

6. OLD PORT LEVY ROAD – ROAD FORMATION APPLICATION AND GATES ISSUE

General Manager responsible:	General Manager City Environment, DDI 941-8608
Officer responsible:	Asset and Network Planning Manager
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PURPOSE OF REPORT

1. The purpose of this report is to:
 - (a) Consider an application received from Richard West to form approximately 700 metres of currently unformed Old Port Levy Road to allow access to his farm property at 869 Purau-Port Levy Road, and to a dwelling house intended to be built on that property (for which a building consent has already been granted); and
 - (b) Consider whether any of the five gates currently erected across Old Port Levy Road and used by the M A W Craw Family Trust and C J Craw are “redundant” or constitute an “inconvenience” in terms of section 344(3) of the Local Government Act 1974, and, if so, whether to issue a notice of the Council’s intention to remove any of those gates under that section.

EXECUTIVE SUMMARY

Road Formation Application

2. Old Port Levy Road is legal road vested in the Council as shown on the plan attached to this report as **Annexure A**. From the junction of Old Port Levy Road with Wharf Road, that part of Old Port Levy Road shown as **Area A** on the plan is formed and fenced on either side. Thereafter, Old Port Levy Road is unformed and passes through open fields. That part of Old Port Levy Road which is the subject of the West application is shown as **Area B** on the plan. The unformed part of Old Port Levy Road is presently in its natural state. The unformed road has a continuous fence along its southern boundary, but is unfenced from the land to the north, and it is virtually undistinguishable from the privately owned field of which it appears to be part.
3. As shown on the attached plan, there are essentially two landowners whose properties adjoin Old Port Levy Road in the area affected by the West application. Generally speaking, interests associated with Richard West own the land essentially on the south side of Old Port Levy Road and interests associated with the Craw family own the land to the north.
4. Attached to this report in **Annexure B** are various recent photographs of Old Port Levy Road taken by Council staff.
5. A building consent was granted to the applicant in 2007 for the construction of a new dwelling on his property situated at 869 Purau-Port Levy Road, the approximate position of which is shown on the plan. In the applicant’s building consent application, access to the proposed new dwelling was shown to be via Old Port Levy Road from its junction with Wharf Road, over both the formed part and the unformed part. The Building Act is concerned with compliance with the Building Code, and legal road access to a building site, or lack of it, is not a relevant matter when a local authority considers a building consent application where there are no Resource Management Act issues arising.
6. Shortly after the building consent was granted, the applicant requested that approval be given by the Council as roading authority to form the approximately 700 metre length of currently unformed Old Port Levy Road as is marked B on the plan to provide access to the new dwelling.
7. Council staff initially approved the application to form the road, subject to the applicant agreeing to fund all the costs associated with the formation work and those works being undertaken to specified Council roading standards. However, it subsequently became apparent that Council

staff did not enjoy the necessary delegated authority to give such approval. A letter withdrawing the Council's approval was subsequently sent to the applicant. In the absence of such delegated authority it is therefore necessary for the application to be decided by the Council.

8. Ideally, such decisions should be made with the guidance of an appropriate council policy developed following full public consultation. Council staff propose to commence the development of such a policy shortly, but given the need for full public consultation, especially on Banks Peninsula, it is likely that it will take 18 months or more before a policy could be adopted. Whilst no such policy currently exists, it is considered by staff that it would be unreasonable, in the current circumstances, to delay a decision on this particular road formation application until such a policy was developed.
9. In the interim, Council staff have developed a set of considerations to assist the Council to decide whether the application should be approved or not. These considerations are detailed in the 'Background' section of this report.
10. Recognising the Council's statutory obligation to consult persons affected by the application, details of the road formation application were forwarded to the landowners with properties adjoining or in the vicinity of the relevant sections of Old Port Levy Road and to the Port Levy Residents Association on 30 March 2010. Submissions were required to be received by the Council by 28 April 2009. Copies of the 62 written submissions received in response are attached to this report in **Annexure D**.
11. The staff recommendation is that the application be granted subject to the applicant agreeing to fund all the costs associated with the formation and the works being undertaken to specified Council standards.

Gates Issue

12. There are presently five gates located at the various points along Old Port Levy Road, as are shown on the plan. Accordingly to information supplied by Mr Craw, these gates were originally erected by persons unknown (presumably a previous owner of the Craw property) prior to Mr Craw's purchase of the property 25 years ago and appear to have been in place for at least 53 years. Mr Craw has continued to use the gates and has maintained and replaced them as they have required maintenance and replacement over the years. The Craw property adjoins that part of Old Port Levy Road which is the subject of the road formation application discussed in this report. Photographs of the various gates are attached to this report as **Annexure F**.
13. A dispute has arisen between Richard West and members of the Craw family concerning the gates. The Craws regard the gates as an essential element of the management of their farming operation, whilst Mr West considers them an impediment to his lawful use of Old Port Levy Road. Discussions between the West and Craw interests over the gates issue have been on-going for sometime, but without resolution.
14. As a consequence of this disagreement, the Council has received a complaint from Mr West concerning the gates. In response to the West complaint, Council staff invited the Wests and the Craws to an informal meeting held at the Civic Offices in Tuam Street on 26 March 2010 to discuss and to attempt to reach an agreement between them and the Council as to the gates issue. Subsequent to that meeting the Legal Services Unit facilitated detailed discussions between the parties in an attempt to bring them to an agreed solution in relation to the gates. Those discussions included the possibility of certain gates being removed and certain gates being retained. The gates to be retained were to generally be kept open, but to be available to be closed when required by the Craws for stock control purposes. The need to fence the legal boundary between the road, if formed, and the neighbouring land owned by the Craws was discussed, together with the possibility of erecting additional gates in that fence to facilitate access to the Craw land. Unfortunately, the Wests and the Craws were unable to agree on a scheme of arrangement concerning the gates.

15. Whilst the gates issue is allied to the road formation issue, the existence of express statutory provisions dealing with it mean that it must be dealt with separately. Section 344 of the Local Government Act 1974 provides a specific process for resolving this issue if the Council considers that the gates are either “redundant” or an “inconvenience”.
16. For the reasons discussed in the ‘Background’ section of this report, the staff recommendation is that the gates are not “redundant” and do not cause an “inconvenience “ in terms of section 344 of the Local Government Act 1974. Accordingly, it is recommended that no notice be issued by the Council under that section at this time.

FINANCIAL IMPLICATIONS

17. It is recommended that any formation of the unformed section of Old Port Levy Road as approximately shown on the plan by the applicant be undertaken at the applicant’s expense. In that event, the Council would be liable for the future maintenance of the formed section of the road in accordance with the current Road Network Activity Management Plan. Given that any approval to form Old Port Levy Road would be given on the condition that the road formation works are completed to Council’s standards, it is not expected that any maintenance work will be required for some years, and that given the limited public use of the road that any maintenance over the longer term is likely to be minimal.

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

18. As it is recommended that any formation of the unformed section of Old Port Levy Road as approximately shown on the plan by the applicant be undertaken at the applicant’s expense, no costs in respect of those works would be incurred by the Council. In the event the road is formed, the Council would be liable for the future maintenance of the formed section of the road in accordance with the current Road Network Activity Management Plan.

LEGAL CONSIDERATIONS

Road Formation Application

19. Under common law the public has a right of passage over legal road and adjoining owners have a right of access (called ‘frontager rights’) to the road from all points on their frontage. However, there is nothing in law which confers a right on members of the public to form an unformed road.
20. Section 319(a) of the Local Government Act 1974 confers on local authorities a power “to construct, upgrade and repair all roads with such materials and in such manner as the Council thinks fit”. This sections confers a *power* to construct, upgrade and repair, rather than a *duty* to do so. Accordingly, there is no general obligation on local authorities, statutory or otherwise, to either maintain or form an unformed road.
21. Section 357 of the Act prohibits any person undertaking any work on a road without the consent of the responsible Council.
22. Thus, if a local authority is considering whether to form a road, that decision is ultimately a matter of the Council discretion, to be exercised in accordance with the decision making requirements of the Local Government Act 2002. It is up to the Council to decide the most appropriate course of action based on the considerations relevant in the particular instance, including financial considerations, allocation of resources, how often the road would be used and what type of traffic it might generate etc.
23. However, where a subdivision of land relies in part or in whole on an unformed legal road for legal access to new allotments, and the Council approves the subdivision under the Resource Management Act 1991, it is likely that the Council would be considered to have given consent to the formation of the unformed road for that purpose. The granting of a land use consent to carry out a development on land which relies on an unformed road for vehicular access would have a similar result. These arguments do not arise in the current circumstances.

24. Notwithstanding, the comments contained in paragraph 23, it could not legitimately be assumed that a Council, by granting a building consent under the Building Act 2004, has impliedly agreed to the formation of an unformed legal road.
25. Formally stopping the road is not considered by Council officers to be a practical method of dealing with Old Port Levy Road. There are two statutory processes available to stop legal road. The first, under section 116 of the Public Works Act 1981, is essentially only available to be used where all parties adjoining the road provide written consent to such stopping. In the current circumstances, that it not thought that could be achieved. The second process, under the Local Government Act 1974, involves a full public consultation process, which would, if employed, be likely to give rise to objections. If the Council were to allow any of the objections received, the road could not be stopped. If the Council disallowed any of the objections received, the matter must then be referred to the Environment Court for final decision. Given the landowner and public interest in Old Port Levy Road, the Legal Services Unit is of the view that the Council would be required to use the Local Government Act procedure & that an attempt to stop the road using that procedure would be unlikely to be successful.

Gates Issue

26. This Council has no record of approval having been granted to the M A W Craw Family Trust, C J Craw, or any other person, to erect the five gates across Old Port Levy Road that currently exist. Council staff have also been unable to establish whether any approval was given by its predecessor Councils, which historically had jurisdiction over the area. Mr Craw has indicated that the gates were already in place when he acquired his property 25 years ago and appear to have been in place for over 53 years.
27. In the absence of any record relating to the gates, Council staff have therefore proceeded in their consideration of this issue on the assumption that some form of consent to erect that gates may have been given at some time in the past to a prior owner of the property. That form of consent could (if given) have taken the form of a consent under the relevant statutory provision applying at the time (currently section 344 of the Local Government Act 1974 or those provisions applying prior to the enactment of section 344 referred to in section 344(12)) or, perhaps more likely, a licence issued by the Council at the time as landowner. The Legal Services Unit is of the view that it is arguable that a licence to erect gates which stipulated very minimal and only occasional interruptions to the right of public access along the road could have been lawfully given.
28. The Legal Services Unit is of the view that if a new application was received under section 344 to erect new gates across Old Port Levy Road at those points where Gates 3, 4 and 5 are erected it could not be granted, but could be granted in respect of Gates 1 and 2. Section 344(1) has the effect of only allowing gates where "in the Council's opinion it is not practicable or reasonable to fence the road" or where it is necessary to fence an "outer boundary". Neither of these circumstances would apply to Gates 3, 4 and 5 (i.e. the road is fenced by these gates and none of these gates are on an "outer boundary"). This commentary would suggest that a previous Council probably proceeded by way of licence grant, rather than under the then applicable statutory power.
29. Even if the original approval to erect the gates was given by licence, and not under the statutory provisions applicable at the time, the Legal Services Unit is of the view that the current section 344(3) is not limited to approvals given under section 344(1,) or any prior applicable statutory provision, and that section 344(3) will have general application to all arrangements concerning gates erected across legal roads. It is therefore considered reasonable to apply Section 344(3) to the existing circumstances.
30. Section 344(3) provides that if the Council considers that a gate across a road is considered to be either "redundant" or to be an "inconvenience", the Council may serve notice on the person authorised to erect the gate of the Council's intention to remove it. The recipient of such a notice is given 14 days from the service of such notice within which to object in writing. Within 14 days of receiving such an objection the Council is required to hear the objector, if required, and consider the objection. The Council may then either dismiss the objection, decide not to proceed to remove the gate(s) or make such modifications to its proposal to remove the gate(s) as it thinks fit.

31. Notwithstanding any consent that may have historically been given to erect the gates across Old Port Levy Road, the use of Old Port Levy Road for the movement of stock is subject to the Christchurch City Council Stock Control Bylaw 2008. That bylaw applies to Old Port Levy Road, although not to the part which is “unfenced” (paragraph 6(7) of the bylaw), and requires that certain things must be done when moving stock on roads, including the placement of temporary signage on the road and on a vehicle moving ahead of or behind the stock and other matters.

Significance

32. The Council’s capital programme set out in the 2009-19 LTCCP provides for the renewal and replacement of roads. If a decision was made to adopt the staff recommendation, the cost of any work required in respect of the road to be formed by Mr West would be met from that provision. This is not expected to be for some years yet.
33. Because the formation of the road would be paid for by Mr West, the Council would not be incurring any capital expenditure if it adopted the staff recommendation.
34. Therefore it is open for the Council to decide that sufficient consideration has been given to the views of those people affected by or with an interest in the matter without undertaking further consultation. It is the view of the Legal Services Unit that the level of compliance with sections 77 (assessment of options) and 78 (community views) of the Local Government Act 2002, as referred to in this report, meets the Council’s obligations under that act.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

35. The Road Network Activity Management Plan states that the Council provides services to manage road use and to provide safe, easy and comfortable access to homes, shops, businesses and recreational and leisure destinations.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

36. As above.

ALIGNMENT WITH STRATEGIES

37. The Council has a strategic direction to provide a safe, sustainable, responsive, integrated, attractive and affordable transport network.
38. Council approval of the application to form Old Port Levy Road would be consistent with the Banks Peninsula District Council Roading Policy, which was adopted on 10 June 1998 and remains current. In particular paragraph 4.7 of that Policy provides:

“Council does not intend to construct any new roads although will not usually prevent developers or property owners constructing new roads. However if a developer or property owner wishes Council to take responsibility for the maintenance of the new roads, it must be constructed to Council’s specifications. Council will consider each request for a new road on a case by case basis”.

Do the recommendations align with the Council’s strategies?

39. See above.

CONSULTATION FULFILMENT

Road Formation Application

40. The Council is required by section 78 of the Local Government Act 2002 in the course of its decision-making in relation to a matter to give consideration to the views and preferences of

persons likely to be affected by, or have an interest, in the matter. Accordingly, the Legal Services Unit has advised that, given the local nature of Old Port Levy Road, that the persons who should be consulted are those landowners whose properties adjoin, or which are in the immediate vicinity of those parts of Old Port Levy Road proposed to be formed. In addition, the Port Levy Residents Association has also been consulted.

41. Accordingly, details of the applicant's road formation application were posted to the various affected landowners and the Port Levy Residents Association on 30 March 2010. Submitters were required to deliver their written submissions to the Council no later than 28 April 2010.
42. 62 written submissions have been received and a table providing a summary of the main points of each submission, with staff comments, is attached to this report as **Annexure C**. Full copies of each of the submissions received are attached to this report for the Council's consideration as **Annexure D**.
43. Of the 62 submissions received, one submission has been received in favour of the application, and 61 submissions have been received opposed to the application.
44. In addition, a petition signed by 111 signatures in the following form was presented to the 16 February 2010 meeting of the Lyttelton/Mount Herbert Community Board and to the 8 April 2010 meeting of the Council:

"Petition: Old Port Levy Paper Road.

The road should not be formed since –

1. *It is not needed for vehicular access – the applicant's are able to use their own private land.*
2. *The Council would have to pay –*
 - (a) *all ongoing maintenance costs;*
 - (b) *to maintain other paper roads that are formed unnecessarily".*

A copy of the petition is attached to this report as **Annexure E**.

45. It is further expected that a certain number of the submitters and the applicant may seek to make a deputation to the Council at the meeting at which it considers this report.

Gates Issue

46. Council staff have sought written submissions from the owners of the gates (Craws) and the complainant (West) on whether the gates should be considered to be "redundant" or an "inconvenience". Mr West's submissions on this issue are contained on pages 7 to 10 of his submission on the road application issue attached in **Appendix D**. The Craw submission on the gates issue is attached to this report as **Appendix G**.
47. If the Council was to decide to issue a notice of its intention to remove any of the gates, section 344 of the Local Government Act 1974 effectively provides for a further consultation process with the owner of the gates. Under that section, the person who erected the gates is required to be notified of the Council's intention to remove the gates in question. That person is then afforded a 14 day period by the end of which he or she may object to the Council's notice. The Council is then required to hear that objection before deciding the matter.

STAFF RECOMMENDATION

It is recommended that the Council resolves as follows:

- (a) That the Council, having considered the submissions received and deputations made to the Council (if any), approves the application made by Mr Richard West to form that part of Old Port Levy Road as is shown as area B on the plan attached to this report as Annexure A, subject to the following:
 - (i) The applicant paying all costs associated with the road formation; and

- (ii) The road formation works being completed in accordance with the Council's engineering and other requirements as determined by the Asset and Network Planning Manager; and
 - (iii) The applicant obtaining and complying with any regulatory consents required (if any).
- (b) In relation to the issue of the five gates erected across Old Port Levy Road and used by C J Craw and the M A W Craw Family Trust as shown on the plan attached to this report as **Annexure A**, having considered the submissions received and the depositions made to the Council (if any), that the Council considers that for the purposes of section 344(3) of the Local Government Act 1974 that the said gates are not redundant and do not constitute an inconvenience on the basis that the gates are managed on the following basis:
- (i) Gate 1 – is to be usually left open, but may, if stock are required to be retained in the lower paddock adjoining Gate 1 for inspection purposes, be closed (but not locked) periodically, but for no more than a total of 10 days in a calendar year and for no more than a single day at a time.
 - (ii) Gate 2 – is to be generally closed (but not locked at all times) to contain stock within the paddock to which it provides access.
 - (iii) Gates 3 & 4 – are to be usually left open, except if stock are required to be moved or controlled when they may be closed (but not locked) for no more than for up to two hours at a time and no more than once in each week.
 - (iv) Gate 5 – is to be usually left open, except if stock are required to be moved or controlled when it may be closed (but not locked) for no more than on one hour and no more than once in each calendar month.
 - (v) That the signage required by section 344(2) of the Local Government Act 1974 is immediately erected by the M A W Craw Family Trust and C J Craw.
 - (vi) That the requirements of the Christchurch City Council Stock Control Bylaw 2008, where applicable, be complied with at all times.
 - (vii) That the Council reserves its position to review these arrangements in the event that further complaints concerning the gates are received.
 - (viii) That, if any grant of a licence made or found to have been made by the Council, or its predecessors, to the M A W Craw Family Trust and C J Craw, or their predecessors, to erect the gates on Old Port Levy Road is found to be unlawful then that licence shall be deemed to be terminated without compensation and the gates will be immediately removed.
- (c) That an appropriate road sign be erected at the junction of Wharf Road and Old Port Levy Road identifying Old Port Levy Road as a public road.

BACKGROUND

Road Formation Application

48. In 2007 a building consent for an additional dwelling to be erected by Mr Richard West on his property at 869 Purau-Port Levy Road (Lot 2 on Deposited Plan 313725) was issued under the Building Act 2004. The Building Act is concerned with compliance with the Building Code, and legal road access to a building site, or lack of it, is not a relevant matter when a local authority considers a building consent application where there are no Resource Management Act issues arising. The total area of the property at 869 Purau-Port Levy Road is approximately 83.78 hectares and the property is zoned rural.
49. The West property at 869 Purau-Port Levy Road has two road frontages. There is an existing dwelling erected on another part of the West property, which is accessed to the south from another formed road, Purau - Port Levy Road. The second road frontage for the property is the unformed Old Port Levy Road to the north.
50. Mr West has applied to the Council for consent to extend the formation of Old Port Levy Road some 700 metres from where the existing formation ends to provide vehicular access to the new dwelling and the upper part of his farm. The applicant has indicated his willingness to be responsible for all the costs associated with the road formation works and to complete the works in compliance with the Council's engineering and other requirements.
51. A possible alternative access route exists through the West property to connect the new dwelling to Purau-Port Levy Road. However, this alternative access route would be extremely challenging from an engineering point of view to construct and would be prohibitively expensive to form. The terrain on that part of the West property takes the form of a very steep "V" shaped valley as shown on the photographs attached to this report in **Annexure H**. The access road following this route would also need to cross a small watercourse. Also, it is estimated that the length of the access way using the alternative route would be at least some 1700 to 1800 metres, which is over twice the length of the access way sought to be formed on Old Port Levy Road.
52. The unformed portion of Old Port Levy Road is considered by Council staff as suitable to be formed. It is expected that the unformed road will be formed to provide a 3.5 metre wide metal road with a 1.0 metre wide shoulder on both sides. Surface water run off will be contained in and dispersed by a typical roadside swale system. These requirements are typical of the standard requirements for rural roads.
53. Asset & Network Planning Unit staff have developed the following criteria which have been used to formulate the staff recommendation contained in this report:

Considerations for (in no particular order):

- (a) Old Port Levy Road, whilst unformed, is legal road which the public and neighbouring landowners (including the applicant) are entitled to use and access as of right.
- (b) Building Consent has been approved by the Council for the proposed dwelling planned to be built on the applicant's property adjacent to Old Port Levy Road. The Building Act is concerned with compliance with the Building Code, and access to a building site, or lack of it, is not a relevant matter when a local authority considers a building consent application.
- (c) The proposed dwelling is sited on land comprised in a fee-simple land title fronting Old Port Levy Road. Accordingly, the landowner is entitled to access Old Port Levy Road from all points of his property as a legal frontager.
- (d) Given that public access along Old Port Levy Road cannot be denied, and that it is being used by members of the public, it is considered necessary to ensure that the integrity of the road corridor is not compromised by its use as a road.

- (e) The applicant is prepared to form the road at his cost and to the Council's specifications in terms of road construction and mitigation of any additional storm-water run-off generated.
- (f) Given that any approval to form Old Port Levy Road would be given on the condition that the road formation works are completed to Council's standards, it is not expected that any maintenance work will be required for some years, and that given the limited public use of the road that any maintenance over the longer term will be minimal.
- (g) As discussed in paragraph 48 of this report, the alternative route running through the West's property would be challenging from an engineering point of view to construct and would be prohibitively expensive to form.
- (h) The physical conditions and the gradient of the land is such that they do not present any undue difficulties in forming the road to Council standards.
- (i) Council approval of the application to form the road would be consistent with the current Banks Peninsula District Council Roding Policy, paragraph 4.7 of which provides: *"Council does not intend to construct any new roads although will not usually prevent developers or property owners constructing new roads. However if a developer or property owner wishes Council to take responsibility for the maintenance of the new roads, it must be constructed to Council's specifications. Council will consider each request for a new road on a case by case basis"*.
- (j) Initial advice from Environment Canterbury is that a resource consent for the road formation is unlikely to be required.

Considerations against (in no particular order):

- (a) The formation of the road in essence provides access for a single property only.
 - (b) The proposal to form the unformed road may have negative impacts on the neighbouring landowners.
 - (c) The Council would be committed to future additional maintenance costs should the road be formed, however these costs are likely to be minimal as any maintenance would be of a very low level and should not be required for some time providing construction is undertaken to appropriate standards stipulated by Council.
54. It is estimated that there are 2000 km of unformed roads within the City boundaries. These roads were created to provide road frontages for sections historically.

Gates Issue

55. Mr West's submissions on this issue are contained on pages 7 to 10 of his submission attached in **Annexure D**. The Craw submission on the gates issue is attached to this report as **Annexure G**.
56. Essentially, in their submission the Craws have detailed their use and management of the gates as follows:
- (a) Gate 1 - is to be usually open, but may, if stock are required to be retained in the lower paddock adjoining Gate 1 for inspection purposes, be closed (but not locked) periodically, but for no more than a total of six days in a calendar year and for no more than a single day at a time.
 - (b) Gate 2 - is to generally closed (but not locked at all times) to contain stock within the paddock to which it provides access.
 - (c) Gates 3 & 4 - are usually left open, except if stock are required to be moved or controlled when those gates may be closed (but not locked) for no more than for up to two hours at a time and no more than once in each week.

- (d) Gate 5 – is usually left open, except if stock are required to be moved or controlled when it may be closed (but not locked) for no more than one hour and no more than once in each calendar month.
57. In his submission, Mr West submits that the cumulative effect of the five gates erected along a length of approximately 1200 metres is inconvenient. He states that he believes that “the number and positioning of gates can be rationalised to suit all stakeholders”. He further states that “some of the gates can be considered to be redundant as they do not contain stock within the boundaries of a field, but serve as a method to control stock on the public road.”
 58. Mr West details an alternative proposal for resolution of the gates issue on pages 9 and 10 of his submission contained in Annexure D. Specifically, he proposes the following:
 - (a) Gates 1 & 2 – to be relocated into a new fence line to be constructed by him on the northern side of the road as shown on Attachment 4 to his submission. New gates to be erected as shown on that plan. All work to be completed at his expense.
 - (b) Gates 2, 3, 4 & 5 – these gates to remain in place, but to remain open at all times except where required to be closed for the “immediate and direct management of stock” but with the proviso that no more than 2 gates may be shut at any one time.
 59. At the meeting between the Crows and the Wests facilitated by staff held at the Civic Offices on 26 March 2010, the parties discussed at length the possibility of an agreed solution as to the gates issue. The proposal contained in Mr West’s submission is not dissimilar to the arrangements that were discussed at the 26 March 2010 meeting and subsequently. Unfortunately, the parties were unable to agree on a solution to be presented to the Council for approval.
 60. In the absence of agreement between the parties, and a complaint by Mr West, section 344 of the Local Government Act 1974 requires the Council to consider whether the gates are “redundant” or constitute an “inconvenience”.
 61. The recommendation of staff is, given the current management of the gates detailed in paragraph 56 of this report, that the existing gates do not, in all of the circumstances, constitute an inconvenience to either Mr West, or the general public, nor are they redundant. In the circumstances of a narrow partially formed shingle country road, Council staff do not consider that the presence of one gate which, will generally be closed but unlocked, and the presence of four others that may be closed at very limited times and for very limited periods to facilitate stock movements, do not constitute an inconvenience to an extent that would warrant the issuing by the Council of a notice to remove the gates. Council staff are also of the view that the gates are not redundant, as they are required for the movement and control of stock.
 62. Alternatively, if the Council was minded to refer the matter back to the Wests and the Crows to explore the alternative proposal made by Mr West, it would need to delay determining whether the existing gates constitute an inconvenience or are redundant under section 344.
 63. In the circumstances of Council staff having no delegated authority to determine matters under section 344 of the Local Government Act 1974, it is necessary to refer this issue to the Council for decision.

THE OPTIONS – ROAD FORMATION APPLICATION

Option 1

64. Grant the road formation application.

Option 2

65. Decline the road formation application.

PREFERRED OPTION – ROAD FORMATION APPLICATION

Option 1

66. Grant the road formation application.

ASSESSMENT OF OPTIONS – ROAD FORMATION APPLICATION

The Preferred Option

67. Option 1 – Grant the road formation application.

	Benefits (current and future)	Costs (current and future)
Social	Improved access to the applicant's proposed new dwelling house and the higher parts of his farm property. Improved access for the public along Old Port Levy Road. Improved access for neighbouring farmers to their farms	Potential negative impacts on neighbouring landowners and their farming operations.
Cultural	N/A	N/A
Environmental	Nil	Road formation will generate additional storm-water run off, which will be mitigated by requiring the road to be formed to Council standards and compliance with any consents required (if any).
Economic	Improved access to the applicant's proposed new dwelling and the higher parts of his farm property. Improved access for neighbouring farmers to their farms.	Nil to the Council in terms of construction cost, as this would be funded by the applicant. Future maintenance costs will arise, however these costs are likely to be minimal as any maintenance would be of a very low level and should not be required for some time providing construction is undertaken to appropriate standards stipulated by Council. Potential negative impacts on neighbouring landowners.
<p>Extent to which community outcomes are achieved: Unformed roads provide an important role in providing access to remote rural areas to support - a city for recreation, fun and creativity -a city of people who value and protect the natural environment</p> <p>Impact on the Council's capacity and responsibilities: Future maintenance costs will arise, however these costs are likely to be minimal as any maintenance would be of a very low level and should not be required for some time providing construction is undertaken to appropriate standards stipulated by Council.</p> <p>Effects on Maori: Nil.</p> <p>Consistency with existing Council policies: Consistent with the current Banks Peninsula District Council Rooding Policy, paragraph 4.7 of which provides: <i>"Council does not intend to construct any new roads although will not usually prevent developers or property owners constructing new roads. However if developer or property owner wishes Council to take responsibility for the maintenance of the new roads, it must be constructed to Council's specifications. Council will consider each request for a new road on a case by case basis".</i></p> <p>Views and preferences of persons affected or likely to have an interest: A summary table of the submissions received is attached as Annexure C. Copies of the written submissions received in are attached to this report for the Council's consideration as Annexure D. A copy of the petition received by the Council is attached to this report as Annexure E.</p> <p>Other relevant matters: Nil.</p>		

Other Option

68. Option 2 – Decline the road formation application

	Benefits (current and future)	Costs (current and future)
Social	Potential negative impacts on neighbouring landowners would be avoided.	Improved access to the applicant's proposed new dwelling house and the higher parts of his farm property would not be achieved. Improved access for the public along Old Port Levy Road would not be achieved. Improved access to neighbouring farms would not be achieved.
Cultural	N/A	N/A
Environmental	Additional storm-water run-off resulting from the road formation would not arise.	Nil – status quo would be maintained.
Economic	The imposition of future maintenance costs on the Council would be avoided. The potential negative impacts on neighbouring landowners would be avoided.	Improved access to the applicant's proposed new dwelling house and the higher parts of his farm property would not be achieved. Improved access to neighbouring farms would not be achieved.
<p>Extent to which community outcomes are achieved: Unformed roads provide an important role in providing access to remote rural areas to support – a city for recreation, fun and creativity – a city of people who value and protect the natural environment</p> <p>Impact on the Council's capacity and responsibilities: Nil. The Status quo would remain.</p> <p>Effects on Maori: Nil.</p> <p>Consistency with existing Council policies: Potential inconsistency with the current Banks Peninsula District Council Roading Policy, paragraph 4.7 of which provides: <i>"Council does not intend to construct any new roads although will not usually prevent developers or property owners constructing new roads. However if developer or property owner wishes Council to take responsibility for the maintenance of the new roads, it must be constructed to Council's specifications. Council will consider each request for a new road on a case by case basis"</i>.</p> <p>Views and preferences of persons affected or likely to have an interest: A summary table of the submissions received is attached as Annexure C. Copies of the written submissions received in are attached to this report for the Council's consideration as Annexure D. A copy of the petition received by the Council is attached to this report as Annexure E.</p> <p>Other relevant matters: Nil.</p>		

THE OPTIONS – GATES ISSUE

Option 1

69. Resolve that the gates, or some of them, constitute either an "inconvenience" or are "redundant" in terms of section 344(3) of the Local Government Act 1974, and to issue a notice of the Council's intention to remove the gates.

Option 2

70. Decline to resolve that the gates constitute an "inconvenience" or are "redundant" in terms of section 344(3) of the Local Government Act 1974 and decline to issue a notice of the Council's intention to remove the gates.

PREFERRED OPTION – GATES ISSUE

Option 2

71. Decline to resolve that the gates constitute an “inconvenience” or are “redundant” in terms of section 344(3) of the Local Government Act 1974 and decline to issue a notice of the Council’s intention to remove the gates.

ASSESSMENT OF OPTIONS – GATES ISSUE

The Preferred Option

72. Decline to resolve that the gates constitute an “inconvenience” or are “redundant” in terms of section 344(3) of the Local Government Act 1974 and decline to issue a notice of the Council’s intention to remove the gates.

	Benefits (current and future)	Costs (current and future)
Social	There will be no negative impact on the Crows as the status quo would essentially be maintained	Potential negative impacts on the Wests
Cultural	N/A	N/A
Environmental	Nil – as the status quo will remain	Nil – as the status quo will remain
Economic	No disruption to the operation of the Crow farm.	Possible negative economic impacts on the Wests, although if terms of the recommended Council resolution are complied with by the Crows, these impacts should be minimal.
<p>Extent to which community outcomes are achieved:</p> <p>Not applicable</p> <p>Impact on the Council's capacity and responsibilities:</p> <p>Nil</p> <p>Effects on Maori:</p> <p>Nil.</p> <p>Consistency with existing Council policies:</p> <p>No existing applicable policies.</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>Mr West’s submissions on this issue are contained on pages 7 to 10 of his submission attached in Annexure D. The Crow submission on the gates issue is attached to this report as Annexure G.</p> <p>Other relevant matters:</p> <p>Nil.</p>		

Other Option

73. Resolve that the gates, or some of them, constitute either an “inconvenience” or are “redundant” in terms of section 344(3) of the Local Government Act 1974, and to issue a notice of the Council's intention to remove the gates.

	Benefits (current and future)	Costs (current and future)
Social	Potential positive impacts on the Wests in terms of ease of access to the higher parts of their farm and their proposed new dwelling. Possible public benefits in terms of unrestricted access along Old Port Levy Road.	Potential negative impacts on the Crows. Potential increased public use of Old Port Levy Road.
Cultural	N/A	N/A
Environmental	Removal of gates will provide improvement in so far as obstructions could be removed & possibly result in less use of the road for the movement of stock.	Nil
Economic	Improved access along Old Port Levy Road for the Wests and members of the public, although impediment occasioned by the gates, if managed correctly, is minimal. Possible improved access for the Crows to the higher parts of their farm.	Potential negative impacts on the operation of the Crow farm as a result of the reduction in their ability to manage their stock.
<p>Extent to which community outcomes are achieved:</p> <p>Not applicable</p> <p>Impact on the Council's capacity and responsibilities:</p> <p>Such a resolution would require the Council to issue a notice under section 344 of the Local Government Act 1974 and undertake a hearings and decision making process an objection was received.</p> <p>Effects on Maori:</p> <p>Nil.</p> <p>Consistency with existing Council policies:</p> <p>No existing applicable policies</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>Mr West's submissions on this issue are contained on pages 7 to 10 of his submission attached in Annexure D. The Crow submission on the gates issue is attached to this report as Annexure G.</p> <p>Other relevant matters:</p> <p>Nil.</p>		