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### **Irongate/Stock Road Development – Wellwood Drain Land Matters - Summary**

The purpose of this document is to provide a summary of the advice relating to the potential options in relation to Crown/public land matters at the Wellwood Drain (Drain) as it intersects with land for proposed development by the Heretaunga Tamatea Settlement Trust (HTST) at Irongate/Stock Road, Flaxmere.

Please find as follows.

#### **Background**

1. The Drain and the status and ownership, application of marginal strips and the existing right of way easement were created as a result of disposal of the land by the Crown around 2013. The Irongate Stream, for that part that it crosses HTST's land was not a Crown disposal, being held in private ownership, and therefore was not affected by the actions on the Drain.
2. It is worthwhile noting that we were engaged as a LINZ Crown Accredited agent in the original disposal process for this land. At the time there was robust debate and discussion regarding appropriate ownership of the Drain and the extent of the protection mechanisms required on disposal, given that the Drain was considered by the Hawke's Bay Regional Council (Council) to be a man-made local drain subject to the Local Drainage Act 1908. Ultimately however, it is the Crown's decision as to the requirements and protection mechanism created on disposal of land.
3. Given the proposed development by HTST of its land which will see a land use change, it is appropriate that the status of the Drain, marginal strips and access are reviewed in addition to the Irongate Stream for that part within the proposed development.

#### **Wellwood Drain**

4. The Drain is described as Sections 67 and 68 SO Plan 438108 and comprised in Record of Title 621785, held by the Council as a Local Purpose (soil conservation and river control) Reserve pursuant to the Reserves Act 1977. New Zealand Gazette Notice 2013 p2601 vested the Drain 'in trust' in the Council. The Drain is a Crown derived reserve.

5. The option to revoke the reserve status has been considered but has been dismissed as an appropriate option. Revocation would require the Council to resolve to revoke the reserve vesting in trust and the land would then become a potential disposal pursuant to the provisions of the Land Act 1948. Given the proposed development and improvements to the Drain within the development, we consider that there is a more appropriate option.
6. An exchange pursuant to Section 15 of the Reserves Act 1977, with part of the bed of the Irongate Stream is considered a more appropriate course of action. That part of the Irongate Stream as it crosses HTST's land is comprised within Section 18 SO 438108 being land held in Record of Title 552618. In simple terms, an exchange of this nature would see the current reserve status over the Drain being exchange for the same or similar reserve status over the Irongate Stream. Acknowledging the Crown derived status of the reserve, this action would require a tripartite agreement between HTST, Council and the Department of Conservation in addition to public notification and the consent of the Minister of Conservation.
7. We understand that through initial discussions and ecological advice, such an exchange would meet if not exceed the values-based test. We note that engagement with the Department of Conservation at a local and National office level is ongoing in this regard.

### **Marginal Strip**

8. As part of the abovementioned Crown disposal actions, a marginal strip, being 20m on either side of the Drain from the boundary was reserved under the provisions of the Conservation Act 1987.
9. We have considered options including resumption, exemption and seeking to 'reduce' the width of the marginal strip. However, considering the proposed upgrade and improvements to the Drain as part of the development, these options either don't apply in this case or will not achieve a sensible outcome, in our view.
10. We consider that an exchange of marginal strip pursuant to Section 24E Conservation Act 1987, for that currently reserved over the Drain with a marginal strip proposed to be reserved in exchange along both sides of the Irongate Stream. We acknowledge that the proximity of the boundary of the neighbouring property, alignment of the Stream and proposed recreation and reserve areas may mean that a reduced marginal strip may be required in some parts.
11. An exchange will require approval of the Minister of Conservation, who will assess the application against the purposes of marginal strips as specified in section 24C Conservation Act 1987, being conservation purposes, public access, and recreational use.

### **Right of Way Easement**

12. We have not addressed the current right of way easement in favour of Council and registered as Easement Instrument 9309864.1. However, we understand that if the above proposed approach to the Drain was acceptable to Council, then it would make sense for this easement to be surrendered once all matters have been agreed, approved, and consented.

## Summary

We trust that the above provides a summary of the advice relating to the potential options in relation to Crown/public land matters at the Drain and opportunities that the proposed development presents for both the Drain and the Irongate Stream.

Please don't hesitate to contact us if you have any questions or wish to discuss further.

Yours sincerely



**Rebecca Mackenzie**

Regional Business Manager

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