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Report to the Landcare Committee
from Geoff Dick, Manager, Flood Protection (Operations) and
Peter O'Brien, O'Brien Property Consultancy Ltd

Purchase of Mangahanene Nos 1 & 2, Otaki River

1. Purpose

To request the Landcare Committee to recommend to the Policy and Finance Committee that the Council:

- purchase land described as Mangahanene Nos 1 and 2 at the Otaki River mouth.
- make an ex gratia payment to settle issues relating to entry onto the land and construction of a stopbank in 1978.

2. Exclusion of the Public

Grounds for the exclusion of the public under Section 48(1) of the Local Government Official Information and Meetings Act of 1987 are:

That the public conduct of the whole or relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists (i.e. to preserve commercial confidentiality and to enable the Council to carry on negotiations), including commercial negotiations, without prejudice or disadvantage.

Interests protected:

Wellington Regional Council

The Logan Whanau

3. Background

Soon after assuming responsibility for management of the Otaki River from the Manawatu Catchment Board (MCB) we became aware of land issues on the south bank of the Otaki River mouth. The issues related to the extension of the south stopbank in 1978 and extraction of gravel in this reach of the river.

From about 1995 a concerted effort has been made to identify these land related issues, and resolve them. Resolution of the issues is needed so the Otaki Floodplain Management Plan can be fully implemented in this reach of the river. Accordingly, some extensive discussions have taken place with the two landowners, the Katihiku X Trust and the Logan Whanau (see **Attachment 1**).

A very brief summary of the investigations and discussions with the two landowners is provided as follows:

- Both the Katihiku X Trust and the Logan Whanau believed that large quantities of gravel were removed from their properties in the late 1970s as part of river realignment improvements undertaken by the MCB. Both parties stated that no approval was given for the gravel extraction nor were any royalties paid to them.

Records do confirm that about 240,000 cubic metres were removed from the river mouth during this period. However careful checking of the records and aerial photography shows that the gravel was taken from the nearby Soil Conservation Reserve.

- Prior to 1978 the south stopbank stopped at the upstream boundary of the Katihiku X Trust land. In 1978 the MCB extended the stopbank downstream to link into the sand dunes adjacent to the beach. This new piece of stopbank was constructed on both Katihiku X Trust and Logan Whanau land. Formal approval was given by the Katihiku X Trust for the stopbank extension, and there is a good file record of this. However, no record can be found of approval being given for entry into Mangahanene Nos 1 & 2, owned by the Logan Whanau.

Discussions with Kathiku X Trust representatives in 1998 and 1999 resolved the gravel extraction issues. At that time Trust representatives also advised us that they wanted to retain all their land, including the land under the stopbank and that in the Otaki River bed. There have been no problems gaining access to Trust land for stopbank or river management work since these discussions.

Discussions with members of the Logan Whanau have been more protracted, and at times have involved lawyers. While the gravel extraction issues were resolved early, construction of the stopbank has been the difficult matter. This report proposes that Council now purchases Mangahanene Nos 1 & 2, and that an ex gratia payment be made, to permanently resolve all issues related to the extension of the stopbank in 1978.

4. The Otaki Floodplain Management Plan

The Otaki Floodplain Management Plan provides for the following at the river mouth:

- Clearing and removal of part of Mangahanene Island. The build-up of this island has raised flood levels and increased erosion pressures on the adjacent river banks.
- Maintaining the stopbank on the south bank of the Otaki River downstream of State Highway 1.
- Periodic realignment of the river mouth.

Report 98.131 proposed a project to remove part of Mangahanene Island by gravel extraction. This project has not proceeded because the Logan Whanau has refused Council access to part of the island until past grievances have been addressed and resolved.

Similarly, repairs to the south stopbank following erosion during the October 2000 floods remain only partially completed due to a request from the Logan Whanau not to proceed until their land issues are resolved. The Logan Whanau however has been helpful in agreeing to north stopbank repairs and the April 2001 major realignment of the river mouth.

5. The Logan Whanau Claim

The Logan Whanau are understood to be the rightful inheritors of 3.93 Ha (10 acres) of land, Mangahanene Nos 1 and 2, from their grandfather who used to farm this it. The title of the land remains in the name of the now deceased grandfather Hemi Kupa Hawea.

The 1978 stopbank extension cut through the middle of this property with about 35 percent of the land ending up on the landward side of the stopbank and 65 percent under the stopbank or in the river corridor.

The Logan Whanau claim is that the construction of the stopbank effectively alienated the property from the family and rendered the land useless for both farming and traditional uses. Their original compensation claim was \$330,000 being \$185,000 for the land and \$145,000 for the trespass.

Since receiving this claim the following has been undertaken:

- A registered valuation has been obtained from Graham Halstead and Associates. The assessed market valuation of the land is \$11,500. An independent valuation commissioned by the Logan Whanau gave a valuation of \$17,000 but this valuation assumed that the land was not prone to flooding.
- A legal opinion was obtained from Council solicitors Oakley Moran on the apparent lack of approval obtained by the MCB to construct the stopbank in 1978. It appears that the existing stopbank may in fact be a continuing trespass on the Logan land as no record can be found of an agreement to construct the stopbank nor is there any evidence that the MCB applied the correct procedures for entry under the Soil Conservation and Rivers Control Act 1941. However no claim for compensation can be legally made due to a six-year time limitation for proceedings.
- A series of meetings with the Logan Whanau to try and agree on a record of past events and to agree on the best means for resolving the continuing stopbank trespass.

6. The Options

Council has a number of options for “legalising” the stopbank through Mangahanene Nos 1 and 2. These include purchasing the land, negotiating an easement or invoking Council’s statutory powers under the Soil Conservation and Rivers Control Act 1941.

Officers discussed all of the above three options with the Logan Whanau.

Purchase will resolve all past issues and secure the stopbank for the future. As landowner, the Council will be able to upgrade the stopbank, access the stopbank for all future maintenance, and extract Mangahanene Island. Purchase also opens up options for a partnership to be formed with the Katihiku X Trust to preserve and enhance a significant piece of wetland behind the stopbank that is a valuable whitebait spawning ground.

Negotiating an easement would provide for the stopbank to be legitimised and for the Council to conduct ongoing maintenance, but would not allow for the extraction of Mangahanene Island, nor would it address the Logan Whanau grievances arising from the MCB 1978 entry. Both the extraction of the island and the 1978 entry would remain to be dealt with separately.

To invoke the Council’s powers under the Soil Conservation and Rivers Control Act 1941, would first require the removal of the existing 1978 stopbank from the land. The due process of serving notices and placing advertisements of the intention to enter the land and undertake work would have to be followed and subsequently a new stopbank could be constructed. This process would require the Council to compensate the owner for the land lost and the consequential impacts. All this action would achieve is a legitimate stopbank that the owner could not remove. This process would not address or resolve the past issues but rather would escalate the grievance.

7. The Proposal

It became clear for both the Council and the Logan Whanau that purchase of the land was the best option for all concerned and would provide certainty and closure to a long outstanding grievance.

Negotiations resulted in a proposal that was forwarded to the Logan Whanau in a letter dated 22 March 2002 (**Attachment 2**). In short a single payment totalling \$42,000 is proposed to be made as follows:

- For the purchase of the land in title 458/254 (Mangahanene Nos 1 and 2) \$12,000 incl. of GST if any
- Ex gratia payment for issues related to the 1978 entry onto the land and the stopbank construction \$24,000 incl. of GST if any
- Lump sum payment to cover legal and valuation fees related to the sale of the land to the WRC \$6,000 incl. of GST if any

Payment is to be made only on completion of a signed transfer of the title to the WRC.

The Logan Whanau have now accepted the above proposal in a letter dated 1 April 2002 (**Attachment 3**) and have requested the proposal be put to Council for approval.

8. Budget

The Flood Protection 2001/02 annual plan includes \$35,000 for the purchase of Mangahanene Nos 1 and 2. It is proposed to fund the shortfall of \$7,000 from savings in the other areas of the Flood Protection Group budget.

The actual purchase and payment, if approved, may take up to 12 months as the title requires transferring from the estate of Hemi Kupa Hawea to the Logan Whanau before transfer can be made. Accordingly it is proposed to carry forward the \$35,000 budget provision to 2002/03.

9. Recommendations

That the Committee:

- (1) *receive the report and note the contents.*
- (2) *recommend to the Policy and Finance Committee:*
 - (a) *that it resolves to purchase the land contained in CT 458/254 from the beneficiaries of the estate of Hemi Kupa Hawea, understood to be the Logan Whanau, for the sum of \$18,000 (includes legal and valuation costs), and to make an ex gratia payment of \$24,000 to settle all issues related to entry on land and construction of the stopbank in 1978.*
 - (b) *that the total compensation payment of \$42,000 inclusive of GST (if any) be made only on completion of a signed transfer for CT 458/254 from a legally authorised representative of the beneficiaries of the estate of Hemi Kupa Hawea, understood to be the Logan Whanau.*
 - (c) *that the Council Common Seal be affixed to the necessary documents to achieve the purchase.*

Report prepared by:

Approved for submission:

GEOFF DICK
Manager, Flood Protection (Operations)

ROB FORLONG
Divisional Manager, Landcare

PETER O'BRIEN
O'Brien Property Consultancy Ltd

Attachment 1 : Site Plan

Attachment 2 : WRC letter of 22 March 2002

Attachment 3 : Logan Whanau letter of 1 April 2002