



T Knowles  
Manager  
Crown Property  
Land Information New Zealand  
P O Box 5501  
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Your File: CPC 2011/16121

9 February 2022

Dear Trevor

**Re: Section 40 Public Works Act 1981 – Stage I**

**INVESTIGATION OF LAND – Sec 25 Draft SO 505430, RAUMATI, PARAPARAUMU.** Quadrant Heights.

**LINZ FILE REFERENCE:** CPC2011/16121

**JOB NO:** New

**CLIENT:** Waka Kotahi (New Zealand Transport Agency)

**INTRODUCTION:** The need for a new western arterial highway along the Kapiti Coast, had been planned since the 1950's. Construction of the first stage, MacKays to Peka Peka (M2PP) is complete, and the associated surplus land has now been identified.

Initially the Crown by Proclamation laid out a centre line for the Wellington to Foxton Motorway and a number of small farm properties were purchased in the 1950s and 60's. In later years much of the required land, was purchased by the Kapiti Coast District Council ("KCDC"), however following several unsuccessful attempts at establishing the road, the Crown acting through the New Zealand Transport Agency now Waka Kotahi and the Wellington Regional Council became involved. Properties originally acquired by KCDC were subsequently purchased by

the Crown for the M2PP Expressway Project.

The purpose of this report is to undertake a Section 40 Investigation under the Public Works Act 1981 to determine whether Section 25 Draft SO 505430 (previously referred to as Section 21 Concept Plan 3272648-GS-018 Rev D) shown highlighted on the attached Draft SO Plan 505430, is required to be offered back to the former owners. The previous Section 21 was declared surplus to requirements on 13<sup>th</sup> April 2021.

The Crown had by transfer obtained this land from the Kapiti Coast District Council in 2014 under a global Agreement with other lands the Council had earlier acquired for the proposed "Western Link Road".

**LEGAL DESCRIPTION:** Part of Lot 2 DP 72985 (Section 25 Draft SO 505430) Copy of Draft SO Plan attached at **Appendix A**

**AREA:** 0.7658 ha (subject to final survey)

**ENCUMBRANCES:** On disposition from the Crown the land will become subject to Part IVA of the Conservation Act 1987 and Section 10 and 11 Crown Minerals Act 1991.

A Reverse Sensitivity Encumbrance will also be required to protect the Crown from issues associated with the operation of the Expressway in the future. (light, noise & dust etc)

**LAND STATUS:** Fee-simple land held by Her Majesty the Queen for 'Use in connection with a Road' being part of the land comprised in title RT WN40D/129.

Copy of title attached at **Appendix B.**

Areal overview attached at **Appendix C.**

**MINERAL STATUS:** This area is not an area of known mining activity and as such it is considered that at the time the land was acquired in full by the

Crown all the Minerals ran with the land.

Therefore, it is considered that both Statute and Non Statute minerals were contained in the transfer to KCDC in 2008 and from KCDC to the Crown in 2014 under RT WN40D/129.

There is no record of the former Maori landowners retaining mineral rights on the transfer to the Council. following the Court order approved alienation of this former Maori freehold and change of status to General Land under the Land Transfer Act.

**CONTINGENT LIABILITY/  
CONTAMINATION**

This property is not listed on the Greater Wellington Council's Selected Land Use Register (SLUR)

There is no known Contingent liability or contamination identified on this section of the property.

Copy of current GWRC (SLUR) Selected Land Use Register attached as **Appendix D**.

**OTHER CLEARANCES:**

In accordance with LINZ Standard 15000 - Standard for disposal of land held for a public work the following statutory clearances have been obtained for this Surplus Government Property.

1. This property is no longer required by the vendor and was declared surplus on 13 April 2021. Confirmation of this is disclosed in the Waka Kotahi (NZTA) Declaration of Surplus Property Forms. Attached at **Appendix E**.

2. The vendor has no wish to retain an interest in the land either short or long term.

3. There is no known requirement for this property for another public work.

4. DOC Clearance under Part IVA of the Conservation Act 1987 was obtained on 20 May 2021 and DOC confirmed that the subject land does not contain any conservation values that it wishes to protect.

5. Heritage New Zealand Clearance was obtained on 3 May 2021 and confirmed that it had no recommendations for

Heritage protection.

6. Kainga Ora confirmed by email, dated 22 April 2021, that they were not interested in acquiring the land for affordable housing purposes.

7. Min HUD confirmed in their email on 21 April 2021 that they did not wish to acquire this site.

8. MBIE confirmed on 22 April 2021 that they had no interest in acquiring this site.

9. There is no known or likely Section 105 Public Works Act 1981 exchange requirement for the property.

10. The Ngati Toa Rangatira Claims Settlement Act 2014 contains a schedule of selected Right of First Refusal properties, but this property is not included. However due to the nature of overlapping Claims in the North Island, should this property pass the Offer Back stage of Section 40 PWA, it will be necessary to place it through the Maori Protection Mechanism (MPM).

11. The land is not subject to the Crown Gifted Land policy as valuable consideration was paid for the land.

Copy of Statutory Clearances **attached in Appendix F**

**LOCATION & PHYSICAL  
DESCRIPTION:**

The subject parcel is located west of State Highway 1 and the Cycle Way/Walkway/Bridleway. It is of an irregular triangular shape and has contrasting contours with high ground adjoining the rear of a number of residential houses that have frontage onto Quadrant Heights (road).

The land is rolling dune land with some trees and cover with native grasses cover, the lower eastern area is contoured sympathetically with the adjoining Cycle Way/Walkway/Bridleway.

**PRESENT  
ZONING/DESIGNATION:**

The parcel is zoned Residential in the Kapiti Coast Operative District Plan.

The Motorway Designation will be removed from this property to match the actual final project requirements.

**VALUATION:**

No independent current market valuation has been obtained. Independent valuations will be obtained as required for Disposal purposes.

The disposal of the surplus land was originally identified by a "white areas" investigation land that had not been previously identified for disposal in late 2018.

The DSPF was signed by the Senior Manager on 13 April 2021.

We consider that despite the hold up with the identification of these parcels, the objectively surplus date should be as per the time frame established for the adjoining Raumati Road properties that have recently been offered back with an objective surplus date of 1<sup>st</sup> January 2018.

**SURVEY PLAN  
REQUIREMENTS (if any)**

A survey definition of the land required for the Expressway, and the balance surplus areas is currently in draft form and will be finalised prior to offerback.

**TITLE REQUIREMENTS:**

A new record of title will be obtained for disposal purposes.

**ACQUISITION HISTORY:**

The Crown acquired its interest in the property by Transfer in 2014 from the Kapiti Coast District Council.

The plans for a new road through the Kapiti Region had been under consideration for many years and in 1956 the Governor General issued a middle line Proclamation for a proposed motorway between Paekakariki and Otaki (as part of the Wellington Foxton Motorway), known as the "Sandhills Motorway". Following several unsuccessful roading initiatives by KCDC, the Greater Wellington Regional Council and the Crown confirmed the Western Link Road designation in July 2006 and the Western Corridor Study later confirmed the need to develop a four lane, greenfield alignment for SH1 from Mackays Crossing to Otaki. By 2009, NZTA had consulted the public on alternative options, and confirmed the Sandhills route as the preferred option, whereupon the Wellington Northern Corridor was included as part of Governments Roads of National Significance.

An Entry Agreement was entered into between the Crown & KCDC in September 2013 to allow construction on the required land.

Negotiations were concluded by the parties and, following approval by NZTA, an agreement was signed on 20 June 2014 in respect of a large tranche of Council property pursuant to Section 50 of the Public Works Act 1981, at the consideration of \$7,491,203.37 plus GST, if any. And subject to the revocation of Council road reserves. The land was transferred to the Crown (Her Majesty the Queen) on 27 June 2014.

The Crown accepted KCDC's liability (if any) under the Agreement in respect of Council's existing Compensation Certificate.

In consideration to the provisions of Section 40 PWA the Crown is required to go beyond the Council ownership and consider the transfer from private ownership into public ownership.

The Council had acquired its interest in this land from the original Maori owners by Agreement dated July 2008 for all the land held in RT WN40D/129 for the then planned "Western Link Road". The Council had previously initiated a Notice of Designation for this Link Road.

The Councils purchase Agreement included the purchase of another two complete titles WN40D/131 and WN40/132 for a total consideration of \$6,270,000 plus GST (if any) with the Agreement conditional on the Maori Land Court consenting to the alienation and vesting orders.

It was not until September 2013 and by Court Order the alienation of this land transferred to the Council together with a Status order that the subject land ceased to be Maori Freehold and became General Land. Copy of Court Order attached at **Appendix G**

In the period between the Council securing their 2008 agreement and the Vesting Court Order the historic title records three actions:

- a Caveat was discharged in 2009.
- 2 Trustee Orders vesting the land in named persons as responsible trustees the first in 2010 and the later order in 2011 these two actions to facilitate an application in the Maori Land Court for the alienation and sale.

## CONSIDERATIONS:

### Section 40 (2) (a)

Impracticable, unreasonable or unfair

Not applicable as we are recommending offer back to the former owner upon first obtaining confirmation of Trustees to take receipt of the offer through the Maori Land Court.

### Section 40 (2) (b)

No significant change

Not applicable as there is no issue as to signification change.

### Section 40 (2) (c)

Current Market Valuation

The property will be offered back to the former owner at current market valuation within 18 months of the objective surplus date.

### Section 40 (3)

Land acquired between 31/1/82 and 31/3/87.

Not applicable as the land was not acquired between 31 January 1982 and 31 March 1987

## Section 40 (4)

### Size, shape and situation

Not applicable as there is no issue of size, shape or situation.

The subject land has no legal road frontage and the offer will note this fact.

Advice from the Council is that potential use of the road reserve abutting this property being legalised to provide access from Milne Drive will only be considered upon a development plan being presented to the Council for consideration. It is reasonable that the offeree if genuinely interested in repurchasing this land will require an extension of the statutory offer period of 40 days to secure an Agreement with the Council. Extensions of time have been considered and granted by the Crown in the past.

In the event that this property passes on to an Open Market sale, the conditions of sale will need to be structured to provide sufficient time for any potential purchaser to investigate Council approval.

## Section 40 (5)

### Successor in Title

Successor in title is not applicable as the property was acquired in totality by the Crown.

## SUMMARY:

There had been discussion in the public arena since the early 1950's and the need to acquire land had been established to support the development of a new road through the Kapiti Region, (the Sand Hills Option) and therefore we hold that an element of compulsion existed in the land acquisition.

A Notice of Designation had been raised by the Council.

It is held that the Kapiti Coast District Council acquired the land from the original Maori landowners for a public work by Court Order vesting the land in the Council for use in connection with a road.



The Council subsequently transferred this land to the Crown following the approved Notice of Requirement for the MacKays to Peka Peka Expressway.

In consideration of Section 40 case law and one of the principles arising from the *Bowler Investments v Attorney-General* case, it is held that the Maori landowners were compelled to sell their land to the Council for a public work arising from the Council's notice of designation.

The surplus land parcel does not hold legal frontage. Any recipient of an offer should be given sufficient time to approach the Council to determine if access would be available from Milne Drive over the adjoining Road Reserve. This should not preclude an offer back, as the former owner has the opportunity to make his own arrangements for access. The aspect of being landlocked arose in the case *Rowan v Attorney-General* in 1997.

Today the Crown is at law required to consider Sec 21 Concept Plan 3272648-GS-018 Rev D being surplus and apply the provisions of Section 40 Public Works Act 1981.

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**RECOMMENDATION:**

1. That the disposal of Sec 25 Draft SO 505430, being part of Lot 2 DP 72985 is subject to the Statutory Provisions set out within Section 40 (1) Public Works Act 1981.
2. That Sec 25 Draft SO 505430 be offered back to the former owner pursuant to Section 40 (2) (a) of the Public Works Act 1981 at Current Market Valuation subject to title being raised.


(Note there is a probability of the offeree requiring an extension of offer time to investigating Council's agreement in gaining access over the Road Reserve from Milne Drive).

**AUTHORITIES:**

Section 40 (2) (a) Public Works Act 1981

**PREPARED BY:**

**PEER REVIEWED:**



.....  
**Robin Shafford**

.....  
**Lawson Price**

**Nominated Person**

**Nominated Person**

**Section 40 Stage 1 – Sec 25 Draft SO 505430, RAUMATI BEACH, PARAPARAUMU.** Quadrant Heights

**APPROVED / DECLINED**

.....  
**Clearances Team**

**Date**     /     /

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## Appendices:

**Appendix A** – Copy of Draft SO 505430

**Appendix B** - Copy of RT WN40D/129 & MLC Court Order

**Appendix C** - Coloured up Aerial Photo.

**Appendix D** – Greater Wellington Regional Councils (SLUR) mapping

**Appendix E** - NZTA – Declaration of Surplus Land (DSPF)

**Appendix F** – Statutory Clearances

**Appendix G** – Copy of Court Order 9515586.1

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