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Report to Rural Services and Wairarapa Committee
from Kevin Worsley, Senior Biosecurity Officer (Plants)

Default Work – Cost Recovery

1. Purpose

To advise the Committee of possible complications following the recent issuing of a Notice of Direction under Section 122 of the Biosecurity Act to ensure actions are taken in accordance with the Regional Pest Plant Management Strategy.

2. Background

Where an occupier has failed to clear a Total Control Pest plant infestation following a request in writing to do so, a Notice of Direction is issued. Such a Notice generally requires the work to be completed within 28 days. Some exceptional circumstances may arise where this deadline is extended.

If the control is not completed to a satisfactory level, the occupier/owner is then advised that a contractor will carry out the work under Section 128 at his/her cost. The occupier/owner is then invoiced. Failure to pay within a reasonable period results in all costs, including contractor charges, legal fees and administration costs, being placed as a Statutory Land Charge against the title of the property under Section 129 of the Act.

3. A Complex Example

In late May this year staff located large infestations of Old Mans Beard and Cathedral Bells on a steep vacant property in the suburb of Northland in Wellington City. A title search was completed and the owners were requested in writing to clear the infestations before the 30 August 2000. The standard offer of advice, assistance with costing the work, and arranging contractors was also included in the request. As other adjacent properties had complied with requests to complete similar work, officers were under an obligation to ensure consistency throughout this area.

Following no contact from the owners the site was inspected in September and it was noted that no clearance work had taken place. Another search at the Titles Office revealed that one of the two owners was now bankrupt, placing in doubt whether costs would be recovered should a Section 128 Notice proceed. A legal opinion indicated that if the work was carried out and resulted in a statutory land charge, this charge would take precedence over other incumbencies, even in a bankruptcy situation. The legal opinion also advised serving a Direction on the non-bankrupt part owner and the Official Assignee. A Notice of Direction was served on the Official Assignee and the other owner, who now lives in the UK, on the 12 October 2000. This Notice expires on 30 November 2000.

4. Current Situation

The Official Assignee has advised there is no money to comply with the Notice. He suggested WRC complete the work, then attempt cost recovery through a Statutory Land Charge. However he indicated that there is difficulty in disposing of the property as there are building restrictions owing to the presence of a fault line on the property. A competent contractor has quoted a cost of \$4,715.00 to clear the infestations.

As the clearance of a statutory land charge is dependent on the sale or subdivision of the land involved, there could be a considerable wait before cost recovery occurs in this situation. All costs are recovered including interest, upon eventual sale. However, the steepness of the site and the presence of a fault line may make a sale very difficult.

5. Communications

No particular communication initiatives are necessary for this matter.

6. Recommendation

- (1) *That the Committee notes this unusual situation.*
- (2) *That the Committee support the clearance of the infestations following expiry of the Notice of Direction, and support the placement of a Statutory Land Charge under Section 129 of the Biosecurity Act 1993.*

Report prepared by:

Approved for submission by:



Kevin Worsley
Senior Biosecurity Officer (Plants)

Wayne O'Donnell
Manager, Biosecurity