

OIR: 2324/796

27 February 2024

[REDACTED]
[REDACTED]

Tēnā koe [REDACTED],

Request for Information under the Local Government Official Information and Meetings Act 1987 (the Act) (the LGOIMA)

Thank you for your email of **9 February 2024** requesting the following information:

The Section 40 Report with regard to both of these land sales:

- a) 29 Hinau Street, Otaki and***
- b) 161 Riverbank Road Extension, Otaki***

As requested, please find attached a combined Section 40 report for:

- (a) 29 Hinau Street, Otaki, and
- (b) 161 Riverbank Road Extension, Otaki.

This is one report covering both properties, as the land was divided into two parcels after the report was prepared in March 2020 (previously held in Record of Title WN52D/116).

Ngā mihi,



Kris Pervan
Group Manager Strategy and Growth
Te Kaihautū Rautaki me te Tupu

Please note that any information provided in response to your request may be published on the Council website, with your personal details removed.

Section 40 Public Works Act 1981

Historical Investigation Report

Record of Title WN52D/116



Area: 3.5817 hectares more or less

Legal description: Part Lot 5 Deposited Plan 6595

Record of Title: Record of Title WN52D/116

Current Registered Owner: Kāpiti Coast District Council

Registered Interests: Nil

Introduction: You have asked us to advise whether the Council has any obligation to offer the above land at Riverbank Road Extension in Otaki (**Property**) back to the former owners under section 40 of the Public Works Act 1981 (**PWA**) as it has been declared surplus by the Council.

Physical description and current use:

The Property consists of vacant land (paddocks) in a rural locality on the outskirts of an industrial park.

It has frontage to both the Riverbank Road Extension and Hinau Street.

Improvements are limited to some stock proof fencing (both around the perimeter and internally).

It is currently leased to a local resident for grazing on a month to month basis.

Property status:

The Property was acquired by the Council for housing and industrial purposes. It is separately defined in a record of title and does not need to be surveyed to facilitate a disposal.

Zoning:

Industrial/Service Zone within the Kapiti Coast District Council Operative District Plan and Proposed Plan.

Requirement for other public work and declaration that the Property is surplus:

The Council declared the Property surplus in a Public Excluded meeting held on 27 February 2020.

Acquisition history:

Council acquisition

The Council's predecessor, the Mayor, Councillors and Citizens of the Borough of Otaki¹, acquired ownership of the Property from William Leonard McBeth and John Allan McBeth, who were registered as owners as tenants in common in equal shares (**Former Owners**) in 1974 by Transfer 060013.1. The transfer records that the Former Owners were paid \$32,375 for the Property and for an adjoining parcel of land, the balance of which is now described in Record of Title WN31B/341.

At the time of transfer, the Property was part of a wider parcel of land described in Title WN561/93. At the time of transfer a new title (WN14A/516) was created.

Following its acquisition, various parcels of land were subdivided off the original parcel and transferred to private owners with the balance land ultimately being recorded in Record of Title WN52D/116 in 1997.

¹ The Council is the successor to the Borough of Otaki as a result of local government reorganisations.

The original transfer to the Council records that the Property transferred to the Borough of Otaki for “housing and industrial purposes”. That purpose was recorded on the transfer memorial on the original title (WN561/93) and on the title that subsequently issued (WN14A/516). It was also brought down to the next title (WN16C/1499), but was omitted from the subsequent title (WN29C/295). The reason for the omission at that time is not apparent. We note that the order for a new title for that particular title did not reference the purpose or require it to be brought down.

The purpose is not recorded on the current title. We have found no evidence to suggest that the purpose was deliberately removed, and in our view it is likely that its omission was inadvertent.

Status of former registered owners:

- William Leonard McBeth (died 31 August 1986)

William Leonard McBeth was survived by his wife (Elsie Josephine McBeth). Under the terms of his will, if his wife survived him, he left the whole of the residue of his estate (after payment of debts, funeral and testamentary expenses and death duty) to her. Elsie Josephine McBeth subsequently passed away on 6 November 2005.

- John Allan McBeth (died 30 August 1981)

John Allan McBeth was survived by his wife (Doris Emma McBeth). Under the terms of his will, he gave all his personal chattels to his wife and gave all the rest of his real and personal property to his trustees, on trust, to “sell call in and convert into money”. The will further provided for the net annual income arising from his residuary estate (following payment of his debts, funeral and testamentary expenses) to his wife during her lifetime, with the capital and income following her death to be paid to children and/or grandchildren.

Assessment of offer back obligation:

Current requirements

The Council formally resolved on 27 February 2020 that the Property is surplus to its requirements. To our knowledge there is no known requirement for the Property for any other public work, and there is no known or likely

requirement that it is required for exchange under section 105 of the PWA.

Offer back obligation between the Council and former owner

In our view, no offer back obligation is triggered on the basis that both Former Owners have died and their successors have also died (in the case of William McBeth) or were not entitled to the Property under the will of the former owner (in the case of John McBeth).

Application of section 40 exceptions:

Section 40(2)(a)

**Impracticable,
unreasonable, unfair**

In our view, there is no need to rely on section 40(2)(a) if there is no immediate living successor which is the case with the Property.

Therefore, this exception is not applicable and does not need to be considered because both former owners are deceased and there are no valid successors.

However, at one level it might be argued that it is impracticable or unreasonable to offer the land back because the Former Owners and their successors are all deceased.

In terms of defining successors under section 40(5), a successor is defined as any person who would have been *"entitled to the land under the will or intestacy of that person had he owned the land at the date of his death; and, in any case where part of a person's land was acquired or taken, includes the successor in title of that person."*

In the present circumstances, both William McBeth and his immediate successor are deceased. As there is no obligation to look beyond the first level of succession under section 40 of the PWA², there can be no offer back in respect of his ownership interest in the Property.

Further, John McBeth left the entire residue of his estate upon trust to be sold, with capital and income applied for the benefit of his wife, children and grandchildren.

Therefore, the beneficiaries in the estate were not entitled

² *Williams v Auckland Council* [2015] NZCA 479. The findings of the Court of Appeal in this case are yet to be tested before the Supreme Court in any subsequent case.

to the Property by John McBeth's will. Rather they were entitled to a share of capital and income derived from the Property (and other assets) and therefore they do not meet the definition of successors for the purposes of section 40(5). On that basis there can be no offer back in respect of his ownership interest in the Property.

**Section 40(2)(b)
Significant change in
character**

This exception is not applicable on the basis that it does not need to be considered because both former owners are deceased and there are no valid successors.

However, for completeness, we have considered historic aerial views that include the property dating from 2005. These support a conclusion that the land has remained vacant paddock at least since that time, and likely since its acquisition by Otaki Borough Council so that there is unlikely to be any suggestion that there has been a significant change in character for the purposes of, or in connection with, the public work for which it was acquired or is held.

**Section 40(3)
Acquired between 31
January 1982 and 31
March 1987**

This exception is not applicable on the basis that it does not need to be considered because both former owners are deceased and there are no valid successors.

In any event, if valid successors were identified, the Property was not acquired within the relevant timeframe and the exception is not applicable.

**Section 40(4)
Size, shape and situation**

This exception is not applicable on the basis that it does not need to be considered because both former owners are deceased and there are no valid successors.

However, for completeness we record that the Property is a large, relatively regularly shaped, allotment so had valid successors been identified, this exception would not apply.

Recommendation:

No offer back is required under section 40(2) of the PWA because the former owners have both died and there are no successors who would be entitled to the Property under their wills.

The Council is free to proceed with disposal of the Property in accordance with section 42 of the PWA.