

Notice is hereby given that an ordinary meeting of the Horowhenua District Council will be held on:

Date: Wednesday 14 December 2022
Time: 1.00pm
Meeting Room: Council Chambers
Venue: 126-148 Oxford St
Levin

Council OPEN AGENDA

MEMBERSHIP

**Mayor
Deputy Mayor
Councillors**

His Worship The Mayor Bernie Wanden
Councillor David Allan
Councillor Mike Barker
Councillor Rogan Boyle
Councillor Ross Brannigan
Councillor Clint Grimstone
Councillor Nina Hori Te Pa
Councillor Sam Jennings
Councillor Paul Olsen
Councillor Jonathan Procter
Councillor Justin Tamihana
Councillor Piri-Hira Tukapua
Councillor Alan Young

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Full Agendas are available on Council's website
www.horowhenua.govt.nz

Full Agendas are also available to be collected from:
Horowhenua District Council Service Centre, 126 Oxford Street, Levin
Te Awahou Nieuwe Stroom, Foxton,
Shannon Service Centre/Library, Plimmer Terrace, Shannon
and Te Takeretanga o Kura-hau-pō, Bath Street, Levin

Note: The reports contained within this agenda are for consideration and should not be construed as Council policy unless and until adopted. Should Members require further information relating to any reports, please contact the Chief Executive Officer or the Chairperson.

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Karakia

Acknowledgements

Prior to the commencement of today's meeting the Mayor will make presentations to former Councillors recognising their service to the Council and the communities of the Horowhenua District.

Council officers from the Emerging Leaders programme will also present to Councillors.

1 Apologies

2 Public Participation

Notification of a request to speak is required by 12 noon on the day of the meeting by phoning 06 366 0999 or emailing public.participation@horowhenua.govt.nz.

3 Late Items

To consider, and if thought fit, to pass a resolution to permit the Council to consider any further items which do not appear on the Agenda of this meeting and/or the meeting to be held with the public excluded.

Such resolution is required to be made pursuant to Section 46A(7) of the Local Government Official Information and Meetings Act 1987, and the Chairperson must advise:

- (i) The reason why the item was not on the Agenda, and
- (ii) The reason why the discussion of this item cannot be delayed until a subsequent meeting.

4 Declarations of Interest

Members are reminded of their obligation to declare any conflicts of interest they might have in respect of the items on this Agenda.

5 Confirmation of Minutes

Recommendations

That the minutes of the meeting of the Council held on Wednesday, 23 November 2022, be confirmed as a true and correct record.

That the minutes of the meeting of the In Committee Meeting of Council held on Wednesday, 23 November 2022, be confirmed as a true and correct record.

File No.: 22/672

6.1 Lease for new Levin-Waitārere Surf Lifesaving Club building

1. Purpose

To seek approval from Council to enter into a lease with the Levin-Waitārere Surf Lifesaving Club, for the new Surf Club building at Waitārere Beach.

2. Executive Summary

- 2.1 Construction has commenced on the new Levin-Waitārere Surf Lifesaving Club building, which is a project jointly funded by Horowhenua District Council and Surf Lifesaving New Zealand. There is a need to put in place a lease agreement with the Levin-Waitārere Surf Lifesaving Club for their occupation of this new building which is scheduled for completion in November 2023.
- 2.2 Three options are provided in section 6, with Officer recommendation being option 1, a thirty (30) year lease term for this building.
- 2.3 The lease will be in alignment with Council's Community Leasing Policy; this policy is attached to this report as Appendix A.

3. Recommendation

- 3.1 That Report 22/672 Lease for new Levin-Waitārere Surf Lifesaving Club building be received.
- 3.2 That this matter or decision is recognised as not significant in terms of S76 of the Local Government Act.
- 3.3 That Council enter into a lease agreement of thirty (30) years with the Levin-Waitārere Surf Lifesaving Club at a rental level calculated to align with the criteria set out in Council's Community Leasing Policy.
- 3.4 That Council notes the Community Leasing Policy sets out the criteria for assessing the level of subsidy that would apply to this community lease
- 3.5 That Council give delegated authority to the Chief Executive Officer to negotiate and enter into a new lease on Council's behalf.

4. Background / Previous Council Decisions

- 4.1 The old surf club building at Waitārere Beach, owned by Horowhenua District Council and built in 1953, has deteriorated in this harsh beach environment to the point where it is no longer fit for purpose. It is also earthquake-prone. Another significant issue is that with the yearly accretion rates at this beach being over one metre per annum on average, the building which was originally positioned near the beach is now over 100 metres from the water. This has presented a real challenge to the Levin-Waitārere Surf Lifesaving Club to deliver an effective lifesaving service for Waitārere Beach residents and visitors.
- 4.2 Funding for the construction of a new Levin-Waitārere Surf Lifesaving Club building has been secured, through a combination of Council funding through its Long Term Plan process, and a contribution from Surf Lifesaving New Zealand. Construction has begun and is expected to be completed by November 2023.
- 4.3 The old surf club building was subject to a lease agreement with the Levin-Waitārere Surf Lifesaving Club. With construction having commenced on the new building, there is a need to put in place a new lease agreement which confirms the responsibilities of each party in relation to the building over the term of the lease.

5. Discussion

- 5.1 A lease agreement will need to be drawn up and signed by both parties. This is to ensure that all ongoing responsibilities for management of the building over the term of the lease are agreed and confirmed. A copy of the lease, in draft form only, is provided in Appendix B of this report.
- 5.2 The lease sets out the roles and responsibilities between the Council (the landlord) and the Levin-Waitārere Surf Club Incorporated (the tenant).
- 5.3 The lease provides certainty for the Surf Club so that they can continue to provide and develop their services from a modern fit for purpose facility.
- 5.4 The Council benefits from the leasing of the building to an organisation that provides direct and immediate lifesaving services to its communities who are regular users of the beach.
- 5.5 The term of the lease is thirty years in duration. Clause 1.1 (11) of Council's Community Leasing Policy requires applications for community leases in excess of five years to be referred to Council for a resolution.

6. Options

- 6.1 Option 1: To enter into a lease agreement of thirty (30) years with the Levin-Waitārere Surf Lifesaving Club at a rental level calculated to align with the criteria set out in Council's Community Leasing Policy.
- 6.2 Option 2: To enter into a lease agreement of ten (10) years with the Levin-Waitārere Surf Lifesaving Club at a rental level calculated to align with the criteria set out in Council's Community Leasing Policy.
- 6.3 Option 3: To decline to enter into a new lease for this building.
- 6.4 Note: The Community Leasing Policy sets out the criteria for assessing the level of subsidy that would apply to this community lease. These include:
 - Legal status of entity looking to lease;
 - Relevance of service to community outcomes;
 - Sources of income;
 - Membership numbers.

- 6.5 Although discussions are still continuing with the Levin-Waitārere Surf Lifesaving Club to determine the final rental amount, it is likely that it will fall into a subsidy range of 90% of the market rent. This would equate to a rental somewhere within the vicinity of \$200 per annum.

Cost

There will be minor legal costs associated with putting this lease agreement in place which will be covered by existing operational budgets.

Rate Impact

There will be no Rate impacts arising.

7. Community Wellbeing

- 7.1 Entering into this lease is in line with a number of community outcomes, including Fit for Purpose Infrastructure and Stronger Communities.
- 7.2 Levin-Waitārere Surf Lifesaving Club have a membership of approximately 160 members. Throughout the summer the Club run a Junior Surf Programme that provides valuable beach and water safety education for its membership (approximately 114 junior members).
- 7.3 In addition, Levin-Waitārere Surf Lifesaving Club provides an avenue for 14+ year olds to undertake lifeguard training to become volunteer lifeguards, and provides ongoing training and development opportunities for its members.
- 7.4 Over the past three (3) summer patrol seasons the Levin-Waitārere Surf Lifesaving Club performed on average each year:
- 1912 patrol hours
 - 5 rescues
 - Assisted 10 people to safety
 - Attended 10 first aid incidents
 - And conducted preventative actions involving 2130 people
 - Provided training and education to 160 Levin-Waitārere Surf Lifesaving Club Members with the aim of improving water safety and rescue skills
 - Members of the Levin-Waitārere Surf Lifesaving Club also participated in three (3) Search & Rescue incidents (SARs) at other locations in the region.
- 7.5 The Levin-Waitārere Surf Lifesaving Club also contributes to the communities values of Kaitiakitanga (actively showing guardianship, care and protection for the Waitārere Beach environment), Whakawhanaungatanga (connection and a sense of belonging to the Waitārere Beach and wider community), and Manaakitanga (care for, support and value each other in order to foster a sense of community at Waitārere Beach).

8. Consenting Issues

There are no consenting issues arising from entering into a lease for this building.

9. LTP Integration

The budget for the Levin-Waitārere Surf Lifesaving Club building was approved as part of Council's 2021-41 Long Term Plan. A decision to enter into a lease with Levin-Waitārere Surf Lifesaving Club for this new building is required to finalise how the building will be managed once construction is completed. This includes defining maintenance responsibilities for both parties.

10. Consultation

There is no consultation required to be undertaken in relation to putting this new lease in place.

11. Legal Considerations

There are no legal Requirements or Statutory Obligations affecting this proposed lease agreement.

12. Financial Considerations

There is no financial impact.

13. Iwi Considerations

There has been ongoing consultation with local Iwi in relation to the build of the new facility. Muaūpoko Tribal Authority and Ngati Raukawa hapu have given written support for the Levin-Waitārere Surf Lifesaving Club rebuild through the consenting process with Horizons Regional Council.

14. Climate Change Considerations

There is no climate change impact.

15. Environmental Considerations

There are no environmental considerations.

16. Health & Safety Considerations

- 16.1 The current building poses a significant risk to health and safety. Demolition of the current building and construction of a fit for purpose facility will address the health and safety risks associated with the building.
- 16.2 If council chooses not to endorse a lease to Levin-Waitārere Surf Lifesaving Club it is likely that the provision of a valued community service would be impacted as the club would not have an adequate facility to undertake its lifesaving operations.

17. Other Considerations

There are no other considerations.

18. Next Steps

If the recommendation is accepted, Officers will seek to finalise the signing of a lease agreement by both parties.

19. Supporting Information

Strategic Fit/Strategic Outcome

This lease fits with the following community outcomes from the LTP:

Fit For Purpose Infrastructure:

- We develop and maintain facilities and infrastructure to meet the needs of current and future generations.
- Our community facilities and infrastructure are resilient, helping us to respond to climate change and natural hazards.

Strong Communities:

- We provide infrastructure and services as a foundation for resilient and connected communities.

- We help create facilities and places where people of all ages and backgrounds feel included, safe and connected

Decision Making

The decision can be made through an Ordinary Meeting of Council.

Consistency with Existing Policy

Entering into a lease with Levin-Waitārere Surf Lifesaving Club meets Council's existing Community Leasing Policy.

Funding

Legal costs associated with this lease will be met through existing operational budgets.

Confirmation of statutory compliance

In accordance with section 76 of the Local Government Act 2002, this report is approved as:

- a. containing sufficient information about the options and their advantages and disadvantages, bearing in mind the significance of the decisions; and,
- b. is based on adequate knowledge about, and adequate consideration of, the views and preferences of affected and interested parties bearing in mind the significance of the decision.

20. Appendices

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B	Draft - Lease for Waitarere Surf Club building - December 2022	27

Author(s)	Sean Hester Parks & Property Lead North	
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Approved by	Arthur Nelson Parks and Property Manager	
	Brent Harvey Group Manager - Community Experience & Services	
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Community Leases Policy

Parks and Property



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Community Leases Policy

Conditions

1. Formal agreements shall be required where organisations occupy Council land or buildings.
2. Rent for the exclusive use of Council buildings or land will normally be set at the presiding market rate for a comparable building or piece of land.
3. Where a market rate is not available the valuation of land for rental purposes shall be based on the Rateable Value. Where an organisation occupies a Council building and land, the Capital Value will be used to assess the rent level.
4. Rent in either case will be set with the intention of making a rate of return of 1-4%, subject to the following provisions.
 - a) Rent will in general be calculated on per/m2 basis for Community Leases not subject to intensive capital development i.e. sportsfields and rural property
 - b) Where land has been intensely capitalised (eg urban areas) including town centres, and in the opinion of the Parks and Property Manager (or other nominated Officer), there is merit in providing for a community lease, such lease may be provided at a rent based on the capital value of the site solely.
 - c) No Community Lease rent will be less than \$200.00 pa.
5. Community leases for whole or part of Council owned buildings will be advertised when they become vacant so that all community groups have an opportunity to submit expressions of interest.
6. Buildings on Council land may be sold, conditional on agreement with Council, the building being advertised, and the prospective buyer obtaining a Council lease to occupy the land.
7. Applicants for leases or licences will be evaluated in line with the Criteria for Community Leases identified in this Policy.
8. Applications for Community Leases need to identify how the proposal meets Council's strategic objectives and will require the applicant to meet a range of criteria relevant to the outcomes identified in the LTP.
9. Successful applicants will be required to provide an annual report to Council detailing achievement of key performance areas relevant to the area of provision; use; membership; provide a copy of their annual accounts, and any other information deemed necessary to clarify the relevance of the Lessee's operation to Council outcomes.
10. Officers may grant a lease where-
 - The lease term does not exceed five years (including any rights of renewal); and/or
 - The concession is not required to be registered against the title of the property; and/or
 - no objections have been received following public notification; and/or
 - the annual concession fee for the proposed term of the concession is within the Council Officer's financial delegation.
11. Applications for community leases in excess of five years will be referred to Council for a resolution.
12. Negotiations relating to new community leases need to be resolved prior to the organisation taking occupancy and in any case six months from the initial application. Where negotiations are not complete in this timeframe, a notice to sign has been issued by Council, and the Lessee refuses to sign, the offer of a community lease may be withdrawn with one month notification in line with clause 113.5 of the Reserves Act.
13. Notwithstanding (12) above where an alternative community organisation expresses an interest in leasing the same property Officers may discontinue negotiations with the initial applicant in favour of the alternate organisation having given one month notice in advance.
14. Where an existing community Lessee wishes to renew a lease on expiry it will need to provide notification as per the existing lease, and complete negotiations within three months of its final expiry unless agreed otherwise at the sole discretion of Council.
15. For the three month intervening period or other such period agreed with Council, the lease will be on a month by month basis and should negotiations not be complete within that timeframe Council may choose to withdraw the lease and either (a) offer it to an alternative community organisation, or (b) cancel the lease.

Criteria for granting community leases

1. Only incorporated societies or organisations with "registered charitable status" or those that can demonstrate that for tax purposes they are considered "not for profit" will be eligible for community leases under this policy. This will include clubs but not private members clubs.
2. Applications must demonstrate the contribution the project will make to Council's Community Outcomes and Long Term Plan priorities and the vision and goals for HDC.
3. Preference is for applications that leverage additional funding from other funders.
4. Those organisations which have identified a range of funding initiatives (e.g. fees, fund-raising, income from other sources e.t.c) by way of reducing dependency on ongoing Council funding will be preferred.
5. Applications must be for, and clearly detail, specific service(s) and/or outcome(s) that will result from the granting of a lease.
6. Other factors that will be considered are:
 - The benefit of the project to the community in comparison to the cost to Council.
 - The level to which the wider community will be involved in the project.
 - The past achievements, or future potential of the organisation.
 - The ability of the organisation to successfully administer its organisation and deliver the relevant outcomes.
 - A project's contribution towards achieving the goals of other Council policies and strategies
7. In addition to the criteria set out above, Council may at times choose to focus assistance on particular Council priorities. The decision on focus area can be made at two different points. It can be made during the Annual Plan process, to be implemented the following financial year, or as a lease comes up for renewal but not where the renewal is a right under the terms of the existing lease.

Reporting

1. All recipients of community leases will provide an annual report documenting how their activities have contributed to the objectives for which the lease was provided.
2. Recipients that fail to submit reports will receive up to two written notices asking them to rectify the situation.
3. Holders of community leases may be considered in breach of lease and have their lease terminated if they fail to present the relevant reports.

What this policy does not cover

1. The Community Leases Policy does not cover the following circumstances. The list provided is indicative and is not intended to cover all instances that may fall outside the provisions of this policy.
 - Council Controlled Organisations.
 - Council funding for major community initiatives budgeted for separately through Council's community plan/annual plan processes.
 - Commercial arrangements where a not-for-profit organisation is contracted to deliver a paid service for Council.
 - Commercial arrangements.
 - Council support for regional facilities.
 - Council owned facilities.
 - Primary and Secondary Schools (for ordinary operational costs), hospitals or other groups funded substantially from Central Government or who have other independent means or regular income.
 - Visitor Accommodation.
 - Community leases apply only to community organisations. A community lease will not be issued to a religious, political, or other exclusive organisation.

Application of Policy

General Information

1. Council owns numerous reserves through-out the Horowhenua District. These in general terms fall into the categories of Recreation Reserve or Local Purpose Reserves.
2. For the purpose of this policy, recreation reserves are broken down into two categories those being Sportsgrounds and Parks.
3. Whether the reserve is a sportsground or a park will determine the type of lease that may be granted for that reserve. For example, a lease to construct a sports hub would not be granted for a park but would be considered for a sportsground.
4. Open Spaces are those areas which are not classified as reserves but are zoned 'Open Space' in the District Plan. For the purpose of this policy Open Spaces will be treated as recreation reserves and as such in general terms will be classified as Park or Sportsground.
5. Any person or organisation seeking a community lease must apply to Council's Parks and Property team.
6. Any application for a lease on reserve land must include the following information:
 - a description of the proposed activity for which the lease is requested;
 - a description identifying the place(s) where the proposed activity will be carried out;
 - a description of the potential effects of the proposed activity; and any actions which the applicant proposes to take to avoid, remedy, or mitigate the adverse effects;
 - a statement of the proposed duration of the lease and the reasons for the proposed duration;
 - reasons as to why the proposed activity is required to take place on reserve land and what steps have been taken to obtain a lease on private land (if any);
 - relevant information relating to the applicant, including:
 - any information relevant to the applicant's ability to carry out the proposed activity;
 - any information relevant to the applicant's ability to meet its ongoing financial obligations under the concession;
 - any information relevant to the applicant's membership (if a body corporate or unincorporated club or society); and
 - any information relevant to the proposed benefactors of the lease.
7. Upon receiving an application for a lease Council Officers may require the applicant to provide such further information as considered necessary to enable a decision to be made, including the preparation of an environmental impact assessment in the form set out in Schedule 4 of the Resource Management Act 1991, or in such other form as Council Officers may require.
8. Where inspection of a Lessee's account indicates that a community lease is to all intents and purposes of a commercial nature, it will constitute a breach of lease. On such evidence coming to light, Officers will consider whether the activity should continue. Should investigation dictate that the activity should remain on the Council property the community lease will cease and be replaced by a commercial lease subject to the provisions contained within Council's Commercial Lease, Concessions and Permit Policy.
9. Council Officers, at the expense of the applicant, may:
 - commission a report or seek advice from any person on any matters raised in relation to the application, or ongoing use of the site, including a review of any information provided by the applicant;
 - obtain from any source any existing relevant information on the proposed activity or structure that is the subject of the application; and/or
 - consult with Iwi or other interested party who may be affected by the application.

Incomplete applications

1. An application will be deemed to be incomplete if it does not include all of the information required under the provisions contained above; or if the applicant does not provide further information if requested by Officers.
2. An incomplete application may be declined by Officers 20 working days after the date of a letter being sent to the applicant advising them further information is required.
3. Officers may grant an extension to the time required to provide further information if the information required is onerous and is unlikely to be provided within 20 working days of the date of the request for the information.

Public notification and consultation

1. The requirements to undertake Public Notification and Consultation are contained within the Reserves Act 1977, Conservation Act 1987 and Local Government Act 2002.
2. Where consultation is required, the applicant must first consult with interested parties and provide Council with written evidence confirming that consultation has occurred along with the outcome of consultation.
3. Where an interested party opposes the granting of a concession or has not been consulted, Council Officers may consult directly with that interested party.
4. Where one or more objections are received following public notification, the matter requires submission to Council, and the objector(s) wish to speak to their submission, the matter will be referred to Council's Hearings Committee to make a decision having regard to the applicable provisions of the Reserves Act 1977 and Conservation Act 1987.
5. Where one or more objections are received following public notification and the objector(s) do not wish to speak to their submission, the matter will be referred to Council to make a decision having regard to the applicable provisions of the Reserves Act 1977 and Conservation Act 1987.

Assessment of applications

1. In considering an application for a lease Officers must have regard to the following matters:
 - the legal status of the entity applying for a community lease;
 - sources of income;
 - membership fees (if any);
 - membership numbers;
 - financial accounts for the last financial year;
 - why assistance is required;
 - any other information deemed relevant to the application.
2. In addition to the above, Officers in evaluating a request for a lease will have a mind to-
 - the nature of the activity and the type of structure or facility proposed to be constructed (if any);
 - the effects of the activity, structure or facility;
 - any measures that can reasonably and practicably be undertaken to avoid, remedy, or mitigate any adverse effects of the activity;
 - any relevant environmental impact assessment, including any audit or review;
 - any relevant oral or written submissions received as a result of any public notice;
 - the proposed activity's fit with Council's community outcomes, strategic goals in the Long Term Plan and other Council strategies (such as the Open Spaces Strategy)
 - consistency with any applicable Reserve Management Plan;
 - the impact the proposed activity will have on community wellbeing;
 - any consenting requirements; and
 - any risks or liabilities to Council as a result of the proposed activity.

Effects of application being declined

1. Where an application for a community lease has been declined, the applicant may not apply for the same or similar lease for a period of one year unless Council Officers grant the applicant the right to make a further application.
2. Council Officers may grant an applicant the right to make a further application where:
 - the application was declined due to insufficient information and the applicant provides the additional information requested along-with a new application form;
 - the application is sufficiently different from the original so that, in the Council Officer's opinion, it is likely that the new application will meet the criteria for granting a lease; or
 - circumstances have changed from the date of the original application so that, in the Council Officer's opinion, it is likely that the new application will meet the criteria for granting a community lease.
3. To seek a new application, an applicant must complete and return the prescribed form to Council Officers.



Applications for assistance (Subsidised rental)

General

1. Applicants may apply for a community rate of rental as detailed in this policy in advance, or contemporaneously of requesting a community lease.

Content of application

1. Any application for community rate of rental must include the following information:
 - the legal status of the entity claiming the subsidy;
 - sources of income;
 - steps taken to increase income and/or income sources (if any);
 - membership fees (if any);
 - membership numbers;
 - financial accounts for the last financial year (if available);
 - why assistance is required; and
 - any other information deemed relevant to the application for assistance.
2. Upon receiving an application for a community rent officers may require the applicant to provide such further information as considered necessary to enable a decision to be made.
3. In addition to the above applicants may be required to provide additional information which may include.
 - the nature of the activity and the type of structure or facility proposed to be constructed (if any);
 - any consenting requirements;
 - any applicable legislation; standards; or code of practice;
 - an Environmental Impact Assessment (EIA);
 - any other information relevant to the activity.

Schedules

Schedule 1: criterion for community rent

Assessment Criteria	Points	Grade Criteria
Legal Status of Entity	5.	Charitable Trust
	4.	Incorporated Society
	1.	Club
Relevance of service to community objectives	5.	Services of high relevance and contribute to 3 or more community outcomes
	3.	Services of medium relevance and contribute to a minimum of 2 community outcomes
	1.	Services relevant to Council strategic/community outcomes (contribute to a single outcome)
Sources of Income	5.	4 or more sources of income or initiatives but unable to meet financial obligations
	4.	2-3 sources if income or initiatives but unable to meet financial obligations
	1.	1 source of income and or initiative but unable to meet financial obligations
Membership numbers	5.	Membership of 100 +
	4.	Membership of 51 - 100
	3.	Membership of 31 - 50
	2.	Membership of 21 - 30
	1.	Membership of 11 - 20

Schedule 2: Qualification Criteria

1. Applicants will not receive community assistance if
(a) they fail to score under legal status of entity, or
(b) Relevance of service to community objectives.

Schedule 3: Level of subsidy

2. The following subsidies will be applied based on the weighting of matrix criteria:

Value of	Points
16 +	90% financial assistance relevant to specific policy
11 - 15	75% financial assistance relevant to specific policy
5 - 10	50% financial assistance relevant to specific policy
< 5	Doesn't qualify for community assistance



Specific Provisions

1. All concessions granted pursuant to the Reserves Act 1977 must include the applicable provisions contained in Schedule 1 of that Act.
2. Where any of the provisions contained in this schedule conflict with those contained in the Reserves Act, those contained in the Reserves Act will be preferred.
3. All concessions granted pursuant to the Reserves Act 1977 must include provisions that provide for the termination of the lease of the land if, in the opinion of Council Officers, it is not being used or not being sufficiently used for the purpose of the concession.



Other Provisions

1. Leases of Council Land must include clauses that give effect to the following provisions:
 - **Alterations and Additions:** The Lessee must obtain the prior written approval of Council's Parks and Property Manager or other nominated officer prior to undertaking any alterations or additions. The Lessee is required to obtain all necessary consents and must strictly adhere to these.
 - **Assignment and Subletting:** The Lessee must not assign, sublet or otherwise part with possession of the land without first obtaining the written approval of Council's Parks and Property Manager or other nominated officer.
 - **Compensation for Improvements:** Council leases will have no provisions for compensation for improvements.
 - **Default Interest:** 10% default interest shall be applied if the Lessee is in breach of the lease.
 - **Health and Safety:** Such provisions shall be included to ensure Council can meet its legal obligations as land owner under the Health and Safety in Employment Act 1992 and/or Health and Safety at Work Act 2015 and any subsequent amendment.
 - **Indemnity:** The Lessee will indemnify the Lessor against all actions, proceedings, calls, claims, demands, losses, damages, costs, expenses or liabilities of any kind suffered or incurred by the Lessor resulting from the Lessee's act or omission, except where section 268 Property Law Act 2007 applies.
 - **Insurance:** The Lessee will at all times during the lease term insure and keep its assets insured for full replacement value.
 - **Keep Premises Clean:** The Lessee must keep the premises clean, tidy and free of rubbish.
 - **Lessor's Right of Entry:** The Lessor may, with all necessary materials and equipment at all reasonable times and on reasonable notice (but at any time without notice in the case of an emergency), enter the Lessee's building to:
 - inspect the condition and state of repair of the Premises;
 - carry out repairs or other works which are the Lessor's responsibility under this lease or which the Lessee has failed to carry out at the Lessee's cost where applicable, in such situations the Lessor may recover the full cost of repairs from the Lessee; or
 - carry out any works to comply with any statutes, regulations, bylaws, ordinances, orders, proclamations, requirements of or notices by any Authority or the requirements or recommendations of the Building's insurer at the Lessee's cost where applicable;
 - Audit the site for compliance
- **Maintenance:** The Lessee is required to maintain the leased area and any improvements erected thereon in a reasonable state of repair. The Lessee must have sufficient financial reserves to meet ongoing maintenance requirements.
- **Outgoings:** The Lessee is responsible for paying the following outgoings:
 - All rates, charges, levies, assessments, duties, impositions and fees from time to time payable by the Lessor to any Authority relating to the Building.
 - All charges for and costs relating to the supply of electricity, telephones, gas, water, sewage, drainage, rubbish collection and other utilities and services supplied to the Building.
 - All costs incurred in complying with the requirements contained in any Compliance Schedule relating to Systems and Features provided in the Building and in obtaining an annual Warrant of Fitness for the Building.
 - All costs of maintaining and servicing fire detection and fire fighting equipment.
 - All costs of painting, repairing and maintaining the roof and exterior of the Building unless otherwise allowed for.

Continued from previous page

- **Reporting Provisions:** all leases will contain the requirement the Lessee report annually as per this policy.
 - **Review of Rent:** Annual rent is to be reviewed every three years in accordance with Council policy.
 - **Use of Premises:** The Lessee must use the premises for the purpose specified in the Lease and utilised to an acceptable level in the reasonable opinion of Council Officers.
- 2) In all other matters Council Officers will have the discretion to negotiate suitable lease terms.
 - 3) Where an existing lease is in place all terms and conditions and provisions relating to that lease shall remain current and constitute the lessee's relationship with the lessor (being HDC).
 - 4) Where an existing lease's final term may have expired it will forthwith come under the provisions of the Community Leases Policy.



Horowhenua
DISTRICT COUNCIL

@ enquiries@horowhenua.govt.nz
www.horowhenua.govt.nz
f HorowhenuaDC
06 366 0999
Private Bag 4002, Levin 5540
126 Oxford St, Levin 5510

Appendix One:
Draft Deed of Lease between Horowhenua District Council and
Waitarere – Levin Surf Lifesaving Club Incorporated

DEED OF LEASE

PREMISES As described in the FIRST SCHEDULE

LANDLORD: Horowhenua District Council, a territorial authority pursuant to the Local Government Act 2002 and acting under delegated authority from the Minister of Conservation (SEVENTH SCHEDULE).

TENANT: Waitarere – Levin Surf Lifesaving Club Incorporated

~~GUARANTOR:~~

THE LANDLORD leases the Premises to the Tenant and the Tenant accepts the lease of the premises on the terms and conditions set out in this Deed of Lease for a term of 30 years from a commencement date in the FIRST SCHEDULE.

THE LANDLORD AND TENANT covenant as set out in the First, Second, Third, Fifth, Sixth and Seventh Schedules.

~~THE GUARANTOR~~ covenants with the Landlord as set out in the Fourth Schedule

SIGNED by the Landlord*

In the presence of:

Witness Signature

Witness Name

Witness Occupation

Witness Address

Signature of Landlord

Print Full Name

(for a company specify position:

Director/Attorney/Authorised Signatory)

Signature of Landlord

Print Full Name

(for a company specify position:

Director/Attorney/Authorised Signatory)

SIGNED by the Tenant*

In the presence of:

Witness Signature

Witness Name

Witness Occupation

Witness Address

Signature of Tenant

Print Full Name

(for a company specify position:

Director/Attorney/Authorised Signatory)

Signature of Tenant

Print Full Name

(for a company specify position:

Director/Attorney/Authorised Signatory)

SIGNED by the Guarantor*

In the presence of:

Witness Signature

Witness Name

Witness Occupation

Witness Address

Signature of Guarantor

Print Full Name

(for a company specify position:

Director/Attorney/Authorised Signatory)

Signature of Guarantor

Print Full Name

(for a company specify position:

Director/Attorney/Authorised Signatory)

FIRST SCHEDULE

1. **PREMISES:** The landlord's improvements on registered title 884156 being a building of 300 square metres more or less as shown in the Fifth Schedule together with land areas under the landlord improvements (Yellow), the hardstand area, vehicle access and 10 carparks (Gray) as shown in the Sixth Schedule
2. **CAR PARKS:** NIL
3. **TERM:** Thirty years (30) from the Commencement Date
4. **COMMENCEMENT DATE:** The date of practical completion (or other date as agreed between the parties) of the surf lifesaving facility to be constructed by the Landlord and generally as shown in the FIFTH and SIXTH SCHEDULES.
5. **RIGHTS OF RENEWAL:** Nil
6. **RENEWAL DATES:** Not applicable
7. **FINAL EXPIRY DATE:** The thirtieth anniversary of the Commencement Date
8. **ANNUAL RENT:** **TBC** plus outgoings and GST
9. **MONTHLY RENT:** Not applicable
10. **RENT PAYMENT DATES:** The 1st day of July in each year during the term the annual rent to be paid without any deductions or set-off by direct payment to the Landlord or as the Landlord may direct.
Any part- year rental payments shall be no later than the due date.
11. **RENT REVIEW DATES:** The rent will be reviewed in accordance with the Landlord's Community Lease Policy on each third anniversary of the Commencement Date during the term of the lease
12. **DEFAULT INTEREST RATE:** 10% per annum
(Subclause 5.1)
13. **USE:** Subject to clause 16 of this lease, use of the Surf Lifesaving Clubroom building shall be for surf lifesaving activities, surf lifesaving training, surf club activities and other closely aligned activities such as search and rescue activities.
14. **LANDLORD'S INSURANCE:** (1) Cover for the building against damage and (Subclause 23.1) destruction by fire, flood, explosion, lightning, storm, earthquake, and volcanic activity on the following basis:
(a) Full replacement and reinstatement (including loss damage or destruction of windows and other glass);
(Delete either (a) or (b); if neither option is deleted **OR**
then option (a) applies)

- (b) ~~Indemnity to full insurable value (including loss damage or destruction of windows and other glass).~~
- ~~(Delete option (i) and complete option (ii) if required. If option (i) is not deleted and option (ii) is completed then option (ii) applies)~~ (2) ~~Cover for the following additional risks:~~
- (a) (i) 12 months
- OR
- (ii) months
- indemnity in respect of consequential loss of rent and outgoings
- (b) ~~Loss damage or destruction of any of the Landlord's fixtures fittings and chattels.~~
- (c) ~~Public liability.~~
15. NO ACCESS PERIOD: (1) 12 months
- (subclause 27.6) ~~OR~~
- ~~(Delete option (1) and complete option (2) if required. If option (1) is not deleted and option (2) is completed then option (2) applies)~~ (2)
16. PROPORTION OF OUTGOINGS: 100% to be met by the Lessee ~~which at commencement date is estimated to be \$..... Plus GST per annum~~
17. LIMITED LIABILITY TRUSTEE: Not Applicable
18. OUTGOINGS:
- (clause 3)
- (a) Rates or levies payable to any or territorial authority.
 - (b) Charges for water, gas, electricity, telecommunications and other utilities or services, including line charges.
 - (c) Rubbish collection and recycling charges.
 - (d) New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and firefighting equipment.
 - (e) Any insurance excess (but not exceeding \$2,000) in respect of a claim and insurance premiums and related valuation fees (subject to subclause 23.2).
 - (f) Service contract charges for air conditioning, lifts, other building services and security services.
 - (g) Cleaning, maintenance and repair charges including charges for repainting, decoration repairs and the maintenance and repair of building services to the extent that such charges do not comprise part of the cost of a service maintenance contract, but excluding charges for structural repairs to the building (minor repairs to the roof of the building shall not be a structural repair), repairs due to defects in design or construction, inherent defects in the building and renewal or replacement of building services.
 - (h) The provisioning of toilets and other shared facilities.
 - (i) The cost of maintenance of lawns, gardens and planted areas including plant hire and replacement, and the cost of repair of fences.
 - (j) Yard and car parking area maintenance and repair charges but excluding charges for repaving and resealing.
 - (k) ~~Body Corporate charges for any insurance premiums under any insurance policy offered by the Body Corporate and related valuation fees and reasonable management administration expense.~~
 - (l) ~~Management expenses (subject to subclause 3.7).~~
 - (m) The costs incurred and payable by the Landlord in supplying to the territorial authority a building warrant of fitness and obtaining reports as required by sections 108 and 110 of the Building Act 2004 but excluding the costs of upgrading or other work to make the building comply with the Building Act 2004.

SECOND SCHEDULE

TENANT'S PAYMENTS

Rent

- 1.1 The Tenant shall pay the annual rent by a one-off payment at the Commencement Date and every year thereafter (or as varied pursuant to any rent review) on the Rent Payment Date. All rent shall be paid without any deductions or set-off by direct payment to the Landlord or as the Landlord may direct.

2.0 Rent Review

- 2.1 The rent shall be reviewed every three years during the term in accordance with the Landlord's Community Lease Policy.
- (a) Notwithstanding any other provisions of this clause, the annual rent payable as from the relevant rent review date shall not be less than the annual rent payable as at the commencement date.
- (b) The annual rent determined pursuant to clause 2.1 shall be the annual rent payable as from the relevant rent review date or the date of the Landlord's notice if such notice is served later than 3 months after the relevant rent review date.
- (c) The rent review may be recorded by way of deed or continuous tax invoice.

Rent Determinations

- 2.2 Immediately following service of the Recipient's notice on the Initiator, the parties shall endeavour to agree upon the current market rent, but if agreement is not reached within 10 working days then the new rent may be determined either:
- (a) By one party giving written notice to the other requiring the new rent to be determined by arbitration; or
- (b) If the parties so agree by registered valuers acting as experts and not as arbitrators as follows:
- (1) Each party shall appoint a valuer and give written notice of the appointment to the other party within 20 working days of the parties agreeing to so determine the new rent.
- (2) If the party receiving a notice fails to appoint a valuer within 20 working day period then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties.
- (3) The valuers appointed before commencing their determination shall appoint a third expert who need not be a registered valuer. If the parties cannot agree on the third expert, the appointment shall be made on the application of either party by the president or vice president for the time being of The New Zealand Institute of Valuers.
- (4) The valuers appointed by the parties shall determine the current market rent of the premises but if they fail to agree then the rent shall be determined by the third expert.
- (5) Each party shall be given the opportunity to make written or oral representations subject to such reasonable time and other limits as the valuers or the third expert may prescribe and they shall have regard to any of the representations but not be bound by them.
- (6) The parties shall jointly and severally indemnify the third expert for their costs. As between the parties, they will share the costs equally. A party may pay the other party's share of the costs and recover the payment on demand from the other party.
- (7) If the parties agree, they may release the third expert from liability for negligence in acting as third expert in accordance with this subclause 2.2.
- When the new rent has been determined the person or persons determining it shall give written notice of it to the parties. The notice shall provide as to how the costs of the determination shall be borne and it shall be binding on the parties.

Interim Market Rent

- 2.3 Pending determination of the new rent, the Tenant shall from the relevant market rent review date, or the date of service of the Initiator's notice if the notice is served later than 3 months after the relevant market rent review date, until the determination of the new rent pay an interim rent as follows:
- (a) If both parties supply a registered valuer's certificate substantiating the new rents proposed, the interim rent payable shall be half way between the new rents proposed by the parties; or
- (b) If only one party supplies a registered valuer's certificate, the interim rent payable shall be the rent substantiated by the certificate; or
- (c) if no registered valuer's certificates are supplied, the interim rent payable shall be the rent payable immediately prior to the relevant market rent review date.

- ~~But in no circumstances shall the interim rent be less than the rent payable as at the commencement date of the then current lease term.~~
- ~~The interim rent shall be payable with effect from the relevant market rent review date, or the date of service of the Initiator's notice if the notice is served later than 3 months after the relevant market rent review date and, subject to subclause 2.4, shall not be subject to adjustment.~~
- 2.4 Upon determination of the new rent, any overpayment shall be applied in payment of the next month's rent and any amount then remaining shall immediately be refunded to the Tenant. Any shortfall in payment shall immediately be payable by the Tenant.

CPI Rent Review

- 2.5 The annual rent payable from each CPI rent review date shall be determined as follows:
- (a) The Landlord shall adjust the annual rent on the basis of increases (and not decreases) in the CPI by giving notice to the Tenant of the increases (if any) using the formula:
- $$A = B \times (C+D)$$
- Where:
- A = the CPI reviewed rent from the relevant CPI rent review date
- B = the annual rent payable immediately before the relevant CPI rent review date
- C = CPI for the quarter year ending immediately before the relevant CPI rent review date
- D = CPI for the quarter year ending immediately before the last rent review date or if there is no previous rent review date, the commencement date of the then current term of the lease (and in the case where A is the CPI reviewed rent for a renewal date then the last rent review date of the immediate preceding lease term or if there is no rent review date the commencement date of the preceding term)
- where (C+D) shall not be less than 1.
- (b) If the CPI is discontinued and not replaced, or if there is a material change to the basis of calculation of the CPI, or a resetting of the CPI, an appropriate index which reflects the change in the cost of living in New Zealand as agreed by the parties and failing agreement to be determined by an expert appointed by the president or vice president of the New Zealand Law Society will be used.
- (c) If the relevant CPI is not published at the relevant CPI rent review date, as soon as the CPI is published an appropriate adjustment will be made to the rent (if necessary) with effect from the relevant CPI rent review date.
- (d) Notwithstanding any other provision of subclause 2.5, the annual rent payable as from the relevant CPI rent review date shall not be less than the annual rent payable immediately preceding the CPI rent review date (and in the case where the relevant CPI rent review date is a renewal date, the annual rent payable at the expiry of the preceding term).
- 2.6 The new rent determined pursuant to subclause 2.5 shall be payable from the relevant CPI rent review date once it is determined by the Landlord giving notice under that subclause. Pending determination of the new rent, the Tenant will pay the rent that applies prior to the CPI rent review date. On determination of the new rent, the Tenant will immediately pay any shortfall to the Landlord.

3.0 Outgoings

- 3.1 The Tenant shall pay the outgoings properly and reasonably incurred in respect of the property which are specified in the First Schedule. Where any outgoing is not separately assessed or levied in respect of the premises then the Tenant shall pay such proportion of it as is specified in the First Schedule or if no proportion is specified then such fair proportion as shall be agreed or failing agreement determined by arbitration.
- 3.2 The Landlord shall vary the proportion of any outgoing payable to ensure that the Tenant pays a fair proportion of the outgoing.
- 3.3 ~~If any outgoing is rendered necessary by another tenant of the property or that tenant's employees, contractors or invitees causing damage to the property or by another tenant failing to comply with that tenant's leasing obligations, then that outgoing shall not be payable by the Tenant.~~
- 3.4 The outgoings shall be apportioned between the Landlord and the Tenant in respect of period's current at the commencement and termination of the term.
- 3.5 The outgoings shall be payable on demand or if required by the Landlord by monthly instalments ~~on each rent payment date of a reasonable amount~~ as the Landlord shall determine calculated on an annual basis. Where any outgoing has not been taken into account in determining the monthly instalments it shall be payable on demand.

- 3.6 After the 31st March in each year of the term or other date in each year as the Landlord may specify, and after the end of the term, the Landlord shall supply to the Tenant reasonable details of the actual outgoings for the year or period then ended. Any over payment shall be credited or refunded to the Tenant and any deficiency shall be payable to the Landlord on demand.

~~3.7 Any profit derived by the Landlord and if a company by its shareholders either directly or indirectly from the management of the property shall not compromise part of the management expenses payable as an outgoing.~~

Goods and Services Tax

- 4.1 The Tenant shall pay to the Landlord or as the Landlord shall direct the GST payable by the Landlord in respect of the rental and other payments payable by the Tenant under this lease. The GST in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment shall be payable upon demand.
- 4.2 If the Tenant shall make default in payment of the rental or other moneys payable under this lease and the Landlord becomes liable to pay Default GST then the Tenant shall on demand pay to the Landlord the Default GST in addition to interest payable on the unpaid GST under subclause 5.1.

Interest on Unpaid Money

- 5.1 If the Tenant defaults in payment of the rent or other moneys payable under this lease for 10 working days then the Tenant shall pay on demand interest at the default interest rate on the moneys unpaid from the due date for payment to the date of payment.
- 5.2 Unless a contrary intention appears on the front page or elsewhere in this lease the default interest rate is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the default interest is payable, plus 5 per cent per annum.

Costs

- 6.1 Each party will pay their own costs of the negotiation and preparation of this lease and any deed recording a rent review or renewal. The Tenant shall pay the Landlord's reasonable costs incurred in considering any request by the Tenant for the Landlord's consent to any other matter contemplated by this lease, and the Landlord's legal costs (as between lawyer and client) of and incidental to the enforcement of the Landlord's rights remedies and powers under this lease.

LANDLORD'S PAYMENTS

Outgoings

- 7.1 Subject to the Tenant's compliance with the provisions of clause 3 the Landlord shall pay all outgoings in respect of the property not payable by the Tenant direct. The Landlord shall be under no obligation to minimise any liability by paying any outgoing or tax prior to receiving payment from the Tenant.

MAINTENANCE AND CARE OF PREMISES

Tenant's Obligations

- 8.1 The Tenant shall be responsible to:

(a) **Maintain the premises**

In a proper and workmanlike manner and to the reasonable requirements of the Landlord keep and maintain the interior of the premises in the same clean order repair and condition as they were in at the commencement date of this lease ~~(or where the lease is renewed, the commencement date of the initial term of this lease)~~ and will at the end or earlier determination of the term quietly yield up the same in the like clean order repair and condition. The premises condition report (if completed) shall be evidence of the condition of the premises at the commencement date of this lease. In each case the Tenant shall not be liable for fair wear and tear arising from reasonable use.

(b) **Breakages and minor replacements**

Repair or replace glass breakages with glass of the same or better weight and quality, repair breakage or damage to all doors windows light fittings and power points of the premises and replace light bulbs, tubes and power points that wear out with items of the same or better quality and specification.

(c) **Painting**

Paint and decorate those parts of the interior of the premises which have previously been painted and decorated as at the commencement date of this lease (or where the lease is renewed the commencement date of the initial term of this lease) when they reasonably require repainting and redecoration to a specification as approved by the Landlord such approval not to be unreasonably withheld.

- (d) **Floor coverings**
Keep all floor coverings in the premises clean and replace all floor coverings worn or damaged other than by fair wear and tear with floor coverings of the same or better quality, specification and appearance when reasonably required by the Landlord.
 - (e) **Damage or Loss**
Make good any damage to the property or loss caused by improper careless or abnormal use by the Tenant or those for whom the Tenant is responsible, to the Landlord's reasonable requirements.
- 8.2 Where the Tenant is leasing all of the property, the Tenant shall:
- (a) **Care of grounds**
Keep any grounds yards and surfaced areas in a clean and tidy condition and maintain any garden or lawn areas in a tidy and cared for condition.
 - (b) **Water and drainage**
Keep and maintain the storm or waste water drainage system including downpipes and guttering clear and unobstructed.
 - (c) **Other works**
Carry out those works maintenance and repairs to the property as the Landlord may require in respect of which outgoings are payable by the Tenant.
- 8.3 Notwithstanding subclause 8.1(a) the Tenant shall not be liable for the maintenance or repair of any building services but this subclause shall not release the Tenant from any obligation to pay for the cost of any service maintenance contract or charges in respect of the maintenance or repair of the building services if it is an outgoing specified in the First Schedule but only to the extent specified in the First Schedule.
- 8.4 Notwithstanding any other provision of this lease, the Tenant shall not be liable to repair any inherent defect in the premises nor to pay any outgoings incurred by the Landlord in remedying any inherent defect.
- 8.5 If the Landlord shall give the Tenant written notice of any failure on the part of the Tenant to comply with any of the requirements of subclauses 8.1 or 8.2 the Tenant shall with all reasonable speed so comply.

Toilets

- 9.1 The toilet sinks and drains shall be used for their designed purposes only and no substance or matter shall be deposited in them which could damage or block them.

Rubbish Removal

- 10.1 The Tenant shall regularly cause all of the Tenant's rubbish and recycling to be removed from the premises and will keep the Tenant's rubbish bins or containers in a tidy condition. The Tenant will also at the Tenant's own expense caused to be removed all trade waste boxes and other goods or rubbish not removable in the ordinary course by the local authority.

Landlord's Maintenance

- 11.1 The Landlord shall keep and maintain the building, all building services and the carparks in good order and repair and weatherproof but the Landlord shall not be liable for any:
- (a) Repair or maintenance which the Tenant is responsible to undertake.
 - (b) Want of repair or defect in respect of building services, so long as the Landlord is maintaining a service maintenance contract covering the work to be done, or where the building services have not been supplied by the Landlord.
 - (c) Repair or maintenance which is not reasonably necessary for the Tenant's use and enjoyment of the premises
 - (d) Loss suffered by the Tenant arising from any want of repair or defect unless the Landlord shall have received notice in writing of that from the Tenant and has not within a reasonable time after that taken appropriate steps to remedy the same.
- 11.2 The Landlord shall keep and maintain service maintenance contracts for lifts, air-conditioning and at the Landlord's option any other building services supplied by the Landlord. Whenever building services cannot be maintained in good order and repair through regular maintenance, the Landlord will if reasonably required replace the services with services of a similar type and quality.
- 11.3 The Tenant shall be liable to reimburse the Landlord for the cost of any such repair, maintenance or service contract pursuant to subclauses 11.1 and 11.2 if it is an outgoing specified in the First Schedule but only to the extent specified in the First Schedule.

Notification of Defects

- 12.1 The Tenant shall give to the Landlord prompt written notice of any accident to or defect in the premises of which the Tenant may be aware and in particular in relation to any pipes or fittings used in connection with the water electrical gas or drainage services.

Landlord's Right of Inspection

- 13.1 The Landlord and the Landlord's employees, contractors and invitees may at all reasonable times and after having given prior written notice to the Tenant (except in the case of emergencies) enter upon the premises to view their condition.

Landlord May Repair

- 14.1 If default shall be made by the Tenant in the due and punctual compliance with any repair notice given by the Landlord pursuant to this lease, or if any repairs for which the Tenant is responsible require to be undertaken as a matter of urgency then without prejudice to the Landlord's other rights and remedies expressed or implied the Landlord may by the Landlord's employees and contractors with all necessary equipment and material at all reasonable times and on reasonable notice (except in the case of emergencies) enter the premises to execute the works. Any moneys expended by the Landlord in executing the works shall be payable by the Tenant to the Landlord upon demand together with interest on the moneys expended at the default interest rate from the date of expenditure to the date of payment.

Access for Works

- 15.1 The Tenant shall permit the Landlord and the Landlord's employees and contractors at all reasonable times and on reasonable written notice (except in the case of emergencies) to enter the premises for a reasonable period to inspect and carry out works to the premises or adjacent premises and to install inspect repair renew or replace any services where they are not competent authority. All repairs inspections and works shall be carried out with the least possible inconvenience to the Tenant subject to subclauses 15.3 and 15.4.
- 15.2 If the Tenant's ~~business~~ use of the premises is materially disrupted because of the Landlord's works provided for in subclause 15.1, then during the period the works are being carried out a fair proportion of the rent and outgoings shall cease to be payable but without prejudice to the Tenant's rights if the disruption is due to a breach by the Landlord of the Landlord's obligation, under subclause 15.1, to cause the least possible inconvenience to the Tenant.
- 15.3 If in the Landlord's reasonable opinion, the Landlord requires the Tenant to vacate the whole or part of the premises to enable the works referred to in subclause 15.1 to be carried out, the Landlord may give the Tenant reasonable written notice requiring the Tenant to vacate the whole or part of the premises and specifying a reasonable period for which the Landlord requires possession. On the expiry of the notice the Landlord may take possession of the premises or the part specified in the notice. A fair proportion of the rent and outgoings shall cease to be payable during the period the Tenant vacates the premises as required by the Landlord.
- 15.4 The Landlord shall act in good faith, and have regard to the nature, extent and, urgency of the works when exercising the Landlord's right of access or possession in accordance with subclause 15.1 and 15.3.

USE OF PREMISES

Use

- 16.1 The Tenant shall not without the prior written consent of the Landlord use or permit the whole or any part of the premises to be used for any purpose other than the use as set out at clause 13 of the FIRST SCHEDULE. Further the Tenant shall ensure that while using the premises it will comply with the designation conditions set out in the SEVENTH SCHEDULE. The Landlord's consent shall not be unreasonably or arbitrarily withheld or delayed in respect of any proposed use which is:
- (a) Consistent with the Reverses Act 1977; and
 - (b) Consistent with the management plan for the reserve; and
 - (c) Consistent with the designation conditions in the SEVENTH SCHEDULE; and
 - (d) Of a temporary or periodic nature that is consistent with clause 16.5; and
 - (e) Compliant with the requirements of the Resource Management Act 1991 or any other statutory provisions relating to resource management.
- 16.2 If any change in use requires compliance with sections 114 and 115 of the Building Act 2004 the Landlord, as a condition of granting consent, may require the Tenant to comply with sections 114 and 115 of the Act and to pay all compliance costs.
- 16.3 The Tenant must ensure the premises remains utilised to an acceptable level but at all times pursuant to the use as set out in clause 13 of the First Schedule. If the premises becomes underutilised for reasonable periods of time and after consultation with the Tenant the Landlord forms the reasonable opinion that the premises is under utilized, the Landlord may elect to terminate the lease;
- 16.4 The provisions in 16.3 shall not to be exercised maliciously or arbitrarily by Landlord.

Other Services

- 16.5 The Landlord may approve the periodic use of the premises by emergency, civil defence, police, search and rescue, fire and emergency and other emergency community services where an event warrants such emergency use as determined by the Landlord or any other relevant governmental body.
- 16.6 The Tenant acknowledges the possible periodic emergency use may be necessary from time to time and agrees to permit such use and cooperate with the Landlord and any other relevant authority
- 16.7 The Landlord or lead emergency service providers will use their best endeavours to keep the Tenant reasonably informed during any emergency event that requires periodic use of the premises as described herein.
- 16.8 The Landlord may consent to use of the premises by other community groups or the Local or Regional Authorities for community purposes provided that such other use complies in all other respects with the use provisions of this lease.

~~16.8 If the premises are a retail shop the Tenant shall keep the premises open for business during usual trading hours and fully stocked with appropriate merchandise for the efficient conduct of the Tenant's business.~~

Lease of Premises and Car Parks Only

- 17.1 The tenancy shall relate only to the premises as described in the FIRST SCHEDULE and ~~the car parks (if any) and the~~ Landlord shall at all times be entitled to use occupy and deal with the remainder of the property without reference to the Tenant and the Tenant shall have no rights in relation to it other than the rights of use under this lease.

Neglect of Other Tenant

~~18.1 The Landlord shall not be responsible to the Tenant for any act or default or neglect of any other tenant of the property.~~

Signage

- 19.1 The Tenant shall not affix paint or exhibit or permit to be affixed painted or exhibited any name sign name-plate signboard or advertisement of any description on or to the exterior of the building without the prior approval in writing of the Landlord but approval shall not be unreasonably or arbitrarily withheld or delayed in respect of signage describing the Tenant's use. If approved the signage shall be secured in a substantial and proper manner so as not to cause any damage to the building or any person and the Tenant shall at the end or sooner determination of the term remove the signage and make good any damage occasioned in connection with the signage.

Additions, Alterations, Reinstatement and Chattels Removal

- 20.1 The Tenant shall neither make nor allow to be made any alterations or additions to any part of the premises or alter the external appearance of the building without first producing to the Landlord on every occasion plans and specifications and obtaining the written consent of the Landlord (not to be unreasonably or arbitrarily withheld or delayed) for that purpose. If the Landlord authorises any alterations or additions which are made before the commencement date or during the term of this lease the Tenant will at the Tenant's own expense if required by the Landlord no later than the end or earlier termination of the term reinstate the premises. Ownership of the alterations or additions that are not removed by the end or earlier termination of the lease may at the Landlord's election pass to the Landlord without compensation payable to the Tenant. If the Tenant fails to reinstate then any costs incurred by the Landlord in reinstating the premises whether in whole or in part, within 6 months of the end or earlier termination of the term shall be recoverable from the Tenant.
- 20.2 The Tenant, when undertaking any "building work" to the premises (as that term is defined in the Building Act 2004), shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates pursuant to that Act and shall provide copies of the building consents and code compliance certificates to the Landlord.
- 20.3 The Tenant may at any time before and will if required by the Landlord no later than the end or earlier termination of the term remove all the Tenant's chattels. In addition to the Tenant's obligations to reinstate the premises pursuant to subclause 20.1 the termination of the term ownership of the chattels may at the Landlord's election pass to the Landlord or the Landlord may remove them from the premises and forward them to a refuse collection centre. Where subclause 27.5 applies, the time by which the Tenant must remove the chattels and to make good all resulting damage will be extended to 5 working days after access to the premises is available.
- 20.4 The cost of making good resulting damage and the cost of removal of the Tenant's chattels shall be recoverable from the Tenant and the Landlord shall not be liable to pay any compensation nor be liable for any loss suffered by the Tenant.

Compliance with Statutes and Regulations

- 21.1 The Tenant shall comply with the provisions of all statutes, ordinances, regulations and by-laws relating to the use of the premises by the Tenant or other occupant and will also comply with the provisions all licences, requisitions and notices issued by any competent authority in respect of the premises or their use by the Tenant or other occupant provided that:

- (a) The Tenant shall not be required to make any structural repairs alterations or additions nor to replace or install any plant or equipment except where required by reason of the particular nature of the use of the premises by the Tenant or other occupant of the premises or the number or sex of persons employed on the premises.
 - (b) The Tenant shall not be liable to discharge the Landlord's obligations as owner under the Building Act 2004 unless any particular obligation is the responsibility of the Tenant as an occupier of the premises.
 - (c) The Tenant will promptly provide the Landlord with a copy of all requisitions and notices received from a competent authority under this subclause.
- 21.2 If the Landlord is obliged by any legislation or requirement of any competent authority to expend moneys during the term of this lease or any renewed term on any improvement addition or alteration to the property which is not the Tenant's responsibility under subclause 21.1 and the expenditure would be an unreasonable amount then the Landlord may determine the lease. Any dispute as to whether or not the amount to be expended by the Landlord is unreasonable shall be determined by arbitration.
- 21.3 The Landlord warrants that allowing the premises to be open to members of the public and allowing the use of the premises by members of the public at the commencement date will not be a breach of section 363 of the Building Act 2004. This clause does not apply to any "building work" (as defined in the Building Act 2004) relating to the fit-out of the premises by the Tenant.
- 21.4 The Tenant, when undertaking any building work to the premises, shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates and shall not allow the premises to be open to members of the public or allow use of the premises by members of the public if that would be in breach of section 363 of the Building Act 2004.
- 21.5 During the term and any renewal, the Landlord shall not give consent to or carry out any building work in any part of the Landlord's property which may cause the Tenant to be in breach of section 363 of the Building Act 2004 by allowing the premises to be open to members of the public and allowing the use of the premises by members of the public.

No Noxious Use

- 22.1 The Tenant shall not:
- (a) Bring upon or store within the premises nor allow to be brought upon or stored within the premises any machinery goods or things of an offensive noxious illegal or dangerous nature, or of a weight size or shape as is likely to cause damage to the building or any surfaced area.
 - (b) Contaminate the property and shall undertake all works necessary to remove any contamination of the property other than contamination not caused by the Tenant or which took place prior to the commencement date of the lease term. Contamination means any change to the physical chemical or biological condition of the property by a "contaminant" as that word is defined in the Resource Management Act 1991.
 - (c) Use the premises or allow them to be used for any noisome noxious illegal or offensive trade or business.
 - (d) Allow any act of thing to be done which may be or grow to be a nuisance disturbance or annoyance to the Landlord, other tenants of the property, or any other person, and generally the Tenant shall conduct the Tenant's business upon the premises in a clean quiet and orderly manner free from damage nuisance disturbance or annoyance to any such persons but the carrying on by the Tenant in a reasonable manner of the business use or any use to which the Landlord has consented shall be deemed not to be a breach of this clause.

INSURANCE

Landlord Shall Insure

- 23.1 The Landlord shall at all times during the term keep and maintain insurance of the type shown and for the risks specified in the First Schedule. If insurance cover required under this subclause becomes unavailable during the term of this lease and any renewal other than because of the Landlord's act or omission, the Landlord will not be in breach while cover is unavailable, provided the Landlord uses all reasonable endeavours on an ongoing basis to obtain cover. The Landlord will advise the Tenant in writing whenever cover becomes unavailable and provide reasons as to the unavailability. The Landlord will also provide the Tenant with reasonable information relating to the cover when requested by the Tenant.
- 23.2 The parties acknowledge and agree pursuant to section 271 of the Property Law Act 2007 that to the extent of any excess payable regarding any insurance policy held by the Landlord, the excess will represent an amount for which the Landlord has not insured, or has not fully insured the premises or the property against destruction or damage arising from the events that the section applies to. If the Landlord makes any claim against its insurance for any destruction or damage because of any act or omission of the Tenant, the Tenant will pay the Landlord the full amount of the excess.

Tenant Not to Void Insurance

- 24.1 The Tenant shall not carry on or allow upon the premises any trade or occupation of allow to be done any act or thing which:
- (a) Shall make void or voidable any policy of insurance on the property.

- (b) May render any increased or extra premium payable for any policy of insurance except where in circumstances in which any increased premium is payable the Tenant shall have first obtained the consent of the insurer of the premises and the Landlord and made payment to the insurer of the amount of any such increased or extra premium as may be payable but the carrying on by the Tenant in a reasonable manner of the business use or any use to which the Landlord has consented shall be deemed not to be a breach of this clause.
- 24.2 In any case where in breach of subclause 24.1 the Tenant has rendered any insurance void or voidable and the Landlord has suffered loss or damage by that the Tenant shall at once compensate the Landlord in full for such loss or damage.

When Tenant to Have Benefit of Landlord's Insurance

- 25.1 Where the property is destroyed or damaged by fire, flood, explosion, lightning, storm, earthquake, volcanic activity or any risk against which the Landlord is (or has covenanted with the Tenant to be) insured the Landlord will not require the Tenant to meet the cost of making good the destruction or damage to the property and will indemnify the Tenant against such cost where the Tenant is obliged to pay for making good such damage or destruction. The Landlord does not have to indemnify the Tenant and the Tenant will not be excused from liability under this subclause if and to the extent that:
 - (a) The destruction or damage was intentionally caused by the Tenant or those for whom the Tenant is responsible; or
 - (b) The destruction or damage was the result of an act of omission by the Tenant or those for whom the Tenant is responsible and that act or omission:
 - (1) Occurred on or about the property; and
 - (2) Constitutes an imprisonable offence; or
 - (c) Any insurance moneys that would otherwise have been payable to the Landlord for the damage or destruction are rendered irrecoverable in consequence of any act or omission of the Tenant or those for whom the Tenant is responsible.

DAMAGE TO OR DESTRUCTION OF PREMISES

Total Destruction

- 26.1 If the premises or any portion of the building of which the premises may form part shall be destroyed or so damaged.
 - (a) as to render the premises untenable then the term shall at once terminate from the date of destruction or damage; or
 - (b) in the reasonable opinion of the Landlord as to require demolition or reconstruction, then the Landlord may within 3 months of the date of damage give the Tenant 20 working days' notice to terminate and a fair proportion of the rent and outgoings shall cease to be payable as from the date of damage.

Any termination pursuant to this subclause shall be without prejudice to the rights of either party against the other.

Partial Destruction

- 27.1 If the premises or any portion of the building of which the premises may form part shall be damaged but not so as to render the premises untenable and:
 - (a) the Landlord's policy or policies of insurance shall not have been invalidated or payment of the policy moneys refused in consequence of some act or default of the Tenant; and
 - (b) all the necessary permits and consents are obtainable.

the Landlord shall with all reasonable speed expend all the insurance moneys received by the Landlord in respect of such damage towards repairing such damage or reinstating the premises or the building, but the Landlord shall not be liable to expend any sum of money greater than the amount of the insurance money received.
- 27.2 Any repair or reinstatement may be carried out by the Landlord using such materials and form of construction and according to such plan as the Landlord thinks fit and shall be sufficient so long as it is reasonably adequate for the Tenant's occupation and use of the premises.
- 27.3 Until the completion of the repairs or reinstatement a fair proportion of the rent and outgoings shall cease to be payable as from the date of damage.
- 27.4 If any necessary permit or consent shall not be obtainable of the insurance moneys received by the Landlord shall be inadequate for the repair or reinstatement then the term shall at once terminate but without prejudice to the rights of either party against the other.

No Access in Emergency

- 27.5 If there is an emergency and the Tenant is unable to gain access to the premises to fully conduct the Tenant's business from the premises because of reasons of safety of the public or property or the need to prevent reduce or overcome any hazard, harm or loss that may be associated with the emergency including:

- (a) a prohibited or restricted access cordon applying to the premises; or
 - (b) prohibition on the use of the premises pending the completion of structural engineering or other reports and appropriate certifications required by any competent authority that the premises are fit for use; or
 - (c) restriction on occupation of the premises by any competent authority,
- then a fair proportion of the rent and outgoings shall cease to be payable for the period commencing on the date when the Tenant became unable to gain access to the premises to fully conduct the Tenant's business from the premises until the inability ceases.

27.6 This subclause 27.6 applies where subclause 27.5 applies and the premises or building of which the premises form part are not totally or partially destroyed or damaged resulting in the lease being cancelled as provided for in subclause 26.1 or 27.4. Either party may terminate this lease by giving 10 working days written notice to the other if:

- (a) the Tenant is unable to gain access to the premises for the period specified in the First Schedule; or
- (b) the party that terminates this lease can at any time prior to termination establish with reasonable certainty that the Tenant is unable to gain access to the premises for that period.

Any termination shall be without prejudice to the rights of either party against the other.

DEFAULT

Cancellation

28.1 The Landlord may (in addition to the Landlord's right to apply to the Court for an order for possession) and subject to section 245(2) of the Property Law Act 2007 cancel this lease by re-entering the premises at the time or at any time after that:

- (a) If the rent shall be in arrears 10 working days after any rent payment date and the Tenant has failed to remedy that breach within 10 working days after service on the Tenant of a notice in accordance with section 245 of the Property Law Act 2007.
- (b) In case of breach by the Tenant of any covenant or agreement on the Tenant's part expressed or implied in this lease (other than the covenant to pay rent) after the Tenant has failed to remedy that breach within the period specified in a notice served on the Tenant in accordance with section 246 of the Property Law Act 2007.
- (c) If the Tenant shall make or enter into or endeavour to make or enter into any composition assignment or other arrangement with or for the benefit of the Tenant's creditors.
- (d) In the event of the insolvency, bankruptcy, statutory management, voluntary administration, receivership or liquidation of the Tenant.
- (e) If the Tenant shall suffer execution to issue against the Tenant's property goods or effects under any judgement against the Tenant in any Court for the sum in excess of five thousand dollars (\$5,000).

The term shall terminate on the cancellation but without prejudice to the rights of either party against the other.

Essentiality of Payments

29.1 Failure to pay rent or other moneys payable under this lease on the due date shall be a breach going to the essence of the Tenant's obligations under the lease. The Tenant shall compensate the Landlord and the Landlord shall be entitled to recover damages from the Tenant for such breach. This entitlement shall subsist notwithstanding any determination of the lease and shall be in addition to any other right or remedy which the Landlord may have.

29.2 The acceptance by the Landlord of arrears of rent or other moneys shall not constitute a waiver of the essentiality of the Tenant's continuing obligation to pay rent and other moneys.

Repudiation

30.1 The Tenant shall compensate the Landlord and the Landlord shall be entitled to recover damages for any loss or damage suffered by reason of any acts or omissions of the Tenant constituting a repudiation of the lease or the Tenant's obligations under the lease. Such entitlement shall subsist notwithstanding any determination of the lease and shall be in addition to any other right or remedy which the Landlord may have.

QUIET ENJOYMENT

31.1 The Tenant paying the rent and performing and observing all the covenants and agreements expressed and implied in this lease shall quietly hold and enjoy the premises throughout the term without any interruption by the Landlord or any person claiming under the Landlord except where the Landlord grants third party use of the premises under clause 16.5-16.7.

RENEWAL OF LEASE

~~32.1 If the Tenant has given to the Landlord written notice to renew the lease at least 3 calendar months before the end of the term and is not at the date of the giving of the notice in breach of this lease then the Landlord will grant a new lease for a further term from the renewal date as follows:~~

- ~~(a) If the renewal date is a market rent review date the annual rent shall be the current market rent which if not agreed on shall be determined in accordance with subclause 2.2 but the annual rent shall not be less than the rent payable as at the commencement date of the immediately preceding lease term.~~
- ~~(b) If the renewal date is a CPI rent review date, the annual rent shall be determined in accordance with subclause 2.5.~~
- ~~(c) Subject to the provisions of paragraphs (a) and (b) the new lease shall be upon and subject to the covenants and agreements expressed and implied in this lease except that the term of this lease plus all further terms shall expire on or before the final expiry date.~~
- ~~(d) The annual rent shall be subject to review during the term of the new lease on the rent review dates specified in the First Schedule.~~
- ~~(e) The Landlord as a condition of granting a new lease shall be entitled to have the new lease guaranteed by any guarantor who has guaranteed this lease on behalf of the Tenant who has given notice or the security of a bank guarantee that has been given.~~
- ~~(f) If the renewal date is a market rent review date, pending the determination of the rent, the Tenant shall pay an interim rent in accordance with subclauses 2.3 and 2.4.~~
- ~~(g) Notwithstanding anything contained in subclauses 32.1(f) the interim rent referred to in that subclause shall not be less than the annual rent payable as at the commencement date of the immediately preceding lease term.~~
- ~~(h) The parties will not be released by the renewal of the lease from any liability for any breach under this lease.~~

ASSIGNMENT FOR SUBLETTING

- 33.1 The Tenant shall not assign sublet or otherwise part with the possession of the premises, the carparks (if any) or any part of them without first obtaining the written consent of the Landlord which shall not unreasonably withhold or delay if the following conditions are fulfilled:
- (a) The Tenant proves to the reasonable satisfaction of the Landlord that the proposed assignee or subtenant is (and in the case of a company that the shareholders of the proposed assignees or subtenant area) respectable responsible and has the financial resources to meet the Tenant's commitments under this lease and in the case of the subtenant the subtenant's commitments under the sublease. The Tenant shall give the Landlord any additional information reasonably required by the Landlord.
 - (b) All rent and other moneys payable have been paid and there is not any subsisting breach of any of the Tenant's covenants.
 - (c) In the case of an assignment a deed of covenant in customary form approved or prepared by the Landlord is duly executed and delivered to the Landlord.
 - ~~(c) In the case of an assignment to a company (other than a company listed on the main board of a public stock exchange in New Zealand or Australia) either a deed of guarantee in customary form approved or prepared by the Landlord is duly executed by the principal shareholders of that company and delivered to the Landlord or a bank guarantee from a registered trading bank in New Zealand on reasonable terms approved by the Landlord as security for the performance by the company of its obligations under this lease is provided to the Landlord.~~
 - (e) The Tenant pays the Landlord's reasonable costs and disbursements in respect of the approval and the preparation of any deed of covenant or guarantee and (if appropriate) all fees and charges payable in respect of any reasonable inquiries made by or on behalf of the Landlord concerning any proposed assignee subtenant or guarantor. All such costs shall be payable whether or not the assignment or subletting proceeds.
 - (f) The Assignees 'Use' is the same, or substantially the same in the reasonable opinion of the Landlord, as indicated in the First Schedule, or is deemed complimentary in the reasonable opinion of the Landlord
- 33.2 Where the Landlord consents to a subletting the consent shall extend only to the subletting and notwithstanding anything contained or implied in the sublease the consent shall not permit any subtenant to deal with the sublease in any way in which the Tenant is restrained from dealing without consent.
- 33.3 Where any Tenant is a company which is not listed on the main board of a public stock exchange in New Zealand or Australia, then any change in the legal or beneficial ownership of its shares or the shares of its shareholder or issue of new capital in the company or its shareholder where in any case there is a change in the effective management or control of the company will require the written consent of the Landlord which will not be unreasonably withheld or delayed.

UNIT TITLE PROVISIONS

~~34.1 Clause 34 applies where the property is part of a unit title development.~~

Body Corporate

~~34.2 The expression "Body Corporate" means the Body Corporate under the Unit Titles Act 2010 (in subclauses 34.2 to 34.7 "the Act") in respect of the property.~~

Act and Rules Paramount

~~34.3 The lease shall be subject to the provisions of the rules of the Body Corporate and the provisions of the Act.~~

Insurance

~~34.4 Unless the Body Corporate has resolved that the Landlord is to insure the building the Landlord's obligations to insure the building shall be satisfied by the Body Corporate maintaining the same insurance cover in accordance with the Act.~~

Landlord's Obligations

~~34.5 The Landlord shall observe and perform all of the Landlord's obligations as a member of the Body Corporate and shall use the Landlord's best endeavours to ensure that the Body Corporate complies with its rules and the provisions of the Act.~~

Tenant's Obligations

~~34.6 The Tenant shall comply with the rules of the Body Corporate and the provisions of the Act to the extent that they apply to the Tenant's use of the property.~~

Consents

~~34.7 Where in this lease the consent of the Landlord is required in respect of any matter than the like consent of the Body Corporate shall also be required if the consent of the Body Corporate to the matter would be necessary under its rules or the Act.~~

CARPARKS

~~35.1 The Tenant shall have the right to exclusion possession of the leased car parks, but when any car park is not being used by the Tenant other persons shall be entitled to pass over the same.~~

~~35.2 The Landlord may carry out repairs to the car parks and no abatement of rent or other compensation shall be claimed by the Tenant except pursuant to subclauses 26.1 and 27.3.~~

~~35.3 The Tenant shall comply with the Landlord's reasonable requirements relating to the use of the car parks and access to them and in particular shall only use the car parks for the parking of one motor vehicle per parking space.~~

~~35.4 The provisions of the Second Schedule shall apply to the car parks as appropriate.~~

GENERAL

Holding Over

36.1 If the Landlord permits the Tenant to remain in occupation of the premises after the expiration or sooner determination of the term, the occupation shall be a periodic tenancy on terminable by at least 20 working days notice given at any time with the tenancy terminating on the expiry of the notice at the rent then payable and otherwise on the same covenants and agreements (so far as applicable to a periodic tenancy) as expressed or implied under this lease.

Access for Re-Letting

37.1 The Tenant will during the term permit the Landlord's representatives and prospective tenants to have access to inspect the premises provided that:

- (a) Any such inspection is at a time which is reasonably convenient to the Tenant and after reasonable written notice.
- (b) The inspection is conducted in a manner which does not cause disruption to the Tenant.
- (c) If the Landlord or the Landlord's representatives are not present the persons inspecting have written authority from the Landlord to do so.

Suitability

38.1 No warranty or representation expressed or implied has been or is made by the Landlord that the premises are now suitable or will remain suitable or adequate for use by the Tenant or that any use of the premises by the Tenant will comply with the by-laws or ordinances or other requirements of any authority having jurisdiction.

Affirmation

39.1 A party to this lease shall not be entitled to cancel this lease if, with full knowledge of any repudiation or misrepresentation or breach of covenant, that party affirmed this lease.

Waiver

40.1 No waiver or failure to act by either party in respect of any breach by the other shall operate as a waiver or another breach.

Land Transfer Title or Mortgagee's Consent

- 41.1 The Landlord shall not be required to do any act or thing to enable this lease to be registered or be required to obtain the consent of any mortgagee of the property and the Tenant will not register a caveat in respect of the Tenant's interest under this lease.

Notices

- 42.1 All notices must be in writing and must be served by one of the following means:
- (a) In the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and
 - (b) In all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:
 - (1) in the manner authorised by sections 354 to 361 of the Property Law Act 2007, or
 - (2) by personal delivery, or by posting by registered or ordinary mail, or by facsimile, or by email.
- 42.2 In respect of the means of service specified in subclause 42.1(b)(2), a notice is deemed to have been served:
- (a) In the case of personal delivery, when received by the addressee.
 - (b) In the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand.
 - (c) In the case of facsimile transmission, when sent to the addressee's facsimile number.
 - (d) In the case of email, when acknowledged by the addressee orally or by return email or otherwise in writing except that return emails generated automatically shall not constitute an acknowledgement.
- 42.3 In the case of a notice to be served on the Tenant, if the Landlord is unaware of the Tenant's last known address in New Zealand or the Tenant's facsimile number, any number placed conspicuously on any part of the premises shall be deemed to have been served on the Tenant on the day on which it is affixed.
- 42.4 A notice shall be valid if given by any director, general manager, lawyer or other authorised representative of the party giving the notice.
- 42.5 Where two or more notices are deemed to have been served at the same time, they shall take effect in the order in which they would have been served but for subclause 47.1(p).
- 42.6 Any period of notice required to be given under this agreement shall be computed by excluding the date of service.

Arbitration

- 43.1 The parties shall first endeavour to resolve any dispute or difference by agreement and if they agree by mediation.
- 43.2 Unless any dispute or difference is resolved by mediation or other agreement within 30 days of the dispute or difference arising, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996 or any other statutory provision then relating to arbitration.
- 43.3 If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon request of any party, by the president or vice president of the New Zealand Law Society. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject to this and varied accordingly.
- 43.4 The procedures prescribed in this clause shall not prevent the Landlord from taking proceedings for the recovery of any rent or other monies payable under this lease which remain unpaid or from exercising the rights and remedies in the event of the default prescribed in subclause 28.1.

No Implied Terms

- 44.1 The covenants, conditions and powers implied in leases pursuant to the Property Law Act 2007 and sections 224 and 266(1)(b) of that Act shall not apply to and are excluded from this lease where allowed.

Limitation of Liability

- 45.1 If any person enters into this lease as trustees of a trust, then:
- (a) That person warrants that:
 - (1) that person has power to enter into this lease under the terms of the trust; and
 - (2) that person has properly signed this lease in accordance with the terms of the trust; and
 - (3) that person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any act of that person including entry into this lease; and
 - (4) all of the persons who are trustees of the trust have approved entry into this lease.
 - (b) If that person has no right to or interest in any assets of the trust except in that person's capacity as a trustee of the trust, that person's liability under this lease will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time ("the limited amount"). If the right of that person to be indemnified from the trust assets has been lost or impaired as a result of fraud or gross negligence that person's

liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.

- 45.2 Notwithstanding subclauses 45.1, a party to this lease that is named in item 17 of the First Schedule as a limited liability trustee, that person's liability will not be personal and unlimited but limited in accordance with subclause 45.1(b).

Counterparts

- 46.1 This lease may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same lease. A party may enter into this lease by signing a counterpart copy and sending it to the other party, including by facsimile or email.

DEFINITIONS AND INTERPRETATION

- 47.1 If this lease:
- (a) "Building services" means all services provided by the Landlord as an integral part of the building for the general use and enjoyment of the building by its tenants or occupants including water, gas, electricity, lighting, air conditioning, heating and ventilation, telecommunications, lifts and escalators whether or not they are located within the premises.
 - (b) "CPI" means the Consumer Price Index (All Groups) published by Statistics New Zealand or other government agency and any revised, replacement or substituted index.
 - (c) "Detail GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the Landlord (or where the Landlord is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this lease but does not include any sum levied against the Landlord (or where the Landlord is or was a member of a GST group its representative member) by reason of a default or delay by the Landlord after payment of the GST to the Landlord by the Tenant.
 - (d) "Emergency" for the purposes of subclauses 27.5 means a situation that:
 - (1) is a result of any event, whether natural or otherwise, including an explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, infestation, plague, epidemic, failure of or disruption to an emergency service; and
 - (2) causes or may cause loss of life or serious injury, illness or in any way seriously endangers the safety of the public or property; and
 - (3) the event is not caused by any act or omission of the Landlord or Tenant.
 - (e) "GST" means the Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985.
 - (f) "Premises" includes all the Landlord's improvements, fixtures and fittings provided by the Landlord and the land area set out in the Fifth and Sixth Schedules.
 - (g) "Premises condition report" means the report prepared by a suitably qualified expert that the condition of the premises at the Commencement Date.
 - (h) "Renewal" means the granting of a new lease as provided for in subclause 32.1.
 - (i) "Rules" in clause 34 means the Body Corporate operational rules under the Unit Titles Act 2010 and any amendments to those rules or replacement rules.
 - (j) "Structural repair" means a repair, alteration or addition to the structure or fabric of the building but not excluding building services.
 - (k) "Term" includes, where the context requires, a further term if the lease is renewed.
 - (l) "The common areas" means those parts of the property the use of which is necessary, for the enjoyment of the premises and which is shared with other tenants and occupiers.
 - (m) "The Landlord" and "the Tenant" means where appropriate the executors, administrators, successors and permitted assigns of the Landlord and the Tenant.
 - (n) "The property" and "the building" mean the land, building(s) or improvements of the Landlord which comprise or contain the premises. Where the premises are part of a unit title development the words "the property" mean the land and building(s) comprised in the development.
 - (o) "Those for whom the Tenant is responsible" includes the Tenant's agents employees contractors and invitees.
 - (p) "Working day" has the meaning given to it in the Property Law Act 2007. Notices served after 5pm on a working day, or on a day which is not a working day, shall be deemed to have been served on the next succeeding working day.
 - (q) A reference in this lease to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

- (r) A reference to the words “include” or “including” are to be interpreted without limitation.
- (s) If any inserted term (including any Further Term in the Third Schedule) conflicts with the covenants in the First, Second and Fourth Schedules, the inserted term will prevail.
- (t) Whenever words appear in this lease that also appear in the First Schedule then those words shall mean and include the details supplied after them in the First Schedule.
- (u) Where the context requires or admits, words importing the singular shall import the plural and vice versa.
- (v) Where the Landlord’s consent or approval to any matter is required under this lease then, unless expressly stated to the contrary in this lease, in each case the Landlord:
 - (1) must not unreasonably withhold consent or approval, and
 - (2) must, within a reasonable time of the Landlord’s consent or approval being requested:
 - (i) grant that consent or approval; or
 - (ii) notify the Tenant in writing that the consent or approval is withheld.

THIRD SCHEDULE

FURTHER TERMS (if any)

Health and Safety:

- 48 The Tenant shall ensure it conducts its activities in such a manner that the Tenant does not prevent the Landlord from meeting its legal obligations as land owner under the Health and Safety at Work Act 2015.

Insurance:

- 49 The Tenant will at all times during the lease term insure and keep its assets insured for full replacement value.

Reporting Provisions –

- 50 The Tenant shall provide to the Landlord an annual report that will ;
- a. Confirm the current legal status of the Tenant;
 - b. proved details of membership numbers and any changes during the previous year;
 - c. financial accounts for the last financial year;
 - d. the activity's contribution to Council's community outcomes, and strategic goals arising from the Long Term Plan/other Council strategies;
 - e. new and proposed developments;

FOURTH SCHEDULE

GUARANTEE

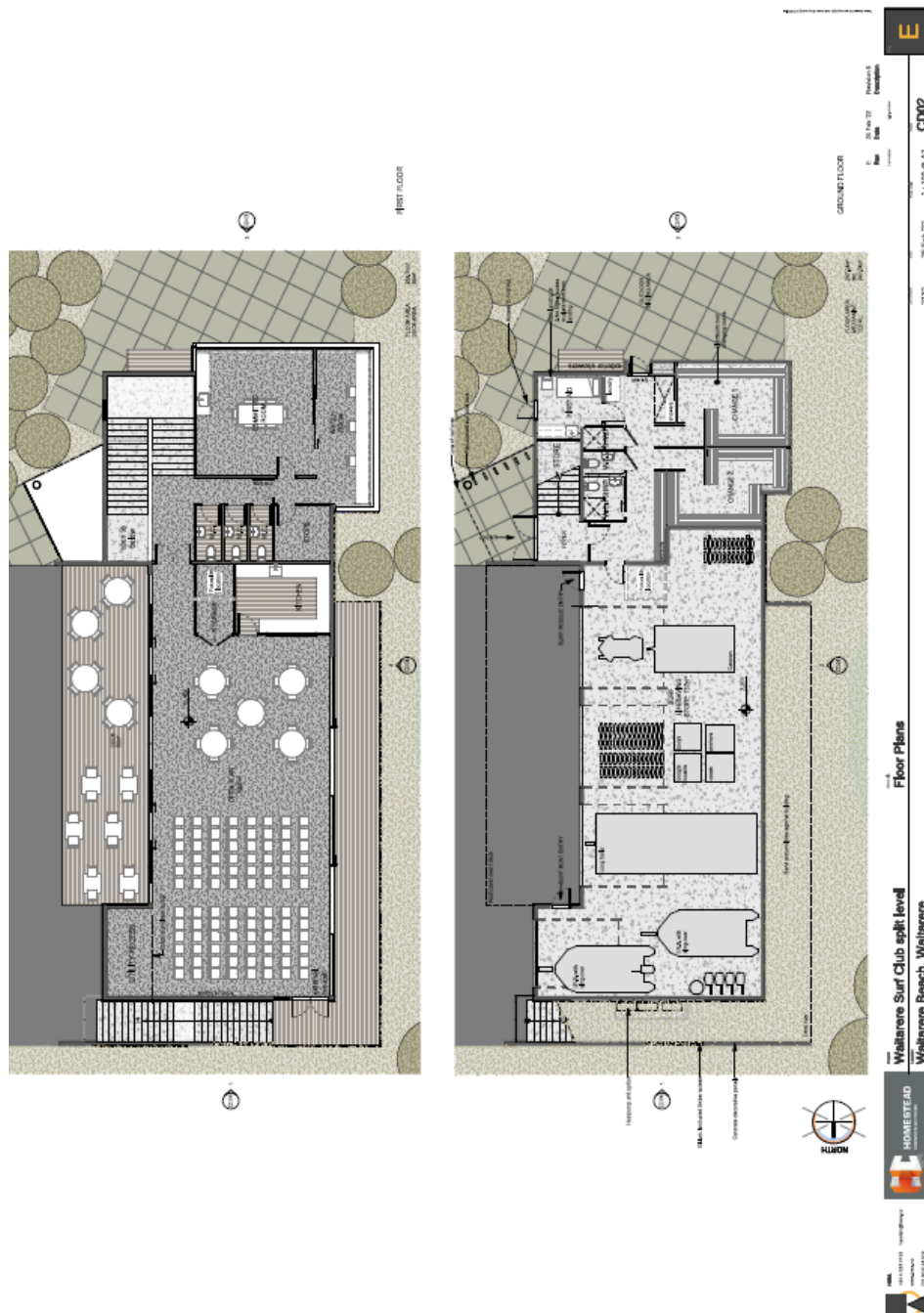
~~IN CONSIDERATION~~ of the Landlord entering into the lease at the Guarantor's request the Guarantor:

- ~~(a) Guarantees payment of the rent and the performance by the Tenant of the covenants in the lease.~~
- ~~(b) Indemnifies the Landlord against any loss the Landlord might suffer should the lease be lawfully disclaimed or abandoned by any liquidator, receiver or other person.~~

~~THE GUARANTOR covenants with the Landlord that:~~

- ~~1. No release delay or other indulgence given by the Landlord to the Tenant or to the Tenant's successors or assigns or any other thing by which the Guarantor would have been released had the Guarantor been merely a surety shall release prejudice or affect the liability of the Guarantor as a guarantor or a indemnifier.~~
- ~~2. As between the Guarantor and the Landlord the Guarantor may for all purposes be treated as the Tenant and the Landlord shall be under no obligation to take proceedings against the Tenant before taking proceedings against the Guarantor.~~
- ~~3. The guarantee and indemnity is for the benefit of and may be enforced by any person entitled for the time being to receive the rent.~~
- ~~4. An assignment of the lease and any rent review in accordance with the lease shall not release the Guarantor from liability.~~
- ~~5. Should there be more than one Guarantor their liability under this guarantee and indemnity shall be joint and several.~~
- ~~6. The Guarantee and indemnity shall extend to any holding over by the Tenant.~~

LANDLORD'S INDICATIVE IMPROVEMENTS



SIXTH SCHEDULE

LAND AREA



SEVENTH SCHEDULE

Designation Conditions – Department of Conservation Authority

Note: Yellow highlight added for emphasis and ease of reference

Confirmation of Designation Subject to Conditions

In accordance with the authority delegated to me by Horowhenua District Council and pursuant to section 168A of the Resource Management Act 1991, I **confirm the designation proposed by notice of requirement 504/2015/4 and impose the conditions detailed in Attachment 1** to enable the construction and use of a surf lifesaving clubrooms and associated vehicle access and parking at Waitare Beach. The reasons for this decision are summarised in Parts 19 and 20 of this decision.



Christine Foster
(Independent Commissioner)

31st March 2016

ATTACHMENT 1

HOROWHENUA DISTRICT PLAN DESIGNATION 504/2015/4

WAITARE BEACH SURF LIFESAVING CLUBROOMS AND CAR PARK

CONDITIONS OF DESIGNATION

Demolition of the Existing Building

1. Once the construction of the replacement Surf Lifesaving Clubrooms is complete, the existing Surf Lifesaving Clubroom building shall be demolished within two years of the date of completion of the replacement building.

Outline Plan

2. Full building design plans, including details of proposed building materials, colours, and proposed landscape planting, must be submitted as part of an Outline Plan lodged pursuant to section 176A of the Act prior to commencement of construction of the replacement Surf Lifesaving Clubroom building.

Management of Potential Construction Effects

3. A Construction Management Plan must be submitted to Council as part of an Outline Plan lodged pursuant to section 176A of the Act prior to commencement of any earthworks or construction authorised by the designation. The Construction Management Plan must be prepared by a practitioner suitably qualified and experienced in the management of erosion and sediment control in the coastal sand dune environment and must detail the measures proposed to address the potential adverse effects of sand erosion and wind blown sand during construction and following completion of construction as well as the potential noise, traffic movement and other effects of construction activities. In particular, the Construction Management Plan must include, but is not limited to, the following matters:
 - The need to confine the area of sand dune exposed by disturbance at any one time;
 - The need to avoid the transport of sand by wind and water by covering exposed areas of sand at the conclusion of each day's work and, following completion of the work until permanent vegetative cover is established, using appropriate mulch or other erosion-suppressing materials;
 - Contingency measures to be employed to clean up any sand drift that occurs inadvertently;

- The 24-hour telephone contact details of the person responsible for managing the construction activities authorised by the designation;
 - Procedures to be implemented to receive, record and respond to any complaints received during construction.
4. All construction activities shall be implemented in accordance with the Construction Management Plan authorised as a result of the Outline Process. All earthworks shall be undertaken in a manner that avoids causing any nuisance to properties in the vicinity of the proposed works.

Note: Earthworks are as defined in the District Plan.

Re-Vegetation of Exposed Areas

5. The disturbed foredune area that remains after construction of the replacement building and sealed areas must be re-contoured to reflect a natural profile, with a dominant seaward slope of 1:5 and a dominant landward slope of 1:3. Any disturbed areas that remain exposed following completion of construction earthworks and no later than one calendar year following completion of construction earthworks using indigenous plant species sourced from the ecological district of which Waitarere Beach is part (including Kowhangatara and Pingao grasses to establish habitat suitable for endangered Katipo species).

Stormwater Management

6. All stormwater and runoff from wash down areas and car parking areas shall be contained on site to avoid surface runoff entering any coastal fishery habitats and to avoid nuisance to neighbours.

Accidental Archaeological Discovery

7. In the event of any archaeological remains, waahi tapu or koiwi being discovered or disturbed during the construction activities authorised by this designation, the requiring authority shall immediately cease further work and inform:
- a. Potentially-affected Iwi: Ngati Huia – Ki Poroutawhao Ki Huia, Ngati Huia – Ki Matau, the Muaupoko Tribal Authority and the Muaupoko Co-operative Society as relevant;
 - b. Heritage New Zealand; and
 - c. Horowhenua District Council's Planning Services Manager.

Further work at the site shall be suspended to provide Iwi an opportunity to carry out their procedures for removal of taonga. The Horowhenua District Council's Planning Services Manager will advise the requiring authority (and/or its nominated representatives) when work at the site may recommence.

Note: In the event that human remains are found the police should be contacted immediately and all works shall cease until advice is given that works can recommence.

Noise, Odour and Storage

8. The activities authorised by the designation must comply with the following permitted activity conditions of the 2015 Horowhenua District Plan for the underlying Open Space Zone:
- Rule 20.6.7(a), (b) and (d) which control noise, including establishing noise limits when measured at, or within, any point in any site in the surrounding Residential, Greenbelt Residential and Rural Zones;
 - Rule 20.6.9(a) which relates to odour; and
 - Rule 20.6.10(a) which relates to the storage of goods, materials and waste products.

Beach Access

9. The requiring authority shall ensure that no more than one pedestrian pathway is created between the site of the replacement surf lifesaving clubrooms and the beach and that pathway shall be of timber board and chain construction. Appropriate planting for dune stabilisation must be carried out along the edges of the pedestrian pathway at the time any such pedestrian pathway is constructed to prevent long term erosion of the fore dunes.

10. The requiring authority shall ensure that no vehicles used in undertaking the activities authorised by the designation are permitted to access the beach other than via the formed and sealed access driveway and Waitarere Beach Road.

Responding to Coastal Hazard

11. If the replacement Surf Lifesaving Clubroom building is constructed seaward of the 2062 Erosion Hazard Zone (as identified in the report on Coastal Hazard Assessment, Waikawa to Waitarere, prepared by Tonkin & Taylor Ltd and dated January 2013), it must be situated at least 35m landward of the western vegetation line at the toe of the sand dune immediately west of the building at the time the building is constructed.
12. The replacement Surf Lifesaving Clubroom building shall be constructed in a way that ensures it can be relocated in the future if the need arises to avert damage from coastal erosion. If the shoreline does start to erode and if the erosion is proven to the satisfaction of a suitably qualified coastal hazard expert to be a trend rather than the result of a specific natural hazard event, then the requiring authority shall ensure that the replacement Surf Lifesaving Clubroom building is relocated landward to a safe position. For the purposes of this condition a 'safe position' is considered to be at least 25m landward of the western vegetation line between the beach and the sand dune, directly seaward of where the building is to be located.
13. The replacement Surf Lifesaving Clubroom building shall be built with a minimum floor level of 7.02m relative to the Wellington Vertical Datum 1953. The maximum building height shall not exceed 8.0m above this floor level.

Maximum Building Footprint and Maximum Sealed Area

14. The maximum building footprint for the new Surf Lifesaving Clubroom building shall be 250m² in area if this building comprises two storeys or 450m² in area if the building is a single storey building.
15. For land within the designation that is outside the extent of the existing car park, which can be considered as being the area seaward of 50m measured directly west of the western boundary of Lot 62 DP 10023, the maximum additional area permitted to be sealed for the purposes of access driveway and car parking is 730m². This sealed area may accommodate a maximum of ten car parking spaces, a loading area and vehicle access to the replacement building. For the purpose of this condition 'sealed area' does not include the area covered by a building.

Use of the Building

16. Use of the Surf Lifesaving Clubroom building shall be limited to surf lifesaving activities and surf lifesaving training and other closely aligned activities such as search and rescue activities. The requiring authority shall ensure that other activities (including private functions and parties) that have potential to create unreasonable or excessive noise or cause unreasonable disturbance to the adjoining residential properties, are not permitted.

Department of Conservation Authority

File No.: 22/673

6.2 Oxford Street Plane Trees

1. Purpose

To seek direction from Council on the currently deferred Resource Consent Application to remove the Plane Trees on Oxford Street between Queen Street and Devon Street.

2. Executive Summary

- 2.1 There are approximately 38 London Plane trees (*Platanus x acerfolia*) on Oxford Street in Levin. The trees are the vestiges of an avenue of 65 trees that were planted along the Levin Main Street (Oxford Street) to commemorate Queen Victoria's Diamond Jubilee in 1897.
- 2.2 Since Council resolved to cease pollarding as a maintenance approach to the avenue of trees at the Operations & Services Committee of 28/04/1993 retailers have complained about alleged flooding issues affecting their premises.
- 2.3 The trees were listed as Notable trees in the Operative District Plan of 2000 and remain listed as such in the 2015 Operative District Plan. This classification severely limits Officers options in terms of pruning and removing the trees to alleviate the alleged issues. Given strategic plans in relation to O2NL, the impending revocation of Oxford Street as a State Highway, and plans for town-centre improvements (Transforming Taitoko), Officers have applied for a resource consent to remove the trees. The application has been made with a view to resolving the long-standing issue described by local retailers, and facilitate the planning and installation of a new landscape design in alignment with future plans for Transforming Taitoko.
- 2.4 This report seeks confirmation of Council as to the future treatment of the Plane Trees on Oxford Street, noting the various arguments both in favour and against the removal or retention of the trees.

3. Recommendation

- 3.1 That Report 22/673 Oxford Street Plane Trees be received.
- 3.2 That this matter or decision is recognised as not significant in terms of S76 of the Local Government Act.
- 3.3 That Council continues current pruning of the Oxford Street Plane trees and suspend/withdraw the resource consent application with a view to considering tree removal and reconfiguration of SH1 as part of the Transforming Taitoko agenda, noting there are no additional costs to current operating expenditure of \$50,000 per annum (Option 1);
or
That Council continues current pruning of the Oxford Street Plane trees and progress the resource consent application for the removal of Oxford Street Plane trees, noting there will be an estimated \$120,000 required for the consent and consultants would be in addition to the current operating expenditure of \$50,000. (Option 2);
or
That Council continues with the current pruning regime and withdraw the current application for a resource consent to remove the Oxford Street Plane trees, in favour of undertaking a District Plan change to delist the trees as Notable noting there will be an estimated \$200,000

required for the Plan Change and external consultants, in addition to the current operating expenditure of \$50,000(Option 3);

or

That Council cease the current pruning regime on the Oxford Street Plane Trees and progress the current application for a resource consent to remove the Oxford Street Plane Trees, noting there will be an estimated additional cost of \$120,000 for the consent and consultants, but the current \$50,000 operating budget will not be required (Option 4);

or

That Council ease the current pruning regime on the Oxford Street Plane Trees and withdraw the current application for a resource consent to remove the Oxford Street Plane Trees, noting there will be a reduction in operating budget of \$50,000. (Option 5).

- 3.4 That Council approves the additional expenditure for the chosen option.

4. Background / Previous Council Decisions

- 4.1 There are approximately 38 London Plane trees (*Platanus x acerfolia*) on Oxford Street in Levin. The trees are the vestiges of an avenue of 65 trees that were planted along the Levin Main Street (Oxford Street) to commemorate Queen Victoria's Diamond Jubilee in 1897.
- 4.2 These trees were initially maintained as pollards. Pollarding can be defined as the initial removal of the top of a young tree at a prescribed height to encourage multi-stem branching from that point. Once started, it should be repeated on a cyclical basis always retaining the initial pollard point, or bolting as it becomes known. It is noted that active management of the trees as pollards ceased following a resolution from the Operations & Services Committee at its meeting of 28th April 1993. The replacement regime was to manage the trees at a maximum height of 11m and maximum spread of 8m. Since pollarding ceased in 1993 leaf fall has been flagged as an issue by local retailers.
- 4.3 In 1999 Council undertook a project to identify Notable trees in the district. The Oxford Street Plane Trees were identified as 'Notable trees' under Plan Change 7 and received that designation when the plan change became operative in 2000.
- 4.4 Report 183 submitted to the Community Assets Committee on 6th March 2002 confirmed that pruning of the Plane trees had ceased in 2000 and that whilst minor pruning of the trees was permitted, pruning of 20-30% of the leaf mass as suggested by the report, would require a resource consent. Council resolved at the meeting amongst other matters that 'the Parks Manager be instructed to undertake the crown lifting and removal of selected branches to reduce leaf volume of the Oxford Street Plane trees'.
- 4.5 A resource consent for the pruning works, removal of the tree outside 199 Oxford Street, and implementation of an annual maintenance program was granted on 13th June 2002 subject to the following conditions –
1. *That the crown lifting, pruning of selected branches, and removal of the single Plane Tree be undertaken as outlined in the application submitted to Council.*
 2. *That all work be carried out by or under the on-site supervision of arborists with recognized qualifications and experience.*
 3. *That the thinning of selected branches shall remove no more than 30% of the total canopy for each tree.*
 4. *That all trees shall be crown lifted no higher than 5.5 meters as shown on Diagram 1 attached.*
 5. *That the overall 'avenue' effect of the trees be retained by removing only selected branches.*
 6. *That a Tree Management Plan be prepared reviewing the current management practice. This management plan is to identify the long term approach to managing*

these trees, including consideration of crown reduction, removal of specific trees and replacement trees.

4.6 Despite the granting of the necessary resource consent and commencement of tree pruning works, leaf fall continued to be a cause of discontent to local retailers with Report 1251 being taken to the Community Assets Committee of 16th September 2003. Council resolved at that meeting to:

- continue the process of crown reduction every 18 months;
- continue to offer support in removing leaves from canopies; and
- supported the proposal for the programmed removal of *'many of the existing Plane trees and replanting in both the centre with larger trees and on the edge of the carriageway with smaller palms and native plants'*. Funding for this work to be in alignment with the Long Term Plan with a view to improving the CBD *'once the highway traffic had been diverted'*.

4.7 The trees remain classified as Notable trees in the current Operative District Plan (2015). The District Plan requirements are as indicated below.

Horowhenua Operative District Plan 2015, Rule 17.6.23 Notable Trees

(a) Any removal or partial removal of a tree listed in Schedule 3 - Notable Trees shall comply with the following conditions:

- i. Council has confirmed the tree is dead; or*
- ii. Removal or partial removal is required as an emergency work to safeguard life or habitable buildings from immediate danger (as confirmed by a qualified arborist).*

(b) Within the drip line of any tree listed in Schedule 3 - Notable Trees, any activities shall not involve the following works:

- i. The construction of any building or structure.*
- ii. The laying of overhead or underground services.*
- iii. Any sealing, paving, soil compaction, or any other impervious surfaces.*
- iv. The alteration of existing ground levels by excavation or deposition of soil including thrust boring and directional drilling.*
- v. The discharge of any toxic hazardous substance.*

(c) Any trimming and maintenance of a tree listed in Schedule 3 - Notable Trees shall be limited to:

- i. Minor trimming necessary to maintain the health of the tree where the work is carried out by, or under the supervision of, a qualified arborist who has advised the Council in advance of the work to be carried out.*
- ii. The removal of branches interfering with buildings, structures, overhead wires or utility networks, but only to the extent that they are touching those buildings, or structures, or likely to compromise the effective operation of those overhead wires or utility networks and only where the work is carried out by, or under the supervision of a qualified arborist who has advised the Council in advance of the work to be carried out.*
- iii. The removal of broken branches, dead wood or diseased vegetation (as confirmed by a qualified arborist).*

iv. *Required as an emergency work*

5. Discussion

- 5.1 The concerns of retailers in relation to leaf fall from the trees have not been resolved by increased pruning even though the process of crown reduction continues today (2022). Council undertakes street sweeping of SH1 three times a week currently under its roading contract but effectiveness of this operation can be inhibited by vehicle parking. A canopy (Export Meat Warehouse), collapsed whilst being cleaned by the contractor in 2016 leading to a 'very serious' near miss. This event necessitated the involvement of Council's regulatory team because of the danger posed to the public from the collapse. After the event retailers were contacted in writing and asked to provide certification that canopies were in a safe state (attached). Unfortunately none responded so gutter cleansing ceased.
- 5.2 Should Council wish to reintroduce canopy cleansing in combination with any of the Options outlined in this report there would still be a need for the businesses concerned to provide a statement of structural integrity so that Council might meet its responsibilities as a Person(s) Conducting Business or Undertakings (PCBU) under the requirements of the Health and Safety at Work Act 2015 (HSWA). A weekly clean of the canopies of the original 17 properties over May-July has been priced at \$30,000 by Council's grounds maintenance contractor Recreational Services.
- 5.3 Measures adopted by Council thus far have not mitigated the retailers concerns in relation to leaf fall and flooding (ongoing since 1993), a number have requested the trees be removed outside their premises. However, as has been established given the Notable status of the trees, removal is not a permitted activity under the Operative District Plan unless dead, or as a safeguard against immediate danger. Given this position Officers applied under the RMA for a consent to undertake tree removal works. The resource consent planner dealing with the matter indicated in July 2022 that the process would require public notification, a process which takes a minimum of 120 days, and may be longer if the matter is of high interest to the public, or is referred to the Environment Court.
- 5.4 In meetings with retailers they have expressed concern in relation to the time taken to move through the notification process, and further concerns that the outcome may not be as wished (the application may be denied). On this matter a number of retailers recently approached Council officers suggesting that Sections 332-338 of the Property Law Act (2007) override Council's Operative District Plan (2015), and that Council could remove the trees accordingly. The view was tested with Council's Solicitor and the Opinion is attached.
- 5.5 The conclusion from the Solicitor was that the appropriate mechanism for removing the Plane trees is via a resource consent as per the RMA. This however does not prevent those shopkeepers affected solely or as a group, utilizing the Property Law Act (2007), to gain an order for the removal of the Plane trees affecting each of their properties individually. Though a High Court Judge may ultimately find in favour of the existing RMA process being completed first. Retailers have been provided with the Opinion.
- 5.6 There are additional reasons for the removal, and replacement of the Oxford Street Plane trees. These include.
- Whilst the avenue of Plane trees in some form or other has been in place on Oxford Street since 1897 the original value of the avenue was always in the fact that it was set out at the same time as similar plantings in UK for Queen Victoria's Diamond Jubilee. The failure to maintain pollarding (in part due to the constraints placed on the trees by Notable status), and lack of a renewals process has led to a significant decline in the original aesthetic. This has been compounded by the planting of native trees in replacement, or beneath the existing canopy.
 - The current avenue is creating nuisance for local shop-owners, and together with large shop canopies, walls, and the lapsed pollards, has led to a claustrophobic

aspect to the high street aesthetic. Current and previous strategic documents do not support the maintenance of the avenue as was originally intended and this has in some respects led to the now evident decline.

- The tree canopy is likely to provide only minimal support to insects and wildlife, given the need for ongoing pruning on an annual basis to keep the trees within acceptable height and spread parameters.
- There is little residual value left in terms of the avenues contribution to historic and cultural value given the weakening of the original concept. In addition, strategic documents (aside from the Operative District Plan) do not support the current aesthetic. The Transforming Taitoko, and Queen Street/Green Street agendas further suggest the need for an entirely new design on completion of O2NL and the revocation of the SH1 status of Oxford Street.
- Tree health is compromised by poor rooting medium and high levels of impermeability leading to overall decline of the trees with time.
- Lapsed pollards do not perform as well as unmodified trees when put under wind load and stress as they have a significantly denser crown than those of a natural form. Current research notes. *“A larger canopy will catch more wind and minimize the transfer of wind energy to the trunk and root system.”* (James, 2006) The research further notes. *“The tree constantly responds to the loads it experiences with two mechanisms, by either growing or shedding limbs”* (James, 2006). Anecdotal evidence and arboriculture theory suggests. *“The trunks of lapsed pollard (where pollarding has stopped) carry the heavy burden of crown units often of large tree size and their trunk shells are prone to catastrophic fragmentation”* (Fay, 2016).
- The trees further offer specific challenges to established retailers and Council infrastructure with root and canopy growth contributing to uneven footpaths and potential damage to buildings respectively. It has also been alleged by local shop owners that leaf fall into the road and accompanying gutters is leading to flooding issues during heavy periods of rain.

- 5.7 Given the above challenges, the long-standing issue of leaf fall and flooding issues outlined by retailers; the significant investment by Council Governance and operations in managing the issue over the last three decades; and matters relating to growth (O2NL; Transforming Taitoko), there is a need to consider a long-term approach to the matter. Hence the application to remove the trees. The application is currently suspended under Section 91a of the RMA subject to Council providing direction on how it wishes to proceed in the matter.
- 5.8 Should Council elect to proceed with a notified consent to remove the Oxford Street Plane trees it is likely to generate a significant amount of community interest, and possibly national interest given the trees are a well-recognized feature of the Levin landscape. There is likely to be a good spread of opinion with those supporting the removal of trees, and those opposed to any such process. There will also be the need to establish a budget to facilitate the resource consent process and physical removal should Council select Option 2, 3, or 4.

6. Options

6.1 **Option 1: Continue current pruning of the Oxford Street Plane trees and suspend/withdraw the resource consent application with a view to considering tree removal and reconfiguration of SH1 as part of the Transforming Taitoko agenda.**

6.2 This option would see the current tree pruning program continue at a cost of around 50k per annum, whilst the removal of the Oxford Street trees, and potential planting of new trees would be considered as part of an integrated remodeling/reconfiguration of the CBD under the auspices of Transforming Taitoko.

6.3 **Advantages:**

- *The current pruning regime is already allowed for in existing grounds budgets so no additional budgets would be required to continue that element of work;*
- *The possible removal of the Plane trees would be incorporated in an overall strategy for the CBD that would ensure any remodeling/reconfiguration of SH1 would be compatible with the wider redesign;*
- *Combining the potential removal of the Oxford Street Plane trees as part of an integrated approach to improving Levin town centre would likely provide many more opportunities to develop a forward-looking, positive narrative for the works;*
- *Consultation would be exhaustive and provide an opportunity for the development of an iterative approach to town centre planning and improvements;*
- *There would likely be cost savings on consultation, design and physical works as the reconfiguration/improvements of the CBD and Oxford Street would be completed as a single operation rather than two separate ones.*

6.4 **Disadvantages**

- *Deferring/withdrawing the application for resource consent would postpone the resolution of a long-standing complaint;*
- *Deferring/withdrawing the application for resource consent would likely frustrate retailers who may elect to take action against Council under the previously reported Sections of the Property Law Act 2007.*

6.5 **Option 2: Continue current pruning of the Oxford Street Plane trees and progress the resource consent application for the removal of Oxford Street Plane trees.**

6.6 This option would see the current tree pruning program continue at a cost of around 50k per annum, whilst the consent for removal of the Oxford Street trees would continue. The primary focus of the resource consent process is to ensure that adverse (negative) environmental effects are appropriately avoided, remedied or mitigated. The landscape assessment (required to progress the application) concluded that the negative effects of removing the trees, would be more than minor. This, combined with the significance of the trees to the community, meant the application needed to be public notified for submissions before a decision could be made. The process should Council adopt this option would be to:

- Carry out pre-notification consultation;
- Decide to move forward with public notification;
- Public notification of application (20 working days);
- Analyse submissions, determine required mitigation to be offered as conditions on the resource consent (e.g. replanting plan);
- Prepare report (consents planner) and circulate prior to hearing;
- Hearing (heard by independent commissioner);
- Decision by independent commissioner.

6.7 **Advantages:**

- *Whilst retailers have expressed concerns about the length of time (4-6 months), and potential outcome of a resource consent application, it does offer an opportunity for the potential resolution of a long-standing complaint;*
- *Should Officers gain a resource consent to remove the Oxford Street Plane trees it can undertake removal in a phased manner which takes into account individual preferences from those affected;*
- *The publicly notified nature of the consent application will allow a wide cross-section of views to be canvassed from the community in respect of its aspirations for Oxford Street;*
- *Achieving a resource consent for the potential removal of the Oxford Street Plane trees will provide a degree of flexibility for planned improvements to Oxford Street as part of the Transforming Taitoko agenda;*
- *The process is faster and cheaper than other proposals to achieve removal of the Plane trees.*

6.8 **Disadvantages**

- *It is possible that an application for a resource consent to remove the Oxford Street Plane trees is declined. This would then require an appeal to the Environment Court should removal still be the favoured option;*
- *It is possible that a notified consent indicating the removal of the existing avenue of trees could attract negative coverage locally and nationally;*
- *Progressing the resource consent application would require a budget for consultation, expert witnesses, reports, design, and funding a public hearing. Such costs could be significant dependent on level of submissions/requests for additional information. Additional costs may accrue should the matter be referred to Environment Court, or face legal challenge. Further funding would be required for physical works;*
- *Processing the resource consent and completing physical works in isolation from the Transforming Taitoko agenda may result in the Oxford Street aesthetic diverging from that envisioned for the town centre improvements.*

6.9 **Option 3: Continue with the current pruning regime and withdraw the current application for a resource consent to remove the Oxford Street Plane trees, in favour of undertaking a District Plan change to delist the trees as Notable.**

6.10 This option is a more involved RMA process than applying for a resource consent. It requires a high degree of evidence, as it seeks to change the District Plan itself. The primary focus of a Plan Change would be to determine whether removing the notable tree listing would be the most efficient and effective way of achieving the purpose of the RMA/District Plan objectives.

6.11 The process to prepare a Plan Change would be:

- Gather evidence about the issue, identify the range of alternatives available;
- Prepare District Provisions;
- Prepare a s32 analysis (report analysing the proposed plan change, including whether it is the most efficient and effective way of achieving the Purpose of the RMA);
- Carry out extensive pre-consultation;
- Council to adopt the Plan Change for notification;

- Public Notification – submissions period (20 working days);
- Prepare a summary of submissions and notify this;
- Further submissions periods (10 working days);
- Analyse submissions, prepare evidence and write the hearing report;
- Circulate hearing report at least 20 working days before hearing;
- Hearing (heard by independent commissioner);
- Decision by independent commissioner.

6.12 **Advantages**

- *Offers an opportunity for the potential resolution of a long-standing complaint;*
- *Removing Notable tree status would allow Officers to manage the trees as part of the wider Beautification network;*
- *The publicly notified nature of the proposed Plan Change would allow a wide cross-section of views to be canvassed from the community in respect of its aspirations for Oxford Street;*
- *Removing the Notable tree status of the Oxford Street Plane trees will provide a degree of flexibility for planned improvements to Oxford Street as part of the Transforming Taitoko agenda;*
- *Removing Notable tree status if granted as a result of the proposed Plan Change would not be subject to specific conditions requiring replacement or preservation of the avenue, and removal work could occur without seeking resource consent.*

6.13 **Disadvantages**

- *Preparing a plan change would require a considerable amount of additional time and resource (compared to resource consent), and would likely necessitate significant input from the Strategic Planning Team, meaning other District Plan work (e.g. housing related Plan Changes) would slow down;*
- *The Plan Change Option takes longer (12+ months), and is significantly more expensive than applying for resource consent;*
- *There is no guarantee a plan change would be approved;*
- *Does not enable re-planting of a more appropriate species to be secured via a condition – meaning neither the community, nor the decision-maker will have confidence that this will occur;*
- *Removing Notable tree status would ultimately remove the checks and balances installed in the District Plan to protect landscapes and features of high interest to the community, and may be interpreted by the community, as serving the interests of a narrow minority rather than the community as a whole.*

6.14 **Option 4: Cease the current pruning regime on the Oxford Street Plane Trees and progress the current application for a resource consent to remove the Oxford Street Plane Trees.**

This would see the cessation of pruning works on the Oxford Street trees and the continuation of the application for a resource consent.

Advantages

- *Advantages are as per Option 2 and given some retailers have intimated they do not recognize there is any value in the current tree-pruning program, the current pruning budget (50k) could be applied to other works, or taken as operational savings.*

Disadvantages

- As per Option 2.

6.15 Option 5: Cease the current pruning regime on the Oxford Street Plane Trees and withdraw the current application for a resource consent to remove the Oxford Street Plane Trees.

This would see the cessation of pruning works on the Oxford Street trees and the withdrawal of the application for a resource consent to remove the trees.

Advantages

- Given some retailers have intimated they do not recognize there is any value in the current tree-pruning program (50k), budgets could be applied to other works or taken as operational savings.

Disadvantages

- As per Option 1.

Cost

6.16 Costs will vary with the Option selected.

Option	Cost Estimate
Option 1: Continue current pruning of the Oxford Street Plane trees and suspend/withdraw the resource consent application with a view to considering tree removal and reconfiguration of SH1 as part of the Transforming Taitoko agenda.	\$50,000 for ongoing pruning works. Currently budgeted.
Option 2: Continue current pruning of the Oxford Street Plane trees and progress the resource consent application for the removal of Oxford Street Plane trees.	\$50,000 Operational budget. \$120,000 for consent & consultant (est.).
Option 3: Continue with the current pruning regime and withdraw the current application for a resource consent to remove the Oxford Street Plane trees, in favour of undertaking a District Plan change to delist the trees as Notable	\$50,000 Operational budget. \$200,000 for Plan Change and use of external consultant (est.).
Option 4: Cease the current pruning regime on the Oxford Street Plane Trees and progress the current application for a resource consent to remove the Oxford Street Plane Trees.	\$120,000 for consent & consultant (est.).
Option 5: Cease the current pruning regime on the Oxford Street Plane Trees and withdraw the current application for a resource consent to remove the Oxford Street Plane Trees.	Potential operational saving of \$50,000

Rate Impact

6.17 Rate impacts will vary with each option. Estimates as a percentage proportion of rates income are indicated below.

Option	Cost Estimate
Option 1: Continue current pruning of the Oxford Street Plane trees and suspend/withdraw the resource consent application with a view to considering tree removal and reconfiguration of SH1 as part of the Transforming Taitoko agenda.	Zero impact on rates as operational budget currently allowed for pruning.
Option 2: Continue current pruning of the Oxford Street Plane trees and progress the resource consent application for the removal of Oxford Street Plane trees.	Estimated increase on rates 0.26%.
Option 3: Continue with the current pruning regime and withdraw the current application for a resource consent to remove the Oxford Street Plane trees, in favour of undertaking a District Plan change to delist the trees as Notable	Estimated increase on rates at 0.43%.
Option 4: Cease the current pruning regime on the Oxford Street Plane Trees and progress the current application for a resource consent to remove the Oxford Street Plane Trees.	Estimated increase on rates 0.26%.
Option 5: Cease the current pruning regime on the Oxford Street Plane Trees and withdraw the current application for a resource consent to remove the Oxford Street Plane Trees.	Estimated potential operational saving of 0.11%.

7. Community Wellbeing

Options 2 & 4 could have a range of community wellbeing impacts both positive and negative given removal of the Oxford Street Plane trees will likely engender a range of responses from the community.

8. Consenting Issues

Options 2 & 4 require application for a resource consent. Option 3 requires a District Plan change.

9. LTP Integration

There is no LTP program related to the options or proposals in this report. There are no Special Consultative Processes required.

10. Consultation

Public consultation will be required to move Options 2-4 forward.

11. Legal Considerations

- 11.1 The owners and occupiers of the shops along Oxford Street would qualify to apply to the Court to have the plane trees removed from outside their premises, should they so desire. These are the owners and occupiers that the PLA is intended to give relief to.
- 11.2 If an application was made, the owner/occupier would need to show it was fair and reasonable that removal of the trees outside their premises would prevent risks, harms, or interferences and that refusing to make an order would cause hardship to an applicant.
- 11.3 As has been indicated prior, a judge might still decline an application in favour of Council's RMA process.

12. Financial Considerations

Financial considerations have been outlined in 6.1.1 and will be funded from rates.

13. Iwi Considerations

Whilst iwi partners have not been directly consulted at this point Officers acknowledge the importance of Te Taiao to Mana Whenua and on that basis recognise the importance of their input dependent on the option chosen by council.

14. Climate Change Considerations

There are no climate change impacts.

15. Environmental Considerations

There are environmental considerations relating to Options 2 & 4 which will be addressed via the resource consent application.

16. Health & Safety Considerations

There is no Health & Safety impact.

17. Other Considerations

There are likely to be strong community views on all options.

18. Next Steps

Once Council has given direction on the subject Officers will seek to enact that guidance.

19. Supporting Information

Strategic Fit/Strategic Outcome

Proposals are in line with promoting a vibrant economy through being business friendly. The proposal assists in the maintenance of fit for purpose infrastructure. The proposal aligns with developing strong communities by encouraging local people to participate in local decision making.

Decision Making

The decision can be made at an Ordinary Meeting of Council

Consistency with Existing Policy

There are no policies or strategies currently supporting the actions/options.

Funding

Funding is not in the current annual plan or long-term plan to fund an application for either a resource consent or Plan Change.

Risk Area	Risk	Consequence	Likelihood	Risk Assessment	Managed how
-----------	------	-------------	------------	-----------------	-------------

	Identified			(Low to Extreme)	
Strategic	N/a				
Financial	N/a				
Service Delivery	N/a				
Legal	Removal or failure to remove the Plane trees may lead to legal action.	Medium	Low	Low	Clear communication with stakeholders and production of a well-developed proposal.
Reputational	Given the high-profile nature of the avenue the process may attract strong community feedback leading to national interest.	Medium	High	High	Clear communication with stakeholders and production of a well-developed proposal.

Confirmation of statutory compliance

In accordance with section 76 of the Local Government Act 2002, this report is approved as:

- a. containing sufficient information about the options and their advantages and disadvantages, bearing in mind the significance of the decisions; and,
- b. is based on adequate knowledge about, and adequate consideration of, the views and preferences of affected and interested parties bearing in mind the significance of the decision.

20. Appendices

No.	Title	Page
A	Legal opinion on ss. 332-338 of the Property Law Act	66
B	Decision of Operations and Services Committee 28 April 1993 to stop pollarding	70
C	Report 183 for the Community Assets Committee 2002	80
D	Resource Consent of March 2002	88

Author(s)	Arthur Nelson Parks and Property Manager	
Approved by	Brent Harvey Group Manager - Community Experience & Services	
	Monique Davidson Chief Executive Officer	



11 November 2022

Horowhenua District Council
Private Bag 4002
LEVIN 5540

Attention: Mr Arthur Nelson

BY EMAIL: arthurn@horowhenua.govt.nz

Dear Arthur

LEGAL ADVICE IN RELATION TO THE OXFORD STREET PLANE TREES

You have asked us for advice with regards who may make an application under sections 332-338 of the Property Law Act 2007 (PLA) for the removal of the plane trees on Oxford Street.

Under the PLA, section 333 allows the Court to make an order on application of the owner or occupier of the land for a tree which is growing on neighbouring land to be trimmed or removed.¹ Under section 334 of the PLA only an owner or occupier of the land can apply for any order under section 333.²

The PLA defines an owner as:³

- (a) in subparts 4 and 5 of Part 5 and in Part 6, in relation to land, means—
 - (i) the holder of an estate in fee simple or a life interest in the land; or
 - (ii) the holder of a licence to occupy the land within the meaning of section 122 of the Land Transfer Act 2017; or
 - (iii) the holder of a deferred payment licence under section 65 of the Land Act 1948; and
- (b) in relation to a public reserve, includes the local authority, trustees, or persons having control of the reserve.

An occupier is defined as a person who is in occupation of the land under a lease or licence to occupy.

Under the PLA Horowhenua District Council (HDC) can be an owner for the purposes of section 334 of the PLA, however the intention of the legislation is to provide relief to owners or occupier of neighbouring property to the land on which the interfering tree is located. As the Plane Trees are all growing on land owned

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E info@cslaw.co.nz

28 Queen Street
Box 541, Levin, 5540
DX PA 86005

cslaw.co.nz

¹ Property Law Act 2007, s 333.

² Property Law Act 2007, s 334.

³ Property Law Act 2007, s 4.



by HDC, the HDC cannot apply against itself to remove the Plane Trees. Instead HDC should use its existing Resource Management Act 1991 (RMA) process to remove the trees.

If there was a situation where HDC owned one of the adjacent lots to Oxford Street, then it may be possible to apply to the Court for that adjacent plane tree in that limited situation. There is case law however to suggest the Court would not grant a right of removal in this situation as HDC already has a process under the RMA for tree removal. This is discussed below.

The owners and occupiers of the shops along Oxford Street would qualify to apply to the Court to have the plane trees removed and would be the more appropriate applicant. These are the owners and occupiers that the PLA is intending to give relief too.

If making an application what would an owner/occupier need to show the Court to get relief?

PLA section 335 refers to matters the Court may consider when determining an application under section 333, this includes whether it is fair and reasonable, whether the order is necessary to prevent certain risks, harms, or interferences and whether refusing to make an order would cause hardship to an applicant.⁴

It is unlikely HDC, if they applied, could show that they were incurring any particular interference, hardship or harm with regards the trees. Each individual shop owner on the other hand would be well placed to argue s 333 and the interference the tree adjacent to their property is causing. There would likely be some difficulty arguing grounds for the removal of all the plane trees on Oxford Street as it would be more difficult for each shop owner to show interference from every plane tree in Oxford Street but it would be up to them to put this before the Court.

When considering removing trees section 336 of the PLA requires the Court to have regard to the following:⁵

- (a) the interests of the public in the maintenance of an aesthetically pleasing environment:
- (b) the desirability of protecting public reserves containing trees:
- (c) the value of the tree as a public amenity:
- (d) any historical, cultural, or scientific significance of the tree:
- (e) any likely effect of the removal or trimming of the tree on ground stability, the water table, or run-off.

As the plane trees are notable tree and protected under the Operative District Plan (ODP) the shop owners would need to have robust arguments under section 333 and 336 of the PLA to show the Plane Trees should be removed given their public interest. HDC if it applied would also have to have very robust arguments as to

⁴ Property Law Act 2007, s 335.

⁵ Property Law Act 2007, s 336(1).



why they couldn't use the RMA process already available to them and as they are a public body this will be more difficult given the public interest in the trees.

What decisions have the Court made under 332-338?

The Courts have considered that there is potential for overlap between the PLA, RMA and ODP and that all processes could apply concurrently.

In New Zealand Suncern Construction Ltd v Auckland City Council Fisher J confirmed in relation to the Property Law Act 1952 and the RMA:⁶

It is therefore clear that the Planning Tribunal had no jurisdiction to make orders under s 129C of the Property Law Act. It had to decide resource consent applications in relation to trees in accordance with the Resource Management Act and the applicable district plans. The District Court had jurisdiction to make orders with respect to the same trees, but there was no conflict between the two jurisdictions. Both place upon an applicant the obligation of making out a case for tree trimming or removal, failing which the status quo would continue. Either body could at any time, and for its own proper reasons, order or authorise trimming or removal. The fact that a case might not have been made out before one body would not interfere with the other's freedom to approach the matter afresh. Since different criteria operate within each jurisdiction, a situation could not arise in which the decision of one could conflict with the decision of the other. The same comments apply, of course, to the consent authority itself.

However in Woodworth v Milich Judge Taumaunu took the position that the order made to trim the trees was "made subject to resource consent approval, if such consent is required".⁷ In this case both the parties were private individuals, the Judge directed that the respondent was to trim the trees and if resource consent was required the respondents were to apply for this seeking approval before trimming the trees.

Therefore the position would seem to be that for an application to succeed under section 333 of the PLA for the removal of trees, the required resource consents or other approvals may still need to be obtained regardless of the order before any tree removal would take place. In which case HDC's RMA process should be followed.

Conclusion:

We are of the view that HDC could not use sections 332-338 of the PLA to circumvent their own RMA processes to remove the plane trees on Oxford Street and that the RMA process already in place should be utilised. Even if HDC were an owner of an adjacent property they would struggle to meet the requirements

⁶ *New Zealand Suncern Construction Ltd v Auckland City Council* [1997] NZRMA 419 at 431.

⁷ *Woodworth v Milich* DC Waitakere CIV-2007-090-2669, 16 September 2008 at [55]-[59].



of the act under s333 and s336 and that any order would likely be limited to the immediately adjacent tree.

The shop owners of Oxford Street are the appropriate owners/occupiers to make an application under the PLA for the removal of the plane trees and it would be up to them to apply whether individually or collectively for an order.

If an application was made to the Court it is possible the Court would still require the RMA process to be followed as stipulated in Woodworth v Milich.

Yours faithfully
CULLINANE STEELE LIMITED

Hannah Wood
Director

Email: hannah@cslaw.co.nz
DDI: 06 366 0173
Our Ref:

cslaw.co.nz

**OPERATIONS & SERVICES COMMITTEE
28 APRIL 1993**

1131. PLANE TREES - OXFORD STREET, LEVIN

(P15-0030)

Manager - Operations submitting Report MO 548 to outline a proposal for future pruning of the Oxford Street Plane trees.

A copy of Report MO 548 is attached to the official minutes.

RESOLVED

(Molloy/Macartney)

"THAT the Manager - Operations Report MO 548 be received."

RESOLVED

(Molloy/Lyons)

"THAT the Committee notes and adopts the future maintenance proposal for the Oxford Street Plane trees as recommended by Treecare and that allowance be made in the 1993/94 budget for increased maintenance of the Oxford Street Plane trees in line with the recommendations of Treecare for the sum of \$6,000 plus GST."

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19 April 1993

REPORT
MO 548

The Chairperson & Members
OPERATIONS & SERVICES COMMITTEE
HOROWHENUA DISTRICT COUNCIL

PLANE TREES - OXFORD STREET, LEVIN

Purpose

To outline a proposal for future pruning of the Oxford Street Plane trees.

Background

It was reported to the Operations & Services Committee at its meeting of 24 March 1993 that the services of an Arboriculturist had been engaged to report on options for tree maintenance of the Plane trees in Oxford Street, Levin (Ref. Report MO 526).

This measure followed seasonal complaints from some retailers in Oxford Street regarding the problems created by the presence of the Plane trees. These problems were said to include leaf litter from the trees which had the potential to block internal roof gutterings and cause flooding of shop premises during periods of heavy rain, and shielding of shop frontages due to leaf growth during the summer months. This latter aspect was seen as a potential threat to the viability of some retail businesses because shop advertising in some instances was obscured by tree growth.

Prior to 1990, the Plane tree pruning programme had involved annual pollarding of the tree branches in the week following Anzac Day. Whilst this practise had the benefit of minimising the effect of the autumn leaf drop, the resulting stunted appearance of the tree trunk could not be considered aesthetically pleasing, and has lead to tree disease in some specimens. Also, regrowth in the following spring was mostly more dense and vigorous than the previous season, generating more foliage and therefore screening some shop frontages. The form of the tree crown was also destroyed as a result of this approach.

Proposal

Appended to this report is copy of a proposal from Mr Lynton Allen, Manager of Treecare. The report is self-explanatory and covers most aspects of the Oxford Street Plane trees.

The specification on page 5 of the attached report represents the first stage of a recommended future tree maintenance programme at an estimated cost of \$6,000 plus GST. This work would have the effect of raising the tree crown to improve visibility of shop frontages while at the same time producing healthy trees of a shape more consistent with the natural form of Plane trees.

The autumn leaf fall will continue to be a problem despite the recommended pruning, which is inherent with the existence of the trees. Shop owners will have an ongoing need for regular maintenance of their roof drainage systems to preempt the risk of internal flooding.

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The pruning programme in subsequent years will concentrate on crown thinning and shaping as the trees approach the target height of 11m.

Although not referenced in the attached report, it should be noted that ever-green tree varieties shed leaves throughout the year, rather than the seasonal leaf fall as occurs with the existing Plane trees. Also, the Indigenous variety typically produce a dark leaf causing additional shade, and the affect of this could be considered undesirable during the cooler winter months when the sun is already lower in the sky.

Recommendations

1. That Report MO 548 be received.
2. That the Committee notes and adopts the future maintenance proposal for the Oxford Street Plane trees as recommended by Treecare.
3. That allowance be made in the 1993/94 budget for increased maintenance of the Oxford Street Plane trees in line with the recommendations of Treecare, to the sum of \$6,000 plus GST.

(Note Allowance for the additional maintenance has been included in the draft estimates.)

G.S. Boyle,
MANAGER - OPERATIONS

Encl

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1

OXFORD STREET PLANE TREES

AGE : 96 YEARS

SPECIES : *Platanus acerifolia*

HISTORIC SIGNIFICANCE :

The Oxford Street Plane Trees, first planted in 1897 in commemoration of Queen Victoria's 60th year reign.

CURRENT CONDITION

Pollarded trees:

Plane trees that have been regularly pollarded in the past, has resulted in many of the trees forming pockets of decay. This decay in the majority of cases appears to have been isolated by the trees natural biological barrier zones.

Non pollarded trees:

These trees have been recently planted and were not present when pollarding was an accepted practice. Their form is that of a typical plane tree and appears to be of reasonable health, requiring some staking to avoid wind rocking effects.

Pest and disease:

These trees do not exhibit signs of serious pest or disease attack. The trees are susceptible to a fungal disease called Anthracnose of Plane which becomes most apparent in summer causing leaves to die and curl up. The infection can cause die back of shoots, however the disease is not normally fatal. Infection on the Oxford Street trees has not been serious enough to warrant concern.

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ADVANTAGES AND DISADVANTAGES OF STREET TREES

Advantages:

During summer months street trees provide shade, reduce glare, absorb pollution gases through the leaves and moderate temperature extremes. Plane trees being deciduous allow sunlight to pass through the trees during the winter months. Trees at any time of the year assist in the dispersion of wind and providing they are pruned in an appropriate manner, give significant aesthetic returns to the townscape.

Disadvantages:

Trees, due to their biological nature, produce waste products consisting mainly of leaves. Plane trees are a large growing species and as a result require pruning to contain their size within the confines of the area within which they are located.

POLLARDING

Advantages:

Pollarding was once an accepted method for controlling the growth of vigorous trees. This involved the annual removal of all shoots from the main trunk. Leaf litter and interference with street lights were kept to a minimum.

Disadvantages:

Continuous cutting back to the main trunk increases the risk of serious decay throughout the tree. The visual result of pollarded trees in winter and spring is that of short stumps with no form characteristic of a tree. Regrowth from pollarded trees is dense and vigorous. The result from this would partially obstruct shop advertising signs and car parking.

TREE PRUNING (with retention of upper crown)

Definition:

The pruning of trees to retain a formed upper crown. Crown lifting to allow light to pass into shop frontages and to reveal shop frontage advertising. To allow free passage of vehicles along Oxford Street and minimise light obstruction from street lights.

Advantages:

Tree form will be more characteristic of a Plane tree, giving greater aesthetics and prestige to Levin's main street. Advertising signs will be visible and more light in summer will filter through into the shop frontages, while still providing necessary shade. In winter the leaves will not be present and shading will not be a problem. The retention of the upper crown during winter months will give a pleasant silhouette and assist in the moderation of wind.

Disadvantages:

In comparison to pollarding, leaf litter will be greater with the retention of the tree crowns. The blockages to gutter systems should be overcome with regular cleaning of mesh placed over the gutters or the use of fine nets over areas where leaves may present a problem.

CURRENT FORM :

Until several years ago all trees except for a few planted more recently, have been regularly pollarded. The effect of this has caused the trees to have extensive branching above the pollard point. Pruning during the last 5 years has consisted of the thinning of epicormic shoots which has resulted in the main stems forming the upper crowns of the trees present today. Since the pollarding of these trees has ceased, the trees have formed a more natural appearance. The form of these trees however, cannot be returned to what would be typical of a Plane tree.

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FUTURE FORM :

If the trees are allowed to grow unpruned, they will ultimately become very large with the trunk and root systems expanding correspondingly. It is my view that many of the selected stems if allowed to grow unpruned will become too heavy and will break away from the trunk / branch union.

STREET LIGHTS :

The light from some street lights cannot pass through to the road due to the trees now being much larger than they were when the lights were first installed. To retain all street lights in their current position and allow adequate light to pass onto the road, drastic pruning of some trees would be required, resulting in the disfigurement and destabilisation of those trees directly in the way of the street light. In view of this, to avoid continuous problems with trees obstructing light, it would be my recommendation to move or modify inappropriately positioned street lights.

RECOMMENDATION :

Retention of tree crowns is more aesthetically beneficial than pollarding. While retaining the tree crowns, pruning to reveal shop advertisements can be easily attained. Pruning to contain the overall height and width of the trees is necessary to maintain the trees safety, contain it within the confines of its given area and provide good tree to building proportions.

I feel the many advantages of having large, appropriately maintained trees located along the main street of a town on State Highway 1 outweigh the few disadvantages such as leaves in gutters.

PRUNING SPECIFICATION

1. Remove trees with extensive decay beyond repair.
2. Selective thin. Remove poorly attached, dead, dying, cracked or crossing branches.
3. Crown lift. Remove lower foliage by up to half a metre above shop facade.
4. Crown reduction and shape. Contain the trees height to 11 metres. (for growth control and safety)
5. Clear from street lights where possible.
6. Contain the tree width to 8 metres.

Variation from specification:

It may be necessary to vary the specification according to the individual requirements of the tree. In some cases the tree will have a much greater area to grow in and full advantage of this should be taken. I do not see any reason to restrict the size of trees in areas where the tree has no confining factors.

Maintenance program

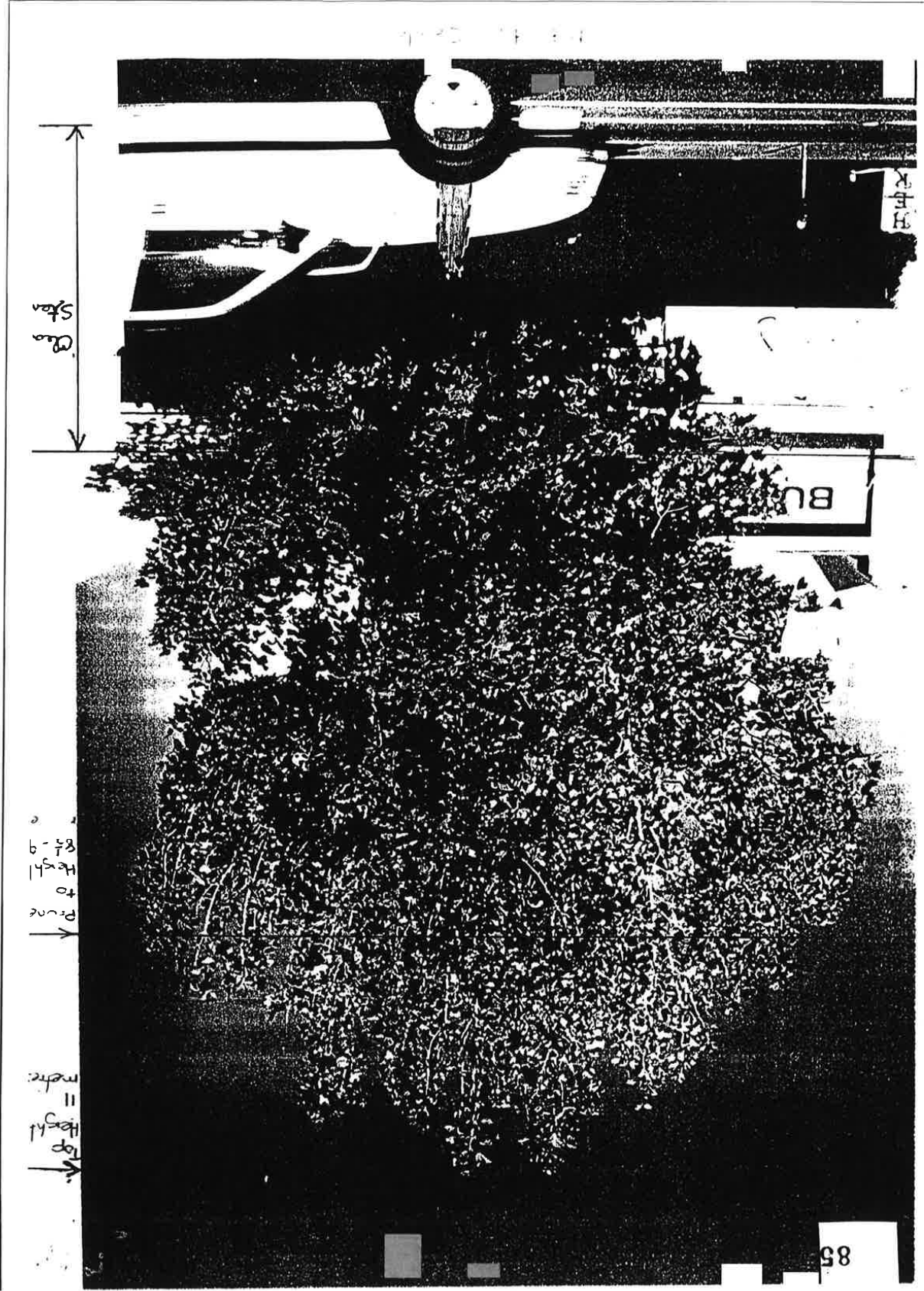
The pruning specification should be undertaken every 2 - 3 years depending on the vitality and vigor of the trees. When pruning to control the height and width of trees it is more practical to remove smaller amounts on a regular basis with less vigorous regrowth. Removing large proportions of a tree less often will result in vigorous regrowth, throughout the tree.

Report by

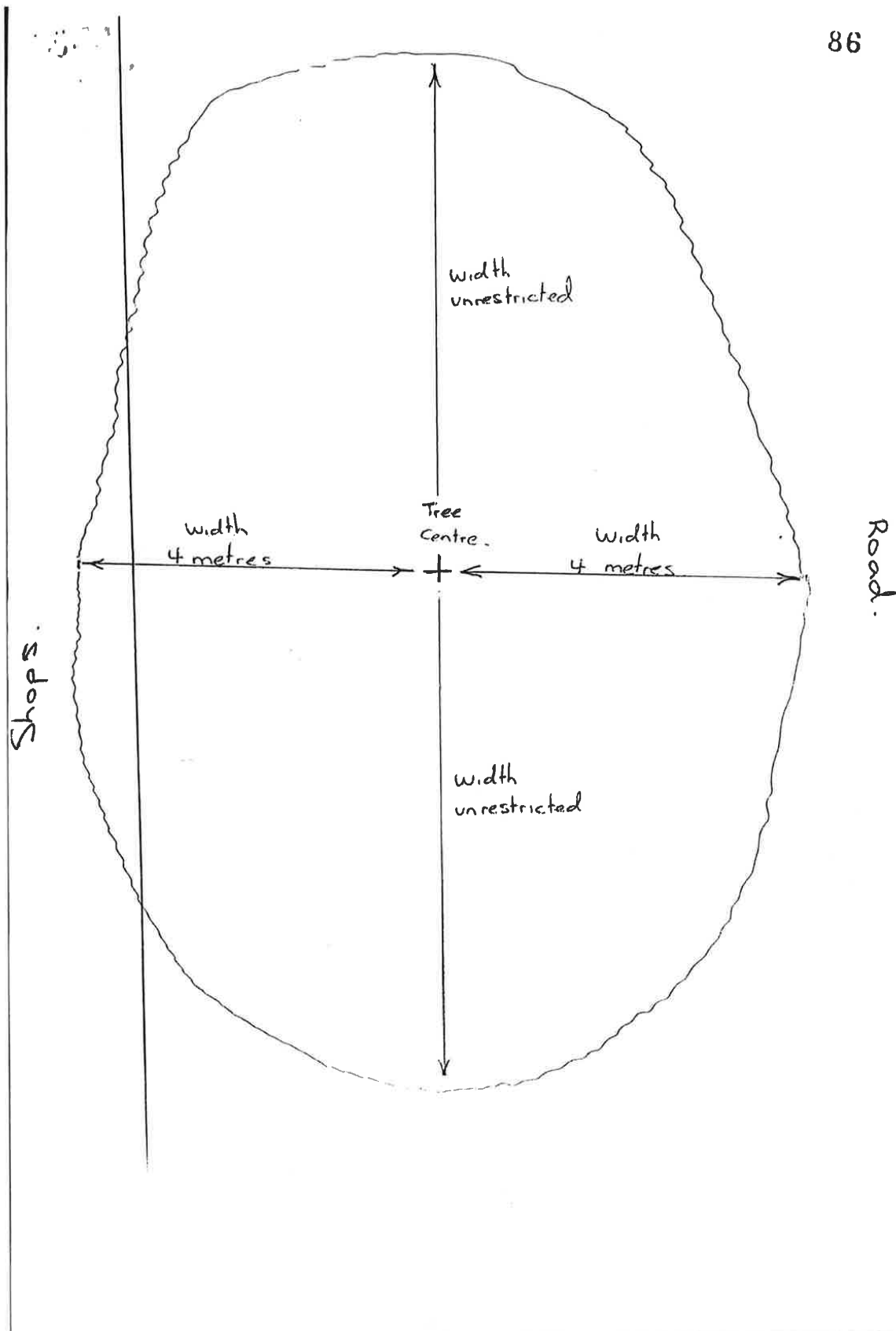
Lynton Allen



Treecare Manager



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**COMMUNITY ASSETS
6 MARCH 2002**

2824 OXFORD STREET PLANE TREES - LEAF LITTER

Manager - Community Assets submitting Report 183 to advise the Committee of issues relating to the Oxford Street trees and to suggest a plan of action.

A copy of Report 183 is attached to the official minutes.

RESOLVED (Guy/Roache)

"THAT Report 183 be received."

The Chair referred to the attendance of Mr Hamish Wesney, Council's Resource Management Planner to outline Section 17 of the Council's District Plan providing for protection orders and preservation of notable trees.

Mr Wesney was invited to address the meeting.

Mr Wesney stated that since the report was prepared the status and value of notable trees was further assessed together with the effect of the proposed work on the trees in relation to the operative District Plan. Minor trimming and maintenance work was permitted involving the removal of selected branches only. Given the extent of the work proposed to reduce leaf volume it was recommended that a resource consent be applied for publicly notified for reasons of transparency. This would ensure that the requirements of Section 17 of the Council's District Plan was being fully complied with.

The following points were raised in discussion:

- the Plane trees located in Oxford Street, Levin were under the ownership of Council
- under the operative District Plan Council could grant consent as a discretionary activity to remove a tree that posed a danger to property or life or was dead or diseased

Cr Allan, in his capacity as Chair of the Council's Regulatory Committee, clarified that under legislation, territorial local authorities were required to have two separate arms dealing with regulatory and service delivery. It was an onus on Council to ensure that its regulatory functions were quite apart from its operational areas. He added that members of the Council's Regulatory Committee would be unable to take any further part in deliberation on this item due to the requirement to remain impartial on this matter pending its consideration by the Regulatory Committee.

The following points were further raised in discussion:

- that prior to the adoption of the planned change resulting in the adoption of the Register of Notable Trees and section changes, the previous pruning of trees would have been permissible
- all of the notable trees had been entered into the Register of Notable Trees under accepted rules and this was adopted by Council in August 2000. At that time all pruning of the Plane Trees in Oxford Street ceased
- minor pruning was defined within the rule change, however, there were a number of Plane trees involved so many variables existed
- a resource consent application was therefore required to undertake any proposed work to ensure that no breach of the Plan existed
- it would be a requirement of the resource consent process that an arborist be involved
- the need for the Committee to be clear on the public process under the Resource Consent Act requirements and the likely time delays that could occur

**COMMUNITY ASSETS
6 MARCH 2002**

- the invidious position that Council was placed in in applying for a resource consent to undertake maintenance on its own trees

At this point in proceedings the Chair outlined the revised recommendations that could be considered which had been compiled to meet the changed circumstances. She then outlined the suggested changes to the recommendations contained within Report 183.

Cr Duffy recorded his support for the recommendations as contained within Report 183 remaining.

Cr Allan stated that in the public interest the Committee needed to be clear on why changes had been suggested to delete recommendations 1.4 and 1.6 and the substituted recommendations.

The Parks Manager, in clarifying the position, stressed that Recommendation 1.2 needed to be clear on what was to be delivered and this alone would not reduce the current leaf litter problem being experienced. The new resolution to 1.2 would assist by a 20 to 30% reduction in leaf form. He added that following discussions held with retailers, Council Planners, the Chair and the Manager - Community Assets on the various options and scenarios required more time in which to prepare a comprehensive report. Consultation was also required with the plumbing contractors who had been involved in removing leaf litter from their clients' property together with the maintenance undertaken.

Cr Guy recorded that whilst he respected the role of the Council's regulatory arm, he struggled with the whole process. There were both for and against the issue, noting the resource consent could result in a process that is time consuming. His concerns were for the longevity of the Plane trees in Oxford Street, noting that pruning in the past may have been too severe. Also saw the need for a replanting regime being established.

In response the Parks Manager reported that the pruning proposal would not have a negative effect on the trees. He also favoured the establishment of a replacement tree programme and stated that he was willing to work alongside the CBD Subcommittee. He personally favoured natives as a replacement for this area. This would be contained within his full report.

The meeting then addressed the concerns of retailers who had encountered flooding through excessive leaf drop and had faced carpet replacement, regular cleaning and gutter replacements.

The historical aspects of the Plane trees were also acknowledged.

RESOLVED (Roache/Duffy)

"THAT the Parks Manager be instructed to undertake the crown lifting and removal of selected branches to reduce leaf volume of the Oxford Street Plane trees at an estimated cost of \$4,500."

RESOLVED (Roache/Duffy)

"THAT the Parks Manager be authorised to liaise with the Levin Retailers Association and affected parties, measure the benefits of this recommended approach and report back to the Horowhenua District Council on the success of this work after a two year monitoring period."

RESOLVED (Roache/Guy)

**COMMUNITY ASSETS
6 MARCH 2002**

"THAT the Parks Manager bring back to the Community Assets Committee a report detailing full options for the introduction of a replacement tree programme for Oxford Street, Levin."

RESOLVED (Duffy/Roache)

"THAT the Parks Manager be authorised to remove the Plane Tree opposite Bargain Busters, Oxford Street for reasons of public safety."

RESOLVED (Guy/Roache)

"THAT the Parks Manager bring down to the Community Assets Committee a report outlining detailed options for addressing the leaf litter issue."

<i>Action Box</i>		
Date	Officer Sent To: D. Quinn M/S D. P. M/S	For Your Action: ① to HDC on 20-3-02 ② to action request.
Sent To File:		<i>Please return to Dennis Cole advising your follow up action on this matter.</i>
Date:		Signed: Date:

REPORT NO. 183

File:

**To: Chairperson and Members
Community Assets Committee**

From: Manager – Community Assets

**Subject: Oxford Street Plane Trees -
Leaf Litter**

Date: 27 February 2002

Recommendation complies with:

Strategic Plan	Yes
LTFS	Yes
Annual Plan/Budget	Yes
District Plan	Yes
Written Policy	Yes

1.0 Recommendations

- 1.1 That Report 183 be received.
- 1.2 That the Parks Manager be instructed to undertake the crown lifting and removal of selected branches to reduce leaf volume of the Oxford Street Plane trees at an estimated cost of \$4,500.
- 1.3 That the Parks Manager be authorised to liaise with the Levin Retailers Association and affected parties, measure the benefits of this recommended approach and report back to the Horowhenua District Council on the success of this work after a two year monitoring period.
- 1.4 That failing a satisfactory outcome the Parks Manager be authorised to undertake an overall crown reduction on any trees over 11m in height and 8m in width at an estimated cost of \$7500, every two years.
- 1.5 That the Parks Manager be authorised to remove the Plane Tree outside Bargain Busters, Oxford Street for reasons of public safety.
- 1.6 That the Parks Manager be instructed to establish new specifications in the next general contract for Parks and Recreation maintenance to include the additional Oxford Street tree maintenance work.

2.0 Purpose of Report

- 2.1 To advise the Committee of issues relating to the Oxford Street trees and to suggest a plan of action.

3.0 Background

- 3.1 Records indicate that some of the existing Plane trees were planted in Oxford Street in 1897 to commemorate a record reign for Queen Victoria of 60 years. Sixty-five of these trees were originally planted between Bath and Devon Street.
- 3.2 The Oxford Street Plane trees (*Plantanus acerifolia*) are a common exotic species used in New Zealand as street trees, parks specimen trees etc.

K:\2000\000abunail\CA Plane Trees Oxford St Leaf Litter.doc

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Note 1: "Pollarding" is a form of pruning where all branches are annually removed back to the tree stump. The resulting stumps regrow new shoots and branches in the following spring. These branches are then again removed in late Summer, early Autumn before leaf fall. This is not a recommended pruning practise with Arborists any more and is generally not practised by many, if any, local authorities in the country.

-2-

- 3.3 They are characteristically a strong and hardy tree that can grow very large in certain situations.
- 3.4 The Oxford Street Plane trees range from 20 years to well over 100 years. The majority of the older and larger Planes are situated within the Oxford Street retail belt from Bath to Devon (older and larger).
- 3.5 Before 1992 the Plane trees were annually "pollarded"¹. In that year a report recommending cessation of this practise was adopted by the Horowhenua District Council.
- 3.6 In the 1992 report to Council by Tree Care Limited it was recommended that the Planes be allowed to grow and then be contained to a height of 11m and a diameter of 8m.
- 3.7 Over the last two years the Parks Manager has received an increasing number of complaints associated with leaf litter from the Plane trees falling into the gutters along Oxford Street, and in some cases, the subsequent flooding has caused considerable cost to retailers.
- 3.8 Council's Planning Department recommended the Oxford Street Plane trees for Notable Trees status in February 1989. In summary they concluded "That the Plane trees play an important role in the street setting. The trees enhance the ".....avenue effect as well as providing a micro-climate in the Central Business District" (see Appendix 1).
- 3.9 Section 17 of the Council's District Plan provides the trees with protection and governs the nature of work that can be undertaken on them. (see Appendix 2).
- 4.0 **Comment**
- 4.1 The Oxford Street Plane trees have generally responded well to the change of pruning. They are now thinned, crown lifted and generally structured as required to maintain strong, healthy and safe trees.
- 4.2 Because of the pollarding practise, the Plane trees were never going to achieve a true form and be as strong as those with intact main leader branches.
- 4.3 They are not managed to reduce leaf litter or maintain a pre-determined height. It is apparent, now, that some of the Planes are now in excess of 11m, and even more have a spread greater than 8m.
- 4.4 **Leaf Litter**
The Parks Manager has been in contact with various Oxford Street retailers to try and determine the extent of the leaf litter problem. There is no doubt that the Plane trees do drop a large amount of leaf litter, and this was always going to increase as the trees grew. This point was made in the 1992 report when the recommendation to change tree management practises was adopted.
- 4.5 How badly the buildings are affected related to the level of maintenance carried out. A walk along Oxford Street and discussion with some of the affected retailers reinforce the fact that some

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landlords (and shop managers) are considerably more proactive than others in mitigating the effects of leaf litter.

- 4.6 Comments from Heartlands Manager are **attached (Appendix 3)** for the Committee's information.
- 4.7 Returning to "Pollarding" is not considered an option for the management of these trees as it would contravene the Notable Trees Protection status and could lead to their death.
- 4.8 The Oxford Street Plane Trees require removal from time to time as a result of infection (disease), damage by vehicles, poor branch attachment or cavities caused by areas of rot, and probable compaction of root zones causing significant decline in health.

Some debate will be required to determine whether a policy is needed for replacing these trees, including the type of species that should be planted, etc.

- 4.9 Tree lights have been contributing to additional maintenance costs because the taped on lights need to be cut and retied every two years. The lights necessitate additional work to prune around them.

5.0 Discussion

- 5.1 There would appear to be two options available to reduce the amount of leaf litter from the Plane trees. These are as follows:

5.1.1 Thin, Crown Lift and Remove Selected Branches.

While this would not reduce the overall height or the diameter of the trees it would help to reduce the canopy volume and therefore the amount of potential leaf litter. This approach is considered to be better in terms of maintaining tree health and is a more "natural" approach to tree maintenance.

It is estimated that the cost to undertake this work to all of the trees between all of the trees between Bath and Devon Streets would be in the vicinity of \$4,500.

This work would be required to be done every two years.

5.1.2 Overall Crown Reduction

This is essentially reducing the height and crown diameter of the trees. This form of pruning can cause different responses from the trees including the proliferation of stress growth within the canopy as the tree tries to replace lost foliage.

This approach would be considerably more expensive because it would require additional disassembly of the lights in the trees and a costly traffic management plan because of the nature of the work, branches would not be able to be passed down through the tree but would have to be cast onto the road, meaning partial road closure of Oxford Street.

The estimated cost of this operation would be as much as \$10,600.

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As with Option 1 this work would probably need to be undertaken every second year, although the price would be expected to be less for a second and subsequent years.

- 5.2 Discussions have been held with the Periodic Detention Service regarding selected detainees undertaking a weekly cleaning service along Oxford Street. This would involve a team of 2-3 people equipped with a ladder, cart and appropriate tools. They would climb verandahs and buildings under the supervision of a Council appointed staff member and clean the gutters out. The Periodic Detention Service have indicated that this is an option they support in principle and the Parks Manager is carrying out further discussions with them as to how this could work. This service, if it was adopted, would still require annual maintenance funding, initial capital funding and annual maintenance funding of:

- Initial purchase of equipment. Estimated cost \$1000.
- Ongoing supervision and follow up. Estimated cost \$1000.

- 5.3 It is possible that the work described in the report can be funded from the existing street tree maintenance budget. However, there is an increased likelihood of that budget coming under stress leading to neglect of trees during a 'bad' year.

(Report prepared by PJ Shore, Parks Manager)



RR Nicholson
Manager - Community Assets

00043

13 June 2002

**File Note: Resource Consent Considered Under Delegated Authority
Resource Management Act 1991
Decision on An Application for Resource Consent (Land Use)
RCA 1426: Horowhenua District Council – Parks Department**

Site: Oxford Street, State Highway 1, Levin
Described as Road Reserve

Proposal: To crown lift and remove selected branches to reduce leaf volume of the Plane Trees, to remove the Plane Tree outside 199 Oxford Street for reasons of public safety, and implement a regular annual maintenance programme

Zoning: Commercial 1 & 2

Date Received: 21 March 2002

1. Proposal and Site

- 1.1 The Plane Trees subject to this Resource Consent Application line both sides of Oxford Street, Levin, from Bath Street at the southern end, up to Devon Street at the northern end. Oxford Street is the main street in Levin, with the core retail businesses located along this street. The Plane Trees range in age from 20 years to just over 100 years.
- 1.2 The Plane Trees are spaced at various intervals along Oxford Street, ranging from 10 metres, up to 150 metres apart. The overall effect of the Plane Trees is an "avenue", with the trees framing Oxford Street.
- 1.3 The proposal involves crown lifting of the Plane Trees. Crown lifting is the removal of lower branches to a pre-specified height. This will provide ample clearance for vehicle parking under the trees, as well as removing lower branches that interfere with verandahs of adjoining buildings.
- 1.4 The proposal also involves thinning the canopy of the Plane Trees, by removing selected branches up to 10mm diameter thickness. The aim of this pruning is to reduce the overall leaf volume and associated leaf litter from the trees.
- 1.5 It is also proposed to remove a single Plane Tree that was damaged by a vehicle last year and is in poor health. The Plane Tree is seen as a hazard to public safety, and should be removed.
- 1.6 It is proposed that an annual maintenance programme will be implemented to ensure the trees are managed to control the amount of leaf volume and associated leaf litter, while still retaining the overall "avenue" effect of the trees.

2. Background

- 2.1 The Plane Trees in Oxford Street, Levin were originally planted in 1897 to commemorate a record reign of 60 years by Queen Victoria. Sixty-five trees were originally planted between Bath Street and Devon Street.
- 2.2 The age of the current Plane Trees in Oxford Street range from 20 years to over 100 years. Some of the original Plane Trees have died, and in the majority of situations have been replaced with similar species.

- 2.3 Plane Trees (*Plantanus acerifolia*) are a common exotic species used throughout New Zealand as street trees, park specimens etc. The growth habit of Plane Trees is described as a round spreading tree, that can tolerate hardy conditions. This species is noted for their ability to survive extreme conditions, including poor soil, limited moisture and sealed roots.
- 2.4 The Oxford Street Plane Trees have a history of annual pruning, where they were "pollarded" each year. This type of pruning was undertaken to control the amount of leaf litter in autumn, and provide a feature for Oxford Street. In 1992, this practice ceased and a new management regime was adopted to allow the trees to grow and develop their natural form. The aim of this new regime was to contain the trees to a maximum height of 11 metres and a diameter of 8 metres. Given the significant length of time the trees were pollarded, this has contributed to problems with the trees achieving their true natural form. Strong leaders have grown from the previously pollarded base of the trees, with lateral growth now enabling the trees to partly represent their natural form.
- 2.5 Since the annual pollarding has ceased, there has been significant canopy growth that has exponentially increased the annual autumn leaf drop. This has caused problems with adjoining properties, where the leaves have dropped, and in some situation blocked gutters causing flooding.
- 2.6 The applicant has undertaken some pruning of the Plane Trees, to ensure the trees are structurally sound, and maintain strong and healthy trees. This pruning involved thinning and crown lifting.
- 2.7 In 1999, Council undertook a project to identify "Notable Trees" in the District, and protect the trees that were considered significant features. The Oxford Street Plane Trees were identified as a significant feature in the District, and should therefore be protected. District Plan Change No.7 introduced the Register of Notable Trees to the Horowhenua District Plan, which included rules relating to the management of Notable Trees. This Plan Change became operative on 9 August 2000. Minor pruning of Notable Trees is a permitted activity, however given the number of trees, and range in the severity of the pruning proposed, Resource Consent is required for this proposal.

3. Approved Horowhenua District Plan

- 3.1 The site of this proposal is designated by the Horowhenua District Council as State Highway 1 (D2). The location of the trees is adjacent to land zoned Commercial 1 and 2 under the Horowhenua District Plan. The following rules from the District Plan are relevant to this proposal:
- 17.2.20 (iii) No person may remove, destroy or damage a tree that may adversely affect the values for which it was considered worthy of protection.
- Council may grant consent as a discretionary activity where it is satisfied that one or more of the following circumstances exist:
- The tree is dead or diseased
 - The tree has become a danger to life, is causing damage to property, or is likely to do so.
- 3.2 In determining whether approval shall be granted to this proposal the Horowhenua District Council must use its discretion in determining the adverse effects of this proposal and the compliance of this proposal with the objectives and policies of the District Plan.
- 3.3 Section 7 of the District Plan outlines the objectives and policies for Heritage Features. Those relevant to this proposal are listed below.

Objective 12: To protect the heritage features which are significant to the community.

Policy 11.1: To ensure that the heritage values associated with a heritage feature are not adversely affected by inappropriate land use, subdivision or development.

The proposal seeks to retain the overall features of the Plane Trees, while addressing the nuisance they are causing to adjacent properties.

Objective 11(2): To balance private property rights with the public good.

Policy 11(2).2: Increase public understanding of the importance of that resource and their values and the responsibility of public and private landowners in the management and protection.

The proposal aims to ensure the public understands the historical significance of the trees, and the aesthetic value they bring to Oxford Street. However, pruning is necessary to minimise the affect of these trees on adjoining properties.

Policy 11(2).4: Provide flexibility in development controls where the development promotes the retention, preservation and protection of the heritage feature.

The proposal seeks to retain the overall values of these trees, with only one tree proposed to be removed for public safety reasons.

4. Submissions

4.1 39 submissions were received. 38 submissions supported the application, and one submission opposed the application. Submissions were received from the following. Copies of their submissions are a separate part of this report.

LC Baker
D Whitelaw
FM Parker
Ruffles Café
RG Gardiner
Harvey-Bowler Funeral Services Ltd
Guthrie Bowron
AT Fletcher
Aussie Wholesale Meats Ltd
Levin Office Products Depot
Kingston and Kemp
SL Olsen
Brenmuhls Jewellers Ltd
Video Ezy Levin
GB Little
KW Clark
AMI Insurance
Levin Club Inc
KB Wilton
Merediths Bedding and Linen

G Tucker
Levin Lighting and Electrical Ltd
Palmer's Sportsworld
Sound Centre
Vibrant Image
N Jones
Shermans Betta Electrical
Unichem Levin Pharmacy Ltd
Go Levin
BP Warden
Transit New Zealand
Horowhenua Motor Company
MA Hood
Camden House Ltd
Horowhenua Branch Forest & Bird
Oxford Buildings Ltd
RM Coulter
Tanenuiarangi Manawatu Inc
Unichem Pharmacy

4.2 The primary issues raised by the submitters include the following:

4.2.1 Oppose

- Pruning the trees will ruin the character of the trees
- Recent growth of the trees has provided character and beauty to Oxford Street

4.2.2 Support

- Plane Trees are an "asset" to Levin, therefore they should be managed accordingly
- Lack of regular maintenance of the trees has caused damage to buildings, in particular from leaves blocking gutters
- Street lighting blocked by trees
- Danger of branches snapping in wind due to their size
- Trees are unsightly and dangerous
- Trees are like ugly fingers protruding into the sky
- Trees need to be "topped", or alternatively "pollarded"
- Reduce size and shape of the trees, to make them more rounded
- Any trees that are removed, need to be replaced with new trees, as they added to the appeal of Levin

4.3 Comment

4.3.1 Oxford Buildings Limited were the only submitter opposing the application. Their concerns related to the previous "pollarding" practice undertaken by Council, where the Plane Trees were pruned each year to their main stump, which they considered made the trees ugly and lose their character. They noted since the trees have been allowed to grow in recent years, this has provided character and beauty to the main street of Levin, which is appealing to passing through traffic.

4.3.2 Given this was the only submission received opposing the application, the Planning Department contacted Mr Nick Cooper (Director of Oxford Buildings Ltd) to discuss the concerns raised in their submission. Mr Cooper was advised that the proposed pruning did not include "pollarding", but rather the thinning of the canopy, with the overall size of the canopy to be retained. Mr Cooper was satisfied with this advice, and said he had no concerns with this style of pruning. He explained the reason for the submission was that he did not want to see Council return to the previous "pollarding" technique. Given this technique is not proposed, Mr Cooper stated he was not opposed to the application. Conditions are proposed to be imposed on the decision to address the concerns of the submitter.

5. Matters to be Considered When Making Decision

5.1 Section 105 (1) (b) states that:

5.1.1 A consent authority may grant or refuse a consent, and (if granted) may impose conditions under Section 108; provided that, where the consent authority has restricted the exercise of its discretion, conditions may only be imposed in respect of those matters specified in the Plan or Proposed Plan to which the consent authority has restricted the exercise of its discretion.

5.1.2 This proposal has to be assessed with regard to the 'discretionary activity' criteria. If the proposal satisfies Section 105 (2), a consent authority can proceed to consider the application and make a decision under Section 104 of the Act. The requirements of Sections 104 and 105 of the Act are considered in Sections 4, 5 and 6 of this report.

5.1.3 Section 104 of the Act sets out the matters to be considered when assessing a resource consent application. Applicable to this proposal is the consideration of:

- (a) Any actual and potential effects on the environment of allowing the activity; and
- (b) Any relevant objectives, policies, rules, or other provisions of the Approved District Plan; and
- (c) The submissions received; and
- (d) An overall regard to the purpose and principles of the Act.

5.2 Purpose and Principles of the Resource Management Act 1991

5.2.1 The following provisions are the relevant purpose and principles of the Resource Management Act which relate to this proposal.

5.2.2 Section 5 states that the purpose of the Act is to promote sustainable development of the natural and physical resources. Section 5(2) of the Act states that *"sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while:*

- (a) **Sustaining the potential of the natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;**
- (b) **Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and**
- (c) **Avoiding, remedying or mitigating any adverse effects of activities on the environment.**

5.2.3 Section 7 of the Act requires particular regard be made to the following matters in relation to managing the use, development and protection of natural and physical resources:

- (c) **The maintenance and enhancement of amenity values;**
- (f) **Recognition and protection of the heritage values of sites, buildings, places, or areas;**

5.2.4 The pruning of the Plane Trees will modify the appearance of the trees. This proposal is not considered to affect the amenity values of Oxford Street, and the setting the Plane Trees provide. The heritage value of the Plane Trees is recognised in terms of their age and reason for planting. Given all trees are to be retained except one, it is considered the heritage value of these trees is being protected.

5.3 Actual and Potential Effects

5.3.1 Amenity/Aesthetic Value

5.3.1.1 The Plane Trees in Oxford Street were considered to be worthy of protection for their high amenity value, and function of creating a setting in the main street of Levin. The trees were assessed for protection using the Standard Tree Evaluation Method (STEM), which is widely used throughout New Zealand.

- 5.3.1.2 The Plane Trees were assessed in two groups. The first group (42 trees) were the ones originally planted in 1897. These trees scored 209 under the STEM criteria. The second group (12 trees) scored 197. These trees are younger and replaced some of the original trees that were removed. The age of the trees is the main reason for the difference in score, with both groups having similar scores for all the other STEM criteria.
- 5.3.1.3 The Plane Trees scored highly under the "amenity" category in the STEM. This relates to the stature, visibility, proximity of other trees, role in setting, and climatic influence. One of the main features identified with the protection of these trees is the "avenue" effect created by the trees, and the microclimate and setting the trees create in the central business district.
- 5.3.1.4 The proposed pruning aims to retain the overall "avenue" effect, by limiting the amount of reshaping. Most of the pruning will involve the removal of internal branches. The type of internal branches to be removed are ones that are structurally weak, or interfere with other branches. This type of pruning is not considered to affect the amenity values of the trees.
- 5.3.1.5 The proposed crown lifting of the trees involves the removal of low branches around the crown of the trees. Most of the trees have already been crown lifted to the required height, and only small re-growths from the crowns is proposed. As long as the trees are not crown lifted above the specified height, this type of pruning is not considered to affect the amenity values of the trees.
- 5.3.1.6 The proposed removal and cutting back of selected branches is required to return the trees to a more "natural" shape. The historical pruning method of the trees (pollarding) has caused the trees to form an "unnatural" shape with strong vertical branches with little horizontal growth. Since the trees have been left to grow naturally in recent years, the trees have started to return to their natural form of a round canopy. The proposed pruning of selected branches would control the unbalanced nature of the trees, and return them to a more natural form. Branches that are diseased or structurally weak are also proposed to be removed. This re-shaping work is considered to result in a more natural looking tree, which is balanced with even growth throughout the canopy. This type of pruning should maintain the amenity values of the trees, by returning the trees to a more natural form.
- 5.3.1.7 The submitter opposing the application is concerned about the affect the pruning will have on the amenity values of the trees. The proposed pruning is considered to maintain the amenity values, by retaining the overall avenue effect of the trees. To ensure this occurs, conditions are proposed to control the amount and type of pruning.

5.3.2 Historical Significance

- 5.3.2.1 The Plane Trees were planted in 1897 to commemorate the record reign of 60 years by Queen Victoria. Sixty five trees were planted along Oxford Street, between Bath Street and Devon Street. Today, 42 of the original trees remain, 12 of the original trees were replaced in the 1950's, and 11 of the original trees have been removed but not replaced.
- 5.3.2.2 The historical significance of the trees primarily relates to their age, and reason for being planted. Given the proposal will retain all trees, except one that is proposed to be removed for public safety reasons, the historical significance of the trees will be largely retained.

- 5.3.2.3 A replacement for the tree to be removed has not been proposed. It has been suggested that cuttings be taken of the removed tree and used to grow replacement trees. This will retain the historical connection with the trees, and the replacement tree would continue the same species currently used.

5.3.3 Leaf Litter Damage

- 5.3.3.1 The primary reason for the proposed pruning of the Plane Trees is to reduce the leaf volume of the trees, therefore reducing the subsequent leaf litter. The leaf litter problem is most significant on the eastern side of Oxford Street, where the prevailing westerly wind blows the leaves on top of adjoining roofs. In turn, the leaves block the gutters and downpipes of these buildings and subsequently cause flooding. Since the trees have been allowed to grow with the change in tree management, this problem has progressively become worst. Autumn is the main problem period, however concerns were raised in late summer following a period of heavy rain and strong winds.

- 5.3.3.2 The District Plan allows Council to grant Resource Consent if it is satisfied that the Notable Trees are causing damage to property, and that the proposal will not affect the values of the trees. A number of submissions have highlighted the leaf litter problem, and have provided financial costs of remedial work undertaken to buildings in an attempt to avoid this problem. These submissions along with observations by both Council officers and Councillors provides sufficient evidence to conclude that the Plane Trees are the source of the problem, and are damaging property. However, it is believed that roof design and construction of some buildings may contribute to some flooding problems.

5.3.4 Tree Management

- 5.3.4.1 The Plane Trees have a history of pollarding, where all branches on an annual basis were removed back to the crown of the tree. The resulting crowns would regrow new shoots and branches in the following spring. This practice was exercised when the trees were first planted, and controlled the size of the trees. This practice caused some trees to become diseased and subsequently decayed, which resulted in these trees being removed. Most of the removed trees were replaced, resulting in trees of various ages along Oxford Street.
- 5.3.4.2 In 1992, a new tree management regime was adopted. This new management regime stopped the annual pollarding, and initially left the trees to grow to their natural form. The overall aim of the new regime was to enable the trees to form a natural upper crown. The reason for this approach was that it was better for overall tree health, and represented a more natural tree form, therefore improving the aesthetics of the trees.
- 5.3.4.3 Reshaping and thinning has been undertaken since 1992, to control epicormic growth and remove branches that are not structurally sound. The trees have also been crown lifted to allow light to pass into shop frontages, and allow free passage of vehicle movements along Oxford Street. It is proposed to continue this management regime of the Plane Trees.
- 5.3.4.4 Independent arboricultural advice received on this Resource Consent Application questions continuing this approach. The arborist considers this approach has removed the "insurance" from the internal branch structure, and that the trees now form an unnatural canopy. The continued thinning and crown lifting has forced the trees to grow vertically. The arborist suggests that an overall crown reduction approach would be more appropriate. This approach would significantly

affect the amenity value of the trees initially, as there is little growth on the lower branches. However, in the long term the trees would have a more natural canopy, and not create as much leaf litter. The arborist acknowledges this approach will be more costly, but will achieve a better outcome for the trees and neighbouring property owners.

5.3.4.5 It is noted that the original management regime proposed when pollarding ceased, recommended that pruning be undertaken to control the overall height and width of the trees. This was considered necessary to maintain the trees safety, contain the tree within the existing setting, and provide good tree structure due to their history of pollarding.

5.3.4.6 The arborist also suggests that the overall management of these trees needs to be reviewed. This includes the proposed work, as well as the removal and replacement of trees that are showing signs of poor health.

5.3.5 Tree Removal

5.3.5.1 One Plane Tree is proposed to be removed outside 199 Oxford Street. This tree is one of the original trees planted in 1897. This tree was subject to the historic pollarding management regime, and the new regime introduced in 1992. This tree has suffered severely from the pollarding, and has not responded well to the current management programme. The growth of this tree since 1992 has been very weak compared to other trees. The tree is showing signs of decay around the stumps of the old pollarded crown. Arborist's who have recently worked on this tree have reported excessive movement in the crown and trunk of the tree. One submitter opposes the removal of this tree, as the tree provides character to the main street of Levin. It is considered the removal of one tree will not affect the amenity values the trees as a whole provide.

5.3.5.2 The District Plan states Council can grant Resource Consent for the removal of a tree that is dead or diseased, or has become a danger to life or property. The independent arborist considers this tree does not pose an immediately risk to life or property. However, the arborist considers the tree to be in poor condition, and this is likely to deteriorate in the next few years, and will become a hazard. Therefore, the removal of this tree is considered acceptable.

5.3.5.3 It is noted no replacement has been proposed. The idea of taking cuttings from the tree to grow replacement trees is acknowledged. However, given the poor health of this specimen, the taking of cuttings from this tree would not be desirable. Replacement of trees requires investigation, as other trees are starting to show signs of poor health.

6. Conclusion

6.1 The primary matters have been assessed in Section 5 of this report. The main issues with this proposal are considered to be the following:

- Leaf litter is causing considerable damage to properties in Oxford Street, in particular on the eastern side.
- Plane Trees are a significant asset to the CBD of Levin, and need to be managed accordingly.
- The trees add to the amenity value of Oxford Street, and provide a streetscape and microclimate.
- The trees are historically significant, and commemorate a significant event.

- The historical management of these trees has created problems with tree health and condition.

It is considered that any adverse effects associated with the proposal can be effectively avoided, remedied or mitigated. The application has attracted mostly submissions in support and a few, albeit relatively minor submissions in opposition.

7. Decision

7.1 Pursuant to Sections 104, 105 and 108 of the Resource Management Act 1991, the Horowhenua District Council grants consent to crown lift and remove selected branches, remove the Plane Tree outside 199 Oxford Street, and to implement a regular annual maintenance programme for the Plane Trees in Oxford Street, Levin, subject to the following conditions:

1. That the crown lifting, pruning of selected branches, and removal of the single Plane Tree be undertaken as outlined in the application submitted to Council.
2. That all work be carried out by or under the on-site supervision of arborists with recognised qualifications and experience.
3. That the thinning of selected branches shall remove no more than 30% of the total canopy for each tree.
4. That all trees shall be crown lifted no higher than 5.5 metres as shown on Diagram 1 attached.
5. That the overall "avenue" effect of the trees be retained by removing only selected branches.
6. That a Tree Management Plan be prepared reviewing the current management practice. This management plan is to identify the long term approach to managing these trees, including consideration of crown reduction, removal of specific trees, and replacement trees.

Note:

- (i) The arborist contracted to undertake the work will need to consult Transit New Zealand prior to the commencement of any work.
- (ii) In terms of Section 35 of the Resource Management Act 1991 the Horowhenua District Council is required to monitor land use consents. For this particular proposal it is recommended that a visit will be carried out during the pruning. The Planning Department is to be advised ten days prior to the commencement of any work. A flat charge as determined by the Horowhenua District Council will be incurred for these visits. Currently the fee is \$66.00 per visit.

7.2 The reasons for the above decision are as follows:

- (i) The adverse actual and potential effects of the proposal on the environment are considered to be no more than minor because:
 - (a) The historical significance of the trees is to be protected and maintained.
 - (b) The pruning will reduce the amount of leaf canopy, therefore reducing the amount of leaf litter and damage to property.

- (c) The amenity and aesthetic values of the trees will be retained.
- (ii) The consent is not contrary to the relevant objectives and policies of the Horowhenua District Plan.
- (iii) The consent is considered to be consistent with the purpose and principles of the Resource Management Act 1991 in terms of the sustainable management of natural and physical resources.

HPJ Wesney
Resource Management Planner

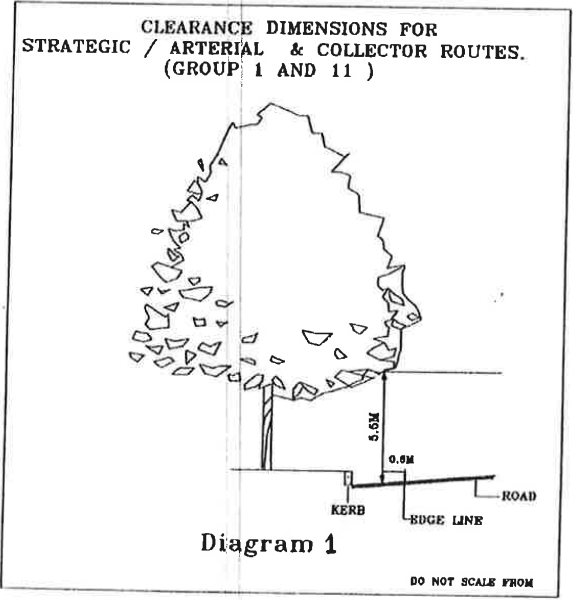
Approved: 
Regulatory Services Manager


Date


Acting Chairperson
Regulatory Committee

Letter sent to: Parks Department
Horowhenua District Council
Private Bag 4002
LEVIN

Copy of decision to: All submitters



Oxford Street Plane Trees Management Plan. 2005 - 2015

Crown Reduction and Removal of Selected Branches

Crown reduction will be undertaken to reduce the height and crown diameter of the trees, while attempting to retain the same overall shape of the canopy. The top of the canopy will be reduced to a height of approximately seven metres above ground level

At the same time as the crown reduction, any branches obscuring streetlights, road signage etc, or encroaching into the required clearances for the carriageway will be removed.

This process will be repeated every two years or so to lower the canopy heights back to seven metres. This is estimated to cost \$18 000 each time.

Some works may be required outside these times to remove any damaged or dying material, or to maintain required clearances from road signage etc.

Leaf Litter

Leaf litter will be manually removed from the roof gutters (by Councils Maintenance Contractors) to mitigate any potential flooding problems. During the periods of higher autumn leaf fall this material will be removed at a greater frequency.

Lights

Approximately every two years the cable ties and tape securing the small decorative lights within the trees canopies will be retied to avoid restricting branch growth. This operation will be undertaken in conjunction with the ongoing crown reductions.

Tree Removals

Ongoing monitoring will be undertaken to assess the health and safety of these trees. Isolated trees may require removal due to vehicular or storm damage or as a result of disease.

Replacement Trees

No replacement planting will occur until a long term landscape management plan has been adopted by Council.

Propagation from Existing Trees

Cuttings from the original 1887 Plane trees will be taken and grown on in a local nursery. The resulting trees will be planted in appropriate greenspace locations within Levin (e.g. Railway reserves, Weraroa Domain) and throughout the District, thus retaining a link to the original trees.

File No.: 22/679

6.3 Levin Landfill Old Dump Remediation Options

1. Purpose

- 1.1 The purpose of this report is to discuss the remediation options for the closed 'Old Dump' portions of the Levin Landfill site. This decision will require approval of funding for the initial recommended remediation actions as well as approval to progress further remediation action investigations. This will include bringing back a request for approval for those stages once the scope of work and timeframes are further developed.
- 1.2 The proposed remediation works would ensure that the Resource Consent compliance requirements are met and be in alignment with the Agreement in Relation to the Levin Landfill, signed between Horowhenua District Council and the S274 parties (Landfill Agreement, 13 March 2019).

2. Executive Summary

- 2.1 The Levin Landfill, located on Hokio Beach Road, had operated for over 50 years, until it closed in November 2021 whilst the future of landfill decision is undertaken. The Old Dump, which closed in 2004, is an unlined landfill located on sand dunes, and comprises two areas separated by an access road, referred to as Areas 1 and 2.
- 2.2 A programme of work is being developed to determine Council's future direction on waste, and the associated timeline, budgets, resources and risks. This includes revision of Council's Waste Management and Minimisation Plan, decisions on future services to be budgeted for within the 2024 Long Term Plan, the decision on the future of the Levin Landfill (including closure), and the selection of the Best Practicable Option (BPO) for the remediation of leachate impacts from the Old Dump. This report addresses the leachate remediation (BPO) decision.
- 2.3 There are legally binding dates within the landfill's resource consents and the Landfill Agreement that must be met. These place constraints on when decision relating to landfill closure and Old Dump leachate remediation need to be made. The Landfill Agreement and the associated commitments sit at the heart of the process to determine the Old Dump leachate remediation solution (the BPO package) to date.
- 2.4 Landfill experts from Tonkin + Taylor, in their role as part of the Technical Advisory Group (TAG), identified 11 potential remediation options in 2019, which have been further developed by Tonkin + Taylor and Stantec experts. These options are not mutually exclusive and have therefore been combined into three options that represent a range of remediation packages for comparison and from which a BPO has been developed.
- 2.5 To mitigate against landfill leachate generation, it is common practice to shape and grade a landfill surface to adequately drain rainwater from the site and to place a layer of low permeability soil (typically clay) over the top of the landfill to prevent rainwater infiltration. It is then planted with grasses and other suitable vegetation to prevent erosion of the cap and protect its integrity.
- 2.6 The following table summarises the BPO package and associated timeframes and costs:

#	Timing	BPO Element	Estimated Cost
1	Do now (annual)	Maintenance contractor company to monitor the landfill cap and repair as needed (includes repairing seeps if seen)	\$130,000 pa

2	Do now (by June 2023)	Import clay soil, shape the top of the Old Dump to stop water ponding, cease ingress and control flows of surface stormwater. Re-establish vegetation.	\$320,000
3	Do now (by June 2023)	Confirm extent of contamination in gulley area (Borehole C2), scope required for remediation of contaminated land, and undertake remediation.	\$300,000
4	Start now (1-5 years)	Assess targeted restoration areas of Tatana Drain and Hokio Stream, working alongside Iwi and willing landowners. Develop a restoration programme, secure funding and proceed with restoration project.	\$300,000
5	Do next (2-5 years)	Add additional capping to the top and sides of the Old Dump as suitable soil becomes available, prioritising areas identified with maintenance contractor, and ensuring suitable drainage constructed as capping applied. Continue until at least 700mm capping applied. Re-establish vegetation.	\$0-4million depending on soil availability.

3. Recommendation

- 3.1 That Report 22/679 Levin Landfill Old Dump Remediation Options be received.
- 3.2 That this matter or decision is recognised as significant in terms of S76 of the Local Government Act.
- 3.3 That Council agrees to:
 - Procure a maintenance contractor to monitor the landfill cap and repair as needed (including repairing seeps as needed) at an estimated cost of \$130,000 per annum as part of opex expenditure.
 - Fund the importation of clay soil, shaping the top of the Old Dump to stop water ponding, cease ingress and control surface stormwater flows. Re-establish vegetation, at an estimated cost of \$320,000 to be completed by June 2023.
 - Procure specialist assistance to confirm contamination in the gulley area at borehole C2, scope the required remediation of contaminated land, and undertake remediation at an estimated cost of \$300,000. Initial actions to be completed by June 2023.
 - Approve a programme of work to firstly assess targeted restoration areas of the Tatana Drain and Hokio Stream by working alongside Iwi and willing landowners, develop a restoration programme, secure additional funding and then proceed with appropriate restoration projects. The initial cost of this action is \$300,000.
 - Authorise Council Officers to undertake scoping activities to determine the cost of adding additional capping to the top and sides of the Old Dump as suitable soil becomes available and ensure that suitable drainage is constructed as capping is applied.
- 3.4 Council notes that taking these actions does not preclude any further remediation actions or enhancements on the sites. Any further remediation actions or enhancements above the scope of those outlined above will be returned to Council for approval before commencing.
- 3.5 Council authorise the Chief Executive to begin the procurement process to undertake the work identified and authorise the Chief Executive to enter into contracts to begin the work

required over the summer earthworks season.

4. Background / Previous Council Decisions

- 4.1 The Levin Landfill, located on Hokio Beach Road, had operated for over 50 years, until it closed in November 2021, whilst the future of landfill decision is undertaken. The old dump portion closed in 2004, when a new Class 1 landfill was opened. The old dump is an unlined disposal facility situated largely on dune sands. It comprises two areas separated by an access road, which are referred to as Area 1 and Area 2, located on the northwest and northeast of the landfill property respectively. Wastes disposed in Area 1 are approximately 20-30m deep and Area 2 is a shallow site with wastes up to 5m deep.
- 4.2 The top of Area 1 has been capped with compacted clay material, the sides are capped with sandy soil and the whole of Area 1 is covered in established grasses and other vegetation. Area 2 has soil cover but no formal capping, and is covered in a dense growth of pine trees.
- 4.3 A programme of work is being developed to determine Council's future direction on waste, and the associated timeline, budgets, resources and risks. This includes revision of Council's Waste Management and Minimisation Plan (WMMP), decisions on future services to be budgeted for within the 2024 Long Term Plan, the decision on the future of the Levin Landfill (including closure), and the selection of the Best Practicable Option (BPO) for the remediation of leachate impacts from the Old Dump. This report addresses the leachate remediation (BPO) decision.
- 4.4 There are legally binding dates within the landfill's resource consents and the Landfill Agreement that must be met. These place constraints on when decision relating to landfill closure and Old Dump leachate remediation need to be made. The Landfill Agreement and the associated commitments sit at the heart of the process to determine the Old Dump leachate remediation solution (the BPO package) to date.
- 4.5 The BPO is to be shared with Horizons, as the regulator, and the Neighborhood Liaison Group (NLG) for comment, prior to commencing implementation of the BPO. Remediation is also a requirement of the Landfill Agreement. The Project Management Group (PMG) (comprising of Council officers, members of the NLG, and an independent project manager), is required to recommend a remediation solution to Council, following advice from landfill experts that form the Technical Advisory Group (TAG). Consequently, Council staff have engaged with PMG, NLG, and Horizons prior to presenting this report to Council and will continue to engage with them throughout the remediation process.

Leachate generation from the Old Dump

- 4.6 Landfills generate leachate as the waste material breaks down and also as a result of rainwater percolating through the waste body. The contaminants within leachate pose a risk to surface water and groundwater. Modern landfills are lined and have leachate collection systems to prevent surface water and groundwater contamination, however the Old Dump is not lined because it was built before these engineering standards were established.
- 4.7 Landfills can withhold large volumes of leachate (likened to a wet sponge that retains water) and the environmental effects can differ from site to site depending on how much water the landfill can hold, how quickly it is released to the environment and the sensitivity of the receiving environment. Monitoring from boreholes north of the Old Dump shows elevated levels of several contaminants through a shallow soil profile, just south of the Tatana Drain.

September 2022 Council Meeting

- 4.8 Council agreed at the September 2022 Council Meeting that the incoming Council would consider two options for when a decision on the future of the Levin Landfill would be made. For background information please refer to the attached Council Report Evaluation Report on the Future of Levin Landfill 14 September 2022.

November 2022 Council Meeting

- 4.9 Council agreed to make a decision about the future of the Levin Landfill as an amendment to the 2021 Long Term Plan. This will enable a decision to be made on the future of the Levin Landfill in June 2023. For background information please refer to the attached Council Report Future of Levin Landfill Decision – Long Term Plan Process 23 November 2022.

30 November 2022 Council Workshop

- 4.10 A Council Workshop was held on 30 November 2022 with Elected Members. Concerns were raised about the extent of the original 11 elements developed by Tonkin and Taylor and whether the packages developed provide sufficient remediation options. Council Officers advised that some of these elements are mutually exclusive but that this is not the end of the process and future remediation options will continue to be developed.

5. Discussion

Reducing leachate generation from the Old Dump

- 5.1 The Levin Landfill Site is located over a groundwater regime which naturally flows in a northerly direction at depth towards the Hokio Stream and the sea. Water additionally flows from Lake Horowhenua into the Hokio Stream's source point at the western edge of the lake. Any leachate that flows from the base or sides of the Old Dump (noting none observed from the sides), will mix with the groundwater flow paths and form a pollutive plume of contaminants towards the Hokio Stream, and indeed the Tatana Drain which is situated south of the Hokio Stream. Current monitoring of groundwater shows that contamination effects are highest in the shallow groundwater profile, of some 4m depth and in particular in the lower gulley area to the north where a borehole 'C2' is located. The deeper groundwater appear to show minimal to no signs of leachate contamination.
- 5.2 To ensure that the possibility of water ingress is prevented, landfill surfaces should be suitably shaped (or domed) and graded to adequately drain rainwater from the site. Additionally, a layer of low permeability soil (typically clay) should be placed over the surface of the Old Dump to prevent rainwater infiltration. To prevent erosion and ponding, drains can be introduced to ensure that rainwater flows have sufficient areas in which to flow at suitably gradual grades. Good vegetation cover is then provided throughout to further prevent erosion and protect the integrity of the cap.

Ongoing maintenance

- 5.3 The landfill cap remedial works described above will mitigate against further leachate generation and potential flow from the Old Dump. However, a landfill can undergo further settlement (including as a result of further soil being added to the cap) and there could be damage caused by heavy rain, for example. To ensure that the remediation works are effective and robust, regular ongoing maintenance needs to be provided. Maintenance works would include regular monitoring of the cap and repair works where there is the potential for the integrity of the capping system, vegetation, drainage systems could be compromised. The more the landfill is disturbed and recapped, the more monitoring and repairs will be required.

Other leachate remediation options

- 5.4 Another way to mitigate leachate impacts is to extract the leachate where it is found in groundwater or surface water. This involves pumping out leachate-contaminated water from groundwater bores or a constructed leachate interceptor trench. Care needs to be taken to ensure that this does not impact the wider groundwater regime, and also that the volume of

water to be pumped out is within the capacity of the receiving wastewater treatment plant (most treatment plants are reluctant to accept low-level contaminated groundwater).

- 5.5 There is also the option to mitigate leachate impacts in the receiving environment e.g. through wetland construction. Again care needs to be taken in the design to ensure the wetland is sized appropriately and the adopted technology is suitable for the type of leachate being treated.

Identifying the BPO

- 5.6 Landfill experts from Tonkin + Taylor, in their role as the TAG, identified 11 potential remediation treatments in 2019, which have been further developed by T+T and Stantec experts. These treatments are not mutually exclusive and have therefore been combined into three remediation packages for comparison and from which a BPO has been selected.

- 5.7 The three packages considered were:

5.8 Package A:

- Import clay and done landfill surface to address ponding.
- Shape existing site drains and install additional drains as needed as capping progresses.
- Re-establish vegetation.
- Capex \$0.9million; Opex \$130,000 per annum.

5.9 Package B:

- Import clay as it becomes available and progressively cap the top and sides in priority areas.
- Shape existing site drains and install additional drains as needed as capping progresses.
- Progressive re-establishment of vegetation.
- Capex \$0.9million - \$4.8million; Opex \$130,000 - \$260,000 per annum.

5.10 Package C:

- Import clay and cap the top and sides.
- Shape the existing site drains and install additional drains as needed.
- Install a groundwater pumping system.
- Construct the Tatana wetland.
- Capex \$10.3million; Opex \$260,000 - \$5.6million per annum (TBC, requiring further investigation and design).

- 5.11 The packages considered did not include the status quo, or do nothing, option. This was discounted because this would not have met the objective of the leachate remediation, which is to reduce leachate generation and impacts on groundwater, the Tatana Drain and the Hokio Stream.

- 5.12 In addition to the activities listed above and identified in 2019, the following actions are strongly recommended to be taken as part of the BPO package. These are considered fundamental to the ongoing mitigation of potential impacts of the Old Dump and wider restoration of the Hokio Stream:

- Employ a landfill maintenance contractor to monitor the landfill cap and repair as needed.
- Explore groundwater contamination at borehole C2, and implement feasible remediation.
- Explore targeted restoration of parts of Tatana Drain and the Hokio Stream, working Iwi and willing land owners. This would also include complementary planting within landfill site drains, if feasible.

5.13 The three packages were assessed based on their environmental outcomes, financial impact and technical achievability. The outcome of this assessment is a combined BPO package shown in the table below. The BPO package comprises the following considerations and elements that were taken forward from the treatments provided by the TAG:

- BPO Elements – Initial Works (Do Now). These works are ranked first as it provides an affordable solution that prevents leachate generation from likely sources, and includes targeted restoration of Tatana Drain and the Hokio stream that improves water quality more broadly than just the leachate impact.
- BPO Element – Initial Works (Do Next) is ranked second. This builds on the Initial Works (Do Now) identified above with an extension to the targeted capping and repairs approach, offers a significantly improved environmental risk outcomes but at six times the cost. Hence the requirement to carry out initial works to achieve a cessation of leachate generation from the Old Dump sites. Further ongoing monitoring and maintenance as a result of having disturbed the cap is also required. The greatest improvements to the Tatana Drain and the Hokio Stream still come from the targeted restoration. The implementation of these works is most cost-effective if implemented over time as suitable soil becomes available.
- Remediation treatments that were considered but not assessed as achievable include those that are technically difficult and impractical, for limited benefit over capping alone. Treatments that were presented by the TAG that have not been brought forward into the BPO because they involve unproven technical concepts and the pumping of contaminated groundwater that would vastly exceed the wastewater treatment plant capacity and would also require negotiations with landowners with regard to access to land not currently owned by Council.

5.14 The BPO proposes the implementation of combined treatments presented by the TAG that are to be both carried out now and then to build upon this over time, working towards expanding and thickening the cap in priority areas as suitable soil becomes available. These priority areas would be identified with the landfill maintenance contractor as a result of their monitoring of the Old Dump cap, over Areas A and B.

5.15 The following table summarises the BPO and associated timeframes and costs.

#	Timing	BPO Element	Estimated Cost
1	Do now (annual)	Maintenance contractor company to monitor the landfill cap and repair as needed (includes repairing seeps if seen)	\$130,000 pa
2	Do now (by June 2023)	Import clay soil, shape the top of the Old Dump to stop water ponding, cease ingress and control surface stormwater flows. Re-establish vegetation.	\$320,000
3	Do now (by June 2023)	Confirm contamination in gulley area (BH C2), scope required remediation of contaminated land, and undertake remediation.	\$300,000
4	Start now (1-5 years)	Assess targeted restoration areas of Tatana Drain and Hokio Stream, working alongside Iwi and willing landowners. Develop a restoration programme, secure funding and proceed with restoration project.	\$300,000
5	Do next	Add additional capping to the top and	\$0-4million

	(2-5 years)	sides of the Old Dump as suitable soil becomes available, prioritizing areas identified by maintenance contractor, and ensuring suitable drainage constructed as capping applied. Continue until at least 700mm capping applied. Re-establish vegetation.	depending on soil availability.
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6. Options

- 6.1 It is the Officer's recommended approach for Council adopt each of the points listed below as part of the Best Practicable Option presented.
- 6.2 Council to decide whether to proceed with none, one, all of the following:
- Procure a maintenance contractor to monitor the landfill cap and repair as needed (including repairing seeps as needed) at an estimated cost of \$130,000 per annum as part of opex expenditure.
 - Fund the importation of clay soil, shaping the top of the Old Dump to stop water ponding, cease ingress, control surface stormwater flows, and re-establish vegetation, at an estimated cost of \$320,000 to be completed by June 2023.
 - Procure specialist assistance to confirm contamination in the gully area at borehole C2, scope the required remediation of contaminated land, and undertake remediation at an estimated cost of \$300,000. Initial actions to be completed by June 2023.
 - Approve a programme of work to firstly assess targeted restoration areas of the Tatana Drain and Hokio Stream by working alongside Iwi and willing landowners, develop a restoration programme, secure additional funding and then proceed with appropriate restoration projects. The initial cost of this action is \$300,000.
 - Authorise Council Officers to undertake scoping activities to determine the cost of adding additional capping to the top and sides of the Old Dump as suitable soil becomes available and ensure that suitable drainage is constructed as capping is applied.
- 6.3 It is recommended that Council notes that taking these actions does not preclude any further remediation actions or enhancements on the sites. Any further remediation actions or enhancements above the scope of those outlined above will be returned to Council for approval before commencing.
- 6.4 Council authorise the Chief Executive to begin the procurement process to undertake the work identified and authorise the Chief Executive to enter into contracts to begin the work required over the summer earthworks season.

Cost

- 6.5 The costs for the BPO are divided into three facets of required expenditure as follows:
- Opex for maintenance: \$130,000 per annum
 - Do now (Capex) for works to be carried out through to 30 June 2023: \$820,000
 - Do next (Capex) as the effectiveness of the BPO works is known and further remediation works (capping and drainage) are identified with soil material as it becomes available: up to \$4,000,000. Funding for this can be approved in advance or brought back to Council for commitment on an as required basis.

6.6 The costs and timing for expenditure are presented in the table below.

#	Timing	Expenditure Description	Estimated Cost
1	Do now (annual)	Operational expenditure: Maintenance works	\$130,000 pa
2	Do now (by June 2023)	Capital expenditure: shaping and capping with clay soil and re-establish vegetation.	\$320,000
3	Do now (by June 2023)	Capital expenditure: investigation works in areas (BH C2), scope and undertake remediation.	\$300,000
4	Start now (1-5 years)	Capital expenditure: assess targeted restoration areas of Tatana Drain and Hokio Stream, develop a restoration programme, secure funding, and proceed with the restoration project.	\$300,000 (estimate for seed funding)
5	Do next (2-5 years)	Capital expenditure: additional capping to the top and sides of the Old Dump as suitable soil becomes available, re-establish vegetation.	\$0-\$4,000,000 depending on soil availability.

7. LTP Integration

Council previously agreed that the decision about the future of the Levin Landfill will be made as an amendment to the 2021 Long Term Plan, enabling a decision on the future of the Levin Landfill to be made in June 2023.

8. Consultation

- 8.1 The Landfill Neighborhood Liaison Group (NLG) and Project Management Group (PMG) have both been advised of the options being considered by Council at a Workshop held with Council Officers on 2 December 2022. These groups were also invited to observe the Council Workshop where this matter was discussed on 30 November 2022.
- 8.2 Following these activities, NLG and PMG representatives provided the feedback that they are supportive of the approach outlined in principle and have provided suggestions for improvements and additions for consideration. They also outlined that they would like to seek confirmation that this is a long term project, running beyond the three year political cycles.

9. Iwi Considerations

The future of the Levin Landfill and when a decision will be made on its closure are important for iwi and hapū in the Hōkio community, particularly Muaūpoko and Ngāti Pareraukawa. Representatives have been aware of this process with attendance at recent meetings. Council will continue to engage with iwi and hapū on this matter and future project that relate to the wider environment including Hōkio Stream.

10. Climate Change Considerations

The proposed BPO works will prevent the ingress of liquid (rainwater) into the waste body of the Old Dump areas. This will restrict and/or significantly reduce the generation of landfill gas which comprises high volumes of methane gas (a potent greenhouse gas).

11. Environmental Considerations

- 11.1 The BPO remediation works are aimed at a complete cessation of leachate flow from the existing Old Dump. The driving action of contaminants from the Old Dump will be greatly reduced and, importantly, increased contamination of areas already affected will be minimised or terminated. Areas of concern, for example around Borehole C2 are to be investigated and action taken to remediate such areas.
- 11.2 Additionally, the BPO aims to address the environmental abundance of the area overall through a restoration plan and targeted restoration action.

12. Next Steps

- 12.1 If the recommended actions are adopted by Council, Council Officers will undertake procurement activities so that the required work is able to commence during the summer earthworks season of 2022/23.
- 12.2 Council approval will be sought for any activities requiring additional Capex funding.

Confirmation of statutory compliance

In accordance with section 76 of the Local Government Act 2002, this report is approved as:

- a. containing sufficient information about the options and their advantages and disadvantages, bearing in mind the significance of the decisions; and,
- b. is based on adequate knowledge about, and adequate consideration of, the views and preferences of affected and interested parties bearing in mind the significance of the decision.

13. Appendices

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Author(s)	Daniel Haigh Group Manager Community Infrastructure	
Approved by	Monique Davidson Chief Executive Officer	



Job No: 1011583
6 December 2019

Horowhenua District Council
C/- Catalyst group
Level 3, 31 George Street
Palmerston North 4440

Attention: Greg Carlyon

Dear Greg

Levin Landfill - Summary of leachate options assessment

1 Introduction

Horowhenua District Council (HDC) has engaged Tonkin & Taylor Ltd (T+T) to undertake a leachate Best Practicable Options (BPO) assessment for the Levin Landfill (the site). This brief letter report summarises the outcome of this assessment.

Specifically, our scope involves review of options that might reduce the impacts from discharge of leachate from the Original Landfill to Tatana Drain and Hokio Stream. This BPO assessment considered options that may (i) reduce the generation of leachate at the Original Landfill, (ii) capture leachate which has been generated, and (iii) reduce the effects of leachate discharge.

This report presents our understanding of the site, describes the development of a conceptual site model to inform the BPO assessment, provides a description of the considered options, and summarises outcomes from this review.

This letter report is complemented by separate reports that provides comment on the technical and commercial implications associated with closure of the Current Landfill.

This review has been completed in accordance with our Letter of Engagement dated 25 July 2019 and consistent with the Agreement in Relation to the Levin Landfill (Landfill Agreement) dated 13 March 2019¹.

2 Background

2.1 General

Levin Landfill is an existing municipal solid waste landfill located to the south of Hokio Beach Road, approximately 4 km west of Levin. The site is located amongst pastoral land approximately 3 km east

¹ Environment Court, 2019, "Agreement in Relation to the Levin Landfill" Horowhenua District Council, Hokio Environmental Kaitiaki Alliance Incorporated, Horowhenua District Ratepayers and Residents Association Incorporated, s274 Parties" 13 March.

of the coastline. The landfill is owned by HDC and operated by EnviroWaste Services Ltd. (EnviroWaste), under subcontract to Midwest Disposals Ltd.

The site layout is shown in Figure 1. Levin Landfill consists of two landfills, the old, unlined "Original Landfill" and the new, lined "Current Landfill". The Original Landfill was established in the 1950s and consists of two areas. Area 1 was the primary disposal area for municipal solid waste until 2004. This disposal area was formed by filling in adjacent inter-dune depressions. We understand² that Area 2 is located to the east of Area 1 and was used for disposal of materials that could not easily be disposed in Area 1, including liquid waste, offal, and tree trunks. Waste filling in the Original Landfill continued until 2004. The Original Landfill was closed and capped following construction of Stage 1A at the Current Landfill.

The original topography prior to landfill development is shown in the aerial photo provided as Figure 2.

The Current Landfill is lined and not is thought to be a significant source of leachate discharge, as discussed in Section 2.4.3. The remainder of this leachate BPO assessment is focused on the Original Landfill, which we consider to be the primary source of leachate discharge at the site.

2.2 Original Landfill capping

We understand² that Areas 1 and 2 of the Original Landfill were closed by capping the waste with sand and planting with grasses, as was required by the consent conditions in place at the time. Larger vegetation, including trees, were established within Area 2 and portions of Area 1, although the pine trees planted in Area 1 were required to be removed as part of the 2009-2010 consent condition review. Trees still appear to be present along the northern perimeter of Area 1, although there is uncertainty regarding the limits of waste in this area.

The quality of the Area 1 cap was identified as an area of concern in the 2009-2010 consent review, as test pit investigations had indicated that the landfill had not been capped to the required 700mm thickness. The revised consent conditions required additional capping at the top deck of Area 1, including placement of additional material to achieve the minimum 700mm cap thickness. The additional capping material was required to have a permeability of no greater than 1×10^{-7} m/s. The additional capping was completed in 2010 and 2011³.

2.3 Site geology and hydrogeology

The published literature⁴ suggests the site is located within an area of Holocene stable sand dune deposits. The dunes range in height from 20 to 30m and comprise fine to medium sand. Peat lenses have also been observed in the sand deposits. Beneath the sand, the site is underlain at depth by the Ohakea Gravels which comprise poorly to moderately sorted gravel with minor sand and silt. A ~2 m thick layer of silt and clay separate the upper sand layer and lower Ohakea Gravels.

Key surface water feature in the region include the Tatana Drain located approximately 150m to the north of the Original Landfill, and the Hokio Stream located approximately 270m to the north of Hokio Beach Road. The Tatana Drain discharges to the Hokio Stream, which flows west towards the coast.

² Landmark, P.S., 2016, "Statement of Evidence of Phillip Sverre Landmark (Design/Operations) on Behalf of the Consent Holder", Consent Holder: Horowhenua District Council, 2 September.

³ For design of additional capping, refer: MWH, 2010, "Design Details for Old Landfill Capping", 9 September.

⁴ Begg, J.G., Johnston, M.R. (compilers) 2000, "Geology of the Wellington area." Institute of Geological and Nuclear Sciences 1:250,000 geological map 10. 1 sheet + 64p. Lower Hutt, New Zealand.

Two aquifers are inferred to be present beneath the site; a shallow aquifer within the sand layer, and a deep gravel aquifer within the Ohakea Gravels⁵.

Groundwater within the shallow sand aquifer flows towards the north - northwest. The shallow groundwater levels is variable and influenced by surface water courses and topography. Shallow groundwater levels are inferred to intersect the valley lines formed by adjacent sand dunes, although waste filling and development may locally influence the groundwater levels. To the north of the site, Tatana Drain partially intercepts the shallow groundwater. Some shallow groundwater is also believed to bypass the Tatana Drain and continue directly to Hokio Stream. The hydraulic conductivity of the shallow aquifer is estimated to be in the range of 2×10^{-5} and 6×10^{-5} m/s, which is typical of fine sands⁵.

Groundwater within the deep gravel aquifer is thought to flow towards the west (i.e., towards the coast). This deep aquifer is thought to be confined to semi-confined. Based on recent groundwater levels measurements, the deep aquifer is believed to be subject to artesian conditions⁶. An upward gradient exists between the deep and shallow aquifers.

2.4 Water quality

The following reports were referenced as sources of water quality information regarding the Levin Landfill:

- Stantec, 2018 "Levin Landfill Annual Compliance Report July 2017 – June 2018," September;
- Stantec, 2017, "Levin Landfill Annual Compliance Report July 2016 – June 2017," September;
- Douglass, S.J., 2016, "Statement of Evidence of Stephen John Douglass on Behalf of Horowhenua District Council", 2 September; and
- Douglass, S.J., 2018, "Statement of Evidence of Stephen John Douglass on Behalf of Horowhenua District Council", 16 November.

Water quality results are discussed below.

2.4.1 Groundwater quality

The groundwater bore monitoring locations are shown on Figure 3. Groundwater water quality data included in the annual compliance reports indicate that:

- Leachate water chemistry is distinct from groundwater;
- Leachate may be characterised by elevated ammoniacal-N, Boron and Chloride. Potential leachate impacts can be identified by comparing the concentration of these contaminants between upgradient and downgradient wells¹;
- Potential leachate impacts have been identified in shallow groundwater wells immediately north of the site between the site and Tatana drain. Lines of evidence for leachate impacts exist at shallow groundwater bores B1, B2, B3, C1, C2⁷. These bores are all located hydraulically down-gradient of the Original Landfill; and
- Discernible leachate impacts have not been identified in any of the deep aquifer bores⁶. We note that leachate impacts in the deep groundwater aquifer is not likely given the observed upward gradient between the deep and shallow aquifers.

⁵ Douglass, S.J., 2016 "Statement of Evidence of Stephen John Douglass on Behalf of Horowhenua District Council", 2 September.

⁶ Douglass, S.J., 2018, "Statement of Evidence of Stephen John Douglass on Behalf of Horowhenua District Council", 16 November

⁷ Stantec, 2018 "Levin Landfill Annual Compliance Report July 2017 – June 2018," September.

2.4.2 Surface water

Surface water monitoring locations are shown on Figure 3. Surface water quality data included in the annual compliance reports indicate that:

- Concentrations of ammonia and chloride are elevated in the upstream monitoring locations of the Tatana Drain. Concentrations of ammoniacal-N, Boron, and Chloride in Tatana Drain surface water samples are similar but slightly less than concentrations measured in shallow downgradient bores, suggesting discharge of leachate-impacted groundwater to the Tatana Drain;
- Water quality within Tatana Drain improves at downstream monitoring locations (further from the Original landfill site);
- Tatana Drain flows in a culvert beneath Hokio Beach Road, then discharges to Hokio Stream. Surface water samples collected upstream and downstream the Tatana Drain and Hokio Stream confluence suggest that discharge of Tatana Drain has a minor to negligible impact on water quality in Hokio Stream; and
- Some shallow groundwater is inferred to bypass Tatana Stream and discharge directly to Hokio Stream, however, surface water quality samples within Hokio Stream do not appear to show discernible leachate impacts.

2.4.3 Leachate discharge potential from the Current Landfill

We understand that the Current Landfill was designed and constructed with the following base liner system (from top to bottom)⁸:

- Gravel leachate collection layer;
- Liner protection layer consisting of a 100mm thick sand layer on the landfill base and a protection geotextile on the side slopes;
- 2mm thick HDPE geomembrane, to serve as a primary leachate barrier;
- 6mm thick geosynthetic clay liner (GCL), to serve as a secondary leachate barrier; and
- Prepared subgrade consisting of compacted sand.

Leachate generated at the Current Landfill is collected via the blanket gravel drainage layer and pumped via a rising main to a leachate pond, where it is temporarily stored before being pumped to the Levin Wastewater Treatment Plant. We consider that the base liner and leachate management system adopted in the Current Landfill substantially reduces the risk of leachate discharge to groundwater relative to the unlined Original Landfill.

Groundwater samples downgradient of the Current Landfill and near the leachate pond do not show discernible leachate impacts^{6,7}. Based on the design of the Current Landfill and water quality results, we consider that the Current Landfill and leachate pond are not likely to be a significant source of leachate discharge to the environment.

2.4.4 Water quality summary

Groundwater quality is reported to be relatively consistent over time (Stephan Douglass, 2018). Shallow groundwater wells located closest downgradient to the unlined Original Landfill have the highest concentration of analytes associated with leachate. Concentrations of these analytes are an order of magnitude lower in shallow groundwater monitoring wells located hydraulically upgradient. These monitoring data suggest that leachate from the Original Landfill is discharging to shallow

⁸ Landmark, P.S., 2016, "Statement of Evidence of Phillip Sverre Landmark (Design/Operations) on Behalf of the Consent Holder", Consent Holder: Horowhenua District Council, 2 September.

groundwater and flowing in a northerly direction, until the groundwater is partially intercepted by Tatana Drain. Surface water quality in the Tatana Drain appears to be impacted with analytes associated with leachate, although we note that there are also other potential sources of contaminants in the Tatana Drain catchment such as grazing in the adjacent pastoral land.

There does not appear to be evidence of significant leachate impact beyond Tatana Drain, including in the Hokio Stream. The improvement in water quality with distance downgradient of the landfill is thought to be due in part to natural processes such as natural attenuation and dilution.

3 Conceptual site model development

We have developed a conceptual site model (CSM) to help inform the leachate BPO assessment. Broadly, the CSM seeks to identify and understand:

- Source – sources of leachate that may potentially impact the site (i.e. the closed, unlined landfill).
- Pathways – migration pathways via which leachate might reach other water bodies.
- Receptor – the shallow and deep water aquifers, the Tatana Drain and Hokio Stream.

The following sections summarise the conceptual understanding of the site. The CSM is presented graphically on Figure 4.

A conceptual site model (CSM) has been developed for the site taking into account the information contained in Sections 2 to 4. A summary of the potential source/pathway/receptor relationships is provided in Table 3.1.

Table 3.1: Summary of CSM

Leachate generation/source	<u>Original landfill</u> · Surface water infiltration from standing water in surface water perimeter drains · Infiltration through cap in Area 1 · Localised ponding at top of cap leading to additional infiltration · Shallow groundwater inflow to base of waste · Upward flow from deep aquifer to shallow aquifer, leading to additional mounding of groundwater levels in waste mass · Infiltration through cap in Area 2
Pathway for migration	Landfill design: The Original Landfill is unlined. Capping quality of top deck varies. Side slopes are capped with sand. Hydrogeology and hydrology: · Elevated leachate levels in waste leading to surface water seeps in downgradient sand dunes · Shallow groundwater discharges to Tatana Drain · Shallow groundwater bypasses Tatana Drain and discharges in Hokio Stream · Leachate discharge to deep groundwater –pathway not likely given upward gradient from deep to shallow groundwater
Receptors	Hydrology: Tatana Drain and Hokio Stream located to the north of the site. Hydrogeology: Shallow aquifer.

3.1 Water balance modelling

Water balance modelling was undertaken to develop the CSM and evaluate the relative benefit of remedial options. Modelling of infiltration through the cap has been undertaken using the Hydrogeological Evaluation of Landfill Performance (HELP) model⁹. The model uses a 50 year synthetic weather file generated from published climate data for Levin¹⁰. Site specific weather data includes temperature, precipitation, wind speed, humidity and evaporation. The generalised 1D soil profile assumed in the modelling is described in Table 4.2.

Table 3.2: 1D soil profile used for HELP modelling

Layer	Thickness (mm)	Permeability (m/s)	Description/key assumption
Landfill cap	480	1.5ha: $k_v = 1.2\text{e-}7\text{m/s}$ 1ha: $k_v = 1.2\text{e-}6\text{m/s}$ 2.3ha (sand slopes): $k_v = 1.2\text{e-}5\text{m/s}$	Quality of clay capping is variable with a portion of Area 1 that recorded a permeability of greater than $1\text{x}10^{-7}\text{m/s}$ ¹¹ . Extents of old landfill derived from site knowledge, historical maps and topographical maps ⁴ .
Refuse	1500	$k_v = 1.0\text{e-}5\text{m/s}$	
Sand aquifer	10,000	$k_h = 1.0\text{e-}5\text{m/s}$	
Gravel aquifer	2500	Modelled as impermeable barrier (upward flow)	

3.2 Model results – leachate generation

The HELP water balance modelling suggests that of precipitation falling on the cap, on average approximately 40% will evapotranspire, approximately 30% will run off the cap surface, and 30% will infiltrate through cap into the refuse, becoming leachate. The amount of infiltration will depend on the quality of the capping material. On the side slopes which have been capped with sand, approximately 35% of precipitation is anticipated to infiltrate through the cap. On the top of the landfill where additional clayey cover soil was placed, approximately 15% of precipitation is expected to infiltrate. Infiltration will be greater than predicted if there is ponding on the cap.

An additional leachate source may be inflow of shallow groundwater into the waste mass. The extent of this contribution is unknown; however, we note that free-field shallow groundwater levels in this area would be anticipated to intersect the base of the sand dune deposits (i.e., the base of the waste mass). In a free-field scenario, shallow groundwater wouldn't be significantly elevated above the base of the waste mass and shallow groundwater inflow therefore would not be a significant source of leachate generation. However, shallow groundwater near the landfill may be locally influenced by the topographic effects. Surface water infiltrating to land upgradient of the landfill is no longer able to discharge to the valley between sand dunes, as the inter-dune depressions have been filled with waste. This change in topography due to landfill development may cause a local mounding of groundwater and leachate levels in the waste mass. Poor drainage upgradient of the landfill would exacerbate this condition, as poor drainage leads to an increase in infiltration and consequent increase in the shallow groundwater levels and leachate generation. However, we are

⁹ United States Environmental Protection Agency (US EPA), 1997, "Hydrologic Evaluation of Landfill Performance" model version 3.07 (1 November 1997)

¹⁰ The Climate and Weather of the Manuatu-Wanganui, P.R. Chappell, 2015, NIWA.

¹¹ Levin Landfill Permeability Testing Results, 2012, email communication with Phil Landmark, Stantec, dated 27 August 2019.

not aware of leachate measurements within the waste mass which could help inform this assumption.

Leachate may also be generated from the upward flow of groundwater from the deep aquifer to the shallow aquifer, leading to a further increase in the shallow groundwater levels at the base of the landfill. The likelihood and magnitude of this effect is unknown, as it depends on the thickness and permeability characteristics of the fine-grained soil layer between the sand and gravel aquifers.

3.3 Leachate pathways

Water which has infiltrated through the cap and groundwater which comes in contact with the waste becomes leachate. In the CSM, we have considered the following pathways for leachate:

- Lateral flow of leachate through the sand dunes, emerging as seeps at the base of the sand dunes to the north of the landfill. These seeps would then potentially flow as surface water to the Tatana Drain;
- Discharge to shallow groundwater. Leachate would intermix with the shallow groundwater and flow towards the north-northwest. Leachate-impacted groundwater is then likely to be subject to one of the following:
 - Interception by the Tatana Drain, then surface water flow along the Tatana Drain until discharging at the Hokio Stream; or
 - Bypassing the Tatana Drain and continued groundwater flow towards the north-northwest, followed by groundwater discharge directly to the Hokio Stream.

4 Description of possible remedial options

4.1 Assessment methodology

A best practicable options assessment was undertaken to identify and assess options which will materially reduce the volume and/or effects of the leachate from the Original Landfill. Options considered and assessed are summarised in Table 4.1. A description of each option is provided in the sections below. These options are further described in Appendix A.

Table 4.1: Options considered

Remedial option category	Option considered
Reduce leachate generation	· Additional capping · Cover system surface water drainage improvements · Perimeter drain improvements
Collect leachate	· Leachate interceptor trench with pump and treat capability · Installation of wells in shallow aquifer and pump and treat shallow groundwater · Installation of a leachate collection system
Manage impacts	· Tatana drain improvements (wetland establishment, riparian planting) · Address/repair seeps

4.2 Options to reduce leachate generation

4.2.1 Additional capping

Additional capping was considered in the options assessment. This option would reduce infiltration and therefore reduce leachate generation. Increasing the quality of capping of Area 1 and 2 would reduce leachate flow through to groundwater. However, cap improvements would not have an immediate impact on groundwater quality down gradient due to the time needed for the existing plume to migrate.

Capping options include:

- Option 1 - Improvements to cap top deck in Area 1, in areas where permeability was measured to be less than 1×10^{-7} m/s;
- Option 2 - Installation of clay cap on side slopes currently capped with sand in Area 1;
- Option 3 - Installation of clay cap in areas currently capped with sand in Area 2;
- Option 4 - In areas of observed ponding in Area 1, conduct localised repairs by improving cover material and re-profiling

Installation of additional capping material may limit discharge pathways for landfill gas. Capping design would therefore need to consider whether landfill gas control options are warranted, in order to prevent build-up of landfill gas within the waste mass.

4.2.2 Option 5 - Cover system surface water drainage improvements

Drainage improvements on the cap will increase the fraction of precipitation that will runoff rather than infiltrate through the cap. A reduction in infiltration will lead to a decrease in leachate generation and flow to groundwater. These improvements would not have an immediate impact on groundwater down gradient due to the time needed for the existing plume to migrate.

Cap drain improvements considered at the site might include:

- Construction of contour drains above the existing landfill cap. These contour drains would consist of soil bunds which will help to promote radial flow of surface water towards the perimeter of the landfill;
- Lining the invert of the drain channels with compacted clay fill (or similar); and
- Installation of biodegradable jute or coir matting to provide erosion protection until vegetation is established.

For reference, the *Closed Landfill Guidelines*¹² recommends installing stormwater cut-off or contour drains at 6m vertical increments for erosion protection. We have assumed a similar contour drain spacing on the side slopes as a means to promote runoff and reduce infiltration.

4.2.3 Option 6 - Perimeter drain improvements

We have considered a remedial option to improve drainage along the southern perimeter of the Original Landfill. The purpose of these improvements would be to increase the interception of surface water uphill of the landfill, and divert this flow around the landfill. These improvements are anticipated to reduce infiltration upgradient of the landfill, as groundwater generated in this area is expected to flow into the waste and create additional leachate.

¹² Ministry for the Environment, 2001, "A Guide for the Management of Closing and Closed Landfills in New Zealand", May.

For this remedial option, we have considered the following:

- Minor re-profiling of the existing ground at the southern perimeter of the landfill;
- Construction of a new perimeter drain channel with polypropylene fibre reinforced spray concrete (or similar); and
- The perimeter drain would be approximately 500m long and discharge to the north of the landfill.

4.3 Options to capture leachate

4.3.1 Option 7 - Groundwater interceptor trench

We have considered an option in which a groundwater interceptor trench is installed between the landfill and the Tatana Drain. The purpose of this trench would be to capture leachate-impacted groundwater before it enters the Tatana Drain. We anticipate that it would not be feasible to capture the full lateral and vertical extent of the leachate impacts. Rather, the design intent of this trench is to target extraction at areas of highest leachate concentrations and reduce the overall contaminant load that will continue to flow downgradient to the Tatana Drain or Hokio Stream.

This option might include:

- Construction of an approximately 240m long trench at the base of the sand dunes, to the south of the Tatana Drain;
- Installation of a perforated pipe with drainage gravel surrounds. The surface of the trench would then be reinstated by capping with the excavated soils;
- Design of the trench to allow for flow by gravity to a central leachate collection manhole;
- Periodic pumping of leachate-impacted groundwater to the existing leachate pond. The leachate-impacted groundwater would then be sent off site for treatment and disposal at the Levin Wastewater Treatment Plant;
- Pumping may need to continue in perpetuity, until groundwater quality improves to acceptable levels. We note that the duration of groundwater extraction and treatment will depend on whether other measures to reduce leachate generation are also implemented.

We note that this option may result in significant ongoing operations and maintenance costs, to allow for pumping leachate and provide for treatment. Based on currently available information on site hydrogeology (Douglass, 2018), we anticipate that a groundwater interceptor trench may involve collection and treatment of approximately 5,000 to 15,000m³ of groundwater per year. We recommend hydrogeologic site investigation to confirm design assumptions if this option proceeds to detailed design.

4.3.2 Option 8 - Pump and treat shallow groundwater

Pumping and treating shallow groundwater is an alternative means of extracting leachate-impacted groundwater for off-site treatment and disposal. We anticipate that the leachate interceptor trench and pump and treat options are mutually exclusive, as they represent two alternative methods for achieving the same purpose of groundwater extraction.

The pump and treat option might involve:

- Installation of extraction wells in the area of potential concern, downgradient of the Original Landfill and south of the Tatana Drain;
- Detailed design of the extraction wells would require confirmation of the site hydrogeology. However, for the purposes of this BPO assessment, we have assumed the wells would be

spaced at approximately 20m intervals (13 No. wells total). The wells are assumed to be approximately 150mm diameter;

- Ongoing pumping of groundwater at each well, for off-site treatment and disposal at the Levin Wastewater Treatment Plant.

As with the leachate interceptor trench, this option may result in lower water levels in the Tatana drain.

4.3.3 Option 9 - Install leachate collection system in Original Landfill

In this option, we have considered the installation of vertical leachate extraction wells in the Original Landfill. The purpose of these wells would be to lower the leachate levels in the waste, which will reduce the amount of leachate which is discharged to the environment. This option would be most effective if the leachate levels in the waste mass are significantly elevated above the base of the landfill. We understand that the leachate levels within the landfill are unknown, therefore the effectiveness of the option is difficult to assess. This option would require ongoing maintenance to pump and treat leachate removed from the waste mass.

4.4 Options to reduce leachate impacts

4.4.1 Option 10 - Constructed wetlands around Tatana Drain

We have considered a remedial option in which a wetland is constructed in the area of Tatana Drain. This option would largely be aesthetic, however, a properly designed wetland can also reduce the contaminant load discharge to Hokio Stream.

No one wetland design can address multiple contaminants. To optimise contaminant extraction the best approach is to design separate wetland bays in series, each bay differently designed to address a specific set of contaminants. Ammonia/ammonium, nitrate, sediment, biological oxygen demand (BOD), and metals all require different wetland conditions to maximise extraction. At the Tatana Drain, the ammonia, chemical oxygen demand (COD), and metals content are the key contaminants of concern, although none seems to be critical in terms of impact on the Hokio Stream.

Ammonia/ammonium reduction requires oxygenated conditions (vertical flow wetland) to promote nitrification. This will generate nitrate (the product of nitrification) which is then best extracted in a low oxygen environment (surface flow wetland). Metals are best extracted by sedimentation (i.e., settling out) for those bound to soil particles and plant uptake (soluble forms). Both require periodic removal from site to ensure net extraction continues to occur (removal of sediment captured in sediment traps and harvest and removal of vegetation).

Based on the above, we have considered that a constructed wetland option might comprise:

- Simple shallow surface flow wetland with an unplanted deeper sediment trap at the downstream end. The surface flow wetland should be flat bottomed, have a mean water depth of 300mm (and not deeper than 500mm) and be fully planted with native sedges and rushes.
- A trench of stoney substrate should be constructed upstream of the wetland, so that groundwater flow is intercepted by the substrate and enter the wetland as a diffuse flow. The stoney substrate will provide a location for nitrification to occur.
- The surface flow wetland will break down the nitrate and trap metals, and the sediment trap will capture sediment and solids containing metals. Net result should be outflow with reduced concentrations of all contaminants.
- The wetland should be designed for a minimum 3 days retention in the wetland. Based on our understanding of the site, we have assumed that the wetland with a surface area of

approximately 3,000m² and a depth of 300mm would be required, although these dimensions would need to be verified during detailed design.

- As with any constructed wetland, the proposed system will require periodic maintenance to sustain plant vigour and to remove accumulated metals in the sediment and by trimming the vegetation (and collecting and disposing of the clippings).
- This constructed wetlands is assumed to be implemented on the Tatana's property. The cost of land acquisition has not been included in the indicative costs presented in Appendix A.

4.4.2 Option 11 - Addressing and repairing seeps

This option involves addressing and repairing seeps to limit direct discharges to surface water. Implementation would involve inspections of the landfill perimeter to identify potential seeps, then creating preferential flow paths for leachate seeps to discharge back into the landfill. The seeps would be repaired by reinstating the surface with a good quality cap. This approach could be used to address the aesthetic effects of leachate seeps in isolated area of the site and reduce seepage of leachate to surface water. It is unlikely that the option would significantly reduce the volume of leachate being generated and the benefits will largely be aesthetic.

5 Best practicable options assessment

5.1 Assessment criteria

We have evaluated the potential remedial options described above as part of the BPO assessment. A summary of the BPO assessment is provided in Appendix A.

In the BPO assessment, we have considered the following:

- Likely effects of each option on key risk areas, including leachate generation, discharge to groundwater, and discharge to surface water. These effects were assessed based on the CSM and water balance modelling described in Section 3;
- Potential consent requirements for each remedial option. We note that the potential consent requirements described in Appendix A are related to ground contamination and closed landfill requirements only, and that a full planning assessment for the remedial options has not been carried out;
- Indicative costs to implement each option, and ongoing maintenance costs. Given the conceptual stage of this options assessment, in Appendix A we have provided qualitative cost categories only. These qualitative cost categories are meant to assist in the selection of preferred alternative(s), and anticipate that these costs would be further refined as part of preliminary design; and
- Design considerations or challenges with implementing these options.

5.2 Effectiveness of the remedial options

The water balance model described in Section 3 was run under various soil parameter and site characteristics scenarios to evaluate the approximate impact of the remedial options. A summary of model outputs for each remedial option is provided in Table 5.1.

Table 5.1: Remedial options and model outputs

Option No.	Remedial option	Leachate reduction potential (indicative only)
Additional capping		
1	· Improve ~1ha portion of the top deck where $k > 1\text{e-}7\text{m/s}$ was measured	· ~15% reduction in total infiltration
2	· Install clay cap alongside slopes ($k = 1\text{e-}7\text{m/s}$):	· ~45% reduction in total infiltration
1 & 2	· Improve top deck and side slopes so that all portions of cap have $k = 1\text{e-}7\text{m/s}$	· ~60% reduction in total infiltration
3	· Cap Area 2 with low permeability material	· ~45% reduction in infiltration in Area 2. However, it is unclear whether Area 2 is a significant source of leachate
4	· Repair cap where ponding is observed	· Would reduce infiltration, but magnitude of reduction depends on extent of repairs
Drainage improvements		
5	· Construct contour drains at ~30m intervals, to reduce infiltration by increasing the amount of run off.	· Construction of lined drains is estimated to increase runoff by ~20 to 30% ^[1] . Infiltration is expected to decrease by a similar amount.
6	· Perimeter drain improvements	· Expected to reduce shallow groundwater levels upgradient of the landfill and therefore reduce leachate generation. Magnitude of leachate reduction depends on condition of existing drain and frequency of ponding in this area.
Extract leachate		
7	· Leachate interceptor collection trench	· Would not reduce leachate generation but would seek to capture a significant fraction of leachate-impacted groundwater prior to discharge to Tatana Drain
8	· Pump and treat shallow groundwater	· Would not reduce leachate generation but would seek to capture a significant fraction of leachate-impacted groundwater prior to discharge to Tatana Drain
9	· Install leachate collection system in old landfill	· Would not reduce leachate generation but would seek to capture a significant fraction of leachate-impacted groundwater prior to discharge to shallow groundwater
Mitigate leachate impacts		
10	· Constructed wetlands around Tatana Drain	· Would not reduce leachate generation or discharge to Tatana Drain, but would seek to improve quality of drain and reduce contaminant load discharged to Hokio Stream
11	· Repair seeps	· Would not reduce leachate, but would seek to limit discharge to surface water

Notes:

- 1 Influence of adding contour drains is based on runoff coefficients in the Rational Method, not from the HELP model. Values are indicative only.

5.3 BPO outcomes

Key outcomes of the assessments include:

- A number of options were identified that were evaluated to likely have desired effect in reducing leachate generation, discharges to groundwater, and discharges to surface water. We have not identified a single "best" option, as selection of an appropriate option will depend on effectiveness, cost, and community acceptance.
- We anticipate that a remedial design may include selection of a suite of options that may be complementary. As an example, a preferred remedial plan may involve improving drainage on and around the cap, repair of seeps and damaged areas of the existing cap, and construction of a wetland around Tatana Drain.
- Remedial options ranged from low cost (<\$100k) to very high cost (>\$1000k). Some of the most expensive options such as large scale recapping may be the most effective at reducing leachate generation. However, these large scale improvements may not be warranted given the observed level of environmental impact;
- Operational and maintenance costs were considered for each option. Installation of a leachate collection system, pumping and treating shallow groundwater and construction of a wetland will require continuous maintenance and/or operational costs.
- Certain remedial options may have other impacts that should also be considered. For instance, groundwater extraction using a leachate interceptor trench or by pumping from extraction wells may reduce water levels in the Tatana Drain and therefore limit the habitat potential of this drain.
- We recommend that a preferred alternative, or set of alternatives, be selected in consultation with HDC, local residents, and other s274 parties as identified in the *Landfill Agreement*. The aim of this process would be to develop a remedial plan that has broad acceptance by the community and other interested parties.

6 Applicability

This report has been prepared for the exclusive use of our client Horowhenua District Council, with respect to the particular brief given to us and it may not be relied upon in other contexts or for any other purpose, or by any person other than our client, without our prior written agreement.

Tonkin & Taylor Pty Ltd

Environmental and Engineering Consultants

Report prepared by:

Authorised for Tonkin & Taylor Pty Ltd by:

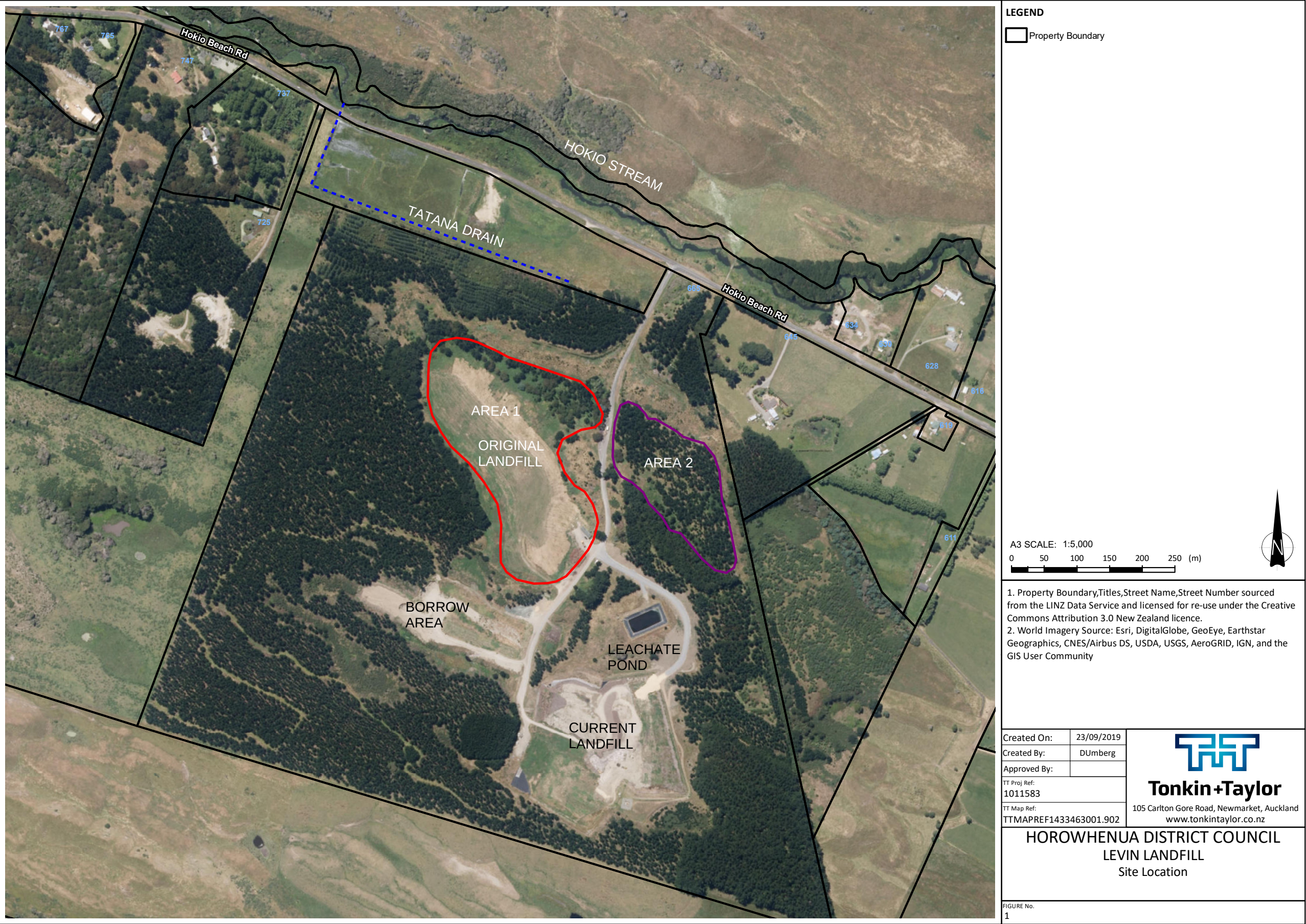


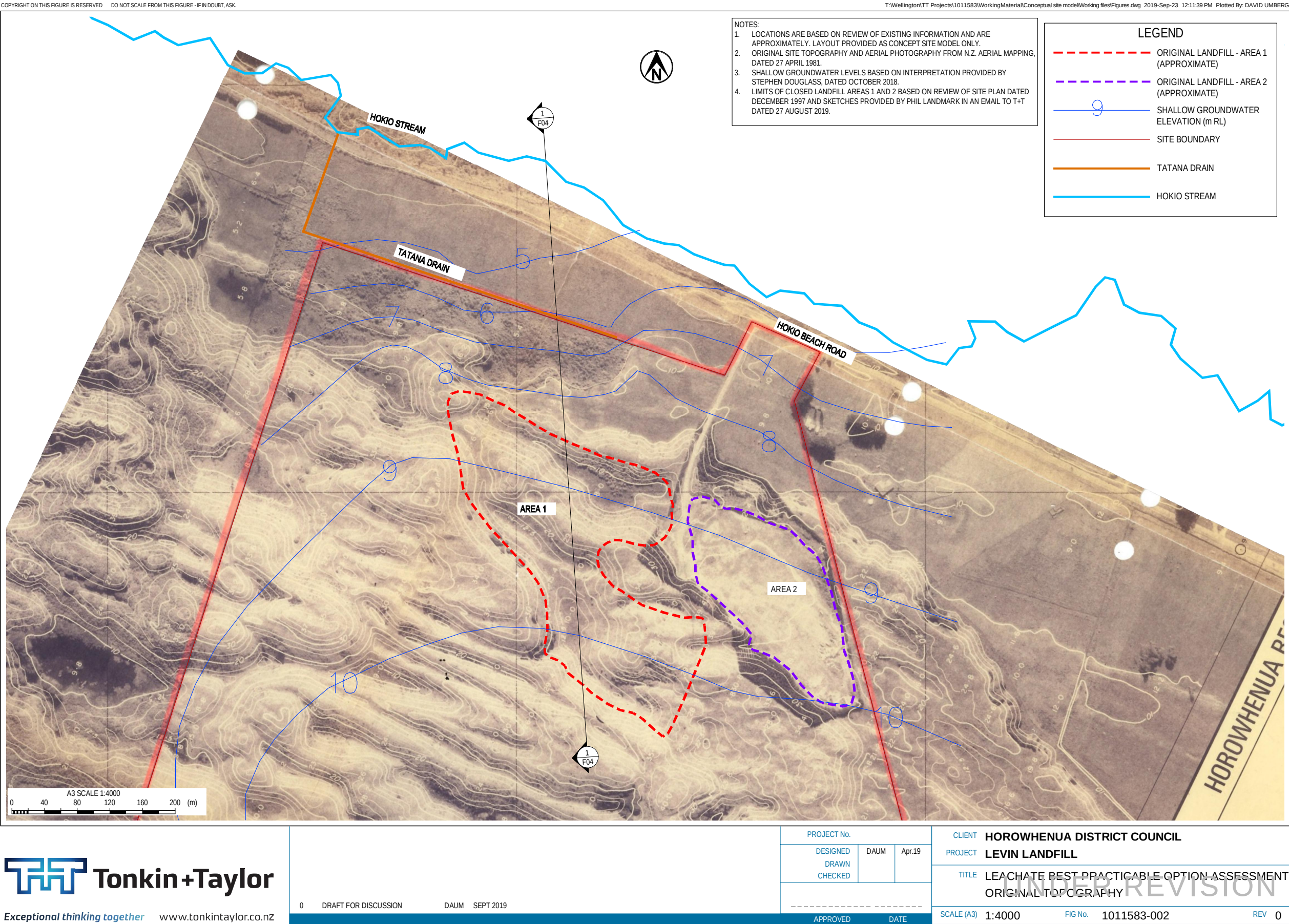
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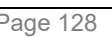
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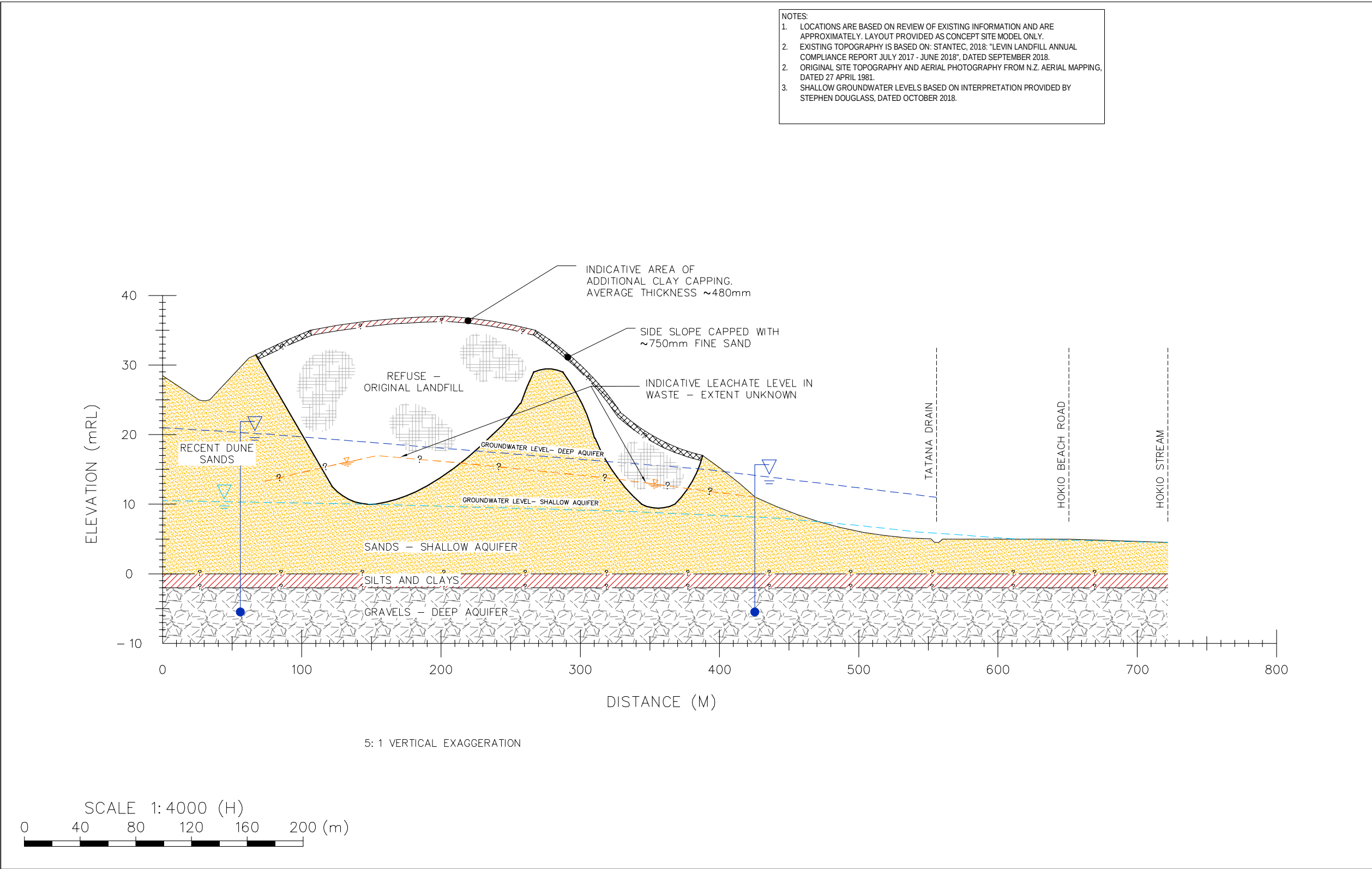






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Appendix A: Best practicable options assessment

Levin Landfill – Leachate best practicalble option (BPO) assessment with indicative costs

Tonkin & Taylor Ltd
T+T Project No. 1011583
December 2019

Table 1: Potentially viable remedial options at Levin Landfill

No.	Remedial action/ task ³	Description	Effects on key risk areas				Consent requirements for implementation ¹	Rough order indicative capital & OM costs ⁵	Design considerations and cost assumptions	Overall effectiveness with consideration of results of water balance modelling
			Leachate generation	Discharge to groundwater	Discharge to surface water	Other impacts				
Reduce leachate generation through additional capping										
1	Capping improvements on top of landfill where permeability >10 ⁻⁷ m/s was measured	Scrapping back topsoil and importing and constructing new capping material to a higher standard, where testing has indicated k > 10 ⁻⁷ m/s	Will reduce infiltration and therefore reduce leachate generation.	Reduced leachate generation will reduce leachate discharge to groundwater.	May increase discharge (of clean water) to surface water, particularly during heavy rainfall events.	Will reduce ability for landfill gas to discharge passively to atmosphere and therefore may increase risk of lateral migration.	Consent likely to be required under NES Soil due to the volume of soil disturbance involved.	High Similar operational costs	- Cost will dependant on how extensive the cap improvements need to be - Assume approximately 1 ha (~1/3) of the top deck does not achieve a permeability of 10⁻⁷ m/s or less - LFG impacts may not be significant if no changes are proposed to the landfill side slopes	Modelling indicates will only moderately reduce leachate generation. Will increase truck movements as material will need to be brought to site. Will not have an immediate impact on groundwater downgradient as existing leachate plume continues to migrate.
2	Capping improvements to side slopes of landfill which were originally capped with sandy material	Scrapping back topsoil and importing and constructing new capping material to a higher standard.	Will reduce infiltration and therefore reduce leachate generation.	Reduced leachate generation will reduce leachate discharge to groundwater.	May increase discharge (of clean water) to surface water, particularly during heavy rainfall events.	Will reduce ability for landfill gas to discharge passively to atmosphere and therefore may increase risk of lateral migration.	Consent likely to be required under NES Soil due to the volume of soil disturbance involved.	Very High Similar operational costs	- Cost will dependant on how extensive the cap improvements need to be - LFG controls may need to be incorporated into cap.	Modelling indicates will reduce leachate generation. Will increase truck movements as material will need to be brought to site. Will not have an immediate impact on groundwater downgradient as existing leachate plume continues to migrate.
3	Cap Area 2 with low permeability material	Scrapping back topsoil and importing and constructing new capping material to a higher standard.	Extent of potential contamination unknown – if Area 2 is a significant source of leachate, capping will reduce infiltration and therefore reduce leachate generation.	If Area 2 is a significant source of leachate, reduced leachate generation will reduce leachate discharge to groundwater.	May increase discharge (of clean water) to surface water, particularly during heavy rainfall events.	Will reduce ability for landfill gas to discharge passively to atmosphere and therefore may increase risk of lateral migration.	Consent likely to be required under NES Soil due to the volume of soil disturbance involved.	Very High Similar operational costs	- Cost will dependant on how extensive the cap improvements need to be - LFG controls may need to be incorporated into cap. - Unclear how much Area 2 is contributing to leachate issues. Additional water quality testing and field investigation to evaluate extent of waste would be required to evaluate effectiveness of remedial option	Difficult to measure environmental benefit as current monitoring of impacts downgradient of Area 2 is not conclusive. Modelling indicates will reduce leachate generation, depending on the quality and extent of the cap. Will increase truck movements as material will need to be brought to site. Will not have an immediate impact on groundwater downgradient as existing leachate plume continues to migrate.

Table 1 (continued): Potentially viable remedial options at Levin Landfill

No.	Remedial action/ task ³	Description	Effects on key risk areas				Consent requirements for implementation ¹	Rough order indicative capital & OM costs ⁵	Design considerations and cost assumptions	Overall effectiveness with consideration of results of water balance modelling
			Leachate generation	Discharge to groundwater	Discharge to surface water	Other impacts				
4	Improve cover material and site contour in the portions of the site where ponding is observed on the cap	Improve the cover thickness and quality in areas where ponding is observed to reduce infiltration.	Will reduce infiltration and therefore reduce leachate generation.	Reduced leachate generation will reduce leachate discharge to groundwater.	May slightly increase discharge of clean water to surface water	Minimal impact.	Localised repairs on cap may not require additional consents, depending on existing consent conditions. Consent may be required under NES Soil if a large volume of soil disturbance is proposed.	Low to Medium Similar operational costs	- Repair depressions in cap by placing fill to achieve positive drainage and prevent ponding - Ongoing maintenance costs to carry out regular inspections of cap and repair depressions in cap as they occur	Will reduce infiltration and therefore leachate generation at areas of ponding. Current information is insufficient to determine how beneficial this would be.
Reduce leachate generation through drainage improvements										
5	Cap drainage improvements	Clay lined contour drains along top of landfill to increase runoff and reduce infiltration. Minor recontouring/cap repairs where ponding has been observed	Will reduce infiltration and therefore reduce leachate generation.	Reduced leachate generation will reduce leachate discharge to groundwater.	May increase discharge (of clean water) to surface water, particularly during heavy rainfall events.	Minimal impact.	Depends on existing consent conditions for the closed landfill. Consent may be required under NES Soil if large volume of soil disturbance is proposed.	Medium to High Similar operational costs	- Assumes up to 1500 m of lined contour drains to be constructed on cap of original landfill. - Drains to be formed as an earth bund. Where drains are placed over sand cap, over excavate and replace with low permeability fill. - Cost of local improvements to reduce ponding will be dependent on how extensive the drainage improvements are. Lower cost to target 1 or 2 key areas, higher cost to target more areas. - Aim to work with existing site contours to improve runoff in areas of identified ponding. - Assume earthworks would occur outside limits of waste and no excavation into waste will be required.	Will reduce infiltration through the cap and increase the amount of runoff thereby reducing leachate generation and associated discharge to groundwater.
6	Perimeter drain improvement	Lined drain at southwestern perimeter of original landfill to reduce ponding and infiltration into the landfill	Will reduce infiltration and therefore reduce leachate generation.	Reduced leachate generation will reduce leachate discharge to groundwater.	May increase discharge (of clean water) to surface water, particularly during heavy rainfall events.	Minimal impact.	Depends on existing consent conditions for the closed landfill. Consent may be required under NES Soil if large volume of soil disturbance is proposed.	Medium Similar operational costs	- Assumes 500 m long polypropylene fibre reinforced spray concrete lined channel - Earthworks to form channel section - Discharge at base of sand dune	Will reduce infiltration into shallow groundwater above the landfill, which is expected to reduce groundwater inflow to the closed landfill. Will not have an immediate impact on groundwater downgradient as existing leachate plume continues to migrate.

Table 1 (continued): Potentially viable remedial options at Levin Landfill

No.	Remedial action/ task ³	Description	Effects on key risk areas				Consent requirements for implementation ¹	Rough order indicative capital & OM costs ⁵	Design considerations and cost assumptions	Overall effectiveness with consideration of results of water balance modelling
			Leachate generation	Discharge to groundwater	Discharge to surface water	Other impacts				
Extract leachate										
7	Install leachate interceptor collection system along north perimeter ⁴	Leachate collection trench to intercept shallow groundwater downgradient of Area 1 (approx. 240 m long).	No impact on leachate generation but will increase the volume of leachate being collected.	Will intercept leachate thereby reducing discharge to groundwater.	Will reduce leachate seeps discharging to surface water in this area.	Will likely reduce flow in Tatana Drain	Consent may be required under NES Soil as a large volume of soil disturbance is proposed.	Medium to High Ongoing maintenance of pumping system	- Assumes 240 m long gravity fed drainage trench discharging into manhole - Filled with drainage aggregate and lined on downgradient side to direct flow towards perforated pipe. - Trench to be located at base of sand dunes. - Collection efficiency will depend on depth of trench. - Likely additional cost to allow for pumping as required to achieve discharge to the existing leachate storage system. - Increased quantity of leachate to be treated	Will reduce leachate entering surface water at Tatana Drain and Hokio Stream. Will result in a significant increase in leachate volume to be managed which may be beyond the capacity of the current system.
8	Pump and treat shallow groundwater ⁴	Install wells in shallow aquifer downgradient of the landfill. Pump groundwater and treat to reduce contaminant load	No impact on leachate generation.	Groundwater quality improvement downgradient of the landfill	No impact	Groundwater drawdown may lower water levels in Tatana Drain	Consents likely needed for installation of wells	Medium to High Ongoing maintenance of treatment system	- Cost would depend on number and location of treatment wells – to be informed by hydrogeologic review - From high-level review of sand aquifer permeability and thickness, preliminary cost estimate has assumed 150 mm diameter wells at 20 m spacing, across 240 m total length (13 No. wells total) - Costs will depend on the level of treatment required - Design would need to consider how treated groundwater is discharged	Secondary impacts are possible depending on where the treated groundwater is discharged (e.g., surface water dilution with treated leachate). This approach will result in a significant increase in contaminated water volume to be managed which may be beyond the capacity of the current system.
9	Install leachate collection system in old landfill	Install vertical collection wells in old landfill and pump leachate to draw down leachate levels in the waste.	No impact on leachate generation.	Groundwater quality improvements downgradient of the landfill	Will reduce leachate seeps discharging to surface water	Minimal impact	Depends on existing consent conditions for the closed landfill. Consents may be needed for installation of wells	Medium to High Ongoing maintenance of leachate pumping system	- Cost would depend on number and location of extraction wells - Would only be a viable option if the leachate level is significantly elevated above the base of the landfill - Risk is that leachate in the waste mass may not travel efficiently towards the vertical extraction wells	Will not affect leachate generation but will reduce leachate discharge to groundwater Will not have an immediate impact on groundwater downgradient as existing leachate plume continues to migrate

T+T ref: 1011583
December 2019

Table 1 (continued): Potentially viable remedial options at Levin Landfill

No.	Remedial action/ task ³	Description	Effects on key risk areas				Consent requirements for implementation ¹	Rough order indicative capital & OM costs ⁵	Design considerations and cost assumptions	Overall effectiveness with consideration of results of water balance modelling
			Leachate generation	Discharge to groundwater	Discharge to surface water	Other impacts				
Mitigate leachate impacts										
10	Constructed wetlands around Tatana drain	Shallow surface flow wetland with unplanted deeper sediment trap at downstream end. Excavate ~3,000 m ² wetland area to north of Tatana drain to intercept shallow groundwater and achieve average water depth of ~300 mm. Wetlands to be planted with native sedges and rushes Add fencing to exclude stock from drains.	No impact on leachate generation.	No reduction in discharge as drain is outside the landfill footprint.	Will not change volume of discharge but will aim to improve water quality in drains by reducing stock impacts	Potential reduction in contaminants in Tatana drain due to biological treatment and sedimentation	Consent potentially needed for works in a watercourse.	Medium to high Medium cost to implement plus cost of land acquisition Ongoing maintenance of riparian plants, particularly in first 3-5 years following planting	- Assume drain improvements includes excavation to expand Tatana Drain to form a shallow constructed wetland - Install stony substrate where groundwater enters the wetland - Riparian planting will improve quality of habitat and provide aesthetic benefits - Tatana drain is on private land – would need to secure access to perform the work - Biological treatment (e.g., nitrogen and ammonia removal) may be possible, depending on the design of the planting scheme - Sedimentation and biological treatment may improve quality at the discharge to Hokio Stream - Wetland system will require periodic maintenance to sustain plant vigour and remove accumulated metals in the sediment. Maintenance to include clipping of vegetation disposal of clipping.	Difficult to differentiate water quality issues from leachate versus other sources, but may lead to better water quality in the drain regardless of the source Works will aim to improve habitat which should improve the quality of water and the aesthetic appearance of the drains. Will not reduce the volume of leachate being generated. Stony substrate will provide a location for nitrification, while the surface flow wetland will break down nitrates and trap metals To optimise contaminant extraction, the wetland will need be designed as separate wetland bays in series, each designed differently to address a specific set of contaminants.
11	Carry out localised works in areas where seepage has been observed.	Create preferential flow paths for leachate seeps to discharge back into the landfill, and reinstate the surface with good quality cap.	Minimal impact on leachate generation.	May slightly increase discharges to groundwater as leachate is being redirected into the landfill.	Will reduce direct discharges to the perimeter drains.	Minimal impact.	Depends on existing consent conditions for the closed landfill. Consent may be required under NES Soil if a large volume of soil disturbance is proposed.	Low Similar operational costs	- Costs based construction of a subsoil drain to address seepage. - Only considers repair of a few locations - Costs assume leachate can be directed back into the landfill with no connection to the leachate collection system. - Individual design for each seepage situation would be required.	Will address the aesthetic effects of leachate seeps in isolated area of the site and reduce seepage of leachate to perimeter drains. Is unlikely to significantly reduce the volume of leachate being generated and the benefits will largely be aesthetic.

Notes:

- Consent requirements are limited to consents related to ground contamination and closed landfills. A planning assessment for the remedial options has not been carried out.
- Indicative capital costs are qualitative and provided for comparative purposes only. These costs should not be relied on for budgeting purposes. No proof of concept or detailed design has been carried out for any of the options. Costs will be dependent on the remedial objective for each action, site conditions, detailed design, and local rates for labour and materials.
- Within each table, remedial options have been organised from simplest to most complex
- : These two options are considered mutually exclusive.
- For the purposes of this qualitative cost estimate, we have applied the following categories:

Category	Indicative cost
Low	<\$100k
Medium	\$100k-350k
High	\$350k-\$1000k
Very High	>\$1,000k

7.1 Long Term Plan 2021 - 2041 Monitoring Report

File No.: 22/605

1. Purpose

The purpose of this report is to present to Council the ongoing monitoring report, which reflects the progress of those actions and recommendations from the Long Term Plan 2021-2041 deliberations.

2. Recommendation

- 2.1 That Report 22/605 Long Term Plan 2021 - 2041 Monitoring Report be received.
- 2.2 That this matter or decision be recognised as not significant in terms of s76 of the Local Government Act 2002.

3. Background/Previous Council Decisions

During Long Term Plan 2021-2041 Deliberations, Council gave direction on a number of actions and recommendations, which are recorded in the attached monitoring report.

4. Issues for Consideration

It is intended that this monitoring report be presented to Council on a quarterly basis.

Attachments

No.	Title	Page
A1	LTP 2021-2041 monitoring report - December 2022	141

Confirmation of statutory compliance

In accordance with section 76 of the Local Government Act 2002, this report is approved as:

- a. containing sufficient information about the options and their benefits and costs, bearing in mind the significance of the decisions; and,
- b. is based on adequate knowledge about, and adequate consideration of, the views and preferences of affected and interested parties bearing in mind the significance of the decision.

Signatories

Author(s)	Grayson Rowe Principal Advisor - Democracy	
Approved by	Monique Davidson Chief Executive Officer	

MONITORING REPORT – Long Term Plan 2021/2041 - December 2022						Completed
						In Progress
						Transfer
						Off Track
Item Description	Topic	Resolved/Actions	Officer	Action by Date	Status	Officer Comment
See the highlighThree Waters	1	Council Officers will provide an update on the progress of the Levin stormwater discharge resource consent application on its website by Sept 2022.	A Crawford	Sept 2022		Officers have engaged with mana whenua, and an update to the website has been drafted and waiting deployment.
	2	Council will provide an update on the Foxton Beach stormwater discharge water quality monitoring, and the resource consent application progress, on Council's website by Sept 2022.	A Crawford	Sept 2022		Officers have engaged with mana whenua, and an update to the website has been drafted and waiting deployment.
	9	That Council continue working collaboratively with Horizons to deliver the improvements to the Foxton East Drainage Scheme to ensure that best outcome is achieved for the community.	C Hiddleston	On-going		Working with HRC officers on alternative options.
	11	That Council continue promoting Enviroschools and general water conservation education.	A Crawford	On-going		This is an ongoing education programme. HDC website updated to include more information on Enviroschools and how schools can sign up.
	14	That Council Officers undertake the Levin wastewater treatment plant masterplan in the 2021/22 financial year.	A Crawford	Completed		First phase has been completed and will be reported through to Council as part of the Long-Term Plan Amendment.

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Solid Waste	1	That the Business Case including the Local Government Act 2002, Section 17A Review. This was presented to Council in April 22. Council requested that a review of the Business Case is performed and reported back to Council in Sept 22.	A Crawford	Completed		First Business Case was completed in April 22.
	8	That Council continue with the feasibility study for the diversion of green waste and food waste from landfills.	A Crawford	On-going		Officers have engaged with Ministry of Environment for funding application and potential suppliers for trial purposes of organic waste collection. An application for funding is being prepared for submission to MfE by the end of March 2023.
Land Transport	1	<u>Public Transport</u> Horizons would be holding a series of workshops beginning in June as part of development of a Regional Transport Plan. That would include considering, at a high level, planning for future growth and the transport needs of the Horowhenua.	J Wallace	Jun 2021		Horizons have adopted the Regional Public Transport Plan (RPTP) 2022 – 2032, which Council submitted to. The RPTP includes consideration for increased public transport investment in the Horowhenua, particularly around investigating increasing the level of service for inter-regional services.
	5	That Officers continue to develop walking and cycling forward works programmes.	J Wallace	Jun 2021		Although June 2021 target has not been met, the development of the Walking & Cycling Strategy is underway and on track for completion by June 2023.
		That Officers develop a 'Walking and Cycling Strategy', with input from key stakeholder groups.	J Wallace	Jun 2021		Although June 2021 target has not been met, the development of the Walking & Cycling Strategy is underway and on

As at 13 January 2023

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						track for completion by June 2023.
		That Officers will investigate whether a similar education programme to 'bikes in schools' could be made available for our local schools.	J Wallace	Jun 2021		This work is being investigated as part of the Walking and Cycling Strategy.
	8	That officers continue to advocate on behalf of the district for the construction of Ō2NL.	D McCorkindale	On-going		Officers continue to advocate to Ministers and Waka Kotahi officials in support of the construction of Ō2NL. Officers acknowledge the joint Minister's decision to approve the pre-implementation phase of the project and the lodgement of the Notice of Requirement.
	9	That officers continue to advocate Waka Kotahi for the investigation and delivery of appropriate safety interventions for the Manakau section of the existing State Highway 1.	D McCorkindale	On-going		Officers are currently advocating to Waka Kotahi to provide some visibility to the planning that is being undertaken to manage the safety of the existing State Highway 1 network ahead of Ō2NL being constructed, particularly once the Peka Peka – Otaki highway is open.
	9	<u>Ō2NL Revocation</u> With the desire expressed for Elected Members to be more involved with this, it was stressed that this was part of the Horowhenua Integrated Transport Strategy and Council was doing everything it could in relation to Ō2NL.	D McCorkindale	On-going		A Taskforce was established in November by the new Council, enabling those interested elected members to participate in the Ō2NL project discussions (including the revocation) with Council officers.
	10	That Officers involved in Ō2NL discussions raise KEAG's desire for the inclusion of a Bridleway in the proposed shared pathway, which integrates where possible with the existing Bridleway network of the Kāpiti Expressways.	D McCorkindale	On-going		The Notice of Requirement application for Ō2NL has been lodged. The application identifies a shared pathway that integrates with the existing

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						network of the Kapiti Expressways. The application references the shared path being for pedestrians and cyclists. The upcoming submission process on the O2NL Notice of Requirement will provide a further opportunity to influence the final form and function of the proposed shared pathway.
Community Infrastructure	2	Foxton War Memorial Hall <i>THAT the Horowhenua District Council supports the transfer of Foxton Memorial Hall to the Foxton War Memorial Hall Interim Committee (FWMHIC).</i>	A Nelson	Ongoing		Officers have had discussions with the Foxton War Memorial Hall Interim Committee and have provided seismic assessments for the building.
		<i>THAT negotiations with the Foxton War Memorial Hall Interim Committee will include, but not be limited to:</i> – ownership of land and building to be transferred to FWMHIC upon receipt of a satisfactory Business Plan and the CEO and both Kere Kere Ward Councillors to complete due diligence before 30 June 2022; – there is no burden on Council' – provision of a business case to identify how the facility will become self-funding; – how the FWMHIC will fund ongoing renewals of the building in order to maintain it in a fit-for-purpose condition going forward; – Māori and Youth representation on the Trust Board to be encouraged; – seed funding provision no greater than one year of the existing maintenance budget. – the completion of seismic strengthening by 2031; – should the FWMHIC disband, Horowhenua District Council will be given first option to take ownership of the land and building at no cost to Council.	A Nelson	March 2023		Date for return of relevant documents has been extended to 31st March 2023

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		Council to continue to lobby Central Government in relation to the River Loop as it was not a Council decision initially that gave rise to this issue.	M Davidson	On-going		Engagement on this continues
	20	<u>Naming of Reserves</u> <i>THAT the Horowhenua District Council supports officers to discuss with local iwi, a potential Te Reo name for the River Loop Reserve, with a view to undertaking wider consultation with the community concerning the proposed name.</i>	A Nelson	Jan 2023		This work is currently off-track. Officers will engage with iwi and stakeholders early in the new calendar year (Jan 2023) by way of bringing the matter to a conclusion.
	22	Officers from the Parks and Property and Roading Teams will continue to investigate the opportunity to install a shared pathway connecting Queen Street shared pathway and Mako Mako Road in the 2021/2022 Financial Year.	A Nelson / J Wallace	Jun 2022		This project will be investigated as part of the Walking & Cycling Strategy, and Implementation plan.
	23	<u>Butterfly Pathway</u> <i>THAT the Horowhenua District Council supports in principle the establishment of a butterfly pathway at the Thompson House Remembrance Park and helps clarify wider community support, with consideration to be given to providing a contribution (if any) at the next Annual Plan.</i>	A Nelson	Ongoing		A Butterfly Pathway Steering Group has been established and has met several times. Officers are working with the group to establish a group structure with Chair, treasurer, and secretary. The group have met and considered several sites for location of the pathway but have made no definitive choices at this juncture. Officers will continue to support the group providing admin and comms services as the group seeks to confirm a location for the pathway, and establish funding for its installation.
Property	1	<u>Foxton Courthouse</u> <i>THAT the Horowhenua District Council does not support providing funding to strengthen the Foxton Courthouse Museum for the purpose of establishing a Foxton Heritage Centre.</i>	A Nelson	Jun 2021		Council resolved not to provide funding to strengthen the Foxton Courthouse Museum at its meeting of 26 th May 2021. However, Council has applied for funding via the Three

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						Waters Better Off Funding to undertake a high level feasibility study on the future of the Foxton Courthouse, its purpose, use and future ownership, that can be used for future funding applications. The outcome of the funding application will be known in Dec 2022.
		THAT the Horowhenua District Council works with the WBSLSC building working party to source third party funding contributions of \$1.m towards the feasibility, design and build of the new building at Waitāre Beach. Year 1 - \$200,000, Year 2 - \$800,000.	T Parsons	Jun 2022		Completed: \$1m Funding confirmed via NZSLS.
	6	The CE and Officers engage with the Waitāre Beach Surf Lifesaving Club building working party to determine the optimum method of fast tracking the building project	T Parsons	Jun 2022		Completed: Construction commenced 02/11/22
	2	That Council officers continue to progress work to identify and protect Cultural Sites as part of the District Plan activity and that this be done in partnership with Iwi.	C Dick			No progress has been able to be made on this yet as the capacity and focus of officers has been dedicated to progressing current plan changes 4 (Tara-Ika), 5 (Waitāre Beach), 6 (Urban Growth) and 7 (Intensification) Delays in finalisation of Plan Change 4 with the appeals process activated has continued to draw on the current capacity. This combined with the resourcing currently available to support progressing the existing plan changes means that there will be very limited capacity to progress the sites of cultural significance work in a

As at 13 January 2023

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						meaningful and genuine way. Additional external support has been commissioned to help officers set up an iwi engagement process for the current plan change work. As iwi engagement on proposed plan changes progresses there will be work that crosses over between these plan changes and a sites of cultural significance plan change.
	17	That the group reviewing the Foxton Beach Freeholding Account Strategy and Policy considers the points relevant to the freehold account from the submission of the Foxton Beach Progressive Association to the LTP 2021-2041.	G Rowse	On-going		Workshop scheduled for 19 December with Ta Awahou Foxton Community Board outlining the history of the Foxton Beach Freeholding Account, and reasons for the review. The workshop will identify a time line to finalise the review.
	26	That Council officers engage with Hospitality NZ (and related parties) on ways which Council can increase support to the Tourism/Hospitality sector and enhance commercial business settings in Horowhenua.	B Spencer	June 2022		No action taken in relation to this point at this time. GM will revisit the action and discuss with the Horowhenua Company to ensure there is no crossover with current economic development activities before progressing.
	27	The Information Services Team investigates options to improve the hardware in Council Chambers and meeting rooms to better support accessibility. The Information Services Team investigates automated closed captioning versus other vendors providing transcription services and provide advice on options within the next 3 months.	S McTaylor-Biggs	Nov 2022		AV equipment and associated technology/services has been replaced. An interim solution remains to use the closed captioning services provided by Microsoft and YouTube. Transcription services can also continue to be booked if/when required. There have been no requests

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		The Information Services Team continues to promote Microsoft Teams use and the use of closed captioning when required.				or complaints raised about this service.
	31	Officers to make contact with Muaūpoko iwi representatives in regards to the Muaūpoko Report	M Davidson	On-going		This is still to be actioned.

As at 13 January 2023

D22/151299

7.2 Council Resolution and Actions Monitoring Report December 2022

File No.: 22/678

1. Purpose

The purpose of this report is to present to Council the updated monitoring report covering resolutions and requested actions from previous meetings of Council.

2. Recommendation

- 2.1 That Report, Council Resolution and Actions Monitoring Report December 2022 be received.
- 2.2 That this matter or decision be recognised as not significant in terms of s76 of the Local Government Act 2002.

Attachments

No.	Title	Page
A	Council Actions Monitoring Report 2022 - December 2022	150

Confirmation of statutory compliance

In accordance with section 76 of the Local Government Act 2002, this report is approved as:

- a. containing sufficient information about the options and their benefits and costs, bearing in mind the significance of the decisions; and,
- b. is based on adequate knowledge about, and adequate consideration of, the views and preferences of affected and interested parties bearing in mind the significance of the decision.

Signatories

Author(s)	Grayson Rowse Principal Advisor - Democracy	
Approved by	Monique Davidson Chief Executive Officer	

Council Actions Monitoring Report 2022 As at 13 January 2023

	Completed
	In progress
	Transfer
	Off track

Reference	Resolution/Action	Officer	Due date	Status	Officer Comment
21/502	That the Chief Executive provide a full report on all options in respect of vehicular beach access at Waikawa Beach.	A Nelson	30/11/2022		The Chief Executive is working with the Parks and Property Manager and Horizons Regional Council to explore options. Engagement with the Waikawa community and Ngati Wehiwehi will occur in advance of the report. An update on this is also provided in the Organisation Performance Report.
22/166	That Council requests the Chief Executive to prepare a report into implications of, and options for, granting land access for the Foxton Beach Community Centre to build a three-bay garage, and report on implications and options for boundary line adjustments for the land upon which the Foxton Beach Community centre sits.	S Hester	30/08/2022		Report prepared and presented to Council via Foxton Community Board, approving funding for the garage to be built. The boundary issue remains unresolved, but work is underway to action the boundary change.
22/166	That Council requests the Chief Executive to work with the Windmill Trust and the Foxton Tourism Development Association (FTDA) to look at options for an alternative storage site for the Foxton Tram.	S Hester	30/06/2023		Officers are investigating funding options for a permanent display of the tram within Te Awahou Riverside Cultural Park. A report will be brought to Council via TAFCD in April 2023.

D22/152446

Last update: 13-Jan-23

22/166	That Council enters into a variation of the existing lease for Café Molen in support of option 1, as presented to the Foxton Community Board's meeting of 11 April 2022 – to extend the lease for the Dutch Oven into the current tram storage space.	S Hester	30/10/2022		De Molen currently using the space vacated by the Horse Tram. Discussions continue with the Windmill Trust regarding the lease.
CO/2022/27	That Council supports in principle the approach of a consent fee rebate being provided to applicants where new CPT data from their consent application is uploaded to the NZ Geotechnical database. Officers are asked to prepare a report for Council to consider that sets out the process and associated cost implications.	B Spencer	28/02/2023		Officers are currently considering implications and hope to provide advice in early 2023. Officers are collecting data to determine viability. If there is value, a proposal will be brought to council
CO/2022/28	That Council approves Officers proceeding with the additional liquefaction assessment and mapping to complete the district liquefaction map, and that this work be funded from within existing operational budgets	D McCorkindale	28/02/2023		Officers are progressing with this work and anticipate that it will be completed in early 2023.
CO/2022/59	That Council Agrees to the Board request for officers to commence consultations on the review of the Foxton Beach Freeholding Account Strategy and Policy.	G Rowse	28/02/2023		Workshop with Te Awahou Foxton Community Board will be held on 19 December 2022. Following this workshop a work plan will be developed with a view to finalising the review by June 2023. Consultation is expected to begin after iwi engagement over what the draft policy might encompass.
CO/2022/73	That the Chief Executive be directed to prepare a briefing paper to the incoming Council, outlining the options associated with the Future of the Levin Landfill decision, including an analysis on the risks, costs and any other considerations associated with	M Davison	30/11/2022		Report presented to Council on 14 December 2022 outlining options.

D22/152446

Last update: 13-Jan-23

	whether the decision should be included as part of the 2023-2044 Long Term Plan Amendment or the 2024-2044 Long Term Plan.				
CO/2022/131	That Council asks the Chief Executive, in consultation with the Mayor, Deputy Mayor and the Chair of the Risk and Assurance Committee, to facilitate a recruitment process to identify suitable candidates for appointment as independent members to its committees. and That Council asks the Chief Executive to bring a report no later than of shortlisted of candidates for appointment to Council for consideration no later than 1 February 2023.	M Davidson	01/03/2023		Advertising for independent members underway, with expressions of interest due by 9 January 2023.

8.1 Proceedings of the Te Awahou Foxton Community Board Meeting held 21 November 2022

File No.: 22/677

1. Purpose

To present to the Council the minutes of the Te Awahou Foxton Community Board meeting held on 21 November 2022.

2. Recommendation

- 2.1 That Report 22/677 Proceedings of the Te Awahou Foxton Community Board Meeting held 21 November 2022 be received.
- 2.2 That the Council receives the minutes of the Te Awahou Foxton Community Board meeting held on 21 November 2022.

3. Issues for Consideration

There are no items that require further consideration.

Attachments

There are no attachments for this report.

Confirmation of statutory compliance

In accordance with section 76 of the Local Government Act 2002, this report is approved as:

- a. containing sufficient information about the options and their benefits and costs, bearing in mind the significance of the decisions; and,
- b. is based on adequate knowledge about, and adequate consideration of, the views and preferences of affected and interested parties bearing in mind the significance of the decision.

Signatories

Author(s)	Jody Lygo Democracy Support Officer	
Approved by	Grayson Rowse Principal Advisor - Democracy	
	Monique Davidson Chief Executive Officer	

Te Awahou Foxton Community Board

OPEN MINUTES

Minutes of a meeting of the Te Awahou Foxton Community Board held in the Te Awahou Nieuwe Stroom, 92 Main Street, Foxton on Monday 21 November 2022 at 6:00pm.

PRESENT

Chairperson	Member John Girling
Deputy Chairperson	Member Trevor Chambers
Members	Member Nola Fox
	Member David Roache
	Member Brett Russell
	Deputy Mayor Allan

IN ATTENDANCE

Reporting Officer	Monique Davidson	Chief Executive
	Grayson Rowse	Lead Advisor – Democracy
Meeting Secretary	Jody Lygo	Democracy Support Officer

The Chief Executive opened the meeting with a Karakia.

1 Swearing-in of Councillor Appointee

Deputy Mayor Allan made and signed his Declaration before the Chief Executive of the Horowhenua District Council.

2 Election of Chairperson and Deputy Chairperson

MOVED by Mr Roache, seconded Mr Chambers:

That Mr John Girling be elected the Chairperson of the Te Awahou Foxton Community Board for the Triennium 2022-2025.

CARRIED

MOVED by Mr Roaches, seconded Mr Russell:

That Mr Trevor Chambers be elected the Deputy Chairperson of the Te Awahou Foxton Community Board for the Triennium 2022-2025.

CARRIED

3 Apologies

There were no apologies.

4 Public Participation

There was none.

5 Late Items

There were none.

6 Declaration of Interest

There were none.

7 Reports

7.1 Adoption of Standing Orders

Te Awahou Foxton Community Board is required to adopt its standing orders at the beginning of its triennium. This report presents the draft model standing orders for their adoption, and identifies the areas where the Board must elect an option. This report also identifies how and when the Board may alter its standing orders.

Resolution Number TAFCB/2022/1

MOVED by Cr Allan, seconded Mr Roache:

That Report 22/602 Adoption of Standing Orders be received.

That this matter or decision is recognised as not significant in terms of S76 of the Local Government Act.

CARRIED

Resolution Number TAFCB/2022/2

MOVED by Fox, seconded Cr Allan:

That Te Awahou Foxton Community Board adopt Te Awahou Foxton Community Board Standing Orders Ngā Tikanga Whakahaere Hui 2022-2025, including the following options.

CARRIED

Resolution Number TAFCB/2022/3

MOVED by Fox, seconded Russell:

That Te Awahou Foxton Community Board adopt the option that the Chairperson, or any other person presiding at a meeting, only has a deliberative vote, and that in the event of an equality of votes for any question, that question would be lost.

CARRIED

Resolution Number TAFCB/2022/4

MOVED by Fox, seconded Russell:

The Te Awahou Foxton Community Board adopt System B for Standing Order 5.6 – Voting system for Chairs and Deputy Chairs.

CARRIED

Resolution Number TAFCB/2022/5

MOVED by Cr Allan, seconded Fox:

That Te Awahou Foxton Community Board adopt Option C – General Procedures for speaking and moving motions.

CARRIED

7.2 Adoption of Code of Conduct

The purpose of this report is for the Te Awahou Foxton Community Board to consider the adoption of the updated and refreshed Code of Conduct following the inclusion of industry and sector best practice recommendations.

Resolution Number TAFCB/2022/6

MOVED by Cr Allan, seconded Mr Roache:

That Report 22/601 Adoption of Code of Conduct be received.

That this matter or decision is recognised as not significant in terms of S76 of the Local Government Act.

CARRIED

Resolution Number TAFCB/2022/7

MOVED by Mr Roache, seconded Mr Chambers:

That the Te Awahou Foxton Community Board adopts the Code of Conduct 2022-2025

CARRIED

7.3 Adoption of Meeting Schedule

To seek the Te Awahou Foxton Community Boards approval of the proposed meeting schedule of the Te Awahou Foxton Community Board for the period from 21 November 2022 to 31 December 2023

Resolution Number TAFCB/2022/8

MOVED by Cr Allan, seconded Mr Roache:

That Report 22/602 Adoption of Meeting Schedule be received.

That this matter or decision is recognised as not significant in terms of S76 of the Local Government Act.

CARRIED

Resolution Number TAFCB/2022/9

MOVED by Mr Roache, seconded Fox:

That Te Awahou Foxton Community Board adopts the schedule of meetings for the January to December 2023 based on a 6-week cycle as set out in Appendix A.

That Te Awahou Foxton Community Board notes that additional ordinary, extraordinary and multi-day meetings may be scheduled from time to time in consultation with the Chair and Chief Executive.

CARRIED

Deputy Mayor Allan noted the importance of workshops and that this meeting schedule does not preclude these.

7.4 Terms of Reference and Appointments to External Organisations

For the Te Awahou Foxton Community Board to note its Terms of Reference and make appointments to External Organisations.

Resolution Number TAFCB/2022/10

MOVED by Cr Allan, seconded Russell:

That Report 22/603 Terms of Reference and Appointments to External Organisations be received.

That this matter or decision be recognised as not significant in terms of s76 of the Local Government Act 2002.

CARRIED

Resolution Number TAFCB/2022/11

MOVED by Cr Allan, seconded Russell:

That the Te Awahou Foxton Community Board notes that any elected member is welcome to attend the Te Awahou Foxton Community Board meetings, and may have speaking rights as allowed for in Standing Orders.

That Te Awahou Foxton Community Board notes the Terms of Reference for these committees as outlined in Appendix A of this report.

CARRIED

The Te Awahou Foxton Community Board made the following appointments to the organisations as listed below;

Resolution Number TAFCB/2022/12

MOVED by Cr Allan, seconded Mr Roache:

That the Te Awahou Foxton Community Board appoint Nola Fox to MavTec.

CARRIED

Resolution Number TAFCB/2022/13

MOVED by Mr Chambers, seconded Russell:

That the Te Awahou Foxton Community Board appoint Trevor Chambers to Foxton Tourist and Development Association.

CARRIED

Resolution Number TAFCB/2022/14

MOVED by Cr Allan, seconded Russell:

That the Te Awahou Foxton Community Board appoint John Girling to Save Our River Trust.

CARRIED

Resolution Number TAFCB/2022/15

MOVED by Fox, seconded Mr Roache:

That the Te Awahou Foxton Community Board appoint Brett Russell to Manawatū Estuary Trust.

CARRIED

Resolution Number TAFCB/2022/16

MOVED by Mr Roache, seconded Cr Allan:

That the Te Awahou Foxton Community Board amended the appointment to one member and appoint Nola Fox to Foxton Beach Progressive Association.

CARRIED

Resolution Number TAFCB/2022/17

MOVED by Cr Allan, seconded Russell:

That the Te Awahou Foxton Community Board amended the appointment to one member and appoint David Roache to Manawatū River Loop Working Group.

CARRIED

Resolution Number TAFCB/2022/18

MOVED by Fox, seconded Mr Roache:

That the Te Awahou Foxton Community Board appoint Brett Russell to Wildlife Foxton Trust.

CARRIED

Resolution Number TAFCB/2022/19

MOVED by Mr Chambers, seconded Mr Roache:

That the Te Awahou Foxton Community Board amend the appointment to one member and appoint Trevor Chambers to Foxton Rugby Club.

CARRIED

Resolution Number TAFCB/2022/20

MOVED by Mr Girling, seconded Mr Roache:

That the Te Awahou Foxton Community Board amend the appointment to two members and appoint John Girling and David Roache to Foxton Futures Governance Group.

CARRIED

Resolution Number TAFCB/2022/21

MOVED by Russell, seconded Fox:

That the Te Awahou Foxton Community Board appoint Brett Russell to the Horowhenua Camera Trust.

CARRIED

That the Te Awahou Foxton Community Board request the Chairperson to contact the Foxton Beach Community Centre to confirm if they would like a Board Representative appointed to them and the outcome be brought back to the next Board meeting.

The Chief Executive closed the meeting with a Karakia

6:35 pm

There being no further business, the Chairperson declared the meeting closed.

CONFIRMED AS A TRUE AND CORRECT RECORD
AT A MEETING OF TE AWAHOU FOXTON
COMMUNITY BOARD HELD ON

DATE:

CHAIRPERSON:

Exclusion of the Public : Local Government Official Information and Meetings Act 1987

The following motion is submitted for consideration:

That the public be excluded from the following part(s) of the proceedings of this meeting.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution follows.

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by section 6 or section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public, as follows:

C1 Procurement Plan: Wastewater Stage 2 and Water Main Renewal

Reason for passing this resolution in relation to each matter	Particular interest(s) protected (where applicable)	Ground(s) under section 48(1) for the passing of this resolution
The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.	s7(2)(h) - The withholding of the information is necessary to enable the local authority to carry out, without prejudice or disadvantage, commercial activities. s7(2)(i) - The withholding of the information is necessary to enable the local authority to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).	s48(1)(a) The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.