

Central Hawke's Bay District Council – Report

TO: Services Committee
FROM: Technical Services Manager
DATE: 28 January 2010
FILE REF: SER3-103
SUBJECT: REQUEST FOR DRAIN PIPING - WAIPUKURAU

1.0 SUMMARY

Council has received a request to pipe an open drain behind Chris White's auto electrical building in Takapau Road Waipukurau.

2.0 RECOMMENDATION

THAT

The request to pipe the open drain behind Chris White's auto electrical building in Takapau Road Waipukurau, be declined.

REASON

The Objective of the decision will contribute to the following Community Outcomes:

- *An environment that is appreciated, protected and sustained for future generations.*
- *Communities respecting the importance of our natural environment and working towards sustaining this for the wellbeing of future generations.*

3.0 BACKGROUND

Council has taken responsibility for a number of open drains in Waipukurau. One of these drains is behind Chris White's Auto Electrical building in Takapau Road. Mr White has asked for the drain to be piped so that he can place fill over it, and use it as a carparking area. Mr White wants Council to pay all the costs for a large manhole and all pipes required, an estimated cost of around \$48,000 plus GST.

Correspondence from Mr White is attached to this report. This correspondence outlines why Mr White believes the drain should be piped through his property.

4.0 PUBLIC DRAIN

Council has a responsibility under legislation (Local Government Acts 1974 and 2002, Drainage Act 1908, and the Stormwater Bylaw) for stormwater drainage. If an open drain has been declared to be a public drain, which is the case here, Council owns the drain and has to maintain the drain. Council is responsible for the drain. Council does not have to own the land under the drain. This may still be owned by the private

property owner. However access to the public drain needs to be made available by the land owner to allow Council to maintain the drain.

5.0 BYLAW AND PIPING DRAINS

The Stormwater Bylaw 2008 applies. Applicable sections of the Bylaw are:

2107.1 Protection of Network

No person shall:

- (a) *allow any material, hazardous material, chemical, rubbish, litter or other substance that causes or is likely to cause a nuisance directly or indirectly into the public stormwater drainage network; or*
- (b) *deposit or permit any material, hazardous material, chemical, rubbish, litter or other substance, likely to cause a nuisance on entering the public stormwater drainage network, to be located so that it is likely to enter the public stormwater drainage network (directly or indirectly) in any storm event; or*
- (c) *obstruct any watercourse in a manner that adversely affects or may affect the efficiency and safety of a public stormwater drainage network; or*
- (d) *do anything that damages or is likely to cause damage to any public stormwater drainage network.*

No person shall without the prior written consent of Council:

- (a) *erect any barrier within a stormwater drain; or*
- (b) *stop, obstruct, alter, interfere with or divert any stormwater drain, or any part of Council's drainage network; or*
- (c) *erect any defence against water in any stormwater drain, flood plain, flood risk area or overland flow path; or*
- (d) *carry out any of the above so as to adversely affect land or buildings including other land and buildings on other land.*

All open stormwater drains shall be kept clear of any obstruction that impedes or is likely to impede the free flow of water, for a distance of at least 3 metres from the nearest margin of the stormwater drain, provided that no person shall remove vegetation from such an area without approval from Council, if that clearing may cause or worsen erosion or sedimentation of the drain.

2107.4 Loading or Material over Public Stormwater Pipes

No person shall cause the crushing load imposed on a public stormwater pipe to exceed that which would arise from the soil overburden plus a HN-HO-72 wheel or axle load (as defined by Transit New Zealand Bridge Manual).

No person shall place any additional material over or near a public stormwater pipe without approval.

Manholes, catchpits and other ancillary structures shall not be covered in any way unless approved by Council. Removal of any covering material or adjustment of the structures shall be at the property owner's expense.

2107.6 Building over Buried Services

No building shall be built over a public stormwater pipe without the specific approval in writing of the Council. Council will specify the engineering requirements for any building over a public stormwater pipe.

2109.1 Proposed Works

No person shall carry out stormwater drainage works without:

- (a) *prior written approval from Council, and*
- (b) *a building consent or resource consent if required.*

Every application to carry out stormwater drainage works shall include drawings and specifications for the proposed works. The drawings shall show, to the satisfaction of Council, the proposed works and their effects on the subject site and surrounding land.

All proposed stormwater drainage works shall be designed, constructed and operated:

- (a) in compliance with any relevant Catchment Management Plan or discharge consent including its recommendations or conditions for the area concerned; and
- (b) to Council's standards for corresponding public drainage works where they serve or may serve land or buildings in different ownership; and
- (c) to Council's Stormwater Drainage Policies; and
- (d) to minimise sediment discharge to any stormwater drain; and
- (e) in compliance with any written conditions imposed by Council when approving the works, and with any relevant building or resource consent; and
- (f) to be consistent with foreseeable catchment-wide works (for example, extending a pipe upstream or downstream) so as to give a benefit to the catchment as a whole.

Such stormwater drainage works shall remain the responsibility of the owner of the land on which the works occur unless and until they are taken over and vested in Council. The cost of all work involved will be the owner's cost unless specific agreement for alternative cost sharing is approved in writing by Council.

2109.2 Other Development

No development may take place and no building or structure shall be constructed on or over or under any land within a flood risk area, flood plain or overland flow path unless specifically approved by Council, and subject to such conditions as Council may set.

No person shall extend or alter any building or structure which is already constructed on, over or under any land within a flood risk area, flood plain or overland flow path in such a way that:

- (a) the extent of the obstruction to the flood risk area, flood plain or overland flow path is increased in any way; or
- (b) the protection from any nuisance is reduced; or
- (c) the likelihood or extent of any nuisance is increased, unless specifically approved by Council and subject to such conditions that Council may set.

6.0 BETTERMENT

Section 447 of the Local Government Act 1974 states:

Where the council incurs any expenditure in enclosing and covering in any watercourse under the powers conferred in Section 446 of this Act, each owner of land benefited or likely to be benefited from the enclosing and covering in of the watercourse shall, if the council so requires, pay to the council on account of betterment the amount of increase value thereby given, or likely to be given, to his land, or any smaller amount.

The present Quotable Value valuation for the land under the drain is \$7,500. The estimated value of the land if the drain is piped is over \$100,000.

7.0 LAND OWNERSHIP

The land upon which the drain is situated is owned by Charles Stuart Ewen and David Dicks. This would indicate a trust ownership. If any agreement is entered into between Council and Mr White, the written approval of the owners of the land to the agreement must be received.

8.0 THE OPEN DRAIN REQUIREMENT

The purpose for keeping the drain open is to allow stormwater to pond in this area during heavy rainfall. When the Tukituki River is in flood, the stormwater pipe outlets from this drain under the stopbanks close, and stormwater ponds in this area on the landward side of the stopbank. When the flood flows in the river recede, the stored stormwater can flow into the River. If the drain is piped the amount of storage for stormwater is reduced, and other properties in this ponding area will suffer more flooding. This is contrary to Council's Bylaw.

9.0 PRECEDENT

The property owner downstream of the land under consideration has also expressed a desire to see the drain piped. This would cost Council financially, and further compromise the ponding of stormwater in this area.

If this drain is piped Council will have difficulty refusing requests from other property owners to pipe open drains within their properties. The potential cost of these requests is many millions of dollars. No funding is available in the LTCCP for piping open drains.

10.0 OPTIONS

Option 1

That the request to pipe the open drain behind Chris White's auto electrical building in Takapau Road Waipukurau, be declined.

This would preserve the usefulness of the open drain as a ponding area in times of significant stormwater events, not push flooding on to other properties, and not create a precedent for piping open drains at the request of landowners. This would conform with Council's Bylaw requirement to take into account wider catchment requirements. It would not involve the Council in extraordinary expenditure.

Option 1 is the recommended option.

Option 2

Accept Mr White's offer.

The acceptance would need to be subject to all work being carried out to Council's standards and specifications. The written approval of the property owners would also be needed. Betterment for the improved value of the property after the works are completed should be claimed from the property owners. The Bylaw would need to be amended to take out the requirement to consider wider catchment requirements and then go through public consultation before re-adoption. Council would need to approve extraordinary expenditure for this work because it is not included in the LTCCP.

Option 3

Council offers to buy the land under the open drain.

This would become a drainage reserve under Council's ownership and remove the pressure on Council from property owners to pipe it. The valuation for the land under the drain is \$7,500. This option would preserve the usefulness of the drain for drainage purposes.

11.0 STATUTORY IMPLICATIONS

Council has a responsibility to manage stormwater under the Local Government Acts 1974 and 2002, Drainage Act 1908, and the Stormwater Bylaw 2008.

12.0 CONSULTATION

12.1 External

The Mayor, Councillors and staff have talked to Mr White.

12.2 Internal

Staff

13.0 FINANCIAL

There is no money in the LTCCP for piping of open drains. Any requirement to improve or pipe open drains will require Council to approve extraordinary expenditure.

14.0 STRATEGIC LINKS

LTCCP

Steve Thrush
Technical Services Manager

I know through your processes to come to your decision, you would have one, two or more good reasons for your decision. I would appreciate the reasons put in writing to me, I would like the reasons why you councilors came to your decision and not some dreamt up reason your management team come up with like, (*from an engineering perspective there is no need to pipe the section of drain through your property as it would not improve water flow*). Its only fair if I give you good reasons for piping the drain, you should give good reason why you haven't, and in doing so show some accountability.

I would also like you to reply in writing, who has liability, should there be an accident causing injury/or death in your storm water drain, take this as a formal complaint for the level of water in the drain is a hazard caused by you, and if any person drowns or is injured in your drain the onus is on you

I have been asked by the Mayor to prove that there is more water flooding my section since buying it, If your management team knew their job ,that question would not have to be asked. More water is flooding my section ,and they should not try and use retention schemes as reasons for saying there is not an increase of storm water into my section.

I have no problem discussing this with any councilor openly to come to some sought of compromise ,as long as you flood my section more and more this problem is not going to go away.

With volume of water flowing into the section ,it had dug a deep hole and started to erode the bank and fence away ,I have at my own expense ,filled in the deep hole ,and in doing so stopped the next flood damaging the fence.

You must at some stage realize the need to move your retention pond outside the business district, and away from the close proximity of houses ,at the moment you are abusing my rights, you are flooding the section more and more ,you have not cleaned the drain out further down like you said you would.

Pipes the magnitude of 900mm and 600mm are not pipes that carry the water of one rate payer ,they carry the water of hundreds of rate payers

You have already offered to pay for the manhole , where the two pipes meet ,which I accept, but as a compromise you should also pay for the 900mm and 600mm pipes, and I will install these pipes up to the manhole at my own expense. If every rate payer , made you this offer ,the savings would be thousands to Council ,after all ,it is your water ,so it should be your pipes.

I have met with Mr Way from council management this morning , I hope through our conversation that he will give a more balanced proposal ,with more factual reasons why a single rate shouldn't have to pay for pipes that carry a large majority of Waipukurau's storm water .

Yours faithfully

Chris White

John Freeman

From: Trish Giddens
Sent: Friday, 13 November 2009 3:22 p.m.
To: John Freeman
Subject: FW: Chris White Stormwater

From: Trish Giddens
Sent: Thursday, 12 November 2009 12:40 p.m.
To: 'Chris White'
Subject: RE: Chris White Stormwater

Hi Chris

How about we sought this out by Council purchasing the back section currently valued at \$7,500. What do you think?

Regards
Trish

From: Chris White [mailto:c.whiteautolec@xtra.co.nz]
Sent: Wednesday, 11 November 2009 10:23 a.m.
To: Trish Giddens
Subject: Chris White Stormwater

Hi Trish,

Here are my points on the drain, and a proposal to go with it

thanks Chris

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Trish Giddens

From: Chris White [c.whiteautolec@xtra.co.nz]
Sent: Thursday, 12 November 2009 5:23 p.m.
To: Trish Giddens
Subject: stormwater

Hi Trish,

How about you, don't charge me any rates, pay me a fee for the extra flooding, only till you pipe the drain and ask permission if or when you want to increase water into my section, basically user pay, or take the original proposal as discussed,

thanks Chris

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