



Report PE 07.123
Date 12 March 2007
File WO/02/20/03

Committee Rural Services and Wairarapa
Author Ian Gunn, Senior Policy Advisor

Mr Barton – Issues involving Greater Wellington

1. Purpose

To advise the Committee of the outcome of the recent Environment Court decision over the Scadden stopbank upgrade and to update the Committee on all other matters involving Mr Barton.

2. Significance of the decision

The matters for decision in this report do not trigger the significance policy of the Council or otherwise trigger section 76(3)(b) of the Local Government Act 2002.

3. Exclusion of the public

Ground for exclusion of the public under section 48(1) of the Local Government Official Information and Meetings Act 1987 are:

Release of paragraph 6 of the report would disadvantage the Council in its potential negotiations with John Barton as it would reveal the Council's views on the matter. The Council has not been able to identify a public interest favouring disclosure of this particular information in public proceedings of the meeting that would override this prejudice.

Release of this information would prejudice his privacy by disclosing details of John Barton's dispute with Greater Wellington. Greater Wellington has not been able to identify a public interest favouring disclosure of this particular information in public proceedings of the meeting that would override his privacy.

4. Background

Mr Barton farms the property called Ongaha situated south of Martinborough on the western bank of the Ruamahanga River. He operates both a dairy unit and sheep/beef on the higher land. The property is flanked by a stopbank, part of the Lower Wairarapa Valley Development Scheme (LWVDS) on his eastern boundary. The Whakawiriwiri Stream flows south across his land at the western most edge of his area of flood plain.

Over the years there have been a number of issues with Mr Barton involving resource consents and the management of the LWVDS. Most recently Mr Barton appealed the granting of a retrospective resource consent to our River Management section to shift a 300m section of stopbank inland at Scadden's. Mr Barton lost the appeal and Greater Wellington has applied for costs through the Court (refer **Attachment 1**).

5. Issues

Attachment 2 to the report lists the areas which involve Mr Barton.

The recent Environment Court decisions have by no means solved all matters involving Mr Barton and Council.

6. Discussion

Negotiations with Mr Barton have proved to be time consuming and non-productive over a number of years. He appears to be driven to achieve his own ends with limited room for compromise, and with most issues ending up before the Environment or High Courts.

Mr Barton has now lodged an appeal with the High Court over the Environment Courts decision regarding the Scadden stopbank upgrade appeal. In part this further appeal appears to have been triggered by the officers' decision that Greater Wellington should apply for costs following the Environment Court decisions.

Mr Barton has however made overtures with Council's solicitors and Divisional Manager, Geoff Dick that perhaps it is time to sit down and see if a number of matters can be resolved outside the Courts'.

From Greater Wellington's perspective there are a number of issues that it would be good to resolve. These include:

- Settlement of rating arrears
- Final settlement of access to Mr Barton's dairy unit via the unformed public road to the riverside of the Scadden stopbank.
- Agreement on programmed LWVDS upgrade work that includes the proposed setback of a section of vulnerable stopbank on his property
- Agreement on the location of the proposed designation on the stopbanks within his property
- Agreement on how to proceed with the Whakawiriwiri Drain upgrade.

From Mr Barton's perspective he is expecting that the Council would:

- Stop the cost application resulting from the recent Court decision on the Scadden stopbank upgrade appeal.

- Compensate him for:
 - (a) costs incurred by him to date
 - (b) penalties charged by Fonterra
 - (c) farm inefficiencies (loss of property rights because the legal road adjacent to the Scadden stopbank is no longer a viable access point)

His basic position is that the Council should have stated at the outset that it was not going to allow access under s.176 (refer paragraphs 14 and 15 of W81/2003). Officers believe that Greater Wellington has no liabilities regarding the compensation claims. However we will be seeking advice from Council's legal advisors.

Both Council and Mr Barton clearly have outstanding issues that need to be resolved. Settlement outside the Courts is clearly the preferred approach however past negotiations involving both staff and Councillors with Mr Barton have been singularly unsuccessful.

Mr Barton has however opened the door for a fresh round of discussions with Geoff Dick and this will be pursued to see which matters may be able to be progressed.

7. Communication

This is a private and confidential matter.

8. Recommendations

That the Committee:


1. *Receives the report*
2. *Notes the content of the report.*

Report prepared by:



Ian Gunn
Senior Policy Advisor

Report approved by:



Geoff Dick
Divisional Manager, Catchment Management

- Attachment 1** - Scadden stopbank appeal decision
Attachment 2 - Summary of issues with Mr Barton including their status.