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**REPORT 1**  
(1215/53/IM)

## **OBJECTION TO NOTICE TO LAY A PUBLIC DRAIN – 20 REDWOOD AVENUE, TAWA**

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### **1. Purpose of Report**

To hear an objection to a Notice on the owners of 20 Redwood Avenue, Tawa, in respect of a requirement to lay a Public Drain through their property.

### **2. Executive Summary**

A notice under the Local Government Act 2002 to lay a Public Stormwater main through 20 Redwood Ave, Tawa has been served on the owners.

This is a regular operation and is usually dealt with by negotiation. On this occasion the owners have lodged an objection.

The Regulatory Processes Committee has the delegated authority to hear and deal with this matter.

### **3. Recommendations**

Officers recommend that the Committee:

- 1. Receive the information.*
- 2. Dismiss the objection.*

### **4. Background**

The Council has a policy of encouraging infill development. Generally arrangements to lay new public drains for “the good drainage of the district” are met by agreement or a technical solution. From time to time the only method of providing access to the drainage network is for the Council to step in and serve notice on a reluctant owner. The decision to serve notice is made after considering the options and whether the impact on the adjoining land is minor and will not limit future options. In this case No 20 Redwood Street is fully developed and the existing sections at 17 – 19 Mascot Street are large (1400 sq M) and suitable for further subdivision. The proposed stormwater is adjacent to the existing concrete sewer over (50 years old) which the Council will replace as part of the work.

The hearing is to hear an objection to a notice served by the Wellington City Council under the Twelfth Schedule of the Local Government Act 2002. This schedule provides for a notice to be served under s181 (3) (b) of the 1974 Act. The notice was issued in order to allow the laying of a Public Stormwater Main through a private property at 20 Redwood Avenue. The 2002 Act provided for a number of sections in the 2002 Act to remain in force and s181 is still current.

The decision to serve notice was made by the Team Leader, John Boot, of the Public Drainage Team. This followed after the owner of 20 Redwood Ave refused to allow the installation of a stormwater drain to service a new development at 17 & 19 Mascot Street. The officer considered the options and whether the impact on the adjoining affected land was significant or would limit the use of the land. In most cases work proceeds after negotiation although periodically a request to take such action (serving a notice) is made by the owner of the site requiring the drain. Occasionally such a request is declined if the impact on the affected property is unreasonable. This is the first hearing of an objection under this act by the Council in over forty years.

## **5. Discussion**

### **5.1 *The Notice and the Proposed Work***

The notice was directed to D.W. and L.W. Bakker, the owners of 20 Redwood Ave, Tawa. The notice provided for the laying of 40 metres of 225mm stormwater pipe to provide for stormwater disposal from new home sites at 17 and 19 Mascot Street. Provision has been made to include 13 and 15 Mascot Street later if required.

There is an existing Public Sewer, which serves Mascot Street and runs through 20 Redwood Ave. This was vested in the Tawa Borough in 1958. If such a subdivision had been undertaken in the past 25 years the developer would have been required to lay a Public Stormwater main concurrently with the sewer. This approach recognises smaller lots and more intensive development.

### **5.2 *Negotiation History***

Negotiations between the owners, (D & L Bakker and G & T Crosland) began in December 2006 and had not reached agreement by December 2007. In February 2008 Mr Alistair Syeb, then a Director of Cardno TCB, wrote to the Council on behalf of the Crosland's asking if the Council would take action under the Local Government Act.

After further discussion with Cardno TCB and Mr Costa Varuhas acting for D & L Bakker, notice was served on the Bakker's September 2008. An objection was received from Mr Varuhas in late October. A further review and discussion has brought the matter to a hearing of this committee which has power to deal with the objection to the notice.

### **5.3 Legal Matters and Procedure**

Mr Varuhas objected to the layout of the form of the notice under the Twelfth Schedule of the Local Government Act 2002 used by the Council. Due to the length of the negotiations the Public Drainage Engineer also had concerns about the time delay. Mr Ashley Connor from Phillips Fox has confirmed that the form of the notice was adequate and that the time delay was not an issue.

For the work to proceed the Crosland Family Trust ( 17 & 19 Mascot Street) has to agree to pay the complete cost of the public stormwater main together with any direct legal costs incurred by the Council.

Under the Act there is a provision for compensation. In this case where 20 Redwood Street is fully developed and the pipe is to be laid adjacent to the existing sewer it is considered there will be no loss of amenity and no compensation is recommended. However Council officers will ensure that complete restoration of the site will be completed.

Depending on the decision of the committee the Act allows an objector 14 days of the committee's decision to lodge an appeal to the District Court. The decision of the District Court is final.

Contact Officer: *John Boot, Public Drainage Engineer and Team Leader, Infrastructure Directorate*

## **Supporting Information**

### **1) Strategic Fit / Strategic Outcome**

The use of this procedure supports the infill and redevelopment policies of Wellington City Council.

### **2) LTCCP/Annual Plan reference and long term financial impact**

There are no direct financial implications.

### **3) Treaty of Waitangi considerations**

Not applicable as the property at 20 Redwood Avenue, Tawa is privately owned.

### **4) Decision-Making**

This is a procedural matter.

### **5) Consultation**

#### **a) General Consultation**

The Council is not required under legislation to consult on this matter.

#### **b) Consultation with Maori**

The Council is not required under legislation to consult on this matter.

### **6) Legal Implications**

Wellington City Council's lawyers have been consulted during the development of this report.

### **7) Consistency with existing policy**

This report is consistent with existing Council policies regarding infill and redevelopment.