


OIR: 2324/835

8 May 2024



Tēnā koe ,

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

Thank you for your email of **11 March 2024** requesting the following information:

Once again, thank you for the information with regard to my request in relation to 29 Hinau Street and 161 Riverbank Road Extension, Otaki.

I would like to request further information in regard to both of these properties:

- 1. Any information from the Otaki Borough Council files that informs the original public work of developing an industrial estate on Riverbank Road/Aotaki Street.***

I understand that you clarified on 3 April 2024 that you would like documentation or a scheme plan that defines:

- What the land was going to be used for when originally acquired; and
- Why this area was originally zoned Industrial.

We have searched available records but were not able to find the information above. The relevant Town Planning files we considered included:

- 7/40 Oct 1954 – Oct 1985
- 7/41 June 1970 - Jul 1977
- 7/45 Feb 1969 – Apr 1974
- 7/58 May 1977 – Aug 1985 (Riverbank Road).

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

We identified relevant information in the **1989 Otaki Borough District Scheme Review 2 – Proposed Scheme - Dated 11 October 1989**

SECTION 6 : INDUSTRIAL OBJECTIVES AND POLICIES

6.1 GENERAL

Otaki is an industrial service centre for the surrounding rural area. In recent years other industries have developed in the Riverbank Road locality serving a wider regional and national market. These include manufacture of large and heavy concrete products utilising local metal sources in the Otaki River, manufacture of proprietary style doors for national distribution, recycling and manufacture of products from plastic waste. Land is readily available in the Riverbank Road locality, for further industrial expansion. It has good access to the State Highway and is adequately served for industrial use.

Otaki has the potential to assume a more significant role in the future as an industrial subcentre on the Kapiti/West Coast region.

Background – not part of the district scheme

5. INDUSTRIAL

The pattern of industrial development is now well established. Until recent years Otaki had primarily been an industrial service centre for the surrounding rural area and industrial development had not been of major significance.

In recent years several industries with regional and national markets have been developed in the Riverbank Road-Aotaki Street area. Council has subdivided and sold land in this locality and other industries have developed which have widened the town's industrial base and created more employment opportunities for residents. Large areas of industrial land are available for development, the land is well supplied with utility services and additional water supplies will be available from the new bore in Rangiora Road. The industrial area has good access to the State Highway and all parts of the Borough and is separated from residential areas.

If this information doesn't satisfy your request, you are able to directly contact the Otaki Historical Museum staff who have advised that one of their researchers would be able to assist you further with your query. They are located at 49 Main Street, Otaki.

2. Any briefing papers/information that helped inform the Council to be able to declare the land at 29 Hinau Street and 161 Riverbank Road Extension to be surplus.

Please find attached the Council report dated 27 February 2020 recommending that the property (then held as Part Lot 5 DP 6595 in record of title WN52D/116) was no longer required to be held by Council for a public work and was surplus to its requirements.

I understand that in addition to the original request above, that you clarified on 3 April 2024 that you would also like information around why the land was put up for tender as two titles instead of one. In summary:

- Council officers provided advice to the Chief Executive (CE) on 9 September 2021 that NAI Harcourts had received three offers for all the land, being WN31B/341 and WN52D/116.
- Two of the offers requested the opportunity to subdivide WN52D/116 into two parcels (at their cost). This was to enable two separate businesses to operate on the property instead of one.
- In line with delegations provided by Council, the CE approved the subdivision proposal as landowner.

3. The relevant minute from Council that actually declared the land at 29 Hinau Street and 161 Riverbank Road Extension as surplus.

The resolutions passed by Council on 27 February 2020 in a public excluded setting in relation to the matter are:

12.2 DISPOSAL OF LAND

James Jefferson, Group Manager Place & Space introduced Nicky Holden, Corporate Property Manager & Morag Taimalietane, Principal Advisor who spoke to the report. Members questions were answered.

RESOLUTION 2020/10

Moved: Cr James Cootes

Seconder: Deputy Mayor Janet Holborow

That the Council:

Agree that the following Council owned properties on Riverbank Road Extension, Ōtaki are not required for a public work and are surplus to requirements (as outlined in Appendix One of Disposal of Land report on 27 February 2020):

Part Tutangatakino 5 Block, WN31B/341

Part Lot 5 DP 6595, WN52D/116

Note that approval is subject to a suitable right of way easement being registered to protect future access rights prior to any sale.

Authorise the Chief Executive to commission formal Section 40 reports from a suitably qualified consultant to identify whether the properties must be offered back to the former owner or their successor in title, or whether an exemption from offer back applies.

Note that once the Section 40 reports have been received, a further report will be provided to the Chief Executive, under delegated authority, for approval to either offer back the property to the former owners or their successors in title, or to approve the exemption from offer back.

Authorise the Chief Executive to carry out all further steps required to enable the disposal of the land, including to negotiate, impose any reasonable covenants and complete the terms of sale through sale and purchase agreements by way of a public tender.

Cr Jocelyn Prvanov left the meeting at 11:09 am and returned at 11.13 am.

Cr Bernie Randall left the meeting at 11:11 am and returned to the meeting at 11:12 am.

A Division was called.

For:

Mayor K Gurunathan, Crs Janet Holborow, Angela Buswell, James Cootes, Jocelyn Prvanov, Sophie Handford and Robert McCann

Against:

Crs Jackie Elliott, Gwynn Compton, Martin Halliday and Bernie Randall

CARRIED 7/4

RESOLUTION 2020/11

Moved: Cr James Cootes

Seconder: Deputy Mayor Janet Holborow

That the Council:

Notes the advice from council staff around the unsuitability of the land for housing for reasons including it being zoned industrial, being close to the wastewater treatment plant and lack of public transport.

Notes advice from staff that the sale provides some financial flexibility to address housing needs and opportunities

Asks the Chief Executive to release the report and appendix 1 only from Public Excluded at the appropriate time.


Cr Elliott abstained

CARRIED

Please find attached the 'Public Excluded Council Meeting Agenda' PDF document to this letter. Some information has been redacted under section 7(2)(g) to maintain legal professional privilege. In Council's view the reasons for withholding these details are not outweighed by public interest considerations in section 7(1) favouring their release.

You have the right to request the Ombudsman to review this decision. Complaints can be sent by email to info@ombudsman.parliament.nz, or by post to The Ombudsman, PO Box 10152, Wellington 6143.

Ngā mihi,



Kris Pervan

Group Manager Strategy and Growth
Te Kaihautū Rautaki me te Tupu



AGENDA

Public Excluded Council Meeting

**I hereby give notice that a Meeting of the Kapiti Coast District Council
will be held on:**

Date: Thursday, 27 February 2020

Time: 9.30am

**Location: Council Chamber
Ground Floor, 175 Rimu Road
Paraparaumu**

**Wayne Maxwell
Chief Executive**

Kapiti Coast District Council

Notice is hereby given that a meeting of the Kapiti Coast District Council will be held in the Council Chamber, Ground Floor, 175 Rimu Road, Paraparaumu, on Thursday 27 February 2020, 9.30am.

Council Members

Mayor K Gurunathan	Chair
Deputy Mayor Janet Holborow	Deputy
Cr Angela Buswell	Member
Cr James Cootes	Member
Cr Jackie Elliott	Member
Cr Gwynn Compton	Member
Cr Jocelyn Prvanov	Member
Cr Martin Halliday	Member
Cr Sophie Handford	Member
Cr Robert McCann	Member
Cr Bernie Randall	Member

Order Of Business

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Out of scope

Pages 6-40 of the agenda have been removed from this document as they related to a matter on another topic entirely and are therefore outside of the scope of the request.

12.2 DISPOSAL OF LAND**Author:** Nicky Holden, Corporate Property Manager**Authoriser:** James Jefferson, Group Manager Place and Space

Section under the Act	The grounds on which part of the Council or Committee may be closed to the public are listed in Section 48(1)(a)(i) of the <i>Local Government Act 2002</i> .
Sub-clause and Reason:	Section 7(2)(h) and Section 7(2)(i) - the withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities and the withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).

PURPOSE OF REPORT

- 1 The purpose of this report is to obtain Council's approval that two parcels of land on Riverbank Road Extension, Ōtaki are no longer required for the Council's operational requirements and to authorise Council officers to proceed with disposal under the Public Works Act 1981 (PWA).
- 2 Refer to Appendix one for an aerial showing the two parcels.

DELEGATION

- 3 The Council may make a decision under section A.2 of the Kāpiti Coast District Council's (the Council) Governance Structure:

** purchase or dispose of assets.*

BACKGROUND

- 4 The parcels of land are made up of the following:

	Parcel One	Parcel Two
Legal Description	Part Tutangatakino 5 Block	Part Lot 5 DP 6595
Records of Title	WN31B/341	WN52D/116
Area	20,195m ²	35,817m ²
Zoning	Industrial/Service	Industrial/Service

- 5 Council originally acquired the parcels of land in 1974 for both housing and industrial purposes from the former owners, William Leonard McBeth and John Allan McBeth. The parcels of land have continued to be held in Fee Simple for this purpose.
- 6 The parcels of land adjoin Riverbank Road Extension and are situated in Ōtaki, in a rural locality, on the outskirts of the industrial area.
- 7 The parcels of land are in paddocks with a testing site and water pump in the adjoining land which requires access through Parcel One to the north. This will need to be protected through a registered right of way easement on the title before the land can be sold.
- 8 The parcels of land are currently leased by a local resident for grazing on a month to month basis.

ISSUES**Flooding Issues**

- 9 Council's Flood Hazard Map has identified that there are large areas of Overflow and Ponding across both sites. Construction would require any Purchaser to obtain a Resource Consent notwithstanding that their use of the site would be a permitted activity. These issues are matters for the potential purchasers to satisfy themselves with as part of their due diligence.

Legal Issues*Public Works Act 1981*

- 10 Officers have not identified a public work requirement to continue holding the parcels of land and recommend that the parcels are surplus to Council's operational needs. Council's obligations under Section 40 of the PWA will now need to be undertaken and these are outlined in Appendix two.

11 **Section 7(2)(g) Legal Professional Privilege**

- 12 Once Section 40 is completed Council is obligated to meet the requirements of Section 42, where land that is no longer required for a Public Work the land may be offered for sale to the owner of any adjacent land at a price fixed by a registered valuer, or it may be offered for sale by public auction, public tender, private treaty or by public application at a specified price.
- 13 If Council agrees that the parcels of land are declared surplus and a Section 40 report is completed, officers would recommend Council offer the land as a public tender to achieve the highest and best use. See below for more information on the proposed tender process.

Economic Development Benefits

- 14 The availability of suitable zoned land of sufficient scale has been identified as an issue for businesses looking to either relocate to or expand in Kāpiti. Although the recent NPS – UDC report has identified that there is currently sufficient available commercial land in the district to meet growth requirements, a large portion of the commercial and industrial land in the district is held by a few individual parties, who are either land banking or looking at providing only leasing options. This does not meet the needs of business owners who want to own their premises.
- 15 The draft refresh of the Economic Development Strategy has confirmed that we want to support the growth of a vibrant economy providing increased opportunity, resilience and wellbeing for all. A strategic pillar within the strategy is being open for opportunity. Currently the inability for businesses to access land is an inhibitor to growth and we have examples of at least two large businesses that are looking for land to construct new or expanded manufacturing premises in the Ōtaki area.
- 16 Both of these businesses supply the New Zealand market as well as exporting products overseas. Each of these businesses would provide significant new or increased local employment opportunities.
- 17 In addition to the provision of direct employment opportunities, there are also the multiplier effects that would be created as a result of increased employment in the area. This would include the positive impacts on supporting industries, as well as other businesses in the area.

Public Tender process

- 18 As required under the PWA, Council is required to sell the parcels of land in accordance with Section 42.
- 19 Officers' recommendation is to adhere with this requirement and to sell as a public tender process after seeking proposals from local real estate agents.
- 20 As part of the tender process officers will ensure that the economic outcomes of the sale of the land are achieved. It is recommended that some appropriate conditions are included within the sale of the property. This could include:
- 20.1 Council is to receive a proposal outlining the planned usage for the land and expected timeframe by when this would be achieved.
- 20.2 That the decision to accept an offer of the land is to take into consideration the proposed use of the land, as well as price and other conditions.

Next steps

- 21 The next steps once the land is declared surplus will be:
- 21.1 Undertake a survey and register an easement for the right of way and pump station infrastructure.
- 21.2 Investigate and implement any Section 40 PWA obligations the Council has, including obtaining a formal Section 40 report.
- 21.3 If the land is not required to be offered back under Section 40, commence disposal on the open market under Section 42 PWA, through a public tender process.
- 21.4 Obtain a registered formal valuation.
- 21.5 Appropriate delegated authority will sign any sale and purchase agreements to allow the land to be sold.

CONSIDERATIONS**Policy considerations**

- 22 There are no policy matters arising from this report.

Legal considerations

- 23 Section 7(2)(g) Legal Professional Privilege

Financial considerations

- 24 Council's Book Value of the Land is held under the one valuation at \$798,000 (as at 30 June 2017). This is not a reflection of the current market value, which will only be known once we take the land to the market. A registered full valuation will be obtained prior to sale to ensure we are aware of expected values.
- 25 All sale costs (real estate agent, legal fees etc.) will be deducted from the sale proceeds and the proceeds will initially be used to reduce Council's level of borrowings.
- 26 Council may seek to use these proceeds in the future for strategic property and land purchases.

Tāngata whenua considerations

- 27 Officers are currently in discussion with Ngā hapu o Ōtaki to understand whether there are any considerations from a Tāngata whenua perspective and will provide an overview of these at the meeting.

Strategic considerations

- 28 Attracting business and enabling diversification in business attracts talent, skills, jobs and higher income opportunities. This means there are more employment opportunities for local residents as well as greater spend in our local economy. The availability of land is currently a barrier for some businesses looking to establish or grow in Kapiti and therefore enabling increased access to land will be an important part of achieving economic growth outcomes.

SIGNIFICANCE AND ENGAGEMENT**Significance policy**

- 29 These matters have a low level of significance under Council's Significance and Engagement policy.

Consultation already undertaken

- 30 Due to the commercial implications, no formal consultation is required.

31 Section 7(2)(g) Legal Professional Privilege

Engagement planning

- 32 An engagement plan is not needed to implement this decision.

Publicity

- 33 There are no publicity considerations at this time.

RECOMMENDATIONS

That the Council:

- 34 Agree that the following Council owned properties on Riverbank Road Extension, Ōtaki are not required for a public work and are surplus to requirements (as outlined in Appendix One of Disposal of Land report on 27 February 2020):
 - 34.1 Part Tutangatakino 5 Block, WN31B/341
 - 34.2 Part Lot 5 DP 6595, WN52D/116
- 35 Note that approval is subject to a suitable right of way easement being registered to protect future access rights prior to any sale.
- 36 Authorise the Chief Executive to commission formal Section 40 reports from a suitably qualified consultant to identify whether the properties must be offered back to the former owner or their successor in title, or whether an exemption from offer back applies.
- 37 Note that once the Section 40 reports have been received, a further report will be provided to the Chief Executive, under delegated authority, for approval to either offer back the property to the former owners or their successors in title, or to approve the exemption from offer back.
- 38 Authorise the Chief Executive to carry out all further steps required to enable the disposal of the land, including to negotiate, impose any reasonable covenants and complete the terms of sale through sale and purchase agreements by way of a public tender.

APPENDICES

1. Appendix one - Aerial of Land Parcels
2. Appendix two - Section 40 Obligations under the PWA
3. Appendix three - Section 7(2)(g) Legal Professional Privilege

POTENTIAL SURPLUS LAND AT RIVERBANK ROAD EXTENSION, ŌTAKI



SECTION 40 OBLIGATIONS UNDER THE PUBLIC WORKS ACT 1981

S40 Obligations under The Public Works Act 1981

The Public Works Act 1981, and its predecessors, has played a large part in the development of New Zealand's infrastructure. It has enabled land to be acquired, either by agreement or by compulsion, for the construction of local or public works. The main intention of the Public Works Act 1981 regarding surplus land is that it must be offered for repurchase to the person from whom it was acquired, or the successor of that person, if it is not exempt under the grounds set out in the Act.

Section 40 of the Public Works Act 1981 deals with the disposal of land that is no longer required for the public work for which it is held, or any other public work.

Under section 40 Council is required to:

- (a) Identify what land is subject to section 40;
- (b) Determine when the offer-back obligations under section 40 are triggered;
- (c) Investigate the circumstances surrounding the acquisition, use and characteristics of the land in order to determine whether any exceptions to the offer-back requirement apply as per section 40(2); and
- (d) Determine the appropriate course of action in relation to any affected land.

What Land is Subject to Section 40?

All land held by Council for any public work will be subject to section 40. The land need not have been acquired specifically for a public work nor does it need to be designated formally as such.

Local and public works are:

“Local work” means a work constructed or intended to be constructed by or under the control of a local authority, or for the time being under the control of a local authority.

“Public work” means every Government work or local work that the Crown or any local authority is authorised to construct, undertake, establish, manage, operate, or maintain. It also includes every use of land and anything else required directly or indirectly for any such Government work or local work or use, including those required by any Education Authority within the meaning of the Education Act 1964 and any university within the meaning of the Universities Act 1961 (abridged definition).

The purpose for which Council holds any particular land needs to be considered objectively.

When is an Offer-Back Triggered Under Section 40?

Council must proceed under section 40 when the pre-conditions in Section 40(1) are satisfied, namely when the land in question:

- (a) Is no longer required for the public work for which it is held; and
- (b) Is not required for any other public work; and
- (c) Is not required for any exchange under Section 105 of the Public Works Act 1981.

The Courts have not yet defined the phrase “required for any other public work”. However Council’s legal advisors have recommended that the Land Information New Zealand guideline be followed to interpret this requirement. Their interpretation is as follows:

- The land has been designated for another public work; or
- Written notification has been given of another public work requirement; and
- Council has demonstrated that there is an actual need for the land, or
- Council has demonstrated that the land will be used for the purpose, within a reasonable timeframe.

Council is legally obliged to follow the sales process with due expedition once it has established that the three pre-conditions in Section 40(1) have been satisfied. Having satisfied the above pre-conditions, Council is under a duty (subject to the discretion of Section 40(2) and 40(4)) to endeavour to sell the land back to the former owner or their successors, in a timely manner.

Exemptions to Offer-Back requirements – Section 40(2) and (4)

Once the affected land has been declared surplus, a decision must be made as to whether or not the land must be offered back to its former owner(s) in accordance with section 40. This is a decision for Council and must be made after suitably qualified agents have made full investigations.

Land can be exempted from an offer-back where:

- It would be impracticable, unreasonable or unfair to do so; or
- There has been a significant change in the character of the land for the purposes of, or in connection with, the public work for which it was acquired or held; or
- It is believed on reasonable grounds that, because of the size, shape or situation of the land that it could not be expected to be sold to any person who did not own land adjacent to the land being sold. Hence the land may be sold to an adjoining owner.

Sale of Land

If a property is not exempt under section 40(2) or (4), the property must be offered back to the previous owner(s) or their successors as per section 40(2). This may require further investigation to locate the appropriate person(s) for the offer-back to occur. Once the offer-back is made, the offeree has a certain amount of time to accept the offer.

Where an offer under Section 40(2) is not accepted within the timeframe or is declined outright, or where an exemption to offer-back applies, the land may be sold to the owner of adjacent land, or by public auction, public tender or by private treaty.

Section 7(2)(g) Legal Professional Privilege



Section 7(2)(g) Legal Professional Privilege



Section 7(2)(g) Legal Professional Privilege



Section 7(2)(g) Legal Professional Privilege



The below is an extract of the relevant portion of the public excluded minutes.

RESOLUTION 2020/11

Moved: Cr James Cootes

Seconder: Deputy Mayor Janet Holborow

That the Council:

- 39: Notes the advice from council staff around the unsuitability of the land for housing for reasons including it being zoned industrial, being close to the waste water treatment plant and lack of public transport.
- 40: Notes advice from staff that the sale provides some financial flexibility to address housing needs and opportunities
- 41: Asks the Chief Executive to release the report and appendix 1 only from Public Excluded at the appropriate time.

Cr Elliott abstained

CARRIED