

8. SEWER CONSTRUCTION OVER 33 HEBERDEN AVENUE

General Manager responsible:	General Manager, City Environment, DDI 941 8608
Officer responsible:	Unit Manager, City Water and Waste
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PURPOSE OF REPORT

1. The purpose of this report is to seek a recommendation from the Hagley/Ferrymead Community Board that the Council approve the instigation of proceedings under Section 181 of the Local Government Act 2002 (construction of work on private land) for construction of an emergency sewer pipe over 33 Heberden Avenue, identified in Certificate of Title CB45B/21.

EXECUTIVE SUMMARY

2. The recent earthquakes have caused extensive damage to the existing sewer infrastructure across the City and Port Hills.
3. In order to ensure the sewer network is repaired to full capacity a damaged vertical wastewater pipe running down the cliff above eight Heberden Avenue is to be replaced. The vertical section of pipe has suffered severe cracking due to rock-fall occurring during the June 2011 aftershocks.
4. A number of alignments were considered but due to geo-technical issues the least disruptive, cost effective and direct option is to re-route the wastewater pipe from a proposed manhole on Seaspray Lane to a gully located between Heberden Avenue and Seaspray Lane and then into Heberden Avenue as shown on the plan **Attachment 1**.
5. Part of the pipeline is to pass over two privately owned properties. Consent from the owner of 3 Seaspray Lane has been obtained to both construct the pipeline and for the grant of an easement for it's protection in the future. The owner of 33 Heberden Avenue has not however granted consent for the works, or an easement, following negotiations that commenced in November 2011.
6. Work on the pipeline is due to start in May and unless consent for the pipeline from the owner of 33 Heberden Avenue can be obtained, the project will be delayed with related cost escalations.
7. Approval is therefore sought to protect the Council's position by instigating proceedings under Section 181 of the Local Government Act 2002 which gives rights to the Council to undertake work on private land, whilst staff continue to attempt to reach an amicable agreement.

FINANCIAL IMPLICATIONS

8. Compensation for injurious affection of the pipeline will be payable to the owner. As the land is currently white zoned by the Canterbury Earthquake Recovery Agency (CERA) it is not however possible to quantify the amount that may be payable until the zoning is determined. As soon as the land is zoned by CERA, an Independent Registered Valuation will therefore be obtained to determine the compensation payable.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

9. Not applicable. The works budget for the related works will form part of the Infrastructure Rebuild Programme.

LEGAL CONSIDERATIONS

Have you considered the legal implications of the issue under consideration?

10. Provision exists under Section 181 of the Local Government Act 2002 (LGA) to construct drainage and sewage works on private land where the landowner's consent is not granted to such works, provided that the requirements of section 181 and Schedule 12 of the Act are complied with. If the landowner declines to consent to the works the Council may issue a notice to the landowner specifying the required works. If the landowner objects to the proposed works within one month of the notice, the Council is required to hear the objection and determine to either proceed with the works, with or without alteration, or abandon them. The landowner may then appeal the decision of the Council to the District Court within 14 days of the Council's determination.
11. No delegation to staff exists to initiate the Section 181 process and a Council resolution is therefore required.
12. It would be preferable to protect the pipeline by acquiring an easement by agreement, but the powers granted to the Council under section 181 would be sufficient to enable the works to be constructed and maintained.
13. The Council's standard easement instrument will however be completed and registered at Land Information New Zealand if the owner's consent is granted for an easement.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

14. Yes, page 70 of 2009/19 LTCCP and 11.0.1 of Activity Management Plan – wastewater collection is provided in a safe, convenient and efficient manner.

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

15. Yes, in alignment with Waste Water Activity Management Plan.

CONSULTATION FULFILMENT

16. The owner of 33 Heberden Avenue will be informed of the dates that this report is being considered by the Board and the Council to provide the opportunity for the owner to make a deputation to the meetings at which this report is considered.
17. Section 181 of the LGA provides for a notification process allowing a month for any objections to be received from the owner, a right for a hearing with a further right of appeal to the District Court if the objection is dismissed following the hearing.

STAFF RECOMMENDATION

That the Hagley/Ferrymead Community Board recommend to the Council that the Council adopt a resolution in the following form:

- (a) That in respect of 33 Heberden Avenue the Corporate Support Manager be authorised and delegated authority to commence the process specified in Schedule 12 of the Local Government Act 2002 by:
 - (i) Depositing for public inspection at the Council offices at 53 Hereford Street, Christchurch a description of the proposed works to be completed at 33 Heberden Avenue and a plan showing how they affect the land and buildings at 33 Heberden Avenue.

- (ii) Giving notice in writing of the intention to construct the proposed works to the owner and occupier of 33 Heberden Avenue.
- (b) That a hearings panel be appointed comprising three Councillors with delegated authority to hear and determine in accordance with Schedule 12 of the Local Government Act 2002 any objection received by the Council from the owner and/or occupier of 33 Heberden Avenue in respect of the proposed works.
- (c) That in the event the owner and/or occupier of 33 Heberden Avenue shall appeal against any determination of the hearings panel referred to in paragraph (b) of this resolution that the Corporate Support Manager be authorised and delegated authority to conduct, manage and conclude those proceedings on behalf of the Council as they shall see fit.

CHAIRPERSON'S RECOMMENDATION

That the staff recommendation be adopted.