

**BEFORE THE INDEPENDENT HEARINGS PANEL APPOINTED BY THE
WESTERN BAY OF PLENTY DISTRICT COUNCIL**

UNDER The Resource Management Act 1991

IN THE MATTER of a Notice of Requirement by Western Bay of Plenty
District Council for Active Reserve, Ōmokoroa

**STATEMENT OF EVIDENCE OF ANNELIE BADENHORST ON BEHALF OF
WESTERN BAY OF PLENTY DISTRICT COUNCIL (AS REQUIRING
AUTHORITY) - ACQUISITION STRATEGY**

28 AUGUST 2023

CooneyLeesMorgan

ANZ Centre
Level 3, 247 Cameron Road
PO Box 143
TAURANGA 3140
Tel: (07) 578 2099
Partner: Mary Hill
Lawyers: Kate Stubbing / Jemma
Hollis
kstubbing@clmlaw.co.nz
jhollis@clmlaw.co.nz

INTRODUCTION

1. My name is Annelie Badenhorst
2. I am employed by Western Bay of Plenty District Council (**Council**) as a Legal Officer. As part of this position, I have been involved with progressing the land acquisition for the Active Reserve subject of the Notice of Requirement (**NOR**). This work has included liaising with affected landowners and being involved in the development of a land acquisition strategy.
3. I have experience in providing Council with advice which is legal / strategic in nature, including for acquisition and disposal of property when required for a public work, particularly through the Public Works Act 1981 (PWA) mechanism.
4. I confirm I have reviewed the s42A report considering the NOR, dated 9 August 2023.
5. Although I am giving evidence as an employee of Council, to the extent that my evidence involves the provision of any opinion of an expert nature, I have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2023 and I agree to comply with it. I confirm that the issues addressed in this statement of evidence are within my area of expertise, except where I state I am relying on the specified evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from my expressed opinion.

Scope of evidence

6. My evidence addresses the land acquisition process of Council under the PWA. As described in the 42A report, this is a separate process from the establishment of a designation under the Resource Management Act 1991 NOR process, and therefore is provided for context rather than being a directly relevant consideration for the hearing panel considering the NOR.
7. In this evidence I will address:
 - 7.1 Council's land acquisition process and strategy;

- 7.2 The process undertaken to date, including development of the acquisition strategy;
- 7.3 Council's plan for moving forward with the acquisition process, including timelines.

Initial engagement

8. Council first engaged with the landowners of 7 Prole Road, 468 Ōmokoroa Road, and 474 Ōmokoroa Road to discuss potential land acquisition in March 2023. The purpose of those initial discussions was to explore the potential for landowners to engage in the land acquisition process with Council, in light of the proposed Active Reserve designation affecting their properties.
9. During March 2023, Council was already in contact with the landowners of 454 Ōmokoroa Road regarding another project, and through these discussions explored the potential to acquire their land for Active Reserve purposes.

Acquisition Strategy

10. Following the initial round of discussions, Council considered that the development of a robust land acquisition strategy was required before proceeding with any further landowner engagement.
11. In late May and June 2023 Council sent emails to the landowners of 7 Prole Road, 454 Ōmokoroa Road, 468 Ōmokoroa Road, and 474 Ōmokoroa Road outlining Council's proposed approach to finalise our planning and strategy for land acquisition before proceeding with discussions further. The email noted that a comprehensive approach was needed due to the number of properties to be acquired, and that funding/budgeting also needed to be approved for any acquisition, with a commitment to be in touch once the acquisition strategy had been finalised. Annexed marked "**A**" is a copy of one of the emails. Substantially similar emails were sent to the above listed landowners.
12. Council's considerations when developing the acquisition strategy for 7 Prole Road, 454 Ōmokoroa Road, 468 Ōmokoroa Road, 474 Ōmokoroa Road, and 476 Ōmokoroa Road (the **Properties**), were that:

- (a) Acquisition of the land would need to occur in time for the development of the Active Reserve as well as align with Council's funding;
 - (b) Council's holding costs of the land would need to be minimised where possible;
 - (c) The concerns and objections of affected landowners needed to be proactively managed through engagement;
 - (d) Council's legislative obligations under the Resource Management Act 1991, Local Government Act 2002 and PWA need to be met.
13. Following development of the acquisition strategy the Legal Property Team developed a process forward, being that:
- (a) The Properties be purchased under the PWA in a proactive manner, two to three years prior to the development of the Active Reserve commencing;
 - (b) If earlier purchases are contemplated, it would be beneficial to Council if lease-back arrangements could be agreed with the landowners. This would enable the land and improvements to be managed in the current land use, providing Council with a revenue stream to reduce holding costs. Rent charged under the owner lease-back arrangements would reasonably be negotiated at below market to provide an incentive for the landowners to stay and manage the property.
14. Circumstances under which a particular property could be expected to be purchased sooner included where:
- (a) The landowner is willing to sell early;
 - (b) Council could be deemed to have a legal obligation to purchase the property under section 185 of the RMA, which considers the existence of the designation and its contribution to the inability to sell the property and the

extent to which the designation prevents reasonable use of the owner's interest in the land;

- (c) The property is being offered for sale on the open market.
15. At the time of preparing this evidence Council has not yet resolved deadlines for the development of the Active Reserve. It is not expected to commence until approximately 2031. The 2021/31 Long Term Plan allocated budget for the acquisition of the required land during 2024-2026. As part of the 2022/23 Annual Plan development, Council resolved to set a \$24 million budget for the land acquisition, including legal, valuation and legalisation fees.
 16. An analysis was completed for each property to establish ownership, registered interests, unregistered interests (where known) and any other matter pertinent to the proposed acquisition. High level compensation estimates were assessed based on the desktop market valuations, lease and financial information at hand. A spreadsheet was compiled setting out high level acquisition cost estimates, and for each property a breakdown of holding costs were calculated.
 17. Each of the Properties have been considered in light of the potential purchase price offset and associated risks to further inform the capacity for Council to purchase the Properties as soon as funding is available and as early as 2024.¹
 18. The property market in Ōmokoroa has cooled significantly recently, especially in terms of residential development and there is evidence of declining values. On the face of it this means that the required land currently presents good value from a cost acquisition perspective. However, this positive is tempered by the long holding period before Council intends to develop the active reserve, the likely low returns from the land during the holding period and the associated cost of debt funding and opportunity cost of same to Council and ratepayers. Estimated forecast property price inflation is of insufficient magnitude to indicate that early purchase is financially worthwhile for these properties at the present values.

¹ This timeline is premised on Plan Change 92 and the Active Reserve designation being approved and in effect.

19. The acquisition strategy has been developed on a property-by-property basis. Factors considered include:
- (a) Market considerations, including trends and sales evidence;
 - (b) Property specific characteristics, including known landowner position in regard to the NOR;
 - (c) Council acquisition budget and timings; and
 - (d) The Active Reserve development timings.

Council's acquisition strategy going forward

20. To align the timing of the development with holding costs, it is likely that purchasing of Properties will not commence until 2026. However, Council is committed to proactively progressing land acquisition options with landowners in the meantime. This may include Council acquiring the land in the short term. If this is required, a lease-back at market rates until Council is ready to develop the land should form part of the transactions.
21. Council communicated these timeframes to the landowners of the Properties in an email on 18 August 2023, advising that Council has concluded that the land will be actively acquired between 2026 and 2028. The email also advised that earlier acquisition ahead of the 2026 - 2028 timeline will be considered, which may include a lease-back option, subject a successful PC 92 implementation and Active Reserve Designation. Annexed marked "B" is a copy of one of the emails. Substantially similar emails were sent to all landowners.
22. As at the date of this statement of evidence, Council has not had a response from any landowners to the email.

Annelie Badenhorst

25 August 2023

Archived: Friday, 25 August 2023 5:44:13 AM

From: [Annelie Badenhorst](#)

Sent: Mon, 29 May 2023 20:58:12

To: [REDACTED]

Subject: [REDACTED]

Sensitivity: Normal

"A"

Hi [REDACTED]

Thank you for making the time to meet [REDACTED].

Before Council proceeds any further, we need to finalise our planning and strategy for the land we need to acquire, nothing there are a number of properties Council needs to acquire. The funding/budgeting for the acquisitions also needs to be approved. Council is working through these issues as quickly as we can, but until this planning is finalised, it is too early for us to be entering into negotiations to acquire your land.

We will come back to you once we are in a position to progress the purchase with you.

Thank you.

Annelie Badenhorst
Legal Property Officer

Āpoha Ture Whenua



E Annelie.Badenhorst@westembay.govt.nz

P 027 248 7728 | FP 0800 926 732

1484 Cameron Road, Greerton, Tauranga 3112

westembay.govt.nz | [Facebook](#) | [Instagram](#) | [LinkedIn](#)

Archived: Friday, 25 August 2023 5:56:04 AM

From: [Annelie Badenhorst](#)

Sent: Fri, 18 Aug 2023 00:11:03

To: [REDACTED]

Subject: Notice of requirement - Active Reserve - Plan Change 92

Sensitivity: Normal

"B"

Good Afternoon [REDACTED]

As you are aware Council is currently undertaking the Plan Change 92 process and designation of reserve land, which affects your property.

As such Council has been finalising our planning and strategy for the land acquisitions.

Council has concluded that since development of the land is not immediately required, Council intends to formally commence the acquisition process of your land between 2026 and 2028. Council will make contact once we are ready to actively acquire the land.

Council will, however, consider any other proposal you may have ahead of the 2026 to 2028 timeline, which may include an earlier acquisition and lease-back option, subject to a successful Plan Change 92 implementation and Active Reserve Designation.

Please let us know if you would like to arrange a meeting to discuss in more detail.

We look forward to hearing from you.

Thank you.

Annelie Badenhorst
Legal Property Officer

Âpiha Ture Whenua



**Western
Bay of Plenty**
District Council

For our
people

E Annelie.Badenhorst@westernbay.govt.nz

P 027 248 7728 | FP 0800 926 732

1484 Cameron Road, Greerton, Tauranga 3112

westernbay.govt.nz | [Facebook](#) | [Instagram](#) | [LinkedIn](#)