

**Definitions:**

**Steering Group:** means The **Ngakahu Steering Group** formally created by Council resolution; consists of elected members.

**Ngakahu Trust :** refers to the **Ngakahu/Ngakohu Whanau Ahuwhenua Trust**. Trustees are appointed by Maori Land Count, MLC, and deemed to be owners of the Whenua by the courts.

**Trustees** means appointed trustees on **Ngakahu/Ngakohu Whanau Ahuwhenua Trust**

**Present:** cr Babe Kapa, cr Hilda Halkyard-Harawira, Cr Mate Radich, Cr John Vujcich, cr Steve McNally (arrived late), Council employee Tanya Proctor

**Ngakahu Trust:** Laiha Mann, Desley Austen (Deputy Chair), Des Mahoney (Secretary), Tania Morunga (Trustee), and Alexandra Baker (Trustee)

**Meeting started at 6:30 pm with Karakia by Babe Kapa**

**Apologies:** Mayor Moko Tepania, trustees Casino Hadfield, Prairie Fletcher

Mate started off with general welcome and comments and referred us to the 8 items for discussion. These items formed the agenda.

They were:

- Progress to date - Lowering of the dam.
- Business case for decommissioning costs into LTP
- Contractors for decommissioning
- Cancellation of the ford agreement
- Ongoing access to the whenua
- Ongoing maintenance as a fair share for access until FNDC exits the whenua
- MLC application
- Any other business

Des gave a bit of history and raised concerns that the Dam and other 3 waters assets may already have been transferred to the proposed 3 waters.

Des asked us about the Council resolution 24 February 2022 and why are "Council staff ignoring the resolution". In that resolution, item C, staff were to assist the then Steering Group and not take control or make decisions regarding the dam. The trusts asks us to honour the council resolution of 24 February 2022 in its entirety.

We couldn't give an answer except that the resolution still stands.

### **Recommendation to Council**

- 1) The Ngakahu Steering Committee formally requests a list of all 3-waters assets that have been identified for transfer to another entity.**

**Moved:** Babe Seconded John Vujcich

**Reasoning:** Any Council Kaitia 3 water Council asset that has been transferred into another entity or designated to be transferred to another entity may need to involve another party when planning the decommissioning of the Ngakahu Dam and may impact on the resolution of Council to decommission the Ngakahu Dam.

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### **Progress to date & Lowering of the Dam**

Tanya gave an update of progress to date, mentioning her and Guy's visit to the Whenua on 2 November 2023 and the opening of the valve to lower the dam. Des also gave an update on the visit by the CEO on Thursday and that the siphon valve located near the pump station was opened and the Dam level was now being lowered. Des also sends regular photos to the Council showing the progress of the lowering.

Des also advised us that the dam will cost no more than between \$1.25 million and \$2 million, "provided it's not hijacked by consultants", to decommission.

It was stated that no resolution to lower the dam level was needed as the lowering of the Dam was a previous recommendation by the steering committee, **clause b**, of the steering committee to Council meeting on 24<sup>th</sup> February 2022 which was accepted and passed by Council at the same meeting. See appendix 1

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### **Business case for decommissioning costs into LTP**

The steering committee agreed that the current LTP must include costs for the business case and plans for the decommissioning of the dam. Without such funding Council simply would not be serious about decommissioning the dam.

No resolution was proposed but the third resolution, **clause c**, of the steering committee outlines the work needed for the business case. At the time \$100K was allocated for work towards decommissioning of the dam and it is expected that those funds, or additional funds, would be allocated in the LTP given that the dam decommissioning is a long-standing resolution of Council.

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### **Contractors for Decommissioning**

There was a discussion around contractor. The Ngakahu Trustees are very wary of council appointed contractors working on the Whenua that results in costs to the trustees. A case in point is the original ford, constructed by council, which quickly failed. This was contributed to by the trustees. Another example is slip repairs to the approach roads. With both examples they were fixed by the Trust, with contributions from council.

It was also noted the Ngakahu Trust have notified us of their preferred contractors. See comments below from Des.

Des stated that Ngakahu Trust contractors were agreed by everyone at the 18<sup>th</sup> January 2022 onsite meeting, that John Duder would be the dam specialist supported by Steve Little and Steve Smith. There is no agreement for Vision Consulting to be involved.

Bellingham Quarries were agreed to be the main contractor for the construction of the sediment ponds and decommissioning work'

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### **Discussion on the Ford Agreement**

The ford agreement is causing concern for the trustees as they believe they are being held responsible for total repairs costs should it ever fail again. John Vujcich stated the ford repair agreement was only ever intended to be a repair agreement covering the repair to the original ford that failed at the first major rain event of the season. This ford was designed by Council and constructed by Council appointed contractors. The "full and final" costs stated in the repair agreement was only intended to be the full and final costs of council's contribution to the ford repair. It was never intended to be for any future maintenance or repairs to the Ford caused by unforeseen events. There is in fact agreement that costs for repairs of shared access be split 50 50.

The offending words are in clause 3<sup>1</sup>, which talks about claims from "future repairs" and the "use thereof".

It is stated that the Ford Repair agreement grants access to the Dam and Pump station. This is not stated, and to assume reference to costs associated with the "use thereof" of the ford as granting access to the dam or pump station is spurious and fanciful.

Please see the attached Ford Repair Agreement.

### **Recommendation to Council**

- 2) The Ngakahu Steering Committee recommends that the Ford Repair Agreement be cancelled.**

**Moved: John Vujcich Seconded Babe Kapa Passed Unanimously**

**Reasoning:** Council's current right-of-way road lies outside of the legal right-of-way meaning that council does not have an accessible right-of-way currently even if they had access to cross the ford. Having access over the ford only does not give Council access to the dam or the pump station. So therefore, cancelling the agreement does not change anything. What it does do is release the trust from the liability of being fully responsible for repairs should the ford crossing be damaged by some future event. Since the ford has been repaired it has experienced several major flooding events with no damage to the ford. The only effect was from silt and debris built up around the pipes requiring minor clearing work. It is generally accepted in law the shared accessway costs be split 50 50 and

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<sup>1</sup> See Appendix 1 Prior Steering Group Resolution and, subsequent to this meeting, Des emailed us 12<sup>th</sup> Nov stating the Ngakahu Trust position on the ford repair.

we were told there is an agreement that this would be the case between Council and the Ngakahu Trust<sup>2</sup> The steering committee fails to see how dropping the Repair Agreement introduces any new significant material risk.

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### **Ongoing Access to the Whenua and fair share of ongoing maintenance**

When discussions came to requiring access to the Whenua discussions became very difficult. This is a very sensitive issue as the trust position is that the License to Transverse the whenua has been cancelled. Please see the attached pdf document showing the original licence to transfer.

Council had in place a license to traverse outside of Council right-of-way that covered all parts of the road that were outside of the legal right-of-way. The Ngakahu Trust position is that Council breached clause 7 and after a suitable time to comply in 2021 it was cancelled.<sup>3</sup>

Note the Ngakahu Trust had supplied costing for maintenance that was done including the quote for the work from contractors. Council refused to respond, the Ngakahu Trust after the deadline passed proceeded to formally cancel the transverse agreement.

The steering group recognises that the traverse agreement has been cancelled and there was a **commitment that the Ngakahu Steering Group would work directly with the trustees on a case by case basis when access is required.**

The trust also stated that Larmer Road is an access that the Council can use, but Larmer Road is not drivable because of two slips and a washout on the road that Council has not repaired yet. Des told us that council had received funding from the emergency repair funding to fix this road.

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### **MLC Application**

Des informs us there is only one application before the court, and that is the cancellation of the Ford Crossing Agreement dated 22 September 2016.. Dropping the ford access agreement would mean court action is unnecessary. Note the trust has incurred legal costs in preparing for the court action.

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### **Other Business**

The trustees are tired of the ongoing issues and statements they have noted as being incorrect. These comments came up all through the evening in various ways and this is why I've included a summary of the discussions. The steering group have concluded the following recommendations can help in better dialogue and progress.

### **Recommendation**

- 3) That the steering group and trustees will commit to openly working together in good faith and that no further actions will be taken by Council staff unless agreed jointly**

**Moved Hilda Halkyard-Harawira Seconded Mate Radich Passed Unanimously**

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<sup>2</sup> Subsequent to this meeting Des emailed us on the 12<sup>th</sup> November an attachment of court minutes stating a 50/50 share for maintenance was agreed. Refer to the email.

<sup>3</sup> See the email stating the trust position sent to us on the 12<sup>th</sup> November titled **Cancellation of the licence to traverse agreement dated 15 October 2019**

**(Note: The steering group would talk directly with the CEO Guy Holroyd and Tanya Proctor only and no staff would engage directly with the trust when setting direction and actions that would impact governance of the whenua)**

**Recommendation**

- 4) That all works on the decommissioning of the Dam that haven't been agreed to by the Steering Group and the Ngakahu Trust shall cease. This includes any engagement of consultant and contractors.**

**Moved Des Mahoney Second Alexander Baker Passed Unanimously**

Reasoning: There seems to be work planned and consultants engaged without the knowledge of the steering committee and/or the Ngakahu Trust trustees. This is causing the trustees a lot of stress, hindering progress and adding to mistrust. It also seems to be causing the spread of misunderstandings and conflicts. The above recommendation would help in building trust with the new Council.

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**Meeting closed with Karakia by Babe Kapa**

## Appendix 1 Prior Steering Group Resolution

### **RESOLUTION 2022/12**

Moved: Cr Mate Radich

Seconded: Cr John Vujcich

**That Council, in receiving the recommendations from the Ngakahu Steering Group and subject to discussion and agreement with the Ngakahu/Ngakohu Whanau Ahuwhenua Trust, agree to;**

- a) obtain the processed and analysed data from the Northland Regional Council sonar soundings of the dam, done in 2017.**
- b) stage the lowering of the dam water level, beginning with a water level drop of 2 metres, once lowered the water level will be maintained at the lower levels.**
- c) staff assist the Ngakahu Steering Group to prepare a report showing a visual presentation, including landscaping, of the preferred option, or options, with a rough order of cost to implement.**
- d) and that further recommendations be brought to the 7 April Council meeting.**

In Favour: Mayor John Carter, Crs Dave Collard, Felicity Foy, Mate Radich, Kelly Stratford, Moko Tepania and John Vujcich

Against: Crs David Clendon and Rachel Smith

### **CARRIED**

Note: The Potential Decommissioning of Kauri Creek Dam report from John Duder referenced in the report was commissioned by the Ngakahu/Ngakohu Whanau Ahuwhenua Trust.