

## Central Hawke's Bay District Council – Report

TO: Council  
FROM: Chief Executive  
DATE: 26 March 2009  
FILE REF: SER4-106  
SUBJECT: **KAIRAKAU DRAIN**

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### 1.0 SUMMARY

In August 2008 Council considered whether to pay compensation to move a drain at Kairakau. Council directed staff to clean out the drain and continue discussions with the landowners. A Judicial Conference was held at the Maori Land Court in March 2009 and the Judge suggested that staff report back to Council and recommend acceptance of the compensation request made by the landowners.

### 2.0 RECOMMENDATION

#### *THAT*

Council accept the landowners of 2C5B request for \$20,000 compensation in return for Council moving the existing drain to the north eastern boundary of the property.

#### REASON

**The objective of the decision will contribute to the following community outcomes:**

- *A lifetime of good health and well being*
- *Safe and secure communities.*

### 3.0 BACKGROUND

At Kairakau there is a drain running along the base of the hill behind Kapiti Place and Brodie Place that takes the water runoff from the hill away from the properties and drains the swamp that used to be where the community water supply well is now situated. This drain then runs through land known as 2C5B down to Mananui Street where the flow enters pipes and discharges into the sea. (Note that 2C5B is used as a name for the land which is legally called Part Kairakau 2C5B2 and 2C5B3.)

There is very little natural fall along the length of the drain and regular cleaning is required for the free flow of water. Council is concerned that stagnant water in the drain next to the community water supply well could be the cause of some of the contamination from runoff that periodically occurs with the water supply during heavy rainfall. Additionally the high water table created due to the drain not flowing is causing some of the issues around septic tanks not working efficiently in parts of Brodie Place during winter or wet weather. Good drainage away from the water supply well area and adjacent properties would address these problems.

There have been difficulties in getting the landowners of 2C5B to agree to clean out the drain or to allow Council to clean out the drain due to their past concerns around the use of the drain for public purposes and Council acquisition of land for water supply purposes in the 1960's.

### **Agreement for Judicial Conference**

Notice was served on the major shareholders of 2C5B that Council would clean out the drain. The owners were reluctant to agree to this work, but agreed as long as the Chief Executive and Technical Services Manager attended a Judicial Conference at the Maori Land Court. Council staff agreed to take part in the judicial conference, and the drain was cleaned out.

The Chief Executive and Technical Services Manager attended the Judicial Conference on 5 March 2009. The Conference was held in front of a Maori Land Court Judge, and both parties explained the situation and their points of view. The Judge tried to establish the facts and to get agreement as to how to resolve the situation.

### **Maori Land Court**

The 2C5B landowners and Council staff were generally in agreement. The main facts agreed upon are:

- The strip of land owned by Council was taken by the Council of the day (Patangata County Council) under the Public Works Act, and that no payment can be found in Council or Maori Land Court records being made by Council for the land.
- Council no longer uses the original strip of land taken for water supply purposes as Council has in the past established the water supply pumping station, water storage, the electricity service and access to the treatment plant on a neighbouring property. The strip of land could be returned to the landowners of 2C5B.
- The proposal to dig a new drain next to the north-eastern boundary of 2C5B, fill in the old drain, fence the new drain, and give ownership or an easement in perpetuity to Council is a good idea.

The landowners want a compensation payment of \$20,000 in return for giving Council an easement in perpetuity for a strip of land 7 metres wide over the new drain, fill in the old drain, and fence the new drain. The sum of \$20,000 is equivalent to the quote received by the landowners as the cost to install electricity on to the property, which has been previously discussed.

### **Judge's Recommendation**

The Judge said that he could not issue an order without agreement by both parties. He recommended that Council staff report back to Council and suggest that the payment of \$20,000 in compensation for the creation of the new drain is a sensible decision.

The Judge referred to the case of the Porangahau water tanks which he was familiar with. He said that in that case he was very aware that as well as the order for Council to pay \$20,000 compensation, the whole Court procedure would have cost the ratepayers considerably more for lawyers, valuers, hearings and time. He suggested that payment of the compensation asked for by the landowners of 2C5B would be a much cheaper option than having a protracted Court case with the extra costs and the less certain outcome that process would involve.

## **Proposed Work**

The Chief Executive agreed with the Judge to go back to Council with the following proposal.

- Council relinquish the ownership of the strip of land taken for water supply purposes and transfer it to 2C5B.
- Registering of an easement over a 7 metre strip of land on the north-eastern boundary of 2C5B.
- Construction of the new drain along the land covered by the easement, and fencing of the drain.
- Infilling of the existing drain, and contouring the ground between the old drain and the new drain to ensure the paddock could drain into the new drain.

The Judge and landowners agreed with the proposal being offered by the Chief Executive.

The estimated cost of this work is \$10,000 for survey, legal fees and Maori Land Court costs, and \$13,500 for the construction of the new drain.

## **4.0 OPTIONS**

### **Option 1**

Council agrees to pay compensation of \$20,000 to the landowners of 2C5B for a land swap to form a new drain along the north eastern boundary of the property.

### **Option 2**

Council does not agree to pay compensation.

Option 1 avoids the necessity to contest a court process and the extra costs and uncertainty involved. Even if no court process is instigated, every time Council wanted to clean out the drain (every 2 to 3 years) the same protracted process of serving notice under the Local Government Act 1974, re-litigating the situation, and finally getting the work done would cost time and money. This option would eliminate that problem.

Option 2 may lead to the necessity to contest a court process and the costs and uncertainty involved in that process. Even if no court process is instigated, every time Council wanted to clean out the drain the same protracted process of serving notice, re-litigation, and getting the work done would cost unnecessary time and money.

Option 1 is recommended as the better long term solution to this situation.

## **5.0 STATUTORY IMPLICATIONS**

Section 511 of the Local Government Act 1974

Part 2 of the Health Act 1956

## 6.0 CONSULTATION

### 6.1 External

Land Owners representatives  
Maori Land Court

### 6.2 Internal

Staff

## 7.0 FINANCIAL

The compensation request is for \$20,000. This can be funded from the Chief Executive's contingency fund which has been used in the past for settlements similar to that proposed.

The estimated cost of the work is \$10,000 for survey, legal fees and Maori Land Court costs, and \$13,500 for the construction the new drain. This can be funded from the storm water operational account.

John Freeman  
**Chief Executive**