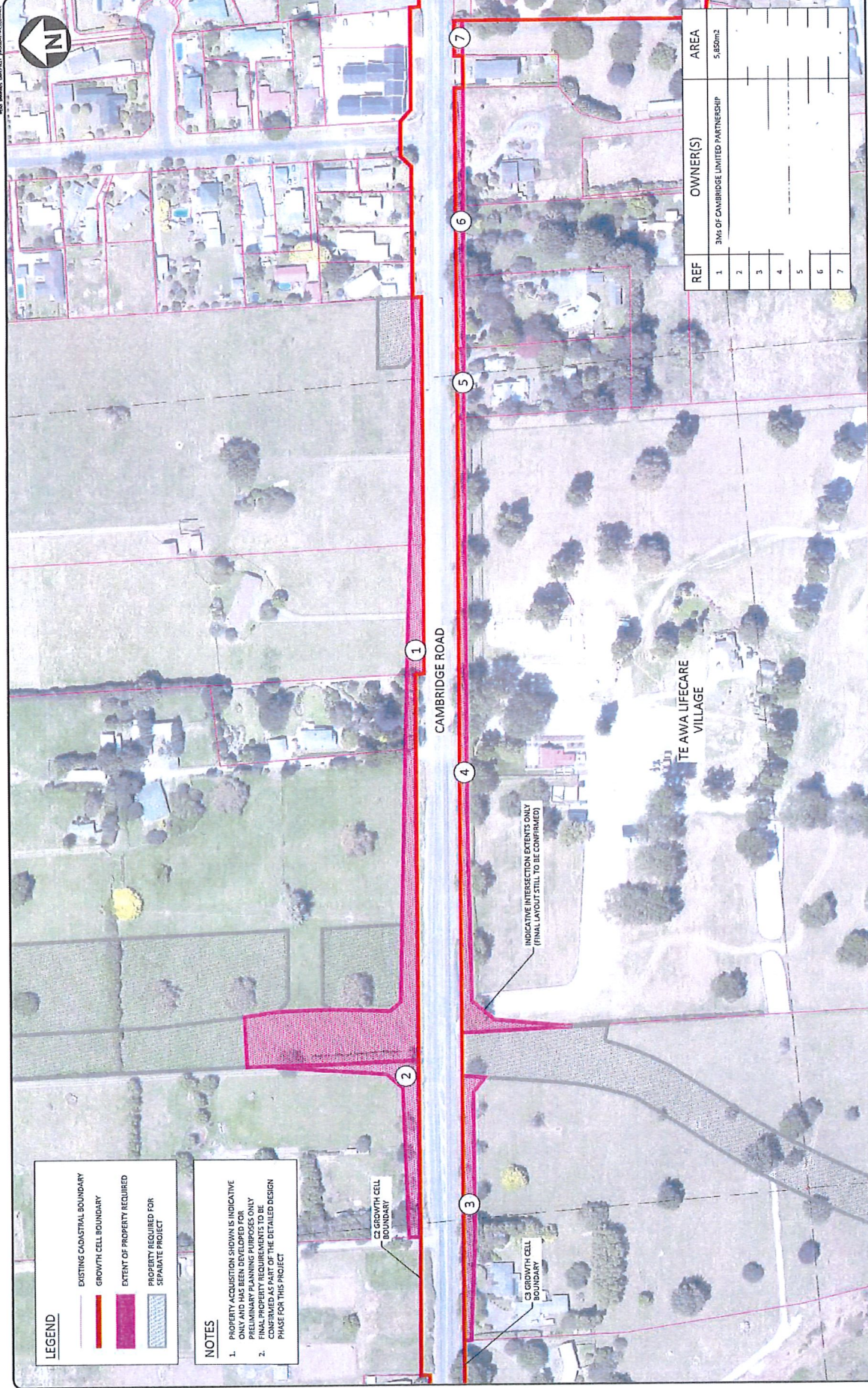
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LEGEND

- EXISTING CADASTRAL BOUNDARY
- GROWTH CELL BOUNDARY
- EXTENT OF PROPERTY REQUIRED
- PROPERTY REQUIRED FOR SEPARATE PROJECT

NOTES

- PROPERTY ACQUISITION SHOWN IS INDICATIVE ONLY AND HAS BEEN DEVELOPED FOR PRELIMINARY PLANNING PURPOSES ONLY. FINAL PROPERTY REQUIREMENTS TO BE CONFIRMED AS PART OF THE DETAILED DESIGN PHASE FOR THIS PROJECT.

REF	OWNER(S)	AREA
1	3M OF CAMBRIDGE UNITED PARTNERSHIP	5.850m ²
2		
3		
4		
5		
6		
7		

LAND REQUIREMENT PLAN

PROJECT #C2C3-02

CAMBRIDGE C1 & C2/C3
PROGRAMME OF WORKS



Matt Smith

From: Matt Smith
Sent: Tuesday, 17 December 2019 4:30 PM
To: Scott Beaumont
Cc: Richard Bax; Wayne Allan; Lachlan Muldowney; Mike Smith; Kate Plaw
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Are you serious that it is WDC expectation that 3MS’s will fund the works required, carry the debt burden and wont be reimbursed until the projects are complete for the benefit of C2, C3 and C7 land owners??

Can you please address the question above urgently?

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Hi Matt

Thanks for your quick response.

I note your question and understand where you're coming from. I will discuss with other relevant WDC staff and come back to you as soon as I can.

Thanks

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Hi Matt

The information contained in my email below was regarding the land only, not the infrastructure to be constructed on the land.
Any agreement regarding the infrastructure itself would go into a development agreement.

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Cc: Richard Bax <Richard.Bax@waipadc.govt.nz>
Subject: Property acquisition discussion - C2, 3M's

Hi Matt

Would you be available sometime Monday (16th) morning after 9.30am to have a meeting with Richard Bax and myself at the Cambridge Council office?
This is regarding the acquisition of land from 3M's for the new C2/C3 & Cambridge road intersection. I understand the discussion will also include the 'bigger picture' regarding land to be acquired/vested from 3M's for other Waipa District Council infrastructure.

Thanks

Scott Beaumont Senior Property Advisor (Project Delivery) WAIPA DISTRICT COUNCIL
scott.beaumont@waipadc.govt.nz | www.waipadc.govt.nz
DDI: 07 872 0061 | MOB: 027 423 0790 | FAX: 07 872 0033

Matt Smith

From: Matt Smith
Sent: Wednesday, 18 December 2019 11:14 AM
To: Scott Beaumont
Cc: Richard Bax; Wayne Allan; Lachlan Muldowney; Mike Smith; Kate Plaw; Robin Walker
Subject: RE: Property acquisition discussion - C2, 3M's

Hi Scott,

As the Senior Property Advisor for WDC can you please simply state what WDC's strategy is in relation to the land required from 3MS for WDC infrastructure?

I need some clarity around the timing for acquisition and payment?

It is my understanding the works required on Cambridge Rd will coincide with the works within the 3MS land as they are all interconnected. It is on this basis it makes sense that WDC purchase the land required as one bundle.

I look forward to your response.

Kind regards
Matt

From: Scott Beaumont <Scott.Beaumont@waipadc.govt.nz>
Sent: Wednesday, 18 December 2019 8:56 AM
To: Matt Smith <matt@3msofcambridge.co.nz>
Cc: Richard Bax <Richard.Bax@waipadc.govt.nz>; Wayne Allan <Wayne.Allan@waipadc.govt.nz>; Lachlan Muldowney <lachlan@muldowney.co.nz>; Mike Smith <mike@mikesmith.co.nz>; Kate Plaw <mitch.kate@xtra.co.nz>; Robin Walker <Robin.Walker@waipadc.govt.nz>
Subject: RE: Property acquisition discussion - C2, 3M's

Hi Matt

The information contained in my email below was regarding the land only, not the infrastructure to be constructed on the land.

Any agreement regarding the infrastructure itself would go into a development agreement.

Look forward to discussing this in more detail at our meeting on Thursday.

Thanks

Scott Beaumont Senior Property Advisor (Project Delivery) WAIPA DISTRICT COUNCIL
scott.beaumont@waipadc.govt.nz | www.waipadc.govt.nz
DDI: 07 872 0061 | MOB: 027 423 0790 | FAX: 07 872 0033

From: Matt Smith <matt@3msofcambridge.co.nz>
Sent: Tuesday, 17 December 2019 4:30 PM
To: Scott Beaumont <Scott.Beaumont@waipadc.govt.nz>

Cc: Richard Bax <Richard.Bax@waipadc.govt.nz>; Wayne Allan <Wayne.Allan@waipadc.govt.nz>; Lachlan Muldowney <lachlan@muldowney.co.nz>; Mike Smith <mike@mikesmith.co.nz>; Kate Plaw <mitch.kate@xtra.co.nz>

Subject: RE: Property acquisition discussion - C2, 3M's

Hi Scott,

Thanks for the email; to be clear with reference to the statement below “Normally the developer/land owner would construct the infrastructure on their land and the land would vest in Council through a legalisation process” relates to works that benefits the land owner directly for example a pump station. The works that are to be undertaken within land owned by 3MS’s benefits multiple catchments and growth cells.

Are you serious that it is WDC expectation that 3MS’s will fund the works required, carry the debt burden and wont be reimbursed until the projects are complete for the benefit of C2, C3 and C7 land owners??

Can you please address the question above urgently?

Regards
Matt

From: Scott Beaumont <Scott.Beaumont@waipadc.govt.nz>
Sent: Tuesday, 17 December 2019 4:19 PM
To: Matt Smith <matt@3msofcambridge.co.nz>
Cc: Richard Bax <Richard.Bax@waipadc.govt.nz>; Wayne Allan <Wayne.Allan@waipadc.govt.nz>
Subject: RE: Property acquisition discussion - C2, 3M's

Hi Matt

The Waipa District Council is actively negotiating with land owners that are directly affected by the proposed C2/3 collector roads & Cambridge road intersection. The Council is looking to purchase the required land for this intersection. See the attached high level draft land requirement plan for the intersection. Please note this plan is based on the signalised intersection and shows a land area required from 3M’s of 5850m2. The area is subject to the developed design due at the end of January 2020. This acquisition by Council would be under the Public Works Act (PWA), albeit aiming for agreement by negotiation. A Valuation by a registered and competent valuer would be used. Under the PWA the Council would pay for the land owners reasonable legal and valuation costs if they chose to get their own.

Regarding other land under 3M’s ownership to be used for Council infrastructure (storm water swales/roads etc.), this would normally go into a development agreement instead of a PWA acquisition agreement. Normally the developer/land owner would construct the infrastructure on their land and the land would vest in Council through a legalisation process. The value of the land would still be valued by a registered valuer.

Happy to discuss all of this further at our meeting on Thursday.

Thanks

Scott Beaumont Senior Property Advisor (Project Delivery) WAIPA DISTRICT COUNCIL
scott.beaumont@waipadc.govt.nz | www.waipadc.govt.nz
DDI: 07 872 0061 | MOB: 027 423 0790 | FAX: 07 872 0033

From: Matt Smith <matt@3msofcambridge.co.nz>
Sent: Sunday, 15 December 2019 11:51 AM
To: Scott Beaumont <Scott.Beaumont@waipadc.govt.nz>
Cc: Richard Bax <Richard.Bax@waipadc.govt.nz>; Wayne Allan <Wayne.Allan@waipadc.govt.nz>
Subject: Re: Property acquisition discussion - C2, 3M's

Hi Scott

To make the meeting efficient can you please send me an outline that covers what WDC proposes with regards to the land required from 3ms; of interest is when does WDC propose to settle on the land??
Can u outline also the process; will valuations be required?
I look forward to receiving the information ahead of the meeting.

Regards
Matt

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From: Scott Beaumont <Scott.Beaumont@waipadc.govt.nz>
Sent: Friday, December 13, 2019 1:38:28 PM
To: Matt Smith <matt@3msofcambridge.co.nz>
Cc: Richard Bax <Richard.Bax@waipadc.govt.nz>; Wayne Allan <Wayne.Allan@waipadc.govt.nz>
Subject: RE: Property acquisition discussion - C2, 3M's

Hi Matt

No worries. I have to be in Te Awamutu Thursday morning but can meet in Cambridge in the afternoon. Would 3.30pm work ok for you?

Thanks

Scott Beaumont Senior Property Advisor (Project Delivery) WAIPA DISTRICT COUNCIL
scott.beaumont@waipadc.govt.nz | www.waipadc.govt.nz
DDI: 07 872 0061 | MOB: 027 423 0790 | FAX: 07 872 0033

From: Matt Smith <matt@3msofcambridge.co.nz>
Sent: Friday, 13 December 2019 10:34 AM
To: Scott Beaumont <Scott.Beaumont@waipadc.govt.nz>
Cc: Richard Bax <Richard.Bax@waipadc.govt.nz>; Wayne Allan <Wayne.Allan@waipadc.govt.nz>
Subject: RE: Property acquisition discussion - C2, 3M's

Hi Scott,

Thanks for the email; I am still away in Australia. I am available on the Thursday to catch up if time allows. As I explained to Wayne our discussion need to bring all the land acquisitions into one deal. All the works will occur concurrently and therefore all the land will be required by WDC at the same time.

Regards

Matt

From: Scott Beaumont <Scott.Beaumont@waipadc.govt.nz>
Sent: Friday, 13 December 2019 9:53 AM

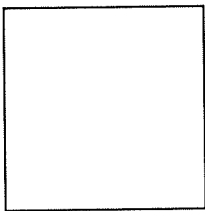
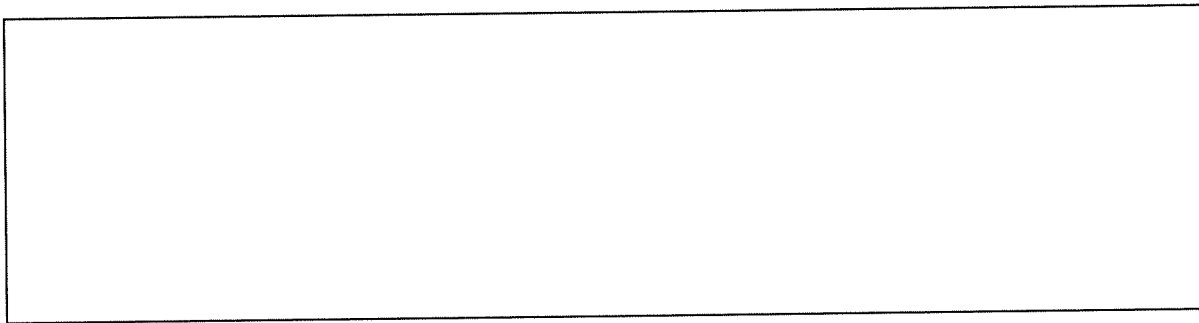
To: Matt Smith <matt@3msofcambridge.co.nz>
Cc: Richard Bax <Richard.Bax@waipadc.govt.nz>
Subject: Property acquisition discussion - C2, 3M's

Hi Matt

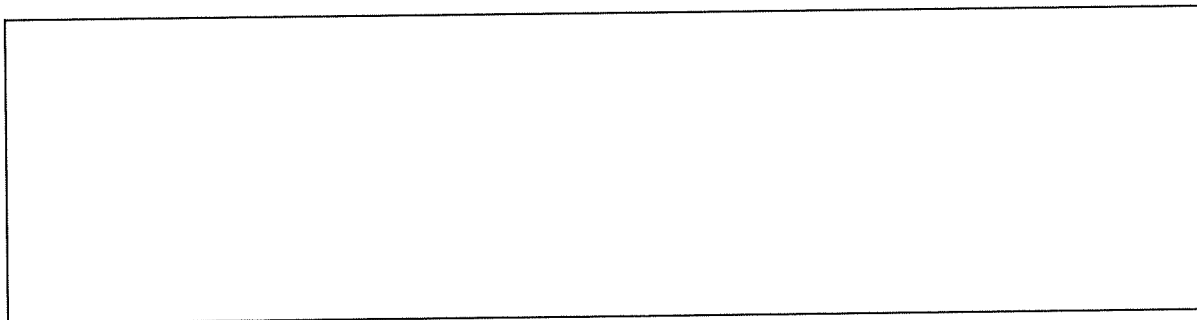
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This is regarding the acquisition of land from 3M's for the new C2/C3 & Cambridge road intersection. I understand the discussion will also include the 'bigger picture' regarding land to be acquired/vested from 3M's for other Waipa District Council infrastructure.

Thanks

.....
Scott Beaumont Senior Property Advisor (Project Delivery) WAIPA DISTRICT COUNCIL
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Te Kaunihera ā Rohe o Waipa

Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Monday, 27 July 2020 4:38 PM
To: Helen Atkins
Cc: Matt Smith; Mike Smith
Subject: Deferred payment for land
Attachments: Scan0533.pdf

Hi Helen,

Thanks for your further email explaining Council's position. 3MS has reflected carefully. I'm instructed to advise;

First, 3MS is committed to finding a way through this issue, and will work with Council to establish a fair and equitable approach.

In terms of the reasoning relied on to set this apart from other developments, the logic is not accepted. The idea that Council is advancing this public infrastructure materially earlier in the development cycle than would ordinarily be the case is simply not right. 3MS can point to numerous examples where Council has acquired land well in advance of development, in order to secure the strategic land resources. One example, close by, is the stormwater detention land Council acquired in the C1 growth cell. The reality is that that only thing different about this land is the scale, extent and therefore the total acquisition costs, which 3MS acknowledges are larger than Council is used to dealing with.

It must also be acknowledged that Council would ordinarily seek to roll out the infrastructure in an incremental manner, linked to the gradual development of the cell, and increasing the services as development progresses. That option is not available here because Council has made commitments to the MOE for the servicing of the School, and cannot use the incremental approach because it needs to reach right into the cell to connect up the School. Council's commitment to MOE is fundamental to Cambridge's future, and the wider community, and it is right that the wider community pays for these strategic outcomes.

Next, it must also be acknowledged that this infrastructure services over 2400 lots within C1, C2, C3 and C7 growth cells. To burden one particular developer with the holding costs associated with the public land is inequitable. Council must bear these costs and defray them equitably across all 2400 sections. Council has passed resolutions in February 2020 to fund the acquisition of this land, so funding is not an issue. Most notably, elected members were made aware of the risks associated with DC revenue delays at the time they were asked to approve the funding of these assets within the 2020/21 year of the LTP. The staff report (attached) which supported the finding resolutions states; " The advancement of the LTP growth funding will not impact the current growth budgets overall, but does include additional funding of \$19.2m and also commits Council to earlier costs and therefore a higher risk of not recovering development contributions in a timely manner, if development

was too slow. The additional funding does not result in Council breaching its Financial Strategy borrowing limit.” Fully aware of these risks, the elected members resolved to fund the assets in this financial year. For staff to now second guess elected members and delay funding the acquisition is contrary to the very clear political mandate.

It seems obvious that what really concerns Council is the fact that it is partnering with the development community at a scale and cost that it is not used to, and that is understandable. But the fundamentals do not change just because the numbers do. It must incur these capital costs, capitalise the borrowing costs and build those costs into the capital programme, and recover DCs against them. As you know Helen, The DC model will make some assumptions regarding DC revenue, and these assumptions/inputs to the model will be updated as years go by. If DCs are being recovered at a slower rate than anticipated, borrowing costs will be recast, and new DCs will be struck.

3MS has reflected carefully on Council's concerns regarding having more certainty over DC revenue, and therefore its source of funding the borrowing costs.

It wants to make it clear to Council that it is 100% committed to its development in Cambridge, and this is evidenced by the following;

a) 3MS has made significant financial investments over a long period of time, and more recently 3MS have committed to the following:

- \$150k on ensuring good urban design outcomes with regards to the roundabout servicing C2/C3.
- \$320k on Master Planning its 40ha
- \$100k on Urban Design and Planning
- Signed contracts with varying civil designers for our stage 1B in excess of \$200k

b) 3MS has already been granted a subdivision consent application (for “Stage 1A”) that created the lots for the public assets (collector road, reserves, school site).

c) An application for a land use consent to enable earthworks for the entire 40-hectare 3Ms site was lodged with the Waipa District Council on Thursday 16 July 2020.

d) 3MS is currently preparing a resource consent application for the Waikato Regional Council consents to enable construction activities on the site – specifically site dewatering and cleanfill use. The groundwater assessment is currently being undertaken by Beca. This is due on 31 July and it is anticipated that the consent application will be lodged a week after this date.

Subsequent land use consents will be obtained from Waipa District Council (under the Infrastructure Works Agreement between 3Ms and Waipa DC) for the C2 collector road and any other public assets that require land use consents in the 3Ms land.

e) In respect of the first stage of the 3Ms residential development / subdivision itself:

- The architectural concept drawings for the housing typologies has been completed.
- Line and Design are completing their landscape design, including the 3D model of the development.
- Chow Hill will be completing their urban design assessment this week.

- The Engineering Statement will be completed in the coming week. This details how the site is to be serviced from a three waters and traffic perspective (and includes information as to how the Stormwater Management Plan requirements are to be achieved).

f) 3MS has also commenced the preparation of the resource consent application and assessment of environmental effects for the subdivision and land use consent application for "Stage 1B". Stage 1B is a 125-lot subdivision. Given the deferred status of the area, a land use consent is also required as the development (obviously) breaches a number of the Rural Zone rules. In any event, even if the zone is residential given the density of housing that has been achieved there would be non-compliances with rules. The land use consent is intended to cover the entire Stage 1B area. Both the subdivision and the land use consents are for non-complying activities. This AEE is thorough as the rule framework does not recognise the future use of the land at this stage, and until PC13 is operative (which 3Ms has also prepared feedback on). I note that there has been significant engagement with Waipa District Council, primarily through Hayley Thomas with whom we have developed a positive working relationship with. It is anticipated that the resource consent application for Stage 1B will be lodged with the Waipa District Council within the next 2-3 weeks.

Based on the above, Council should have every confidence that it is partnering with a highly committed developer, which intends to bring quality sections to the Cambridge market as soon as possible. Its current expectation is that it will be on track to secure s224C for stage 1 by no later than March 2022. At that time, DC revenue will flow. 3MS would hope that this track record of action and current actions gives Council confidence that it will indeed be receiving DC revenue from 3MS within a 1-2 year timeframe.

While Council should be confident of this DC revenue, if it still requires some form of guarantee, 3MS is prepared to offer a solution. As a way to achieve agreement, 3MS is prepared to include, within the PDA, a contractual commitment to pay a level of DC revenue to Council, commencing in March 2022, at an agreed monthly rate, for an agreed period. This payment will be recorded as a credit against 3MS' future DC payments. This will effectively guarantee DC revenue commences in line with Council's "best case" scenario. To be clear, these payments will be made regardless of whether s224C is delayed, provided the delay is not caused by Council actions.

Helen, 3MS would like to meet with you , and Council decision makers, within the next fortnight, to resolve this issue, and all other PDA matters. The PDA can then be documented and signed.

I trust this offer of a guaranteed DC revenue will provide the answer, and I look forward to hearing back from you.

Regards,

Lachlan

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Chambers Panama Square, 14 Garden Place, Hamilton Postal PO Box 9169, Waikato Mail Centre, Hamilton 3240 www.lachlanmuldowney.co.nz

-----Original Message-----

From: Helen Atkins <helen.atkins@ahmlaw.nz>

Sent: Wednesday, 22 July 2020 9:11 AM

To: Lachlan Muldowney <lachlan@muldowney.co.nz>

Subject: RE: Your call - without prejudice

Hi again

Sorry for the delay I have now got instructions and we have an idea that hopefully will see a pathway through.

The Council tells me that this is different from other cases where the Council takes land and pays up front. This is because in this case the land is being taken a lot earlier than would normally be the case so the stormwater infrastructure can be provided in advance of the rest of the cell being developed. For this reason the Council does consider the risk of the 3MS development not proceeding at all or halting for a considerable period does pose risks to Council different from those that exist in other land acquisitions. These risks are difficult to mitigate as it is not like the land could easily be sold by Council for anything else. If Council agreed to pay the money up front would your client be prepared to enter into either a side agreement (I think that sits better than in the S&P) or it could be included in the PDA, whereby if 3MS does not proceed or halts for a considerable period (maybe difficult to define so maybe a review mechanism or similar) or sells the land or goes into liquidation etc then there is a repayment or some penalty imposed as Council would potentially need to halt is capital works programme in relation to stormwater, roading and reserves as these wouldn't be needed to be provided in the same timeframes that currently apply.

Can you take instructions and let me know 3MS thoughts. I can confirm both Wayne and Garry would like this explored.

Regards

Helen

Helen Atkins
Director

Atkins Holm Majurey Limited
DDI +64 9 304 0421 |MOB +64 021 405 464 |FAX: +64 9 309 1821
helen.atkins@ahmlaw.nz

Level 19, 48 Emily Place, AUCKLAND 1010 PO Box 1585, Shortland Street,
AUCKLAND 1140

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-----Original Message-----

From: Lachlan Muldowney [mailto:lachlan@muldowney.co.nz]

Sent: Tuesday, 21 July 2020 8:49 AM

To: Helen Atkins <https://urldefense.proofpoint.com/v2/url?u=http-3A__helen.atkins-40ahmlaw.nz&d=DwIGaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-

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[mKujin0wlTFLE4Cfyzg&m=dU4Yuy8Dv6aJw4E0k5-](https://urldefense.proofpoint.com/v2/url?u=http-3A__helen.atkins-40ahmlaw.nz&d=DwIGaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-mKujin0wlTFLE4Cfyzg&m=dU4Yuy8Dv6aJw4E0k5-)

[b8rSq_HT5YMMgy_1w_0HaMeM&s=XZv_7fl4Fttm7zbJmMYUbgLuUCsGb7Q8qTeplZJ](https://urldefense.proofpoint.com/v2/url?u=http-3A__helen.atkins-40ahmlaw.nz&d=DwIGaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-b8rSq_HT5YMMgy_1w_0HaMeM&s=XZv_7fl4Fttm7zbJmMYUbgLuUCsGb7Q8qTeplZJ)

[Dmq0&e=>](https://urldefense.proofpoint.com/v2/url?u=http-3A__helen.atkins-40ahmlaw.nz&d=DwIGaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-Dmq0&e=>)

Subject: RE: Your call

Thanks Helen,

If it is not a cash flow or balance sheet issue then there can be no issue.

What possible risk is there to Council in funding the purchase of land which vests in it, and upon which public infrastructure is built. Council owns the land and the infrastructure. That asset services a school which is critical to the future success of Cambridge and is of strategic significance. It also enables the development of a series of growth cells that are identified as the key growth areas for Cambridge in the Waipa 2050 growth strategy.

The only risk that has been articulated to date has been that growth does not occur at the rate that Council anticipates, and that DC revenue is slower than expected. That's a cost of funds issue, and the costs are capitalised and recovered through the DC model. So if cash flow is not an issue, this risk of delayed DC revenue shouldn't be either. In any event, 3MS has agreed to include a mechanism in the PDA which guarantees some DC revenue after a certain date. So this should allay any concerns.

Helen, no other Council I work with expects to take land for public infrastructure purposes without paying for it. Council needs to be commercial here. 3MS, and its directors have,

through this project and the Bardowie project invested \$100M plus in Cambridge, much of which is borrowed. They simply cannot afford to carry debt on land which they have vested in Council. There seems to be a misconception that 3MS has deep pockets and can therefore be leaned on. It has strong funding lines and access to capital, but like any commercial entity it pays for it.

If Council wants the land, it must pay for it. The reality is that the greatest cause for a delay in DC revenue will be Council refusing to pay up front for land that is transferred to it. This will affect the developer's ability to fund the development of residential sections.

Have the discussion with Wayne and Garry, and please convey the 3MS position. I recognise that Council is taking huge strides in enabling growth, and that it is rightly cautious in its role, but it has to meet the developers with a commercial approach, otherwise the project will stall.

I look forward to our discussion.

Regards,

Lachlan

LACHLAN MULDOWNNEY
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Chambers Panama Square, 14 Garden Place, Hamilton Postal PO Box 9169, Waikato Mail Centre, Hamilton 3240 https://urldefense.proofpoint.com/v2/url?u=http-3A__www.lachlanmuldowney.co.nz&d=DwIGaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_Cdp gnVfiiMM&r=u9Ej_hFHkx8IGiXVuRlauJl-mKujin0w1TFLE4Cfyzg&m=dU4Yuy8Dv6aJw4E0k5-b8rSq_HT5YMMgy_1w_0HaMeM&s=QQ0dYSLf_Tiv-cMJ7nA9ZwEphwM6vDmJrlBSVX-UrMw&e=

-----Original Message-----

From: Helen Atkins <https://urldefense.proofpoint.com/v2/url?u=http-3A__helen.atkins-40ahmlaw.nz&d=DwIGaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_Cdp gnVfiiMM&r=u9Ej_hFHkx8IGiXVuRlauJl-mKujin0w1TFLE4Cfyzg&m=dU4Yuy8Dv6aJw4E0k5-b8rSq_HT5YMMgy_1w_0HaMeM&s=XZv_7fl4Fttm7zbJmMYUbgLuUCsGb7Q8qTeplZJ Dmq0&e=>

Sent: Tuesday, 21 July 2020 8:21 AM

To: Lachlan Muldowney <lachlan@muldowney.co.nz>

Subject: Re: Your call

Morning I'm in a zoom call all morning so a bit tied up today.

As I noted last week I have to make a time to discuss with Wayne and Garry and the former only got back in the office yesterday. I can't therefore guarantee we can sort anything today.

Given the valuation is still a week or so away and that will no doubt result in further discussions I am not sure why this is so urgent. We obviously need to resolve it soon I just cannot confirm it will be today given everyone's other commitments at the moment. I can confirm we can seek to resolve it this week.

I take it for your client's position is all up front - no alternative as you previously discussed. You understand my clients position which is still that it is bearing some risk in paying all up front which hasn't been allayed. It is not a balance sheet or cash flow issue.

I'll get back to you as soon as I have instructions.

Regards

Helen

> On 21/07/2020, at 8:12 AM, Lachlan Muldowney <lachlan@muldowney.co.nz> wrote:

>

>

> Hi Helen, need to talk to you today to resolve the deferred payment issue. As indicated, 3MS simply cannot afford to carry this debt to assist WDC's balance sheet or cash flow.

>

> We need to get the deal done on the basis that payment occurs up front.

>

> Talk soon.

>

> _____

>

> LACHLAN MULDOWNNEY

> BARRISTER

>

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> Chambers Panama Square, 14 Garden Place, Hamilton Postal PO Box 9169,

> Waikato Mail Centre, Hamilton 3240

> [https://urldefense.proofpoint.com/v2/url?u=http-3A__www.lachlanmuldowney.co.nz&d=DwIGaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_Cdp gnVfiiMM&r=u9Ej](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.lachlanmuldowney.co.nz&d=DwIGaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_Cdp gnVfiiMM&r=u9Ej_hFHkx8IGiXVuRlauJl-mKujin0wlTFLE4Cfyzg&m=ir42L_WYfsVDRCr3qOhq03l7512d_gTNC-YR6ulujiGo&s=5gf3fo6lbyXjF-IEbn1cgCq17tnyJ-F5rvh4XGk8dtM&e=)

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> [mKujin0wlTFLE4Cfyzg&m=ir42L_WYfsVDRCr3qOhq03l7512d](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.lachlanmuldowney.co.nz&d=DwIGaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_Cdp gnVfiiMM&r=u9Ej_hFHkx8IGiXVuRlauJl-mKujin0wlTFLE4Cfyzg&m=ir42L_WYfsVDRCr3qOhq03l7512d_gTNC-YR6ulujiGo&s=5gf3fo6lbyXjF-IEbn1cgCq17tnyJ-F5rvh4XGk8dtM&e=)

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>

>

> -----Original Message-----

> From: Helen Atkins

BCO Inspections	Greg Finch
BCO Processing	Linda Brown
Senior Development Engineer	Tony Coutts
Development Engineer	Zion Nordstrom
Development Engineer	Eva Cucvarova

Cr St Pierre / Cr Stolwyk

9 LTP BUDGET CHANGES FOR C1, C2 AND C3 GROWTH CELLS IN CAMBRIDGE

Council has received requests from a number of developers in the C1, C2, and C3 growth cells located in the Cambridge west area, to provide the necessary funding for the public infrastructure in advance of the current Long Term Plan (LTP) timing. This will enable the earlier development of the stage 1 areas for the C1 growth cell neighbourhood commercial and residential areas, the C2 growth cell neighbourhood commercial and residential areas including the provision for a new primary school and the C3 growth cell residential area.

The Ministry of Education (MOE) have indicated their support for the advanced Council funding request for the provision of the public infrastructure which will enable an earlier construction timetable for a new primary school scheduled to be open in 2023.

The advancement of the LTP growth funding will not impact the current growth budgets overall, but does include additional funding of \$19.2m and also commits Council to earlier costs and therefore a higher risk of not recovering development contributions in a timely manner, if development was too slow. The additional funding does not result in Council breaching its Financial Strategy borrowing limit.

The current LTP has funds for the C1, C2 and C3 growth cell spread from 2019/2020 through to the 2027/2028 period. The majority of the LTP funds are provided in the 2020/2021 (\$19.6m) and 2021/2022 (\$24.2m) years.

The recommendation is to reduce the period of funding from 7 down to 2 years and increase the budget by an additional \$19.2m for infrastructure associated with roading, wastewater, stormwater and parks. This additional funding was signalled to Council in May 2019. The new total difference amounts to \$40.1m; that is the

difference between the current budgets of \$19.6m for the 2020/2021 year and proposed budgets of \$59.7m.

The capital costs are recovered by Development Contributions and the current growth projections indicate that the development contributions to repay this expenditure, will be collected by 2025. The rates impact is funding depreciation earlier than currently in the 2018-28 LTP. This amounts to approximately \$185,000 and impacts in 2021/2022.

RESOLVED

1/20/06

That Council:

- a) **RECEIVES** the 'LTP budget changes for C1, C2 and C3 growth cells in Cambridge' report [document number 10228988] of Richard Bax, Consultant Engineer;
- b) **SUPPORTS** the budget changes for the C1, C2 and C3 Growth Cells by bringing forward \$40.1m of LTP funds to the 2020/2021 period as detailed in attached Appendix 1.

Cr Stolwyk / Cr Barnes

10 DELEGATIONS UPDATES – DEVELOPMENT CONTRIBUTIONS AND LIM APPROVALS

Section 3 of the Delegations Manual sets out delegations for assessing and administering development contributions (DCs). DCs are contributions taken from developers under the Local Government Act, to fund associated infrastructure upgrades and additions. Since these delegations were set, some roles and DC processes have changed. The delegations register needs updating to reflect these changes.

Part D of the Delegations Manual sets out delegations relating to approval of land information memorandums (LIMS). The Project Planner role description includes approval of LIMS, but refers to staff names rather than roles. In addition the Project Planner role and Consents Team Leader role are missing from these delegations, and need to be added. This also ensures there is sufficient cover for approving LIMS across senior staff. The temporary delegations to planning staff are no longer needed and can be rescinded.

Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Monday, 27 July 2020 5:00 PM
To: Helen Atkins
Cc: Matt Smith; Mike Smith
Subject: RE: Deferred payment for land

Hi Helen, just a minor correction, the reference to the attached staff report should in fact be a reference to the excerpt of the meeting minutes. My apologies for any confusion caused.

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-----Original Message-----

From: Lachlan Muldowney
Sent: Monday, 27 July 2020 4:38 PM
To: Helen Atkins <helen.atkins@ahmlaw.nz>
Cc: Matt Smith (matt@3msofcambridge.co.nz) <matt@3msofcambridge.co.nz>; Mike Smith <mike@mikesmith.co.nz>
Subject: Deferred payment for land

Hi Helen,

Thanks for your further email explaining Council's position. 3MS has reflected carefully. I'm instructed to advise;

First, 3MS is committed to finding a way through this issue, and will work with Council to establish a fair and equitable approach.

In terms of the reasoning relied on to set this apart from other developments, the logic is not accepted. The idea that Council is advancing this public infrastructure materially earlier in the development cycle than would ordinarily be the case is simply not right. 3MS can point to numerous examples where Council has acquired land well in advance of development, in order to secure the strategic land resources. One example, close by, is the stormwater detention land Council acquired in the C1 growth cell. The reality is that that only thing different about this land is the scale, extent and therefore the total acquisition costs, which 3MS acknowledges are larger than Council is used to dealing with.

It must also be acknowledged that Council would ordinarily seek to roll out the infrastructure in an incremental manner, linked to the gradual development of the cell, and increasing the services as development progresses. That option is not available here because Council has made commitments to the MOE for the servicing of the School, and cannot use the incremental approach because it needs to reach right into the cell to connect up the School. Council's commitment to MOE is fundamental to Cambridge's future, and the wider community, and it is right that the wider community pays for these strategic outcomes.

Next, it must also be acknowledged that this infrastructure services over 2400 lots within C1, C2, C3 and C7 growth cells. To burden one particular developer with the holding costs associated with the public land is inequitable. Council must bear these costs and defray them equitably across all 2400 sections. Council has passed resolutions in February 2020 to fund the acquisition of this land, so funding is not an issue. Most notably, elected members were made aware of the risks associated with DC revenue delays at the time they were asked to approve the funding of these assets within the 2020/21 year of the LTP. The staff report (attached) which supported the finding resolutions states; "The advancement of the LTP growth funding will not impact the current growth budgets overall, but does include additional funding of \$19.2m and also commits Council to earlier costs and therefore a higher risk of not recovering development contributions in a timely manner, if development was too slow. The additional funding does not result in Council breaching its Financial Strategy borrowing limit." Fully aware of these risks, the elected members resolved to fund the assets in this financial year. For staff to now second guess elected members and delay funding the acquisition is contrary to the very clear political mandate.

It seems obvious that what really concerns Council is the fact that it is partnering with the development community at a scale and cost that it is not used to, and that is understandable. But the fundamentals do not change just because the numbers do. It must incur these capital costs, capitalise the borrowing costs and build those costs into the capital programme, and recover DCs against them. As you know Helen, The DC model will make some assumptions regarding DC revenue, and these assumptions/inputs to the model will be updated as years go by. If DCs are being recovered at a slower rate than anticipated, borrowing costs will be recast, and new DCs will be struck.

3MS has reflected carefully on Council's concerns regarding having more certainty over DC revenue, and therefore its source of funding the borrowing costs.

It wants to make it clear to Council that it is 100% committed to its development in Cambridge, and this is evidenced by the following;

a) 3MS has made significant financial investments over a long period of time, and more recently 3MS have committed to the following:

- \$150k on ensuring good urban design outcomes with regards to the roundabout servicing C2/C3.
- \$320k on Master Planning its 40ha
- \$100k on Urban Design and Planning

- Signed contracts with varying civil designers for our stage 1B in excess of \$200k

b) 3MS has already been granted a subdivision consent application (for “Stage 1A”) that created the lots for the public assets (collector road, reserves, school site).

c) An application for a land use consent to enable earthworks for the entire 40-hectare 3Ms site was lodged with the Waipa District Council on Thursday 16 July 2020.

d) 3MS is currently preparing a resource consent application for the Waikato Regional Council consents to enable construction activities on the site – specifically site dewatering and cleanfill use. The groundwater assessment is currently being undertaken by Beca. This is due on 31 July and it is anticipated that the consent application will be lodged a week after this date.

Subsequent land use consents will be obtained from Waipa District Council (under the Infrastructure Works Agreement between 3Ms and Waipa DC) for the C2 collector road and any other public assets that require land use consents in the 3Ms land.

e) In respect of the first stage of the 3Ms residential development / subdivision itself:

- The architectural concept drawings for the housing typologies has been completed.

- Line and Design are completing their landscape design, including the 3D model of the development.

- Chow Hill will be completing their urban design assessment this week.

- The Engineering Statement will be completed in the coming week. This details how the site is to be serviced from a three waters and traffic perspective (and includes information as to how the Stormwater Management Plan requirements are to be achieved).

f) 3MS has also commenced the preparation of the resource consent application and assessment of environmental effects for the subdivision and land use consent application for “Stage 1B”. Stage 1B is a 125-lot subdivision. Given the deferred status of the area, a land use consent is also required as the development (obviously) breaches a number of the Rural Zone rules. In any event, even if the zone is residential given the density of housing that has been achieved there would be non-compliances with rules. The land use consent is intended to cover the entire Stage 1B area. Both the subdivision and the land use consents are for non-complying activities. This AEE is thorough as the rule framework does not recognise the future use of the land at this stage, and until PC13 is operative (which 3Ms has also prepared feedback on). I note that there has been significant engagement with Waipa District Council, primarily through Hayley Thomas with whom we have developed a positive working relationship with. It is anticipated that the resource consent application for Stage 1B will be lodged with the Waipa District Council within the next 2-3 weeks.

Based on the above, Council should have every confidence that it is partnering with a highly committed developer, which intends to bring quality sections to the Cambridge market as soon as possible. Its current expectation is that it will be on track to secure s224C for stage 1 by no later than March 2022. At that time, DC revenue will flow. 3MS would hope that this track record of action and current actions gives Council confidence that it will indeed be receiving DC revenue from 3MS within a 1-2 year timeframe.

While Council should be confident of this DC revenue, if it still requires some form of guarantee, 3MS is prepared to offer a solution. As a way to achieve agreement, 3MS is prepared to include, within the PDA, a contractual commitment to pay a level of DC revenue

to Council, commencing in March 2022, at an agreed monthly rate, for an agreed period. This payment will be recorded as a credit against 3MS' future DC payments. This will effectively guarantee DC revenue commences in line with Council's "best case" scenario. To be clear, these payments will be made regardless of whether s224C is delayed, provided the delay is not caused by Council actions.

Helen, 3MS would like to meet with you , and Council decision makers, within the next fortnight, to resolve this issue, and all other PDA matters. The PDA can then be documented and signed.

I trust this offer of a guaranteed DC revenue will provide the answer, and I look forward to hearing back from you.

Regards,

Lachlan

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-----Original Message-----

From: Helen Atkins <helen.atkins@ahmlaw.nz>

Sent: Wednesday, 22 July 2020 9:11 AM

To: Lachlan Muldownney <lachlan@muldownney.co.nz>

Subject: RE: Your call - without prejudice

Hi again

Sorry for the delay I have now got instructions and we have an idea that hopefully will see a pathway through.

The Council tells me that this is different from other cases where the Council takes land and pays up front. This is because in this case the land is being taken a lot earlier than would normally be the case so the stormwater infrastructure can be provided in advance of the rest of the cell being developed. For this reason the Council does consider the risk of the 3MS development not proceeding at all or halting for a considerable period does pose risks to Council different from those that exist in other land acquisitions. These risks are difficult to mitigate as it is not like the land could easily be sold by Council for anything else. If Council agreed to pay the money up front would your client be prepared to enter into either a side agreement (I think that sits better than in the S&P) or it could be included in the PDA, whereby if 3MS does not proceed or halts for a considerable period (maybe difficult to

define so maybe a review mechanism or similar) or sells the land or goes into liquidation etc then there is a repayment or some penalty imposed as Council would potentially need to halt its capital works programme in relation to stormwater, roading and reserves as these wouldn't be needed to be provided in the same timeframes that currently apply.

Can you take instructions and let me know 3MS thoughts. I can confirm both Wayne and Garry would like this explored.

Regards

Helen

Helen Atkins
Director

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-----Original Message-----

From: Lachlan Muldowney [mailto:lachlan@muldowney.co.nz]

Sent: Tuesday, 21 July 2020 8:49 AM

To: Helen Atkins <https://urldefense.proofpoint.com/v2/url?u=http-3A__helen.atkins-40ahmlaw.nz&d=DwIGaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-

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Subject: RE: Your call

Thanks Helen,

If it is not a cash flow or balance sheet issue then there can be no issue.

What possible risk is there to Council in funding the purchase of land which vests in it, and upon which public infrastructure is built. Council owns the land and the infrastructure. That asset services a school which is critical to the future success of Cambridge and is of strategic significance. It also enables the development of a series of growth cells that are identified as the key growth areas for Cambridge in the Waipa 2050 growth strategy.

The only risk that has been articulated to date has been that growth does not occur at the rate that Council anticipates, and that DC revenue is slower than expected. That's a cost of funds issue, and the costs are capitalised and recovered through the DC model. So if cash flow is not an issue, this risk of delayed DC revenue shouldn't be either. In any event, 3MS has agreed to include a mechanism in the PDA which guarantees some DC revenue after a certain date. So this should allay any concerns.

Helen, no other Council I work with expects to take land for public infrastructure purposes without paying for it. Council needs to be commercial here. 3MS, and its directors have, through this project and the Bardowie project invested \$100M plus in Cambridge, much of which is borrowed. They simply cannot afford to carry debt on land which they have vested in Council. There seems to be a misconception that 3MS has deep pockets and can therefore be leaned on. It has strong funding lines and access to capital, but like any commercial entity it pays for it.

If Council wants the land, it must pay for it. The reality is that the greatest cause for a delay in DC revenue will be Council refusing to pay up front for land that is transferred to it. This will affect the developer's ability to fund the development of residential sections.

Have the discussion with Wayne and Garry, and please convey the 3MS position. I recognise that Council is taking huge strides in enabling growth, and that it is rightly cautious in its role, but it has to meet the developers with a commercial approach, otherwise the project will stall.

I look forward to our discussion.

Regards,

Lachlan

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-----Original Message-----

From: Helen Atkins <https://urldefense.proofpoint.com/v2/url?u=http-3A__helen.atkins-40ahmlaw.nz&d=DwIGaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpnVfiiMM&r=u9Ej_hFHkx8IGiXVuRlauJl-mKujin0wlTFLE4Cfyzg&m=dU4Yuy8Dv6aJw4E0k5-b8rSq_HT5YMMgy_1w_0HaMeM&s=XZv_7fl4Fttm7zbJmMYUbgLuUCsGb7Q8qTepIzJDmq0&e=>

Sent: Tuesday, 21 July 2020 8:21 AM

To: Lachlan Muldowney <lachlan@muldowney.co.nz>

Subject: Re: Your call

Morning I'm in a zoom call all morning so a bit tied up today.

As I noted last week I have to make a time to discuss with Wayne and Garry and the former only got back in the office yesterday. I can't therefore guarantee we can sort anything today.

Given the valuation is still a week or so away and that will no doubt result in further discussions I am not sure why this is so urgent. We obviously need to resolve it soon I just cannot confirm it will be today given everyone's other commitments at the moment. I can confirm we can seek to resolve it this week.

I take it for your client's position is all up front - no alternative as you previously discussed. You understand my clients position which is still that it is bearing some risk in paying all up front which hasn't been allayed. It is not a balance sheet or cash flow issue.

I'll get back to you as soon as I have instructions.

Regards

Helen

> On 21/07/2020, at 8:12 AM, Lachlan Muldowney <lachlan@muldowney.co.nz> wrote:

>

>

> Hi Helen, need to talk to you today to resolve the deferred payment issue. As indicated, 3MS simply cannot afford to carry this debt to assist WDC's balance sheet or cash flow.

>

> We need to get the deal done on the basis that payment occurs up front.

>
> Talk soon.
> _____
>
> LACHLAN MULDOWNNEY
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> Waikato Mail Centre, Hamilton 3240
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> -----Original Message-----
> From: Helen Atkins
> <https://urldefense.proofpoint.com/v2/url?u=http-3A__helen.atkins-40ahmlaw.nz&d=DwIGaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_Cdp gnVfiiMM&r=u9Ej_hFHkx8IGiXVuRlauJl-mKujin0wlTFLE4Cfyzg&m=ir42L_WYfsVDRCr3qOhq03l7512dgTNC-YR6ulujiGo&s=bEP_TcEolVq2qwx aEbHbm_sm4FIYYAmCyIm6VcObt-M&e=>
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> TNC-YR6ulujiGo&s=bEP_TcEolVq2qwx aEbHbm_sm4FIYYAmCyIm6VcObt-M&e=>
> Sent: Friday, 17 July 2020 5:13 PM
> To: Lachlan Muldowney <lachlan@muldowney.co.nz>
> Subject: Your call
>
> Hi so sorry I couldn't get back to you today was donkey deep in a horrendous evidence exchange. In terms of payment can I get back to you as I need to talk to Wayne and he was away until Monday.
>
> Have a good weekend.
>
> Helen

Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Tuesday, 4 August 2020 6:25 PM
To: Matt Smith
Subject: FW: 3MS

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www.lachlanmuldowney.co.nz

From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Tuesday, 4 August 2020 5:26 PM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: 3MS

Dear Lachlan

As discussed I plan to have a further draft of the Development Agreement to you tomorrow. On the valuation it has been provided to the Council as a draft but there is an issue that the Council are working through internally which means there will be a delay in providing it to you. We are still working on the basis that we are taking a report to the 26 August Council meeting but have the September meeting as a back-up if needs be.

Regards

Helen

Helen Atkins
Director

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Friday, 7 August 2020 10:37 AM
To: Matt Smith
Subject: FW: 3MS
Attachments: 1865 Cambridge Road Compensation Valuation Report 27 July 2020 Rooding &....pdf; Draft Development Agreement - 3MS edits (with Council responses & edits) - 5 August 2020.docx

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From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Friday, 7 August 2020 10:25 AM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: 3MS

Dear Lachlan

The purpose of this email is to report on 2 matters:

- The Development Agreement and the Payment Schedule in particular
- The Valuation

The Development Agreement

As discussed earlier in the week the only significant outstanding issue from the Council's point of view is with the quantum of payments in the Payment Schedule. I have attached a track changes version (which is a version accepting all your edits and tracking changes to those) that deals with the other issues you raised which I hope is acceptable to your client. On the Payment Schedule by instructions are that Council needs to at least cover the annual cost of the borrowing for all the costs associated with the development of 3MS land and that Council needs more security if the s224(c) is not issued by 1 October 2022. To this end you will see the payment amount is \$200,000 per month which I am informed would (over a 6 month period) cover the cost of the borrowing for one year. On the 6 month cut off issue this has been included but I have added a review clause to address the situation where there is still no s224(c) in sight by 1 October 2022.

The Valuation

The valuation is attached. It is final as it has been accepted (after some significant discussions internally and with QV) by Council officers. We anticipate that the key issue is going to be betterment. Anticipating 3MS position on the valuation it is important to set out two principles followed by Council in relation to PWA valuations:

1. Council does not seek to influence the valuation and leaves the process to be followed by the valuer based on best valuation practice. It is clear to me that this is how this valuation has been done and is reflected in the manner in which the valuer has set out the instructions received from Council. Council did not ask the valuer to value betterment and on receiving the valuation sought feedback from the QV regarding this. QV are adamant that this is appropriate and they are more than satisfied that they can defend this approach (if

needs be) in the Land Valuation Tribunal. The very brief instructions that Council did provide to the valuer were provided to you and 3MS on two occasions. Apart from the issue around the deferred zoning timing that the valuer notes there were no other instructions given to the valuer;

2. Council has a Policy in relation to valuations that it will accept them unless there is an appropriate rationale justifying a departure.

By way of context Council valuations have not generally considered betterment but recent experience is that valuers are now starting to include this in their valuations. Council is seeking advice from the President of the Institute of Valuers to see if this is nationwide change in approach. As a result of this and other valuations recently received Council will have to reconsider its valuation policy to determine whether it is still appropriate for betterment to be included in valuations. This will be done as a matter of urgency at the next Council meeting. Obviously this change in approach, if adopted, will have an impact on Council's DCP.

Where to from here

Council officers welcome feedback on the Development Agreement matters and on the valuation. I note under the PWA it is open to your client to seek an alternative valuation and if that was to be done particularly in relation to the betterment and injurious affection matters that would certainly help inform the parties moving forward.

In the meantime Council officers are looking at various ways to progress this issue such that any impasse can hopefully be avoided or addressed. Council confirms its commitment to working in good faith with 3MS to reach an acceptable resolution.

Regards

Helen

Helen Atkins
Director

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Thursday, 13 August 2020 8:19 AM
To: Garry Dyet
Cc: david.heald@muritaicapital.com; Matt Smith; Rob Campbell
Subject: St Peter's C3 development

Dear Garry,

As you know I act for 3MS of Cambridge Ltd in respect of their development interests within the C2 growth cell in Cambridge. The directors of 3MS have been working with St Peter's School in respect of the school's development interests within the C3 growth cell. 3MS and St Peters have recently agreed to collaborate closely on the development of their respective land interests, and I now have instructions to act for both entities.

As you know 3MS has recently been engaging with Council in respect of land acquisition matters, which has included Council seeking valuation advice.

I am instructed to advise Council that like 3MS, St Peter's will not agree to the transfer of land at valuation rates which assume a deferred residential zoning status, nor will St Peter's agree to any discount on land value based on 'betterment'.

St Peter's is willing to enter into good faith negotiations, but as a starting point, only on the basis set out above.

Accordingly, I am instructed that any current discussions regarding transfer of land in relation to the Te Awa cycle way, the roundabout under construction, the land requirement for cycle way in Cambridge road, the new roundabout by Te Awa Lifecare, the stormwater pipe and outlet and collector road are now on hold and will not be progressed until such time as the valuation basis matter is resolved.

I await confirmation from Council regarding its intended approach to establishing compensation for these potential land transfers. Once the Council position is known, St Peter's will assess whether it is prepared to enter into negotiations.

I look forward to hearing from you, and would be happy to discuss matters directly.

Regards,

Lachlan

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Thursday, 13 August 2020 1:00 PM
To: Helen Atkins
Cc: Matt Smith; Mike Smith; Mitch Plaw (mitch.kate@xtra.co.nz); Crawford, Michael (NZ - Hamilton)
Subject: 3MS

Dear Helen,

As you are aware from our recent discussions, in the strongest terms 3MS rejects the valuation prepared by QV (Chris Coakley) dated 5 August 2020. In particular it rejects the notion that any compensation figure payable by Council should be discounted to take account of 'betterment' attaching to the residual 3MS land. I note that during our discussion I have explained the legal basis, and can write to you separately on that topic if necessary. But I note that in principle, there is an inequity in allocating betterment to one developer and not others who also benefit. The capital costs relating to 'betterment' should be spread equitably via development contributions and rates across all relevant catchments.

I also record that I had requested through you, prior to the valuation being issued, that it remain in draft form to give the parties the opportunity to resolve any issues before it is finalised. I note you have explained that this outcome was beyond your control. It is nevertheless regrettable that this did not occur.

I also confirm my previous request on behalf of 3MS that Council not take any further steps to formulate an offer to purchase the land based on the valuation, and not take any steps to seek a political mandate to make such an offer. To be clear, any such offer will be rejected. Transferring the land to Council at the valuation figure will destroy the economics of the 3MS project and render the residual 3MS land undeveloped in the long term, despite whatever public infrastructure is built by Council. Acquisition on this basis will be opposed.

I note you have advised that you will not seek to advance an offer from Council on the basis of the valuation. Instead you have asked that I take instructions from 3MS on what it will accept as an acquisition price for the land, so that you can put it to Council. I have confirmed that any such offer will be based on the previous valuation relating to the MOE land, which 3MS has previously provided to Council. 3MS considers there to be no valid reason to depart from the per sq metre rates derived under that valuation (undertaken by Mr Coakley).

Accordingly, in response to your request I am instructed to advise as follows;

1. Yesterday Robin Walker and Liam McCaffery meet to discuss the lateral spread risk and the land required to mitigate that risk. Post this meeting 3MS has updated the land requirement plan to reflect this agreed position.

2. The land areas required are as follows:

Ref	Area (m ²)	Purpose
1	6,993	Road (Stage 1A)
2	18,211	Road (Stage 1A)
3	14,935	Road (Stage 1B)
4	37,263	Stomwater (1A)
5	2,943	Stomwater (1B)
6	43,589	Reserve (Stage 1A)
7	12,976	Reserve (Stage 1A)
8	751	Wastewater (Stage 1A)
	137,661	

3. There are three factors that determine the compensation payable, the land required for public assets/lateral spread mitigation, the costs of building the Swale Link Roads, and the costs associated with upgrading the foundations from TC1 to TC2 as a result of the lateral spread risk.
4. Based on the above the values associated with each factor is as follows:
 - Land Area being 137,661m² multiplied by \$160 (Crown Valuation for the MOE School Site) equals: \$22,025,760 plus GST (if any).
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 - The costs associated with upgrading the foundations from TC1 to TC2 has been estimated at \$5,000 per section affected. There are 66 lots affected with equates to a further \$330,000 plus GST (if any).
5. Based on the above the compensation payable for the land and the injurious affection is \$22,905,260 plus GST (if any). 3MS will enter into a sale and purchase of the land based on this amount.
6. 3MS requests that Council will, in good faith, move quickly to present an offer reflecting the above figure. If it does, 3MS will commit to the payment terms of 70% on vesting, and 30% on completion of the works. 3MS would also agree to the proposed DC guarantee figure of \$200k per month for 6 month, as currently set out in the draft PDA.

Regards,

Lachlan

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BARRISTER

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www.lachlanmuldowney.co.nz

Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Thursday, 13 August 2020 5:32 PM
To: Matt Smith; Mike Smith
Subject: FW: 3MS

See below. To discuss.

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From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Thursday, 13 August 2020 4:53 PM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: RE: 3MS

Dear Lachlan

Thank you for your email below upon which I now have instructions. There are three points to make before I focus on the key matter outstanding. First, officers accept that betterment should not be applied in this case and will recommend that to Council. There is a report going to the August Council meeting to this effect. Secondly, regarding your point 4 bullet point 3 Robin Walker informs me that there are 58 lots affected not 66 so the figure quoted will need adjusting – reducing by \$40,000 to \$22,865,260. Finally, Council wishes to acknowledge that the agreement from 3MS to the payment terms of 70% on vesting, and 30% on completion of the works for the S&P and to the proposed DC guarantee figure of \$200k per month for 6 month, as currently set out in the draft PDA represents a significant shift in the original position of 3MS. In saying this Council understands that these agreements are conditional upon Council accepting the figure 3MS are seeking for the land purchase. I now turn to this.

We note that the m2 amount is \$160 and this is based on the Crown valuation for the MOE site which was done by the same valuer. I note that the final MOE valuation is not something Council is privy to or has a copy of. My instructions are that due to the considerable difference between the \$160 figure and the figure the valuer says ought to be applied here of \$100 the only proper way forward from here (given we are dealing with public monies) is for 3MS to get a valuation (which Council pays for) that would need to only focus on the m2 value. This follows the proper PWA process and will withstand any scrutiny that may be applied to the process Council has followed. I am sure you appreciate that for Council to simply accept the figure of nearly \$23m (which is significantly more than the valuation on the record) would not be appropriate.

As mentioned in my earlier email Council officers were working to take a report to the August Council meeting. It is not going to be possible to do this as we really need to be closer to resolving the outstanding valuation issue. However, if we can move forward as I have suggested getting a report to the September meeting is achievable that covers off the DA, IWA and S&P agreement.

Regards

Helen

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Director

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From: Lachlan Muldowney [<mailto:lachlan@muldowney.co.nz>]
Sent: Thursday, 13 August 2020 1:00 PM
To: Helen Atkins <helen.atkins@ahmlaw.nz>
Cc: Matt Smith <matt@3msofcambridge.co.nz>; Mike Smith <mike@mikesmith.co.nz>; Mitch Plaw (<mitch.kate@xtra.co.nz> <mitch.kate@xtra.co.nz>); Crawford, Michael (NZ - Hamilton) <micrawford@deloitte.co.nz>
Subject: 3MS

Dear Helen,

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	137,661	

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Regards,

Lachlan

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Monday, 17 August 2020 3:45 PM
To: Matt Smith; Mike Smith
Subject: FW: 3MS

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From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Monday, 17 August 2020 3:44 PM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: RE: 3MS

Thank you Lachlan

I will take instructions on the outstanding issues and revert accordingly. On the IWA I can say that it is near final but my understanding (as set out in an earlier email) is that all three agreements need to be approved by Council and will therefore be executed as a package.

Regards

Helen

Helen Atkins
Director

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From: Lachlan Muldowney [mailto:lachlan@muldowney.co.nz]
Sent: Monday, 17 August 2020 3:17 PM
To: Helen Atkins <helen.atkins@ahmlaw.nz>
Subject: RE: 3MS

Dear Helen,

I refer to my email of 13 August which set out the 3MS position on the potential acquisition of part of its land by Council, and your response of the same date. In respect of the matters raised by you am instructed to advise;

1. Your confirmation that 'betterment' will not be applied to the valuation and calculation of the acquisition price is noted, and appreciated.
2. Mr Walker's note regarding the number of sections required is correct, the number of sections affected is 58.
3. you are correct that the shift in the 3MS position regarding the 70/30 split and \$200k per month guarantee is conditional on an acquisition price reflective of the MOE land valuations. I understand Council has copies of the early valuations regarding this land, but not the final valuations used to settle the purchase price between 3MS and MOE. Accordingly I attach the QV valuation dated 26 February 2020 and the SGHU valuation dated 11 March 2020. As you can see the m² rate for the land ranged between \$147 and \$170 plus gst if any. The land was ultimately sold for \$162.93 per m².
3. Regarding your suggestion that 3MS seek a further independent valuation, 3MS does not wish to embark on a valuation contest. It is seriously concerned with the delay this would cause. It has already put off a number of contractors who were expecting to be engaged for this upcoming construction season, and that situation will be exacerbated if a lengthy valuation contest arises. It has been made clear to Council that there are hundreds of local jobs at risk if the project cannot proceed, and I also note that Council's own deliverables under the NPS-UDC are also at risk if the project cannot proceed.
4. Accordingly, 3MS asks that council give consideration to the existing valuations in relation to the MOE land, which is indistinguishable from the land intended to be taken by Council for public works, and confirm its proposed acquisition price in reliance on these independent valuations.

Finally, I note that the IWA remains unsigned and 3MS is seriously out of pocket for costs that were intended to be covered by the IWA. Where is that document at within Council?

I look forward to your response.

Regards,

Lachlan

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From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Thursday, 13 August 2020 4:53 PM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: RE: 3MS

Dear Lachlan

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From: Lachlan Muldowney [<mailto:lachlan@muldowney.co.nz>]
Sent: Thursday, 13 August 2020 1:00 PM
To: Helen Atkins <helen.atkins@ahmlaw.nz>
Cc: Matt Smith <matt@3msofcambridge.co.nz>; Mike Smith <mike@mikesmith.co.nz>; Mitch Plaw

Subject: 3MS

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Regards,

Lachlan

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Thursday, 20 August 2020 12:06 PM
To: Garry Dyet; Helen Atkins
Cc: Matt Smith; Mike Smith; Mitch Plaw (mitch.kate@xtra.co.nz)
Subject: 3MS - Information request
Attachments: Letter to Waipa District Council 20 August 2020.pdf

Dear Garry,

Please see letter **attached**.

Regards,

Lachlan

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LACHLAN MULDOWNEY

BARRISTER

20 August 2020

Waipa District Council
Private Bag 2402
Te Awamutu 3840

For: Garry Dyet
By email: Garry.Dyet@waipadc.govt.nz

Dear Garry,

RE: 3MS of Cambridge Limited

1. As you are aware I act for 3MS of Cambridge Ltd (**3MS**).
2. 3MS is currently engaging with Waipa District Council (**Council**) in respect of the development of its land within the C2 growth cell area in Cambridge. Recently the parties have been engaged in discussions regarding Council's potential acquisition of certain land owned by 3MS. The land is required by Council for public works.
3. Through that engagement Council has procured certain valuation advice from QV Valuations which it intends to rely on to inform its negotiations. 3MS seeks to better understand the valuation instructions and the approach taken by Council, as compared to other commercial arrangements Council has entered into for the purpose of acquiring land for public works purposes.
4. Accordingly, pursuant to s10 of the Local Government Official Information and Meetings Act 1987(**LGOIMA**) 3MS requests that Council provide it with the following information and documentation;
 - a. All internal file notes, memoranda, reports, emails, texts and written communications between Council staff in respect of the topics referred to in paragraph 5 below;

P +64 7 834 4336 M + 64 21 471 490 E lachlan@muldowney.co.nz

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- b. All file notes, memoranda, reports, emails, texts and written communications between Council staff and external consultants or contractors engaging with Council in respect of the topics referred to in paragraph 5 below;
 - c. All file notes, memoranda, reports, emails, texts and written communications between Council staff and elected members in respect of the topics referred to in paragraph 5 below;
 - d. All file notes, memoranda, reports, emails, texts and written communications copied to Council between external consultants or contractors engaging with and/or on behalf of Council in respect of the topics referred to in paragraph 5 below;
5. The topics which are the subject of the information requests set out in paragraph 4 above relate to land acquisition or potential land acquisition by Council in respect of public works within the Waipa District. Specifically, involving the following parties and land;
 - a. 3MS land at Cambridge Road within the C2 growth cell
 - b. D B Brough J C Brough, legal descriptions SA54D/529
 - c. Pratts, legal description SA1A/1440
 - d. Honnis (55 Victoria Road, Cambridge), legal description SA1A/1441
 - e. FoodStuffs (63 Victoria Road, Cambridge), legal description SA2D/1397
 - f. Shawwire Ropes (67 Victoria Road, Cambridge), legal description SA69B/554
 - g. Te Awa Rest Home (1866 Cambridge Road, Cambridge)
6. Please ensure that any information or documentation which has been deleted (for storage or file management purpose etc) from Council's electronic records is retrieved for the purpose of responding to this request.
7. Please also ensure that if any documents or information is intended to be withheld pursuant to section 6 or 7 of LGOIMA, the documents and information is clearly identified and the reason for withholding is also identified.
8. I recognise that this information request is broad and it may take longer than the statutory minimum to respond to. If that is the case, please prioritise the request relating to the 3MS land. The other material can then follow.
9. I look forward to receiving the material.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Lachlan Muldowney', with a long horizontal stroke extending to the right.

Lachlan Muldowney
Barrister

CC; Helen Atkins

CC; Directors of 3MS of Cambridge Limited

Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Thursday, 20 August 2020 12:24 PM
To: Matt Smith; Mike Smith
Subject: FW: 3MS - Information request

See below.

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From: Lachlan Muldowney
Sent: Thursday, 20 August 2020 12:24 PM
To: 'Helen Atkins' <helen.atkins@ahmlaw.nz>
Subject: RE: 3MS - Information request

Hi Helen, yes correct. As indicated, 3MS is considering its options, which includes an assessment of Chris's letter. However, it will not be in a position to provide Council with any revised proposal before the scheduled workshop.

I'll keep you updated if the position changes.

Regards,

Lachlan

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From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Thursday, 20 August 2020 12:19 PM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: RE: 3MS - Information request

Thank you for copying me in to this letter Lachlan.

As I noted in my last email officers are taking the betterment issue to a Council workshop next week and generally updating them regarding the 3MS development. In that regard can I read your latest request as meaning your

clients are not prepared to get a valuation that addresses the m2 value for the land to address the point made by Chris in his original valuation and his follow up letter?

Regards

Helen

Helen Atkins
Director

Atkins Holm Majurey Limited
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helen.atkins@ahmlaw.nz
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From: Lachlan Muldowney [<mailto:lachlan@muldowney.co.nz>]

Sent: Thursday, 20 August 2020 12:06 PM

To: Garry Dyet <Garry.Dyet@waipadc.govt.nz>; Helen Atkins <helen.atkins@ahmlaw.nz>

Cc: Matt Smith <matt@3msofcambridge.co.nz>; Mike Smith <mike@mikesmith.co.nz>; Mitch Plaw
(mitch.kate@xtra.co.nz) <mitch.kate@xtra.co.nz>

Subject: 3MS - Information request

Dear Garry,

Please see letter **attached**.

Regards,

Lachlan

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Tuesday, 25 August 2020 2:40 PM
To: Liz.Stolwyk@waipadc.govt.nz; Garry Dyet; Jim.Mylchreest@waipadc.govt.nz;
david.heald@muritaicapital.com; rob.campbell@stpeters.school.nz
Cc: Matt Smith; mike@mikesmith.co.nz
Subject: Meeting tomorrow

Afternoon all,

Suggested agenda for tomorrow's meeting;

1. Update and confirmation of Council position and process on land acquisition. (Garry Dyet)
2. 3MS/St Peter's position on the valuations and concerns over different treatments arising from the valuation process.(Matt/David/Rob)
3. 3MS/St Peter's position on acquisition price of the land (Matt/David/Rob)
4. Impacts of delay (both parties)
5. Next step (both parties)

Regards,

Lachlan

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Tuesday, 25 August 2020 4:44 PM
To: Matt Smith; rob.campbell@stpeters.school.nz; david.heald@muritaicapital.com
Subject: FW: 3MS

Gents, see below.

It would be good to discuss matters as a group before the meeting.

Is everyone available for a 30 min catchup beforehand?

Matt, where is the meeting? TA or Cambridge?

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From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Tuesday, 25 August 2020 4:32 PM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: 3MS

Good afternoon Lachlan

As you know the Councillors had a workshop today to get an update on the 3MS development. As this was only a workshop no resolutions were passed but the Councillors did provide their thoughts on the way forward as follows:

- They agreed the Council must follow the proper process and the next step in relation to the valuation dispute is for 3MS to get its own valuation at Council's expense;
- They agreed that the issue of betterment should be part of the negotiations in the Development Agreement moving forward and needs to be more thoroughly addressed in the context of the upcoming review of the DCP;
- With regards to the easement with St Peters School regarding the Te Awa cycleway and the land required at the roundabout which currently under construction these are subject to prior agreement with St Peter's Board and this process should not be confused with the 3MS issue over the valuation of their land. It has nothing to do with the 3MS and St Peters JV. A hold up here puts everyone's reputations at risk .

One issue that was discussed was timing. I am advised by the Council team that if we do not have an agreed path going forward in the next 3-4 weeks the whole development schedule the Council (Robin Walker) is managing will need to be put on hold for 12 months.

I note there is a meeting tomorrow to discuss that Council has asked me to attend via zoom. I therefore look forward to hearing from you and your team regarding next steps from 3MS perspective.

Best regards

Helen

Helen Atkins

Director

Atkins Holm Majurey Limited

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helen.atkins@ahmlaw.nz

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Thursday, 27 August 2020 8:48 AM
To: Helen Atkins
Cc: david.heald@muritaicapital.com; rob.campbell@stpeters.school.nz; Matt Smith; Liz Stolwyk; Jim Mylchreest; Garry.Dyet@waipadc.govt.nz
Subject: RE: 3MS / ST PETERS RECORD OF DISCUSSION

Thanks for the note Helen.

I will review it and respond accordingly.

Regards,

Lachlan

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www.lachlanmuldowney.co.nz

From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Thursday, 27 August 2020 8:41 AM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Cc: david.heald@muritaicapital.com; rob.campbell@stpeters.school.nz; Matt Smith <matt@3msofcambridge.co.nz>; Liz Stolwyk <Liz.Stolwyk@waipadc.govt.nz>; Jim Mylchreest <Jim.Mylchreest@waipadc.govt.nz>; Garry.Dyet@waipadc.govt.nz
Subject: 3MS / ST PETERS RECORD OF DISCUSSION

Dear Lachlan

Further to our discussions yesterday I think it is important to record where we landed. This email is **not** without prejudice as the Council team is desirous to ensure full transparency (subject to commercial sensitivity) moving forward.

As a precursor to what follows it is important to state that while we note that 3MS have the impression that Council expects it to shoulder a disproportionate share of the costs associated with the infrastructure serving the growth cell this is absolutely not the case. It is Council position that the basis of any valuation needs to assume that no developer in the affected growth cells is any better or worse off as a result of the purchase price for the land being acquired the Council. Under the various statutes that Council operates under it is imperative that Council follows a proper process that will withstand any scrutiny brought to bear including by the Council's auditors (OAG).

In terms of 3MS:

- Betterment will be dealt with in the Development Agreement such that no discount for betterment will be included in the S&P Agreement (note Council will take this same approach in relation to betterment for all development in the growth cell);

- Broader issues around betterment will be considered as part of the review of the DCP;
- The Council confirms that it does not see the valuation it has received as being sacrosanct but rather information that can inform the negotiation process. Council has not made an offer based on the valuation (see note on the timeframes to date below);
- The Council needs 3MS to obtain an alternative valuation. On receipt of this alternative valuation Council will discuss with 3MS the process moving forward. In this regard the Council team (see note on who the team is below) is desirous to move to the negotiation phase without tooting and froing between valuers;
- The Council team for negotiation purposes will be – Garry, Jim and Liz. I will be present in the negotiations to provide any legal advice needed. In addition, the Council team will seek any further technical advice it needs during the negotiation process. It is important to note any outcome of the negotiations is subject to full Council approval. If necessary a special Council meeting can be convened or we can take it to a scheduled meeting if the timing works.
- In order for Council to proceed to the contract letting stage for the infrastructure works time is critical and as Garry noted at the meeting we need to finalise the whole negotiation and agreement process within the next month.

In terms of St Peters' the same approach can be taken but note the situation with St Peter's is quite different and at a very different stage.

On the timing I have been asked to note the following:

- The valuation was sent to you on 7 August
- 10 August you confirmed to me orally that 3MS will not be getting their own valuation and will not be accepting any offer based on the Council valuation. I asked you to take instructions on what figure 3MS were seeking for the land
- 13 August you responded to the matters raised in our oral conversation . The particular issue you raised was the square metre value.
- 14 August I responded to your email and noted that 3MS will need to provide another valuation at Council cost
- 17 August you emailed me asking that Council consider the MOE valuation as the basis for determining the correct value for the 3MS land
- 18 August I provided you with the response of the valuer Chris Coates as to why the MOE valuation is not appropriate to apply to the 3MS land
- The matter was then not discussed further until the meeting yesterday

The Council team remain committed to progressing matters with your client in an open and transparent manner. The team do not have any pre-conceived view on what the final value of the land is as this is a matter of negotiation.

I need to reiterate that Council do not see this as a commercial negotiation. Obviously commercial realities are important and Council fully appreciate this but this is a process under the auspices of the PWA. In this respect while your client is of the view that the price paid for the land whatever that may be can be passed on to all developers in the growth cell (including 3MS) that price still needs to be robustly determined in accordance with a proper process.

Best regards

Helen

Helen Atkins
Director

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Tuesday, 1 September 2020 1:13 PM
To: Helen Atkins
Cc: david.heald@muritaicapital.com; rob.campbell@stpeters.school.nz; Matt Smith; Liz Stolwyk; Jim Mylchreest; Garry.Dyet@waipadc.govt.nz
Subject: RE: 3MS / ST PETERS RECORD OF DISCUSSION

Dear Helen,

I refer to your email below of 27 August and note it is written on an open basis, as is this response. In the order in which the issues are raised by you, I advise;

1. 3MS is pleased that Council has abandoned any attempt to recover betterment via the valuation and AS&P. However it is unclear about what Council means when it is suggested that the *broader issues around betterment will be considered as part of the review of the DCP*. I am not aware of any basis under the LGA whereby Council can address betterment via the DCP. Betterment is simply a component of determining land acquisition price, and therefore capex. Once the capex is known and included in the schedule of assets, DC charges can be set, and the capex recovered. Where does betterment fit in? There was a further suggestion at the meeting last week that Council would look to address betterment via the development agreement. Again, 3MS rejects betterment outright, and will not enter into a DA that seeks to recover it.
2. Your acknowledgment that Council does not treat its valuation as sacrosanct is helpful. In your own words, it is clearly conservative. 3MS acknowledges the point Garry made that he must however deal with it, but again stresses that Council has put itself in this position by accepting the valuation in final form, rather than draft. You are correct that Council has not made an offer based on the valuation, in part due to me advising you that an offer at this level will be rejected so need not be presented.
3. 3MS had preferred to see if the parties could move straight to a negotiated purchase price, but notes the very clear indication from Council that it will not negotiate unless 3MS produces a valuation of its own. It is considering doing so. However, before it does, I wish to be clear on the basis for the valuation. The basis will be to first understand the development opportunity for the entire 3MS land without the land acquisition and introduction of public infrastructure. In other words, what could 3MS achieve without the land acquisition and associated works occurring This exercise was not fully carried out by QV, and is an essential step in determining the value for the land to be acquired, because it informs the key threshold test Council promotes, as you state; *It is Council position that the basis of any valuation needs to assume that no developer in the affected growth cells is any better or worse off as a result of the purchase price for the land being acquired the Council*. Please confirm Council's acceptance of this step in the valuation exercise and endorse this aspect of the valuation exercise as a way of moving forward.
4. If the valuation is procured, we agree that we should move to the negotiation phase without too much *tooting and froing between valuers*. It may be useful to have everyone in the same room, valuers included, for an initial period, and then leave it to the parties to negotiate.
5. Your negotiation team is noted. 3MS will confirm its representatives outside of Matt and myself.
6. Garry's warning of the timeframes was particularly frustrating to hear for the 3MS team. 3MS has been pushing Council to share its valuation instructions since December 2019 (and I have been raising it with you directly since June) with a view to speeding up the process and avoid a valuation contest. Due to Council's actions we now have a valuation contest late in the year, and threatening the construction season. The risks arising from the delay arise from Council's actions, not 3MS.
7. Regarding your account of the timing of events, at no stage on 10 August did I state that 3MS was getting its own valuation. 3MS position was that the MOE valuation should be relied upon. The only offer made was the 3MS offer of 13 August, sent 3 days after the QV valuation was provided. 3MS has not, at any stage 'dragged the chain'.
8. Regarding the purchase price, 3MS agrees that it should reflect market value, and stand up to any robust examination. It seeks that. It also seeks that the principles of fairness and equity as between all developers in the area who stand to benefit from the infrastructure.

9. Regarding the St Peters' land, it is not accepted that it is any different to the 3MS land. The land is required as of today for both stormwater and future roading. To enable any development within the respective growth cells to occur as per the structure plan requires Council to acquire the land. As we stated in the meeting, without the full participation of St Peters' and 3MS, including use of their adjacent land the works required for the stormwater corridor, roading corridor and outfall structure cannot occur.

Finally, in terms of the recent LGOIMA request, as I stated in the request, 3MS seeks to prioritise that part of the request which relates directly to matters concerning 3MS and the current land valuation process undertaken by Council. On that basis can you confirm timing of the provision of that information.

Regards,

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From: Lachlan Muldowney
Sent: Thursday, 27 August 2020 8:48 AM
To: Helen Atkins <helen.atkins@ahmlaw.nz>
Cc: david.heald@muritaicapital.com; rob.campbell@stpeters.school.nz; Matt Smith <matt@3msofcambridge.co.nz>; Liz Stolwyk <Liz.Stolwyk@waipadc.govt.nz>; Jim Mylchreest <Jim.Mylchreest@waipadc.govt.nz>; Garry.Dyet@waipadc.govt.nz
Subject: RE: 3MS / ST PETERS RECORD OF DISCUSSION

Thanks for the note Helen.

I will review it and respond accordingly.

Regards,

Lachlan

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Best regards

Helen

Helen Atkins

Director

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Friday, 4 September 2020 3:27 PM
To: Matt Smith; mike@mikesmith.co.nz
Subject: FW: 3MS / ST PETERS RECORD OF DISCUSSION

See email sent below.

LACHLAN MULDOWNEY

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From: Lachlan Muldowney
Sent: Friday, 4 September 2020 3:26 PM
To: Helen Atkins <helen.atkins@ahmlaw.nz>
Subject: RE: 3MS / ST PETERS RECORD OF DISCUSSION

Hi Helen,

Thanks for your email. 3MS is considering its options in light of Council's position. It is obviously keen to avoid a situation where it seeks a valuation only to find that Council fundamentally disagrees with the methodology. You say that Council won't interfere with the process of 3MS instructing a valuer, but Council will still reserve its right to dispute the valuation, including I assume on the basis of 'flawed' instructions. 3MS is simply trying to avoid a needless argument about that if it seeks a valuation. It sees Council's approach to this whole valuation exercise as being needlessly adversarial. Nevertheless, Council is clear in its requirement.

I still do not understand the position regarding betterment. It is either being claimed or it isn't. There is no comfort to 3MS in knowing that it will not be claimed in the context of the land purchase price, but is somehow 'clawed back' via the DA. Can you be more specific regarding Council's intent? As it stands it seems betterment still looms as a major issue to confront. Also, I'm not sure of the meaning behind your reference to HCC collector roads. Can you elaborate?

Finally, I appreciate the impact an extensive LGOIMA request can have on Council. That is why I have suggested that the first step in the response is to focus on the 3MS related materials. Clearly that will be relevant to the ongoing negotiations, particularly where Council seeks to place reliance on the QV valuation. All information relating to the valuation, including raw materials, instructions, assumptions, requests sent to the valuer by Council and/or Council's representatives will be relevant to validating or testing the QV valuation. Please accelerate these aspects of the response.

Regards,

Lachlan

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From: Helen Atkins <helen.atkins@ahmlaw.nz>

Sent: Wednesday, 2 September 2020 3:19 PM

To: Lachlan Muldowney <lachlan@muldowney.co.nz>

Cc: david.heald@muritaicapital.com; rob.campbell@stpeters.school.nz; Matt Smith <matt@3msofcambridge.co.nz>; Liz Stolwyk <Liz.Stolwyk@waipadc.govt.nz>; Jim Mylchreest <Jim.Mylchreest@waipadc.govt.nz>; Garry.Dyet@waipadc.govt.nz

Subject: RE: 3MS / ST PETERS RECORD OF DISCUSSION

Good afternoon Lachlan

Thank you for your email I have recorded the Council responses in bold text below. In short the process from here from the Council's point of view is relatively straight forward:

- 3MS get a valuation on whatever basis they consider appropriate - Council won't interfere or agree in advance what this basis should be; and
- Once the valuation has been provided 3MS and Council determine and agree the process that will be followed from there.

Regards

Helen

Helen Atkins
Director

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From: Lachlan Muldowney [<mailto:lachlan@muldowney.co.nz>]

Sent: Tuesday, 1 September 2020 1:13 PM

To: Helen Atkins <helen.atkins@ahmlaw.nz>

Cc: david.heald@muritaicapital.com; rob.campbell@stpeters.school.nz; Matt Smith <matt@3msofcambridge.co.nz>; Liz Stolwyk <Liz.Stolwyk@waipadc.govt.nz>; Jim Mylchreest <Jim.Mylchreest@waipadc.govt.nz>; Garry.Dvet@waipadc.govt.nz
Subject: RE: 3MS / ST PETERS RECORD OF DISCUSSION

Dear Helen,

I refer to your email below of 27 August and note it is written on an open basis, as is this response. In the order in which the issues are raised by you, I advise;

1. 3MS is pleased that Council has abandoned any attempt to recover betterment via the valuation and AS&P. However it is unclear about what Council means when it is suggested that the *broader issues around betterment will be considered as part of the review of the DCP*. I am not aware of any basis under the LGA whereby Council can address betterment via the DCP. Betterment is simply a component of determining land acquisition price, and therefore capex. Once the capex is known and included in the schedule of assets, DC charges can be set, and the capex recovered. Where does betterment fit in? There was a further suggestion at the meeting last week that Council would look to address betterment via the development agreement. Again, 3MS rejects betterment outright, and will not enter into a DA that seeks to recover it.

Regarding betterment as you know the Council's valuer is adamant that betterment is appropriate to be included in the valuation. What Garry noted at the meeting was that no betterment will be sought in this case but it may need to be reflected in some way in the documentation (AS&P and DA). In terms of how the matter is dealt with going forward during the DCP review everything is on the table including considering the way in which collector roads are dealt with in Hamilton City.

2. Your acknowledgment that Council does not treat its valuation as sacrosanct is helpful. In your own words, it is clearly conservative. 3MS acknowledges the point Garry made that he must however deal with it, but again stresses that Council has put itself in this position by accepting the valuation in final form, rather than draft. You are correct that Council has not made an offer based on the valuation, in part due to me advising you that an offer at this level will be rejected so need not be presented.

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It is not appropriate for the Council to endorse your client's valuation exercise in the same way that it was not appropriate for your client to endorse the Council's valuation exercise. It is up to your client to seek a valuation on whatever terms they consider appropriate. Council will not interfere in this process.

4. If the valuation is procured, we agree that we should move to the negotiation phase without too much *toeing and froing between valuers*. It may be useful to have everyone in the same room, valuers included, for an initial period, and then leave it to the parties to negotiate.

Noted and agreed

5. Your negotiation team is noted. 3MS will confirm its representatives outside of Matt and myself.

Noted

6. Garry's warning of the timeframes was particularly frustrating to hear for the 3MS team. 3MS has been pushing Council to share its valuation instructions since December 2019 (and I have been raising it with you directly since June) with a view to speeding up the process and avoid a valuation contest. Due to Council's actions we now have a valuation contest late in the year, and threatening the construction season. The risks arising from the delay arise from Council's actions, not 3MS.

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7. Regarding your account of the timing of events, at no stage on 10 August did I state that 3MS was getting its own valuation. 3MS position was that the MOE valuation should be relied upon. The only offer made was the 3MS offer of 13 August, sent 3 days after the QV valuation was provided. 3MS has not, at any stage 'dragged the chain'.

I don't think we are in disagreement on this point it is clear 3MS wanted the MOE valuation relied on. What I am saying is that the debate about getting another valuation has delayed matters.

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9. Regarding the St Peters' land, it is not accepted that it is any different to the 3MS land. The land is required as of today for both stormwater and future roading. To enable any development within the respective growth cells to occur as per the structure plan requires Council to acquire the land. As we stated in the meeting, without the full participation of St Peters' and 3MS, including use of their adjacent land the works required for the stormwater corridor, roading corridor and outfall structure cannot occur.

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As you will appreciate the LGOIMA request is quite a distraction for the Council team when they would all rather get on with resolving matters. If you are seeking particular information can you please be more specific about what it is you want as this will make handling the request much faster. Having said this it is Council hope that 3MS will not see the need to pursue this request as Council want to look forward to a resolution not backward to a dispute.

Regards,

LACHLAN MULDOWNEY

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From: Lachlan Muldowney

Sent: Thursday, 27 August 2020 8:48 AM

To: Helen Atkins <helen.atkins@ahmlaw.nz>

Cc: david.heald@muritaicapital.com; rob.campbell@stpeters.school.nz; Matt Smith <matt@3msofcambridge.co.nz>; Liz Stolwyk <Liz.Stolwyk@waipadc.govt.nz>; Jim Mylchreest <Jim.Mylchreest@waipadc.govt.nz>; Garry.Dyet@waipadc.govt.nz

Subject: RE: 3MS / ST PETERS RECORD OF DISCUSSION

Thanks for the note Helen.

I will review it and respond accordingly.

Regards,

Lachlan

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From: Helen Atkins <helen.atkins@ahmlaw.nz>

Sent: Thursday, 27 August 2020 8:41 AM

To: Lachlan Muldowney <lachlan@muldowney.co.nz>

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Subject: 3MS / ST PETERS RECORD OF DISCUSSION

Dear Lachlan

Further to our discussions yesterday I think it is important to record where we landed. This email is **not** without prejudice as the Council team is desirous to ensure full transparency (subject to commercial sensitivity) moving forward.

As a precursor to what follows it is important to state that while we note that 3MS have the impression that Council expects it to shoulder a disproportionate share of the costs associated with the infrastructure serving the growth cell this is absolutely not the case. It is Council position that the basis of any valuation needs to assume that no developer in the affected growth cells is any better or worse off as a result of the purchase price for the land being

acquired the Council. Under the various statutes that Council operates under it is imperative that Council follows a proper process that will withstand any scrutiny brought to bear including by the Council's auditors (OAG).

In terms of 3MS:

- Betterment will be dealt with in the Development Agreement such that no discount for betterment will be included in the S&P Agreement (note Council will take this same approach in relation to betterment for all development in the growth cell);
- Broader issues around betterment will be considered as part of the review of the DCP;
- The Council confirms that it does not see the valuation it has received as being sacrosanct but rather information that can inform the negotiation process. Council has not made an offer based on the valuation (see note on the timeframes to date below);
- The Council needs 3MS to obtain an alternative valuation. On receipt of this alternative valuation Council will discuss with 3MS the process moving forward. In this regard the Council team (see note on who the team is below) is desirous to move to the negotiation phase without tooting and froing between valuers;
- The Council team for negotiation purposes will be – Garry, Jim and Liz. I will be present in the negotiations to provide any legal advice needed. In addition, the Council team will seek any further technical advice it needs during the negotiation process. It is important to note any outcome of the negotiations is subject to full Council approval. If necessary a special Council meeting can be convened or we can take it to a scheduled meeting if the timing works.
- In order for Council to proceed to the contract letting stage for the infrastructure works time is critical and as Garry noted at the meeting we need to finalise the whole negotiation and agreement process within the next month.

In terms of St Peter's the same approach can be taken but note the situation with St Peter's is quite different and at a very different stage.

On the timing I have been asked to note the following:

- The valuation was sent to you on 7 August
- 10 August you confirmed to me orally that 3MS will not be getting their own valuation and will not be accepting any offer based on the Council valuation. I asked you to take instructions on what figure 3MS were seeking for the land
- 13 August you responded to the matters raised in our oral conversation. The particular issue you raised was the square metre value.
- 14 August I responded to your email and noted that 3MS will need to provide another valuation at Council cost
- 17 August you emailed me asking that Council consider the MOE valuation as the basis for determining the correct value for the 3MS land
- 18 August I provided you with the response of the valuer Chris Coates as to why the MOE valuation is not appropriate to apply to the 3MS land
- The matter was then not discussed further until the meeting yesterday

The Council team remain committed to progressing matters with your client in an open and transparent manner. The team do not have any pre-conceived view on what the final value of the land is as this is a matter of negotiation.

I need to reiterate that Council do not see this as a commercial negotiation. Obviously commercial realities are important and Council fully appreciate this but this is a process under the auspices of the PWA. In this respect while your client is of the view that the price paid for the land whatever that may be can be passed on to all developers in the growth cell (including 3MS) that price still needs to be robustly determined in accordance with a proper process.

Best regards

Helen

Helen Atkins
Director

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Wednesday, 9 September 2020 4:39 PM
To: Matt Smith
Subject: FW: 3MS / ST PETERS RECORD OF DISCUSSION

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From: Lachlan Muldowney
Sent: Wednesday, 9 September 2020 4:37 PM
To: Helen Atkins <helen.atkins@ahmlaw.nz>
Subject: RE: 3MS / ST PETERS RECORD OF DISCUSSION

Thanks Helen,

As indicated 3MS is currently reviewing options regarding development with and without the public infrastructure being provided. I'll update you on the position once it has determined its course. It is very conscious of timing and delay.

Regarding the betterment issue, I reiterate that while it is welcome news that betterment will not be sought or included by Council in the setting of land acquisition prices, that comes as no comfort to 3MS when it is then captured under a development agreement as an offset or similar. That is like agreeing the price for the land, only to have it renegotiated after settlement. It won't happen. If there is to be any addressing of betterment in a DA, the exact detail of that will need to be known at the time the acquisition price for land is agreed. Please confirm the approach.

Regards,

Lachlan

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From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Wednesday, 9 September 2020 10:46 AM

To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: RE: 3MS / ST PETERS RECORD OF DISCUSSION

Dear Lachlan

Sorry for the delay. Council understands 3MS desire not to enter into lengthy debates about the valuation that 3MS receives and that is Council's desire also. As stated on a number of occasions Council does not issue methodology instructions to those valuers its uses. As you know in the case of the 3MS land the key matters that the valuer took into account were:

- The Structure Plan and the status of the zoning – the land was to be valued on the basis that residential zoning was imminent
- That no developer should be worse off – the PWA principle of equivalency
- The land area needed to acquire for public works

With regards to betterment - betterment has not just been valued in relation to the 3MS land but other valuers for other pieces of land within the cells have also included betterment. Councillors (at a workshop) have agreed with officer advice that for 3MS (and likely for the other developers in the growth cell) betterment will not be sought, and will likely be best addressed via an offset in the DA. Exactly how it is treated in the various documents is to be determined once we are at the negotiation stage post the 3MS valuation.

In terms of the issue of betterment for collector roads going forward Council may consider adopting the same approach at Hamilton City which would mean no, or very little, betterment is likely to apply in such cases. This is something the Council is currently considering as part of its DCP review.

The LGOIMA process is in hand and will focus on the matters you have raised in the first instance.

Just a reminder on timing as you know the window of works opportunity is closing for the infrastructure team if the works are to be done in the forthcoming construction season.

Regards

Helen

Helen Atkins
Director

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From: Lachlan Muldowney [<mailto:lachlan@muldowney.co.nz>]
Sent: Friday, 4 September 2020 3:26 PM

To: Helen Atkins <helen.atkins@ahmlaw.nz>
Subject: RE: 3MS / ST PETERS RECORD OF DISCUSSION

Hi Helen,

Thanks for your email. 3MS is considering its options in light of Council's position. It is obviously keen to avoid a situation where it seeks a valuation only to find that Council fundamentally disagrees with the methodology. You say that Council won't interfere with the process of 3MS instructing a valuer, but Council will still reserve its right to dispute the valuation, including I assume on the basis of 'flawed' instructions. 3MS is simply trying to avoid a needless argument about that if it seeks a valuation. It sees Council's approach to this whole valuation exercise as being needlessly adversarial. Nevertheless, Council is clear in its requirement.

I still do not understand the position regarding betterment. It is either being claimed or it isn't. There is no comfort to 3MS in knowing that it will not be claimed in the context of the land purchase price, but is somehow 'clawed back' via the DA. Can you be more specific regarding Council's intent? As it stands it seems betterment still looms as a major issue to confront. Also, I'm not sure of the meaning behind your reference to HCC collector roads. Can you elaborate?

Finally, I appreciate the impact an extensive LGOIMA request can have on Council. That is why I have suggested that the first step in the response is to focus on the 3MS related materials. Clearly that will be relevant to the ongoing negotiations, particularly where Council seeks to place reliance on the QV valuation. All information relating to the valuation, including raw materials, instructions, assumptions, requests sent to the valuer by Council and/or Council's representatives will be relevant to validating or testing the QV valuation. Please accelerate these aspects of the response.

Regards,

Lachlan

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- 3MS get a valuation on whatever basis they consider appropriate - Council won't interfere or agree in advance what this basis should be; and
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From: Lachlan Muldowney
Sent: Thursday, 27 August 2020 8:48 AM
To: Helen Atkins <helen.atkins@ahmlaw.nz>
Cc: david.heald@muritaicapital.com; rob.campbell@stpeters.school.nz; Matt Smith <matt@3msofcambridge.co.nz>; Liz Stolwyk <Liz.Stolwyk@waipadc.govt.nz>; Jim Mylchreest <Jim.Mylchreest@waipadc.govt.nz>; Garry.Dyet@waipadc.govt.nz
Subject: RE: 3MS / ST PETERS RECORD OF DISCUSSION

Thanks for the note Helen.

I will review it and respond accordingly.

Regards,

Lachlan

LACHLAN MULDOWNEY

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Postal PO Box 9169, Waikato Mail Centre, Hamilton 3240

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From: Helen Atkins <helen.atkins@ahmlaw.nz>

Sent: Thursday, 27 August 2020 8:41 AM

To: Lachlan Muldowney <lachlan@muldowney.co.nz>

Cc: david.heald@muritaicapital.com; rob.campbell@stpeters.school.nz; Matt Smith <matt@3msofcambridge.co.nz>; Liz Stolwyk <Liz.Stolwyk@waipadc.govt.nz>; Jim Mylchreest <Jim.Mylchreest@waipadc.govt.nz>; Garry.Dyet@waipadc.govt.nz

Subject: 3MS / ST PETERS RECORD OF DISCUSSION

Dear Lachlan

Further to our discussions yesterday I think it is important to record where we landed. This email is **not** without prejudice as the Council team is desirous to ensure full transparency (subject to commercial sensitivity) moving forward.

As a precursor to what follows it is important to state that while we note that 3MS have the impression that Council expects it to shoulder a disproportionate share of the costs associated with the infrastructure serving the growth cell this is absolutely not the case. It is Council position that the basis of any valuation needs to assume that no developer in the affected growth cells is any better or worse off as a result of the purchase price for the land being acquired the Council. Under the various statutes that Council operates under it is imperative that Council follows a proper process that will withstand any scrutiny brought to bear including by the Council's auditors (OAG).

In terms of 3MS:

- Betterment will be dealt with in the Development Agreement such that no discount for betterment will be included in the S&P Agreement (note Council will take this same approach in relation to betterment for all development in the growth cell);
- Broader issues around betterment will be considered as part of the review of the DCP;
- The Council confirms that it does not see the valuation it has received as being sacrosanct but rather information that can inform the negotiation process. Council has not made an offer based on the valuation (see note on the timeframes to date below);
- The Council needs 3MS to obtain an alternative valuation. On receipt of this alternative valuation Council will discuss with 3MS the process moving forward. In this regard the Council team (see note on who the team is below) is desirous to move to the negotiation phase without tooting and froing between valuers;
- The Council team for negotiation purposes will be – Garry, Jim and Liz. I will be present in the negotiations to provide any legal advice needed. In addition, the Council team will seek any further technical advice it needs during the negotiation process. It is important to note any outcome of the negotiations is subject to full Council approval. If necessary a special Council meeting can be convened or we can take it to a scheduled meeting if the timing works.

- In order for Council to proceed to the contract letting stage for the infrastructure works time is critical and as Garry noted at the meeting we need to finalise the whole negotiation and agreement process within the next month.

In terms of St Peters' the same approach can be taken but note the situation with St Peter's is quite different and at a very different stage.

On the timing I have been asked to note the following:

- The valuation was sent to you on 7 August
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- 14 August I responded to your email and noted that 3MS will need to provide another valuation at Council cost
- 17 August you emailed me asking that Council consider the MOE valuation as the basis for determining the correct value for the 3MS land
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The Council team remain committed to progressing matters with your client in an open and transparent manner. The team do not have any pre-conceived view on what the final value of the land is as this is a matter of negotiation.

I need to reiterate that Council do not see this as a commercial negotiation. Obviously commercial realities are important and Council fully appreciate this but this is a process under the auspices of the PWA. In this respect while your client is of the view that the price paid for the land whatever that may be can be passed on to all developers in the growth cell (including 3MS) that price still needs to be robustly determined in accordance with a proper process.

Best regards

Helen

Helen Atkins
Director

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Thursday, 10 September 2020 4:47 PM
To: Matt Smith
Subject: FW: 3MS / ST PETERS RECORD OF DISCUSSION

Sorry just got to this.

LACHLAN MULDOWNEY

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www.lachlanmuldowney.co.nz

From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Thursday, 10 September 2020 9:16 AM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: RE: 3MS / ST PETERS RECORD OF DISCUSSION

Morning Lachlan

Sorry if that is unclear. Hopefully this will help.

If a sum for betterment is included in any agreed valuation of the land (noting we are not at the stage of an agreed valuation yet) then that sum will need to be reflected in the land value in the S&P agreement and will result in the land value being the agreed valuation less the betterment sum. That same sum will then be included as a payment to 3MS in the DA.

Helen

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Director

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From: Lachlan Muldowney [<mailto:lachlan@muldowney.co.nz>]
Sent: Wednesday, 9 September 2020 4:37 PM
To: Helen Atkins <helen.atkins@ahmlaw.nz>
Subject: RE: 3MS / ST PETERS RECORD OF DISCUSSION

Thanks Helen,

As indicated 3MS is currently reviewing options regarding development with and without the public infrastructure being provided. I'll update you on the position once it has determined its course. It is very conscious of timing and delay.

Regarding the betterment issue, I reiterate that while it is welcome news that betterment will not be sought or included by Council in the setting of land acquisition prices, that comes as no comfort to 3MS when it is then captured under a development agreement as an offset or similar. That is like agreeing the price for the land, only to have it renegotiated after settlement. It won't happen. If there is to be any addressing of betterment in a DA, the exact detail of that will need to be known at the time the acquisition price for land is agreed. Please confirm the approach.

Regards,

Lachlan

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From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Wednesday, 9 September 2020 10:46 AM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: RE: 3MS / ST PETERS RECORD OF DISCUSSION

Dear Lachlan

Sorry for the delay. Council understands 3MS desire not to enter into lengthy debates about the valuation that 3MS receives and that is Council's desire also. As stated on a number of occasions Council does not issue methodology instructions to those valuers its uses. As you know in the case of the 3MS land the key matters that the valuer took into account were:

- The Structure Plan and the status of the zoning – the land was to be valued on the basis that residential zoning was imminent
- That no developer should be worse off – the PWA principle of equivalency
- The land area needed to acquire for public works

With regards to betterment - betterment has not just been valued in relation to the 3MS land but other valuers for other pieces of land within the cells have also included betterment. Councillors (at a workshop) have agreed with officer advice that for 3MS (and likely for the other developers in the growth cell) betterment will not be sought, and will likely be best addressed via an offset in the DA. Exactly how it is treated in the various documents is to be determined once we are at the negotiation stage post the 3MS valuation.

In terms of the issue of betterment for collector roads going forward Council may consider adopting the same approach at Hamilton City which would mean no, or very little, betterment is likely to apply in such cases. This is something the Council is currently considering as part of its DCP review.

The LGOIMA process is in hand and will focus on the matters you have raised in the first instance.

Just a reminder on timing as you know the window of works opportunity is closing for the infrastructure team if the works are to be done in the forthcoming construction season.

Regards

Helen

Helen Atkins
Director

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From: Lachlan Muldowney [<mailto:lachlan@muldowney.co.nz>]
Sent: Friday, 4 September 2020 3:26 PM
To: Helen Atkins <helen.atkins@ahmlaw.nz>
Subject: RE: 3MS / ST PETERS RECORD OF DISCUSSION

Hi Helen,

Thanks for your email. 3MS is considering its options in light of Council's position. It is obviously keen to avoid a situation where it seeks a valuation only to find that Council fundamentally disagrees with the methodology. You say that Council won't interfere with the process of 3MS instructing a valuer, but Council will still reserve its right to dispute the valuation, including I assume on the basis of 'flawed' instructions. 3MS is simply trying to avoid a needless argument about that if it seeks a valuation. It sees Council's approach to this whole valuation exercise as being needlessly adversarial. Nevertheless, Council is clear in its requirement.

I still do not understand the position regarding betterment. It is either being claimed or it isn't. There is no comfort to 3MS in knowing that it will not be claimed in the context of the land purchase price, but is somehow 'clawed back' via the DA. Can you be more specific regarding Council's intent? As it stands it seems betterment still looms as a major issue to confront. Also, I'm not sure of the meaning behind your reference to HCC collector roads. Can you elaborate?

Finally, I appreciate the impact an extensive LGOIMA request can have on Council. That is why I have suggested that the first step in the response is to focus on the 3MS related materials. Clearly that will be relevant to the ongoing negotiations, particularly where Council seeks to place reliance on the QV valuation. All information relating to the

valuation, including raw materials, instructions, assumptions, requests sent to the valuer by Council and/or Council's representatives will be relevant to validating or testing the QV valuation. Please accelerate these aspects of the response.

Regards,

Lachlan

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From: Helen Atkins <helen.atkins@ahmlaw.nz>

Sent: Wednesday, 2 September 2020 3:19 PM

To: Lachlan Muldowney <lachlan@muldowney.co.nz>

Cc: david.heald@muritaicapital.com; rob.campbell@stpeters.school.nz; Matt Smith <matt@3msofcambridge.co.nz>; Liz Stolwyk <Liz.Stolwyk@waipadc.govt.nz>; Jim Mylchreest <Jim.Mylchreest@waipadc.govt.nz>; Garry.Dyet@waipadc.govt.nz

Subject: RE: 3MS / ST PETERS RECORD OF DISCUSSION

Good afternoon Lachlan

Thank you for your email I have recorded the Council responses in bold text below. In short the process from here from the Council's point of view is relatively straight forward:

- 3MS get a valuation on whatever basis they consider appropriate - Council won't interfere or agree in advance what this basis should be; and
- Once the valuation has been provided 3MS and Council determine and agree the process that will be followed from there.

Regards

Helen

Helen Atkins
Director

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From: Lachlan Muldowney [<mailto:lachlan@muldowney.co.nz>]

Sent: Tuesday, 1 September 2020 1:13 PM

To: Helen Atkins <helen.atkins@ahmlaw.nz>

Cc: david.heald@muritaicapital.com; rob.campbell@stpeters.school.nz; Matt Smith <matt@3msofcambridge.co.nz>; Liz Stolwyk <Liz.Stolwyk@waipadc.govt.nz>; Jim Mylchreest <Jim.Mylchreest@waipadc.govt.nz>; Garry.Dyet@waipadc.govt.nz

Subject: RE: 3MS / ST PETERS RECORD OF DISCUSSION

Dear Helen,

I refer to your email below of 27 August and note it is written on an open basis, as is this response. In the order in which the issues are raised by you, I advise;

1. 3MS is pleased that Council has abandoned any attempt to recover betterment via the valuation and AS&P. However it is unclear about what Council means when it is suggested that the *broader issues around betterment will be considered as part of the review of the DCP*. I am not aware of any basis under the LGA whereby Council can address betterment via the DCP. Betterment is simply a component of determining land acquisition price, and therefore capex. Once the capex is known and included in the schedule of assets, DC charges can be set, and the capex recovered. Where does betterment fit in? There was a further suggestion at the meeting last week that Council would look to address betterment via the development agreement. Again, 3MS rejects betterment outright, and will not enter into a DA that seeks to recover it.

Regarding betterment as you know the Council's valuer is adamant that betterment is appropriate to be included in the valuation. What Garry noted at the meeting was that no betterment will be sought in this case but it may need to be reflected in some way in the documentation (AS&P and DA). In terms of how the matter is dealt with going forward during the DCP review everything is on the table including considering the way in which collector roads are dealt with in Hamilton City.

2. Your acknowledgment that Council does not treat its valuation as sacrosanct is helpful. In your own words, it is clearly conservative. 3MS acknowledges the point Garry made that he must however deal with it, but again stresses that Council has put itself in this position by accepting the valuation in final form, rather than draft. You are correct that Council has not made an offer based on the valuation, in part due to me advising you that an offer at this level will be rejected so need not be presented.

As noted at the meeting by me the fact that the valuation was not kept in draft is neither here nor there. Once the valuation was presented to Council then it cannot be un-presented. It is clear from the Council team discussions with the valuer post the receipt of the draft and from his presentation to the Council workshop that the valuer is adamant his valuation is appropriate.

3. 3MS had preferred to see if the parties could move straight to a negotiated purchase price, but notes the very clear indication from Council that it will not negotiate unless 3MS produces a valuation of its own. It is considering doing so. However, before it does, I wish to be clear on the basis for the valuation. The basis will be to first understand the development opportunity for the entire 3MS land without the land acquisition and introduction of public infrastructure. In other words, what could 3MS achieve without the land acquisition and associated works occurring. This exercise was not fully carried out by QV, and is an essential step in determining the value for the land to be acquired, because it informs the key threshold test Council promotes, as you state; *It is Council position that the basis of any valuation needs to assume that no*

developer in the affected growth cells is any better or worse off as a result of the purchase price for the land being acquired the Council. Please confirm Council's acceptance of this step in the valuation exercise and endorse this aspect of the valuation exercise as a way of moving forward.

It is not appropriate for the Council to endorse your client's valuation exercise in the same way that it was not appropriate for your client to endorse the Council's valuation exercise. It is up to your client to seek a valuation on whatever terms they consider appropriate. Council will not interfere in this process.

4. If the valuation is procured, we agree that we should move to the negotiation phase without too much *toeing and froing between valuers*. It may be useful to have everyone in the same room, valuers included, for an initial period, and then leave it to the parties to negotiate.

Noted and agreed

5. Your negotiation team is noted. 3MS will confirm its representatives outside of Matt and myself.

Noted

6. Garry's warning of the timeframes was particularly frustrating to hear for the 3MS team. 3MS has been pushing Council to share its valuation instructions since December 2019 (and I have been raising it with you directly since June) with a view to speeding up the process and avoid a valuation contest. Due to Council's actions we now have a valuation contest late in the year, and threatening the construction season. The risks arising from the delay arise from Council's actions, not 3MS.

We will have to agree to disagree on this point. The Council has followed the proper process under the PWA as it is required to do so. I note that the valuation instructions were provided to 3MS on 3 occasions one of these was to you from me. There were no other instructions to the valuer other than providing a response to a question about the deferred zoning status which I reported to you about at the time.

7. Regarding your account of the timing of events, at no stage on 10 August did I state that 3MS was getting its own valuation. 3MS position was that the MOE valuation should be relied upon. The only offer made was the 3MS offer of 13 August, sent 3 days after the QV valuation was provided. 3MS has not, at any stage 'dragged the chain'.

I don't think we are in disagreement on this point it is clear 3MS wanted the MOE valuation relied on. What I am saying is that the debate about getting another valuation has delayed matters.

8. Regarding the purchase price, 3MS agrees that it should reflect market value, and stand up to any robust examination. It seeks that. It also seeks that the principles of fairness and equity as between all developers in the area who stand to benefit from the infrastructure.

Noted

9. Regarding the St Peters' land, it is not accepted that it is any different to the 3MS land. The land is required as of today for both stormwater and future roading. To enable any development within the respective growth cells to occur as per the structure plan requires Council to acquire the land. As we stated in the meeting, without the full participation of St Peters' and 3MS, including use of their adjacent land the works required for the stormwater corridor, roading corridor and outfall structure cannot occur.

Noted but we need to separate out the 3MS land from the St Peters land for the purposes of an ongoing discussion as it required for the stormwater access that services C2 and other growth areas, and to enable the C2/C3 intersection to be constructed. It is however a separate owner with different circumstances and would be valued separately.

Finally, in terms of the recent LGOIMA request, as I stated in the request, 3MS seeks to prioritise that part of the request which relates directly to matters concerning 3MS and the current land valuation process undertaken by Council. On that basis can you confirm timing of the provision of that information.

As you will appreciate the LGOIMA request is quite a distraction for the Council team when they would all rather get on with resolving matters. If you are seeking particular information can you please be more specific about what it is you want as this will make handling the request much faster. Having said this it is Council hope that 3MS will not see the need to pursue this request as Council want to look forward to a resolution not backward to a dispute.

Regards,

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Subject: RE: 3MS / ST PETERS RECORD OF DISCUSSION

Thanks for the note Helen.

I will review it and respond accordingly.

Regards,

Lachlan

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Subject: 3MS / ST PETERS RECORD OF DISCUSSION

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- In order for Council to proceed to the contract letting stage for the infrastructure works time is critical and as Garry noted at the meeting we need to finalise the whole negotiation and agreement process within the next month.

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- 14 August I responded to your email and noted that 3MS will need to provide another valuation at Council cost
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- 18 August I provided you with the response of the valuer Chris Coates as to why the MOE valuation is not appropriate to apply to the 3MS land
- The matter was then not discussed further until the meeting yesterday

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I need to reiterate that Council do not see this as a commercial negotiation. Obviously commercial realities are important and Council fully appreciate this but this is a process under the auspices of the PWA. In this respect while your client is of the view that the price paid for the land whatever that may be can be passed on to all developers in the growth cell (including 3MS) that price still needs to be robustly determined in accordance with a proper process.

Best regards

Helen

Helen Atkins

Director

Atkins Holm Majurey Limited

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helen.atkins@ahmlaw.nz

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Monday, 21 September 2020 5:40 pm
To: Helen Atkins
Cc: Matt Smith
Subject: 3MS
Attachments: 17001-SK-094-REVB.pdf; 17001-SK-094-REVB.pdf; 17001-SK-088-REVA.pdf; 2020.00145 Preliminary Assessment.pdf

Hi Helen,

As indicated 3MS has been in the process of examining a range of development options in respect of its land.

The commercial reality for 3MS is that if the Council land acquisition is to proceed, it will result in a very significant loss of developable land. Of the 40 ha of 3Ms, 13 ha is lost to public infrastructure, some 32.5% of its developable land.

The extent of the land taken does not simply serve the needs of 3MS, but the entire C1, C2,C3 and C7 growth cells. As examples;

- The majority of the collector road for C2 sits within the land required from 3MS's. All other developers/property owners have the rights to connect their local purpose roads into the collector road without any loss of land. Many of the developers/property owners will be able to give sections direct access to the collector road therefore providing them some significant cost savings. 3MS has limited connectivity to the collector road due to the swale network, and therefore occurs additional costs associated with more local roads to service the severed growth cell. This also reduced the section yield so the effect is compounded.
- As 3MS land sits at the lower reach of the swale network in C2 its land affected than any other land owners. 3MS's land at 40h represents 8.5% of the land that will benefit from the stormwater system being 472ha in total. Given the depth of the swale and the batter slopes/liquification mitigation many hectares of land is lost for the benefit of all developers within the catchment.
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I look forward to hearing back from you.

Regards,

Lachlan

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Wednesday, 23 September 2020 6:21 pm
To: Matt Smith
Cc: mike@mikesmith.co.nz
Subject: FW: 3MS

cfyi

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Subject: RE: 3MS

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Sent: Monday, 21 September 2020 5:40 PM

To: Helen Atkins <helen.atkins@ahmlaw.nz>

Cc: Matt Smith <matt@3msofcambridge.co.nz>

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Thursday, 24 September 2020 10:52 am
To: Matt Smith
Cc: mike@mikesmith.co.nz
Subject: FW: 3MS

See below

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From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Thursday, 24 September 2020 10:39 AM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: RE: 3MS

Lachlan

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From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Thursday, 24 September 2020 8:16 pm
To: Matt Smith
Subject: FW: 3MS
Attachments: 17001-SK-095-REVA.pdf

cfyi

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From: Lachlan Muldowney
Sent: Thursday, 24 September 2020 8:15 PM
To: Helen Atkins <helen.atkins@ahmlaw.nz>
Subject: RE: 3MS

All noted, thanks Helen. Also, attached is the cost estimate attachment that I had referred to in my original email but left off. Apologies for that.

Regards,

Lachlan

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Council notes that 3MS is now looking at an option to pursue which is a development proposal that is substantially different from the structure plan that was approved by the Council as part of Plan Change 7 to the Waipa District Plan which was undertaken in consultation with the affected landowners in the C1, C2 and C3 Growth cells. Whilst this alternative development proposal does not involve any land acquisition by the Council it produces sub-optimal outcomes for the Cambridge community and lacks integration with the surrounding growth cells. The Extensor valuer has valued the land based on the outcomes hypothetically achievable under this development plan. I note that the valuer is still to consider what the costs of providing for private infrastructure (in particular stormwater) to service the development would be.

With regard to the comment you make about Council debt this is not the driving issue here for Council. It is important to note that Council's only objective here is to ensure that 3MS is fairly compensated in accordance with the Public Works Act.

With regards to your penultimate comment that 3MS preliminary position should allow Council to re-engage in negotiations the Council team is somewhat confused. If 3MS are now looking to pursue its preferred development proposal which doesn't involve any acquisition of land by Council what are Council being asked to engage and negotiate about? In this regard I note that the valuer has not valued the 3MS land under the structure plan and the reasons for this are understood. However, in terms of being able to have meaningful negotiations it would be helpful for comparative purposes if the 3MS valuation was to at least comment on the QV valuation so there is a basis for comparison.

As you know time is of the essence and with the construction timeframe needing to be given the go ahead within the next week or so Council are wanting to be totally clear about what 3MS is asking of it at this point in time?

Regards

Helen

Helen Atkins

Director

Atkins Holm Majurey Limited

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helen.atkins@ahmlaw.nz

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From: Lachlan Muldowney [<mailto:lachlan@muldowney.co.nz>]
Sent: Monday, 21 September 2020 5:40 PM
To: Helen Atkins <helen.atkins@ahmlaw.nz>
Cc: Matt Smith <matt@3msofcambridge.co.nz>
Subject: 3MS

Hi Helen,

As indicated 3MS has been in the process of examining a range of development options in respect of its land.

The commercial reality for 3MS is that if the Council land acquisition is to proceed, it will result in a very significant loss of developable land. Of the 40 ha of 3Ms, 13 ha is lost to public infrastructure, some 32.5% of its developable land.

The extent of the land taken does not simply serve the needs of 3MS, but the entire C1, C2,C3 and C7 growth cells. As examples;

- The majority of the collector road for C2 sits within the land required from 3MS's. All other developers/property owners have the rights to connect their local purpose roads into the collector road without any loss of land. Many of the developers/property owners will be able to give sections direct access to the collector road therefore providing them some significant cost savings. 3MS has limited connectivity to the collector road due to the swale network, and therefore occurs additional costs associated with more local roads to service the severed growth cell. This also reduced the section yield so the effect is compounded.
- As 3MS land sits at the lower reach of the swale network in C2 its land affected than any other land owners. 3MS's land at 40h represents 8.5% of the land that will benefit from the stormwater system being 472ha in total. Given the depth of the swale and the batter slopes/liquification mitigation many hectares of land is lost for the benefit of all developers within the catchment.
- 3MS's land provides the majority of the land required for Parks and Reserves in respect of the growth cells. As a result no other land owner within the surrounding growth cells is required to give up land for this community benefit. They therefore retain the balance of their property at no loss of section yield and profit opportunity.

Against this background 3MS has been carefully considering its development capacity without the land being taken, and where it mitigates all effects of its development, and makes its proportionate contribution to other public amenity. The result is the **attached** scheme plan. This scheme plan delivers 450 lots in a manner which manages transport network connections, 3 waters connections, and delivers its share of open spaces, all in a manner which integrates with the wider growth cell.

This development plan is now 3MS preferred option to pursue. Given Council's demonstrated concerns regarding debt levels 3MS questions whether this option may even suit Council. It is prudent to note that if the proposed land acquisition proceeds, it is step one in an asset development programme that will see Council spending circa \$80M over the next 3 or 4 construction seasons. To illustrate, **attached** are the capital expenditure summaries for the projects required to allow C3\C2 land to be developed as per the IWA between 3MS and Council, which assumed the land cost per square metre estimated at \$160.

Returning to the land acquisition, the loss of 32% of the developable land, to serve the needs of other developers cannot occur unless 3MS is adequately compensated. Council's position is that no

developer should be worse, or better off, after the taking. Clearly, if Council takes 32% of 3MS' best and most easily developed land under its scheme plan, at a rate which does not reflect its true value, it will indeed be 'worse off'. The financial costs to 3MS are real. This is illustrated in the attached preliminary valuation assessment dated 21 September 2020 which has been prepared for 3MS by Gary Cheyne, of Extensor Advisory Ltd. The final valuation from Extensor is to come, but in the interests of moving the discussion forward, the preliminary assessment is attached so that Council can consider its position.

As you can see, the *go it alone* option yields a net position of \$64,450,000, which equates to a little over \$160 per m². The final valuation will be forwarded to you once completed.

In the meantime, I am instructed to address the original acquisition offer made to Council in my email of 13 August 2020, which was based on a value of \$160 m². That offer, which came with conditions, is withdrawn. For 3MS now, a purchase at that rate would require that the acquisition price was paid in full on vesting/settlement, and the PDA to reflect a zero value for betterment, and a remission for DCs to reflect the greater contribution that 3MS is making to public infrastructure compared to its neighbouring developers.

Council has made it clear that it will only negotiate once 3MS presents a valuation to justify its proposed acquisition price. However, time is, as you say, critical. 3MS's preliminary assessment now allows Council to re-engage in negotiations with 3MS in good faith. 3MS understands that any negotiations will be subject to Council receiving the final valuation.

I look forward to hearing back from you.

Regards,

Lachlan

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Monday, 28 September 2020 5:51 pm
To: Matt Smith; Mike Smith; Mark Chrisp
Subject: FW: 3MS
Attachments: 2020.00145 PWA Summary Advice.pdf

cfyi

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From: Lachlan Muldowney
Sent: Monday, 28 September 2020 5:51 PM
To: 'Helen Atkins' <helen.atkins@ahmlaw.nz>
Subject: 3MS

Dear Helen,

Just tried you by phone without success.

Attached is further correspondence from Extensor (Garry Cheyne) dated 28 September which confirms the square metre rate of \$160 as the starting point.

Is there a willingness from Council to re-engage now with negotiations or does it insist on having the final document in its hands before that occurs. Given the timing issues 3MS wants to talk now rather than later.

Please advise.

Regards,

Lachlan

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Tuesday, 29 September 2020 3:59 pm
To: Matt Smith; Mike Smith
Subject: FW: 3MS

cfyi

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From: Lachlan Muldowney
Sent: Tuesday, 29 September 2020 3:59 PM
To: Helen Atkins <helen.atkins@ahmlaw.nz>
Subject: RE: 3MS

Hi Helen,

I am in meetings all day but will surface after 5. I would like to discuss the next steps with you. Are you available?

3MS was told by Council that it needed a valuation to underpin its position and enable Council to continue to engage in negotiations. Reluctantly 3MS has accepted this step given Council would not negotiate without it being completed.

I am told that Chris Coakley has been instructed by Council to contact Garry Cheyne directly to discuss valuation issues. This is not acceptable to 3MS and is not how it intends to continue negotiations. Please call him off. 3MS will not re-engage in negotiations on the basis that the valuers are assigned the lead in arriving at an 'agreed' value. You have the 3MS valuation (albeit preliminary). You have acknowledged that the Coakley valuation is 'conservative'. That sets the framework for discussions to now continue, and should put Council's negotiators (Gary Dyet, Jim Milchreest, Liz Stolwyck) in a position where they can re-engage.

3MS has no interest in Chris Coakley's views or his response to Garry Cheyne's valuation. If he has questions, please pass them through me and I will have them addressed where appropriate. He is of course free to advise Council whatever he likes, but that is a matter between him and Council. 3MS is not interested in engaging with him, or having its expert engage with him.

Please confirm when you can speak this evening.

Regards,

Lachlan

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From: Helen Atkins <helen.atkins@ahmlaw.nz>

Sent: Monday, 28 September 2020 5:55 PM

To: Lachlan Muldowney <lachlan@muldowney.co.nz>

Subject: RE: 3MS

Sorry just been in an AVL hearing all day. I'll flick this on and get instructions.

Helen

Helen Atkins

Director

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Sent: Monday, 28 September 2020 5:51 PM

To: Helen Atkins <helen.atkins@ahmlaw.nz>

Subject: 3MS

Dear Helen,

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Is there a willingness from Council to re-engage now with negotiations or does it insist on having the final document in its hands before that occurs. Given the timing issues 3MS wants to talk now rather than later.

Please advise.

Regards,

Lachlan

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Thursday, 1 October 2020 10:28 am
To: Matt Smith; Mike Smith
Subject: FW: 3MS
Attachments: Letter - 3MS Residential Development (Alternative Stormwater Solution)-FINAL.pdf; 20200929 - Memorandum - 3Ms Development.pdf

cfyi

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From: Lachlan Muldowney
Sent: Thursday, 1 October 2020 10:27 AM
To: 'Helen Atkins' <helen.atkins@ahmlaw.nz>
Subject: 3MS

Dear Helen,

To keen things moving, in anticipation of Council wanting to understand some of the planning and infrastructure matters which have been relied on in preparing the valuation I have **attached** the Mitchell Daysh report and Liam's stormwater design.

I am told that due to workload the final valuation is still some days away. However with the information currently to had the position is clear.

Please now advise if Council wishes to return to the negotiations.

Regards,

Lachlan

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Te Rapa
Hamilton 3200
P 021 270 1277
E liam@meconsultants.co.nz

30th September 2020

3MS of Cambridge Ltd
1871 Cambridge Road,
Cambridge 3434
NEW ZEALAND

Attention: Matt Smith

3MS Residential Development – Alternative Stormwater Solution

Dear Matt,

The following is a summary of the alternative stormwater solution developed to service the 3MS of Cambridge (3MS) residential development located at 1871 Cambridge Road, Cambridge. The information below confirms the feasibility of this solution and provides initial details for planning purposes.

Background

3MS have created an alternative subdivision layout plan that enables the proposed 40Ha residential development site to proceed without the need for any connections to the proposed Waipa District Council (WDC) supplied stormwater network that will be developed to service the wider C1 and C2/C3 Structure Plan area. Refer to drawing 17001-C-094-REVB attached which shows the alternative subdivision layout plan.

Alternative Stormwater Solution

To service the 3MS alternative subdivision layout plan a 'stand-alone' bulk stormwater solution was identified as the best solution to manage all runoff generated within the proposed 3MS development without reliance on additional downstream infrastructure. The solution is comprised of a centrally located soakage basin which would discharge all stormwater runoff from the development to groundwater while also providing for the diversion of existing upstream catchment flows through the site (refer to Figure 1 below).

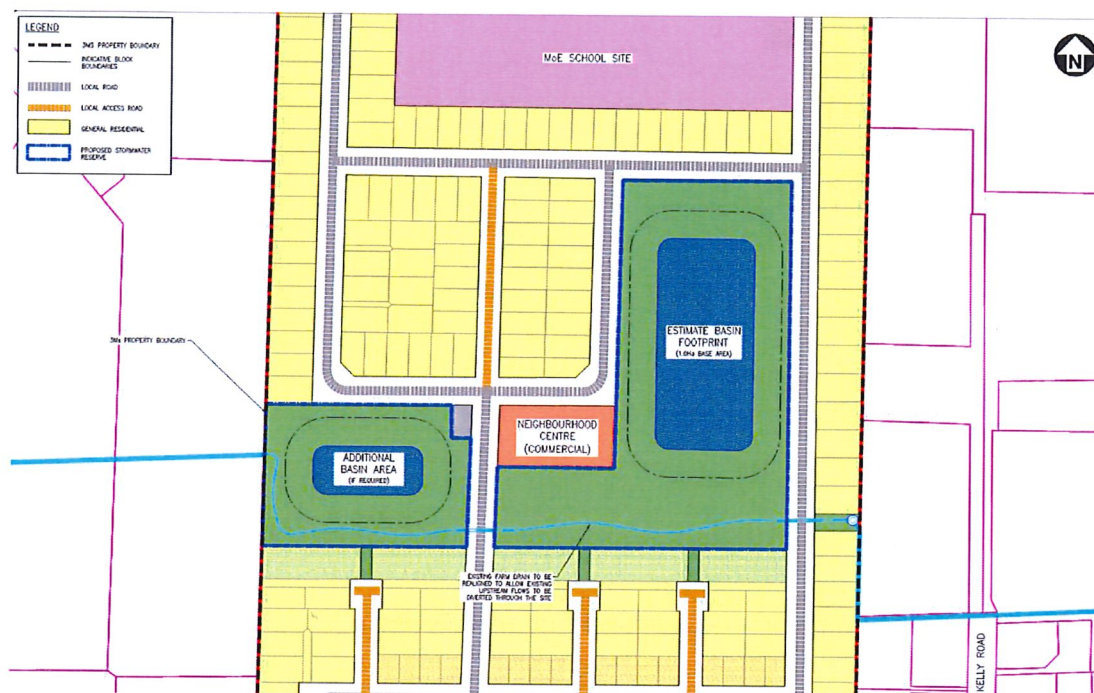


Figure 1 - Alternative Stormwater Solution (General Arrangement)

A high-level assessment was undertaken to confirm the feasibility of the 3MS central soakage basin concept. Table 1 below summarises of the initial design parameters used and initial basin sizing calculated based on a 1% AEP storm event.

Table 1 - 3MS central soakage basin concept (initial sizing)

Design Parameter	Value
Post development catchment area	35.6Ha
Post development catchment coefficient	0.70
Assumed infiltration rate ¹	220mm/hr
<i>Preliminary soakage basin sizing</i>	
Design event	1% AEP storm adjusted to RCP 6.0 (2081-2100)
Required base area	10,500m ²
Live storage depth	1.3m
Required live storage volume	17,000m ³

Initial sizing for the 3MS central soakage basin concept above shows that the 5.2Ha reserve area allocated within the alternative subdivision layout plan is more than adequate to accommodate the proposed solution while also allowing for suitable amenity to be delivered within the reserve area. It also highlights that optimisation of soakage basin design to refine the required footprint would likely further reducing the size of the stormwater reserve area - an estimated reduction of up to 20% is expected to be achievable through further design.

¹ Taken from WDC C1 and C2/C3 Stormwater Management Plan (Beca Ltd, September 2019). Additional site infiltration testing completed within the proposed 3MS central soakage basin footprint on 28th August 2020 showed similar results to previous Beca infiltration testing.

Please contact me if you have any queries regarding any of the above information.

Yours sincerely,



Liam McCaffrey

Director

McCaffrey Engineering Consultants Ltd
P 021 270 1277
E liam@meconsultants.co.nz

Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Thursday, 1 October 2020 10:54 am
To: Matt Smith
Subject: FW: 3MS

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From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Thursday, 1 October 2020 10:30 AM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: RE: 3MS

Thank you I still don't have instructions but I will pass this onto the Council.

Helen

Helen Atkins
Director

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From: Lachlan Muldowney [<mailto:lachlan@muldowney.co.nz>]
Sent: Thursday, 1 October 2020 10:28 AM

To: Helen Atkins <helen.atkins@ahmlaw.nz>

Subject: 3MS

Dear Helen,

To keen things moving, in anticipation of Council wanting to understand some of the planning and infrastructure matters which have been relied on in preparing the valuation I have **attached** the Mitchell Daysh report and Liam's stormwater design.

I am told that due to workload the final valuation is still some days away. However with the information currently to had the position is clear.

Please now advise if Council wishes to return to the negotiations.

Regards,

Lachlan

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Saturday, 3 October 2020 11:25 am
To: Matt Smith
Subject: FW: 3MS
Attachments: Letter - 3MS Residential Development (Indicative Infrastructure Costs)(1).pdf

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From: Lachlan Muldowney
Sent: Saturday, 3 October 2020 11:24 AM
To: 'Helen Atkins' <helen.atkins@ahmlaw.nz>
Subject: RE: 3MS

Good morning Helen,

As requested, here is the McCaffrey report referred to.

Also relevantly, the following inputs in respect of sale price in relation to the alternative layout:

Gen residential	\$400K per lot
Compact residential	\$350K per lot
High Density	\$250K per lot

Also assumed are DCs at \$28K which reflects stormwater infrastructure and reserves provided by the developer and therefore under s200 of the LGA not recoverable from the developer as a DC charge.

Happy to discuss early next week.

Regards,

Lachlan

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From: Helen Atkins <helen.atkins@ahmlaw.nz>

Sent: Friday, 2 October 2020 5:59 PM

To: Lachlan Muldowney <lachlan@muldowney.co.nz>

Subject: RE: 3MS

Lachlan

Confirming our call:

- For the purposes of valuation Council can confirm that 3MSs alternative development proposal could, hypothetically, get consent. In this regard the Council has instructed Chris Coatley to value the land on this basis;
- I have asked Chris to send me his questions for Gary and I will send these to you when I get them.
- I noted that we need valuation advice but the valuers are not negotiating the final deal that is a matter for our respective clients.
- We can discuss next steps once I have sent you the questions from Chris.

Regards

Helen

Helen Atkins

Director

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helen.atkins@ahmlaw.nz

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From: Helen Atkins

Sent: Friday, 2 October 2020 3:41 PM

To: 'Lachlan Muldowney' <lachlan@muldowney.co.nz>

Subject: 3MS

Hi Lachlan

One thing that is missing from the material you sent through is the costings by the Engineers referred to in the valuation material as follows: [The indicative infrastructure costs provided by McCraffrey Engineering Consultants Limited in its letter and related attachments dated 25 September 2020](#) noted in the letter from Extensor dated 28 September 2020.

Looking back at the earlier plan you sent I realised this was in relation to St Peters.

Talk a bit later on today. It will be off the record as I haven't received final instructions but I can indicate where things are likely to be heading.

Helen
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Director

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helen.atkins@ahmlaw.nz
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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Monday, 5 October 2020 6:32 pm
To: Matt Smith
Subject: FW: 3MS

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From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Monday, 5 October 2020 1:37 PM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: RE: 3MS

Hi there is no forensic review intended to be undertaken it was just that Chris (and the Council noted) noted the rates appear a bit lower than comparable developments they are involved in valuing so some context and background. So to keep things moving rather than the Council team trying to extract the information from the IWA documentation it would be really helpful (and a lot quicker) if Liam could just send through the information he has relied on.

Also not sure the reference to DC's not being payable for reserves that you made on Saturday (see email trail below) is correct? Can you check this?

Thanks

Helen
Helen Atkins
Director

Atkins Holm Majurey Limited

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helen.atkins@ahmlaw.nz

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From: Lachlan Muldowney [<mailto:lachlan@muldowney.co.nz>]
Sent: Monday, 5 October 2020 12:41 PM
To: Helen Atkins <helen.atkins@ahmlaw.nz>
Subject: RE: 3MS

PS; In the interests of keeping it constructive, can I suggest that if Chris comes back and says he wants to see all the rates to verify reasonableness that you counsel him against that and have him simply make a note in his valuation that these rates are assumed to be reasonable market rates. Getting caught up in an in depth forensic examination by Chris will not go well.

Cheers Helen.

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From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Monday, 5 October 2020 12:23 PM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: RE: 3MS

Ok thanks

Helen Atkins
Director

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From: Lachlan Muldowney [<mailto:lachlan@muldowney.co.nz>]
Sent: Monday, 5 October 2020 12:18 PM
To: Helen Atkins <helen.atkins@ahmlaw.nz>
Subject: RE: 3MS

Good morning Helen,

Matt confirms that the rates are the tender rates submitted to 3MS as reflected in the updated IWA.

Regards,

Lachlan

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www.lachlanmuldowney.co.nz

From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Monday, 5 October 2020 11:39 AM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: RE: 3MS

Morning Lachlan

I sent this to the valuer and he has asked for some more finely grained detail as follows:

The indicative infrastructure costs provide a very brief summary of the cost per lot stating, 3MS Infrastructure development cost = \$42,000 per lot.

Without the background information that was relied upon to calculate this figure, we cannot check if it is reasonable and cannot be sure what is included and excluded.

It seems the required information will be included in the costs submitted to 3MS by CAMEX and GT Civil as part of their tender process. This was used by McCaffrey Engineering Consultants Ltd as the basis for the calculation of the 'average rate per lot' required to provide infrastructure necessary to service a total of 106 lots within the 3MS development site.

Thank you. Also any news on the timing of the final valuation? Chris is happy to proceed without it as he assumes it won't change much from the draft.

Regards

Helen

Helen Atkins
Director

Atkins Holm Majurey Limited

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helen.atkins@ahmlaw.nz

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From: Lachlan Muldowney [<mailto:lachlan@muldowney.co.nz>]

Sent: Saturday, 3 October 2020 11:24 AM

To: Helen Atkins <helen.atkins@ahmlaw.nz>

Subject: RE: 3MS

Good morning Helen,

As requested, here is the McCaffrey report referred to.

Also relevantly, the following inputs in respect of sale price in relation to the alternative layout:

Gen residential	\$400K per lot
Compact residential	\$350K per lot
High Density	\$250K per lot

Also assumed are DCs at \$28K which reflects stormwater infrastructure and reserves provided by the developer and therefore under s200 of the LGA not recoverable from the developer as a DC charge.

Happy to discuss early next week.

Regards,

Lachlan

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From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Friday, 2 October 2020 5:59 PM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: RE: 3MS

Lachlan

Confirming our call:

- For the purposes of valuation Council can confirm that 3MSs alternative development proposal could, hypothetically, get consent. In this regard the Council has instructed Chris Coatley to value the land on this basis;
- I have asked Chris to send me his questions for Gary and I will send these to you when I get them.
- I noted that we need valuation advice but the valuers are not negotiating the final deal that is a matter for our respective clients.
- We can discuss next steps once I have sent you the questions from Chris.

Regards

Helen

Helen Atkins
Director

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From: Helen Atkins
Sent: Friday, 2 October 2020 3:41 PM
To: 'Lachlan Muldowney' <lachlan@muldowney.co.nz>
Subject: 3MS

Hi Lachlan

One thing that is missing from the material you sent through is the costings by the Engineers referred to in the valuation material as follows: [The indicative infrastructure costs provided by McCraffrey Engineering Consultants Limited in its letter and related attachments dated 25 September 2020](#) noted in the letter from Extensor dated 28 September 2020.

Looking back at the earlier plan you sent I realised this was in relation to St Peters.

Talk a bit later on today. It will be off the record as I haven't received final instructions but I can indicate where things are likely to be heading.

Helen
Helen Atkins
Director

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Tuesday, 6 October 2020 3:38 pm
To: Matt Smith
Subject: FW: 3MS
Attachments: Letter - 3MS Residential Development (Additional Infrastructure Cost Information).pdf

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From: Lachlan Muldowney
Sent: Tuesday, 6 October 2020 3:37 PM
To: 'Helen Atkins' <helen.atkins@ahmlaw.nz>
Subject: 3MS

Hi Helen

Please see the **attached** letter prepared by Liam McCaffrey dated 6 October.

This should provide all of the material required by Council.

Liam is a trusted adviser to Council and I would expect Council to now accept these calculations.

Regards,

Lachlan

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Sunday, 11 October 2020 5:30 pm
To: Helen Atkins
Cc: Matt Smith
Subject: 3MS
Attachments: 2020.00145 Valuation Report FINAL.pdf

Dear Helen,

Please find **attached** the final valuation prepared by Extensor Advisory Ltd (Gary Cheyne).

This valuation represents the vendor's expectations regarding any sale and purchase.

Please now advise if Council wishes to proceed with the acquisition.

Regards,

Lachlan

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Monday, 12 October 2020 3:49 pm
To: Matt Smith
Subject: FW: 3MS

cfyi

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-----Original Message-----

From: Lachlan Muldowney
Sent: Monday, 12 October 2020 3:48 PM
To: Helen Atkins <helen.atkins@ahmlaw.nz>
Subject: RE: 3MS

Hi Helen,

I understand that Council and its valuer will be considering the Extensor valuation and reflecting on its current position.

Can you please confirm next steps. 3MS wants to understand if Council continues to have an interest in purchasing its land. Matt and I can meet with you and council representatives to finalise any deal on Wednesday or Thursday this week if Garry, Liz and Jim are available.

Regards,

Lachlan

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-----Original Message-----

From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Sunday, 11 October 2020 5:35 PM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: Re: 3MS

Thanks Lachlan

Helen

> On 11/10/2020, at 5:30 PM, Lachlan Muldowney <lachlan@muldowney.co.nz> wrote:
>
> Dear Helen,
>
> Please find attached the final valuation prepared by Extensor Advisory Ltd (Gary Cheyne).
>
> This valuation represents the vendor's expectations regarding any sale and purchase.
>
> Please now advise if Council wishes to proceed with the acquisition.
>
> Regards,
>
> Lachlan
>
> _____
>
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> Waikato Mail Centre, Hamilton 3240
> https://urldefense.proofpoint.com/v2/url?u=http-3A__www.lachlanmuldowney.co.nz&d=DwIGaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=u9Ej_hFHkx8IGiXVuRlauJl-mKujin0wITFLE4Cfyzg&m=nU01mK1dsUFITquOqBZFNUSEKalc_o3oXxvqeciV_xXE&s=YNX1s47gbczB1zuAaj_EWUzMh9iDxkp1rzlY2L17r4M&e=
>
>

Dear Helen,

With respect to the proposed steps identified by you;

1. Mr Coakley's next steps are noted. That is a matter for Council.
2. There is no need for the valuers to meet. The process under the PWA is a legal process that both you and I are very familiar with. I will be guiding 3MS through any PWA process, not Mr Cheyne.
3. 3MS will not be commissioning a joint report. Again, if Council seeks more advice or input from Mr Coakley that is for it to determine, but 3MS is not part of that.
4. 3MS will meet Council's negotiation team wherever, whenever. Although your timeline suggests that could be weeks away.

I reiterate that the parties are not in a PWA process. They are in an arms length commercial negotiation. Council needs to figure out what it is prepared to pay for this land and make its offer. It has 3MS position, which is that it will sell the land according to the Extensor valuation. For the negotiation to move forward, Council needs to make an offer. How it gets to that point is a matter for it to determine, but having provided its valuation, nothing more is required from 3MS to enable Council to formulate its position.

As you would expect, 3MS is now commencing preparation of its subdivision and land use consents based on the go it alone option. It is likely that it will be seeking a pre-application meeting in the next week or so with Council planners to discuss certain aspects. I assume that should be channelled through Wayne Allan. Please can you confirm.

In the meantime, the ball is in Council's court regarding any offer it wishes to make for the land.

Regards

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From: Helen Atkins <helen.atkins@ahmlaw.nz>

Sent: Wednesday, 14 October 2020 8:22 AM

To: Lachlan Muldowney <lachlan@muldowney.co.nz>

Subject: 3MS

Dear Lachlan

Further to receipt of the final valuation report from Extensor I can confirm Council has all the information it needs. The next steps are:

- Chris Coakley will prepare a valuation report on a similar basis as that prepared by Extensor – this will be done no later than the end of next week.
- The valuers will then need to meet and confer as per the process under the PWA – this can occur the week after next.

- A joint report from the valuers will be required to determine the points of similarity and the points of difference.
- Assuming the parties still wish to meet the negotiation teams can then be brought together.

Regards

Helen

ends

Helen Atkins
Director

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Helen

Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Friday, 16 October 2020 8:44 am
To: Helen Atkins; Wayne.Allan@waipadc.govt.nz
Cc: Matt Smith
Subject: RE: 3MS

Dear Helen and Wayne,

3MS seeks a pre-application meeting next week to discuss its subdivision consent application. I will be in attendance along with Matt Smith and Mark Chrisp.

Can you please confirm a time on Wednesday afternoon that would work.

Regards,

Lachlan

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From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Wednesday, 14 October 2020 1:21 PM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: RE: 3MS

Afternoon Lachlan

I have instructions on your email below.

The Council's position is that 3MS must follow the normal process in regard to reaching an agreed valuation for the property. This involves the valuers discussing their respective positions and providing advice. The Council will not be making any offer until this process has been followed. Chris Coatley has readjusted his commitments and should have his report to Council this week. If there is an agreement between the valuers then time could be made to consider the 3MS package of documents at the Council meeting on 27 October or an extraordinary Council meeting.

If 3MS reject this process then Council will consider its options.

Regards

Helen

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Director

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From: Lachlan Muldowney [<mailto:lachlan@muldowney.co.nz>]

Sent: Wednesday, 14 October 2020 10:22 AM

To: Helen Atkins <helen.atkins@ahmlaw.nz>

Subject: RE: 3MS

Dear Helen,

The timeframes you have identified are unacceptable to 3MS. I am advised that there are, quite literally, jobs on the line which are contingent on this deal being concluded immediately, one way or the other. The reality is that section availability in Cambridge is at an all time historic low, and the local construction sector is holding on in hope of the C2 cell opening up immediately.

Council has stressed the need for urgency, yet its suggested process sees negotiations extending for weeks. 3MS cannot be a party to that kind of delay.

Council required that 3MS get a valuation so that negotiations could progress. It has the valuation. Council now needs to make its offer (bearing in mind it has not made an offer to date).

I reiterate that the parties are not in a PWA process. They are in an arms length commercial negotiation. Council needs to figure out what it is prepared to pay for this land and make its offer. How it gets to that point is a matter for it to determine, but having provided its valuation, nothing more is required from 3MS to enable Council to formulate its position. It has 3MS position, which is that it will sell the land according to the Extensor valuation.

3MS requires that Council present its offer within the next 24 hours.

If no offer is forthcoming 3MS will immediately commencing preparation of its subdivision and land use consents based on the go it alone option. It is likely that it will be seeking a pre-application meeting in the next week or so with Council planners to discuss certain aspects. I assume that should be channelled through Wayne Allan. Please can you confirm.

3MS also has a responsibility to advise the Ministry of Education that it has been unable to conclude arrangements with Council in a manner that allows it to meet its contractual deadlines with the Ministry. Unless an offer is made immediately, that advice will be provided this week.

Regards,

Lachlan

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From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Wednesday, 14 October 2020 8:22 AM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: 3MS

Dear Lachlan

Further to receipt of the final valuation report from Extensor I can confirm Council has all the information it needs. The next steps are:

- Chris Coakley will prepare a valuation report on a similar basis as that prepared by Extensor – this will be done no later than the end of next week.
- The valuers will then need to meet and confer as per the process under the PWA – this can occur the week after next.
- A joint report from the valuers will be required to determine the points of similarity and the points of difference.
- Assuming the parties still wish to meet the negotiation teams can then be brought together.

Regards

Helen

ends

Helen Atkins
Director

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helen.atkins@ahmlaw.nz

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Thursday, 22 October 2020 4:51 pm
To: Matt Smith
Subject: FW: here tis
Attachments: 1865 Cambridge Road Compensation Valuation Report 14 October 2020 Rooding & Reserve Acquisition.pdf

Matt, Coakkley's updated valuation attached. Helen sent me this afternoon.

She has arranged to call me at 10.15 tomorrow morning.

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From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Thursday, 22 October 2020 3:21 PM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: here tis

Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Thursday, 29 October 2020 8:39 pm
To: Matt Smith
Subject: FW: 3MS - Waipa DC

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From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Thursday, 29 October 2020 7:48 PM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: Re: 3MS - Waipa DC

Thanks I will share and come back to you shortly

Helen

On 29/10/2020, at 6:16 PM, Lachlan Muldowney <lachlan@muldowney.co.nz> wrote:

Dear Helen,

Following our discussion last week set out below is an update on the current position;

1. As discussed, the pre-application meeting held on 23 October was disappointing. The views of Wayne, Tony and Richard were very entrenched. They considered the proposed application 'not in general accordance with the Structure Plan' and raised fundamental issues of 'plan integrity'. They seemed adamant the application would require limited notification, and possibly public notification. Indeed Wayne suggested the application was likely to go 'all the way to the Environment Court'. The Council position appeared predisposed towards declining the application, which was presumably borne out of the frustration over the failed land acquisition negotiations. I trust you'll ensure 3MS can expect a level playing field in any consenting processing. I have been advised of at least two recent occasions (one in Te Awamutu and one in Cambridge) where infrastructure development has proceeded on a slightly different basis to that depicted in a Structure Plan.
2. Returning to the land acquisition point, I note your advice that Mr Coakley has reviewed the Extensor valuation and appears open to revising his valuation on the basis of the assumptions

identified in the Extensor valuation. While that is positive, it seems the parties are still too far apart for the negotiations to be brought back to life. I have reflected on whether there are any other ways of closing the gap but cannot identify any 'added value' opportunities for 3MS that would warrant accepting a figure less than their asking price. If you have any ideas I would be keen to hear them. I am also conscious that Council has never made any offer to 3MS. Any re-engagement of the negotiations would require that as a first essential step.

3. In the absence of any such offer from Council, 3MS is now committed to pursuing the alternative scheme plan, which sees the central infrastructure spine shifted west, off the 3MS land. I strongly encourage Council to consider the substantial benefits of the proposal. It will enable a significant amount of development to occur within the C2 Cell, fully in accordance with the structure plan, but without Council having to confront the significant capital expenditure that would otherwise be required. It will enable Council to fulfil its immediate obligations under the NPS-UD 2020 by ensuring zoned and serviced land is available in the short to medium term.
4. I am advised that 3MS will now be committing circa \$200k to secure subdivision and land use consents to enable its alternative scheme plan. It is serious in its pursuit of this option and looks forward to working constructively with Council. While it is frustrating for both parties that the original proposal cannot be achieved, the new option is a win/win for both parties and 3MS remains committed to partnering with Council in developing the C2 Cell.

As always, if any matters require discussion please give me a call.

Regards,

Lachlan

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Matt Smith

From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Friday, 30 October 2020 12:39 pm
To: Matt Smith; Lachlan Muldowney
Cc: Jim Mylchreest; Liz Stolwyk; Garry Dyet
Subject: RE: External Sender: 3MS Valuation and Alternative Plan

Dear Matt

Thank you for your email below regarding your concerns with the latest valuation undertaken by QV. Garry has asked me to respond on his behalf. I apologise for the delay in getting back to you.

The Council notes your concerns and your stated desire to pursue the stand-alone option. Council remains committed to completing the valuation process in the manner we have set out on a number of occasions – namely that the valuers confer to see if they can reach an agreement of the valuation, noting that this does not commit either party, but helps get them to the end point or closer to it.

Council, will of course, assess any alternative option under the appropriate statutory tests that apply.

Regards

Helen

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Director

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From: Matt Smith <matt@3msofcambridge.co.nz>
Sent: Friday, October 23, 2020 1:07 PM
To: Liz Stolwyk; Garry Dyet; Jim Mylchreest

Cc: Mike Smith; Mitch Plaw (mitch.kate@xtra.co.nz)
 Subject: External Sender: 3MS Valuation and Alternative Plan

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Hi Garry, Jim and Liz,

Last night we received the latest valuation from WDC and again we are disappointed. We have recently signed a heads of agreement with a rest home provider at a figure significantly higher than the 3MS valuation calculated at \$168 square metre plus the injurious affection outlined within the report. They are purchasing a 8ha super lot.

Currently WDC valuation is still well below three valuations that 3MS have served to WDC. At the \$124 square metre value assumed (ignoring the affect of betterment), 3MS are \$42,300,000 worse off financially between the current structure plan and the go alone option. The go alone option has significant benefits for WDC given the concerns raised around WDC future debt ceiling.

Below is a table that coarsely shows the difference in capital required to developed 800 sections across the land owned by 3MS and St Peter's. The numbers below don't included the capital costs of building the roundabout with underpass, and the Kelly Rd upgrade. I have estimated this at an additional \$12,000,000 required which is not listed below.

In short if WDC/3MS were to proceed based on the current structure plan WDC would need to have circa of \$81,000,000 of allocated capital that will be offset by \$41,000,000 of Development Contribution Revenue.

Under the 3MS go alone option WDC would need circa of \$35,500,000 of allocated capital that will be offset by \$29,000,000 of Development Contribution Revenue.

The difference between the two opportunities is an additional debt of \$12,000,000 plus the additional debt required for the other capital works projects being \$12,000,000 which equates to \$24,000,000 of unrecovered debt against the same section yield.

	WDC-3MS Scenario	3MS Only Scenario
WDC C2 Land/Infrastructure Costs	\$46,000,000	\$8,000,000
WDC C3 Land/Infrastructure Costs	\$33,000,000	\$25,500,000
WDC Cambridge Road Bulk Mains	\$2,000,000	\$2,000,000
TOTAL WDC Stage 1A Investment	\$81,000,000	\$35,500,000
ESTIMATED WDC REVENUE	\$41,000,000	\$29,000,000

Our go alone option doesn't compromise the structure plan and allows WDC greater flexibility as many of the big capital works projects can be delayed 5 to 7 years depending on Cambridge's growth profile.

The initial capital requirement from WDC is significantly reduced too which means if the market conditions change WDC aren't exposed as they would be under the WDC/3MS scenario. Another bonus for WDC is that 3MS at their own cost will provide much amenity within the stormwater reserve areas to a similar standard to St Kilda; this will be vested with WDC at no cost.

The information should not be ignored when assessing the options facing WDC.

Kind regards
 Matt, Mike and Mitch

=====

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Monday, 2 November 2020 8:23 am
To: Matt Smith
Subject: FW: 3MS / ST PETERS RECORD OF DISCUSSION

Here is my response.

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www.lachlanmuldowney.co.nz

From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Tuesday, 1 September 2020 3:10 PM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Cc: david.heald@muritaicapital.com; rob.campbell@stpeters.school.nz; Matt Smith <matt@3msofcambridge.co.nz>; Liz Stolwyk <Liz.Stolwyk@waipadc.govt.nz>; Jim Mylchreest <Jim.Mylchreest@waipadc.govt.nz>; Garry.Dyet@waipadc.govt.nz
Subject: Re: 3MS / ST PETERS RECORD OF DISCUSSION

Thank you Lachlan I will respond fully shortly.

Regards

Helen

On 1/09/2020, at 1:13 PM, Lachlan Muldowney <lachlan@muldowney.co.nz> wrote:

Dear Helen,

I refer to your email below of 27 August and note it is written on an open basis, as is this response. In the order in which the issues are raised by you, I advise;

1. 3MS is pleased that Council has abandoned any attempt to recover betterment via the valuation and AS&P. However it is unclear about what Council means when it is suggested that the *broader issues around betterment will be considered as part of the review of the DCP*. I am not aware of any basis under the LGA whereby Council can address betterment via the DCP. Betterment is simply a component of determining land acquisition price, and therefore capex. Once the capex is known and included in the schedule of assets, DC charges can be set, and the capex recovered. Where does betterment fit in? There was a further suggestion at the meeting

- last week that Council would look to address betterment via the development agreement. Again, 3MS rejects betterment outright, and will not enter into a DA that seeks to recover it.
2. Your acknowledgment that Council does not treat its valuation as sacrosanct is helpful. In your own words, it is clearly conservative. 3MS acknowledges the point Garry made that he must however deal with it, but again stresses that Council has put itself in this position by accepting the valuation in final form, rather than draft. You are correct that Council has not made an offer based on the valuation, in part due to me advising you that an offer at this level will be rejected so need not be presented.
 3. 3MS had preferred to see if the parties could move straight to a negotiated purchase price, but notes the very clear indication from Council that it will not negotiate unless 3MS produces a valuation of its own. It is considering doing so. However, before it does, I wish to be clear on the basis for the valuation. The basis will be to first understand the development opportunity for the entire 3MS land without the land acquisition and introduction of public infrastructure. In other words, what could 3MS achieve without the land acquisition and associated works occurring. This exercise was not fully carried out by QV, and is an essential step in determining the value for the land to be acquired, because it informs the key threshold test Council promotes, as you state; *It is Council position that the basis of any valuation needs to assume that no developer in the affected growth cells is any better or worse off as a result of the purchase price for the land being acquired the Council.* Please confirm Council's acceptance of this step in the valuation exercise and endorse this aspect of the valuation exercise as a way of moving forward.
 4. If the valuation is procured, we agree that we should move to the negotiation phase without too much *toing and froing between valuers*. It may be useful to have everyone in the same room, valuers included, for an initial period, and then leave it to the parties to negotiate.
 5. Your negotiation team is noted. 3MS will confirm its representatives outside of Matt and myself.
 6. Garry's warning of the timeframes was particularly frustrating to hear for the 3MS team. 3MS has been pushing Council to share its valuation instructions since December 2019 (and I have been raising it with you directly since June) with a view to speeding up the process and avoid a valuation contest. Due to Council's actions we now have a valuation contest late in the year, and threatening the construction season. The risks arising from the delay arise from Council's actions, not 3MS.
 7. Regarding your account of the timing of events, at no stage on 10 August did I state that 3MS was getting its own valuation. 3MS position was that the MOE valuation should be relied upon. The only offer made was the 3MS offer of 13 August, sent 3 days after the QV valuation was provided. 3MS has not, at any stage 'dragged the chain'.
 8. Regarding the purchase price, 3MS agrees that it should reflect market value, and stand up to any robust examination. It seeks that. It also seeks that the principles of fairness and equity as between all developers in the area who stand to benefit from the infrastructure.
 9. Regarding the St Peters' land, it is not accepted that it is any different to the 3MS land. The land is required as of today for both stormwater and future roading. To enable any development within the respective growth cells to occur as per the structure plan requires Council to acquire the land. As we stated in the meeting, without the full participation of St Peters' and 3MS, including use of their adjacent land the works required for the stormwater corridor, roading corridor and outfall structure cannot occur.

Finally, in terms of the recent LGOIMA request, as I stated in the request, 3MS seeks to prioritise that part of the request which relates directly to matters concerning 3MS and the current land valuation process undertaken by Council. On that basis can you confirm timing of the provision of that information.

Regards,

LACHLAN MULDOWNY

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From: Lachlan Muldowney

Sent: Thursday, 27 August 2020 8:48 AM

To: Helen Atkins <helen.atkins@ahmlaw.nz>

Cc: david.heald@muritaicapital.com; rob.campbell@stpeters.school.nz; Matt Smith <matt@3msofcambridge.co.nz>; Liz Stolwyk <Liz.Stolwyk@waipadc.govt.nz>; Jim Mylchreest <Jim.Mylchreest@waipadc.govt.nz>; Garry.Dyet@waipadc.govt.nz

Subject: RE: 3MS / ST PETERS RECORD OF DISCUSSION

Thanks for the note Helen.

I will review it and respond accordingly.

Regards,

Lachlan

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From: Helen Atkins <helen.atkins@ahmlaw.nz>

Sent: Thursday, 27 August 2020 8:41 AM

To: Lachlan Muldowney <lachlan@muldowney.co.nz>

Cc: david.heald@muritaicapital.com; rob.campbell@stpeters.school.nz; Matt Smith <matt@3msofcambridge.co.nz>; Liz Stolwyk <Liz.Stolwyk@waipadc.govt.nz>; Jim Mylchreest <Jim.Mylchreest@waipadc.govt.nz>; Garry.Dyet@waipadc.govt.nz

Subject: 3MS / ST PETERS RECORD OF DISCUSSION

Dear Lachlan

Further to our discussions yesterday I think it is important to record where we landed. This email is not without prejudice as the Council team is desirous to ensure full transparency (subject to commercial sensitivity) moving forward.

As a precursor to what follows it is important to state that while we note that 3MS have the impression that Council expects it to shoulder a disproportionate share of the costs associated with the infrastructure serving the growth cell this is absolutely not the case. It is Council position that the basis of any valuation needs to assume that no developer in the affected growth cells is any better or worse off as a result of the purchase price for the land being acquired the Council. Under the various statutes that Council operates under it is imperative that Council follows a proper process that will withstand any scrutiny brought to bear including by the Council's auditors (OAG).

In terms of 3MS:

- Betterment will be dealt with in the Development Agreement such that no discount for betterment will be included in the S&P Agreement (note Council will take this same approach in relation to betterment for all development in the growth cell);
- Broader issues around betterment will be considered as part of the review of the DCP;
- The Council confirms that it does not see the valuation it has received as being sacrosanct but rather information that can inform the negotiation process. Council has not made an offer based on the valuation (see note on the timeframes to date below);
- The Council needs 3MS to obtain an alternative valuation. On receipt of this alternative valuation Council will discuss with 3MS the process moving forward. In this regard the Council team (see note on who the team is below) is desirous to move to the negotiation phase without tooting and froing between valuers;
- The Council team for negotiation purposes will be – Garry, Jim and Liz. I will be present in the negotiations to provide any legal advice needed. In addition, the Council team will seek any further technical advice it needs during the negotiation process. It is important to note any outcome of the negotiations is subject to full Council approval. If necessary a special Council meeting can be convened or we can take it to a scheduled meeting if the timing works.
- In order for Council to proceed to the contract letting stage for the infrastructure works time is critical and as Garry noted at the meeting we need to finalise the whole negotiation and agreement process within the next month.

In terms of St Peter's the same approach can be taken but note the situation with St Peter's is quite different and at a very different stage.

On the timing I have been asked to note the following:

- The valuation was sent to you on 7 August
- 10 August you confirmed to me orally that 3MS will not be getting their own valuation and will not be accepting any offer based on the Council valuation. I asked you to take instructions on what figure 3MS were seeking for the land
- 13 August you responded to the matters raised in our oral conversation . The particular issue you raised was the square metre value.
- 14 August I responded to your email and noted that 3MS will need to provide another valuation at Council cost
- 17 August you emailed me asking that Council consider the MOE valuation as the basis for determining the correct value for the 3MS land
- 18 August I provided you with the response of the valuer Chris Coates as to why the MOE valuation is not appropriate to apply to the 3MS land
- The matter was then not discussed further until the meeting yesterday

The Council team remain committed to progressing matters with your client in an open and transparent manner. The team do not have any pre-conceived view on what the final value of the land is as this is a matter of negotiation.

I need to reiterate that Council do not see this as a commercial negotiation. Obviously commercial realities are important and Council fully appreciate this but this is a process under the auspices of the PWA. In this respect while your client is of the view that the price paid for the land whatever that may be can be passed on to all developers in the growth cell (including 3MS) that price still needs to be robustly determined in accordance with a proper process.

Best regards

Helen

Helen Atkins
Director

Atkins Holm Majurey Limited

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Matt Smith

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Monday, 2 November 2020 4:52 pm
To: Helen Atkins
Cc: Matt Smith
Subject: RE: 3MS - Waipa DC

Thanks Helen. Regarding point 4 below, Matt has asked that I also advise Council that he is in close communication with MOE, and has kept them fully informed of the new development plans. They have confirmed they are comfortable with the direction being taken and have no issue conceptually with what 3MS is now proposing. This should give Council further comfort that this significant stakeholders is on board.

Regards,

Lachlan

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From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Monday, 2 November 2020 9:36 AM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: RE: 3MS - Waipa DC

Dear Lachlan

I have conferred with the Council team – please see the responses in red below.

Helen

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Thursday, 29 October 2020 6:16 PM
To: Helen Atkins <helen.atkins@ahmlaw.nz>
Subject: 3MS - Waipa DC

Dear Helen,

Following our discussion last week set out below is an update on the current position;

1. As discussed, the pre-application meeting held on 23 October was disappointing. The views of Wayne, Tony and Richard were very entrenched. They considered the proposed application 'not in general accordance with the

Structure Plan' and raised fundamental issues of 'plan integrity'. They seemed adamant the application would require limited notification, and possibly public notification. Indeed Wayne suggested the application was likely to go 'all the way to the Environment Court'. The Council position appeared predisposed towards declining the application, which was presumably borne out of the frustration over the failed land acquisition negotiations. I trust you'll ensure 3MS can expect a level playing field in any consenting processing. I have been advised of at least two recent occasions (one in Te Awamutu and one in Cambridge) where infrastructure development has proceeded on a slightly different basis to that depicted in a Structure Plan. **Council will of course process any application for resource consent appropriately and in accordance with the statutory tests. Council have already determined that this application will be processed by an independent planner to avoid any concerns regarding pre-determination on Council's part.**

2. Returning to the land acquisition point, I note your advice that Mr Coakley has reviewed the Extensor valuation and appears open to revising his valuation on the basis of the assumptions identified in the Extensor valuation. While that is positive, it seems the parties are still too far apart for the negotiations to be brought back to life. I have reflected on whether there are any other ways of closing the gap but cannot identify any 'added value' opportunities for 3MS that would warrant accepting a figure less than their asking price. If you have any ideas I would be keen to hear them. I am also conscious that Council has never made any offer to 3MS. Any re-engagement of the negotiations would require that as a first essential step. **As discussed with you last week apart from the valuers conferring to see if they can get to an agreed figure I have not other suggestions as to breaking the impasse. Council has not made an offer because that next step of the valuers conferring is still to occur. Council has understood from 3MS that any offer below what they are seeking will be rejected. Hence no offer has been made.**
3. In the absence of any such offer from Council, 3MS is now committed to pursuing the alternative scheme plan, which sees the central infrastructure spine shifted west, off the 3MS land. I strongly encourage Council to consider the substantial benefits of the proposal. It will enable a significant amount of development to occur within the C2 Cell, fully in accordance with the structure plan, but without Council having to confront the significant capital expenditure that would otherwise be required. It will enable Council to fulfil its immediate obligations under the NPS-UD 2020 by ensuring zoned and serviced land is available in the short to medium term. **Council will consider the proposal as noted in 1 above once an application is made. Obviously it significantly affects other landowners that are not yet aware of it.**
4. I am advised that 3MS will now be committing circa \$200k to secure subdivision and land use consents to enable its alternative scheme plan. It is serious in its pursuit of this option and looks forward to working constructively with Council. While it is frustrating for both parties that the original proposal cannot be achieved, the new option is a win/win for both parties and 3MS remains committed to partnering with Council in developing the C2 Cell. **Thank you this is noted.**

As always, if any matters require discussion please give me a call.

Regards,

Lachlan

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Matt Smith

Subject: FW: 3MS - Waipa DC
Attachments: RE: External Sender: 3MS Valuation and Alternative Plan

From: Lachlan Muldowney
Sent: Wednesday, 4 November 2020 9:07 AM
To: Helen Atkins <helen.atkins@ahmlaw.nz>
Subject: RE: 3MS - Waipa DC

Dear Helen,

Thank you for the response set out below.

I do not wish to spend time looking backwards, but I am compelled to address one point raised in your response where you note;

“Council has not made an offer because that next step of the valuers conferring is still to occur.”

This statement is in line with another statement made in your email to Matt Smith of 30 October which is **attached**, where you state;

“Council remains committed to completing the valuation process in the manner we have set out on a number of occasions – namely that the valuers confer to see if they can reach an agreement of the valuation, noting that this does not commit either party, but helps get them to the end point or closer to it.”

Regrettably, 3MS views these comments as an attempt by Council to rewrite history to enable it to point the finger at 3MS as say that they have not followed the “agreed process”, and that it is 3MS who are responsible for negotiations failing.

3MS will not stand by and allow Council to create this narrative to suit itself. Never was it agreed that after 3MS received its valuation would the valuers be required to meet and discuss differences. As you know, at the meeting held on 26 August Council made its position clear; it would not negotiate on price until 3MS had a registered valuation on the table to underpin its position. Reluctantly, 3MS recognised that this was a bottom line requirement for Council, and agreed to get a valuation, on the basis that the parties would then come together to negotiate.

In an open email communication to me after our meeting of 26 August you confirmed;

- The Council confirms that it does not see the valuation it has received as being sacrosanct but rather information that can inform the negotiation process. Council has not made an offer based on the valuation (see note on the timeframes to date below);
- The Council needs 3MS to obtain an alternative valuation. On receipt of this alternative valuation Council will discuss with 3MS the process moving forward. In this regard the Council team (see note on who the team is below) is desirous to move to the negotiation phase without tooting and froing between valuers;
- The Council team for negotiation purposes will be – Garry, Jim and Liz. I will be present in the negotiations to provide any legal advice needed. In addition, the Council team will seek any further technical advice it needs during the negotiation process. It is important to note any outcome of the negotiations is subject to full Council approval. If necessary a special Council meeting can be convened or we can take it to a scheduled meeting if the timing works.

Despite this clear process, after 3MS tabled its registered valuation, Council has changed the rules and required that before any further negotiation occur, the valuers must meet and confer. This step was never agreed and is a unilateral change to the agreed process that 3MS has rejected.

I do not wish to spend more time and cost addressing this issue, but am instructed to ensure that the record is clear on this point. After the valuation was provided, 3MS had a legitimate expectation that Council's negotiation team would engage. It didn't.

If Council continues to state that negotiations have failed due to 3MS' failure to adhere to the 'agreed process' 3MS will continue to correct the assertions.

Finally, despite the failed negotiations, 3MS will require Council to meet all of its reasonable costs incurred in the valuation and negotiation process. Those costs include valuer, legal and planning costs which are currently being compiled and will be forwarded to Council for payment.

Regards,

Lachlan

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From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Monday, 2 November 2020 9:36 AM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: RE: 3MS - Waipa DC

Dear Lachlan

I have conferred with the Council team – please see the responses in red below.

Helen

From: Lachlan Muldowney <lachlan@muldowney.co.nz>
Sent: Thursday, 29 October 2020 6:16 PM
To: Helen Atkins <helen.atkins@ahmlaw.nz>
Subject: 3MS - Waipa DC

Dear Helen,

Following our discussion last week set out below is an update on the current position;

1. As discussed, the pre-application meeting held on 23 October was disappointing. The views of Wayne, Tony and Richard were very entrenched. They considered the proposed application 'not in general accordance with the Structure Plan' and raised fundamental issues of 'plan integrity'. They seemed adamant the application would require limited notification, and possibly public notification. Indeed Wayne suggested the application was likely to go 'all the way to the Environment Court'. The Council position appeared predisposed towards declining the application, which was presumably borne out of the frustration over the failed land acquisition negotiations. I trust you'll ensure 3MS can expect a level playing field in any consenting processing. I have been advised of at least two recent occasions (one in Te Awamutu and one in Cambridge) where infrastructure development has proceeded on a slightly different basis to that depicted in a Structure Plan. **Council will of course process any application for resource consent appropriately and in accordance with the statutory tests. Council have already determined that this application will be processed by an independent planner to avoid any concerns regarding pre-determination on Council's part.**
2. Returning to the land acquisition point, I note your advice that Mr Coakley has reviewed the Extensor valuation and appears open to revising his valuation on the basis of the assumptions identified in the Extensor valuation. While that is positive, it seems the parties are still too far apart for the negotiations to be brought back to life. I have reflected on whether there are any other ways of closing the gap but cannot identify any 'added value' opportunities for 3MS that would warrant accepting a figure less than their asking price. If you have any ideas I would be keen to hear them. I am also conscious that Council has never made any offer to 3MS. Any re-engagement of the negotiations would require that as a first essential step. **As discussed with you last week apart from the valuers conferring to see if they can get to an agreed figure I have not other suggestions as to breaking the impasse. Council has not made an offer because that next step of the valuers conferring is still to occur. Council has understood from 3MS that any offer below what they are seeking will be rejected. Hence no offer has been made.**
3. In the absence of any such offer from Council, 3MS is now committed to pursuing the alternative scheme plan, which sees the central infrastructure spine shifted west, off the 3MS land. I strongly encourage Council to consider the substantial benefits of the proposal. It will enable a significant amount of development to occur within the C2 Cell, fully in accordance with the structure plan, but without Council having to confront the significant capital expenditure that would otherwise be required. It will enable Council to fulfil its immediate obligations under the NPS-UD 2020 by ensuring zoned and serviced land is available in the short to medium term. **Council will consider the proposal as noted in 1 above once an application is made. Obviously it significantly affects other landowners that are not yet aware of it.**
4. I am advised that 3MS will now be committing circa \$200k to secure subdivision and land use consents to enable its alternative scheme plan. It is serious in its pursuit of this option and looks forward to working constructively with Council. While it is frustrating for both parties that the original proposal cannot be achieved, the new option is a win/win for both parties and 3MS remains committed to partnering with Council in developing the C2 Cell. **Thank you this is noted.**

As always, if any matters require discussion please give me a call.

Regards,

Lachlan

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Matt Smith

Subject: FW: 3MS

From: Helen Atkins <helen.atkins@ahmlaw.nz>
Sent: Monday, November 16, 2020 3:56:07 PM
To: Lachlan Muldowney <lachlan@muldowney.co.nz>
Subject: Re: 3MS

Thank you Lachlan

I agree with all of this. I'll be back to you shortly with the proposal.

Helen

On 16/11/2020, at 3:51 PM, Lachlan Muldowney <lachlan@muldowney.co.nz> wrote:

Dear Helen,

Thanks for the meeting today. Please also pass on my thanks to Jim for his time.

Rather than a detailed record of the discussion I want to simply capture the essential takeaway points and actions as I saw them, using our agreed references of plan A and plan B:

1. 3Ms is moving forward with the new development plan (plan B).
2. WDC will process the plan B application with diligence, and has appointed Mark Batchelor as an independent planner. He has advised WDC that he will be solutions focussed in his approach to his planning assessment.
3. 3MS is likely to have the application lodged within the next few weeks. WDC anticipates some level of notification, but that decision will be made at the appropriate time under the RMA. As the processing occurs, collaboration regarding public communications will be necessary.
4. Both parties agree that the key issue with plan B will be its effect on those landowners now potentially affected by the central swale and transport corridor moving to the west.
5. WDC remains interested in exploring plan A, as per the structure plan, given it has invested heavily in this outcome, and the public has an expectation that it will be delivered.
6. WDC advises that it wants to 'put its best offer' to 3MS but cannot do that until a number of specific valuation related questions are addressed.
7. You will write to me setting out those specific points of clarification, and I will get a response for you. We can then discuss what, if any, next steps are to be taken towards WDC making an offer.
8. The process regarding any further valuation in respect of plan A is separate to the processing of plan B, which will proceed down ordinary RMA timeframes.

Happy to discuss and matters.

Regards,

Lachlan

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24 November 2020

Lachlan Muldowney
Barrister
PO Box 9169
Waikato Mail Centre
HAMILTON 3240

By email: lachlan@muldowney.co.nz

Dear Lachlan

3MS DEVELOPMENT – LAND ACQUISITION

1. I am authorised by Waipa District Council to set out what it sees as the end steps on the process around the valuation process that has stalled.
2. First, I want to set out some preliminary points that I hope will be helpful.
3. I understand 3MS were somewhat surprised that on receipt of its valuation, Council required the valuers to confer. For my part, I apologise if this step was not clear in communications from Council.
4. Secondly, I want to assure your client that Council has no preconceived view of what the value of the land is. Council relies on experts to assist it in this process.
5. Thirdly, while it is Council's hope that all acquisitions can proceed on a willing buyer/willing seller basis, such acquisitions are not the same as commercial sector ones. Council is a public entity dealing with public funds. It therefore must follow transparent, consistent and proper processes and procedures.
6. With this background as context, Council is wishing to have progress begun on the valuation of the 3MS land. Council is, of course, fully aware of 3MS alternative proposal that is still in the early stages.
7. Council sees the next steps as being:
 - (a) The valuers confer with a view to producing a joint statement, noting there are likely to be areas they disagree on;
 - (b) Council will consider that joint statement and pull together an offer to 3MS; and

HELEN ATKINS
MICHAEL HOLM
PAUL MAJUREY
VICKI MORRISON-SHAW

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(c) Negotiations can then begin between the parties to see if an agreement can be achieved.

8. If you could please take instructions on this that would be much appreciated.

Yours faithfully

ATKINS HOLM MAJUREY



Helen Atkins
Director

Direct dial: 09 304 0421
Email: helen.atkins@ahmlaw.nz

LACHLAN MULDOWNEY
BARRISTER

25 November 2020

Atkins Holm Majurey
Lawyers
PO Box 1585
Shortland St
Auckland 1010

By email: helen.atkins@ahmlaw.co.nz

Dear Helen

RE: 3MS of Cambridge Ltd – Waipa District Council

1. I refer to your letter of 24 November 2020 and am instructed as follows.
2. Council's suggested next steps in respect of the valuation exercise are unacceptable to 3MS.
3. It was made clear to you and Mayor Mylchreest at our meeting on 16 November 2020 that 3MS was pursuing its alternative development plan, and that it had no intention of looking backwards and revisiting the valuation exercise. Nevertheless, I acknowledged that 3MS could not stop Council presenting any offer to purchase the land, noting no offer had yet been made.
4. This was acknowledged by both you and Mayor Mylchreest, and you indicated that Council remained interested in the valuers meeting, in order to resolve certain questions, and that once those questions were resolved, Council would be in a position to make its offer.
5. I reiterated that 3MS objected to putting the valuers together to confer, but that if Council insisted on pursuing these valuation questions, the questions could be put to me, via yourself. From there I would arrange the necessary response from the valuer. You accepted that proposition, as recorded in our email exchange of 16 November 2020, where at points six and seven I expressly state; *WDC advises that it wants to 'put its best offer' to 3MS but cannot do that until a number of specific valuation related questions are addressed. You will write to me setting out those specific points of clarification, and I will get a response for you. We can then*

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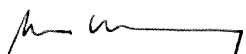
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discuss what, if any, next steps are to be taken towards WDC making an offer. In your email response you confirmed agreement.

6. It is therefore somewhat perplexing and extremely disappointing to 3MS that your letter of 24 November now suggests a very different approach, namely that the valuers confer and produce a joint statement. 3MS can only conclude that Council is consciously selecting a negotiation path that it knows 3MS will not agree to.
7. This departure from the agreed path once again erodes any confidence 3MS has in Council's willingness to engage in good faith negotiations.
8. 3MS has incurred significant legal, valuation, and consulting fees in response to Council's signalled intent to purchase its land, which it requires be met by Council. It is currently collating those costs and will provide them directly to Council. Please confirm that in accordance with the principle of 'full compensation' arising under a compulsory land acquisition, and s 60 of the Public Works Act 1981, that Council will now meet these costs, noting that Council's obligation to pay is not contingent on a successfully concluded negotiation. I note also that in the present circumstances Council's obligation to meet these costs is particularly clear, given it insisted on 3MS procuring a valuation.
9. Returning to the valuation issues, 3MS has no current intention of selling its land to Council. Accordingly, it sees no purpose is served by having the valuers confer, as you suggest.

Yours faithfully,



Lachlan Muldowney
Barrister

CC: 3MS of Cambridge Ltd