

7.2	Legal Opinion on Credit Liability to Franz Josef Joint Committee Rating District Ratepayers and Rock Stockpile Management
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Public Excluded	No

Report Purpose

This report provides the Franz Josef Joint Committee Rating District (FJJCRD) with legal advice obtained from Jonathan Salter at Simpson Grierson regarding the obligation to credit a liability to the Franz Josef Rating District ratepayers. Additionally, it presents information on the management and proposed repurposing of a rock stockpile located in Franz Josef.

Report Summary

1. A legal opinion has been sought in relation to a historical consultation in 2020 concerning the merger of the Lower Waiho and Franz Josef Rating Districts and the proposed crediting of the Franz Josef Rating District's prudent reserve balance to its ratepayers.
2. Jonathan Salter's legal opinion indicates that the former Franz Josef District ratepayers have a legitimate expectation of receiving a refund, calculated based on the relative capital value of their properties.
3. Further legal advice was requested to assess the risks of not proceeding with the refund and to explore potential risk management strategies.
4. The report also includes a proposal concerning the management of a rock stockpile in Franz Josef, with options for its use in ongoing flood protection works.
5. The FJJCRD is requested to consider both the legal and practical implications outlined in this report and make decisions on the proposed actions.

Recommendations

It is recommended that the Committee resolve to:

1. Receive the report.
2. Note the legal opinion provided by Jonathan Salter from Simpson Grierson.
3. Recommend that the West Coast Regional Council pay the refund of rating district reserves held at the time of the merger and note the risks outlined in the legal advice associated with NOT proceeding with this course of action.
4. Review and decide on the options provided for the repurposing of the Franz Josef rock stockpile.
5. Submit the chosen option regarding the rock stockpile to the West Coast Regional Council for approval.

Issues and Discussion

Background

In 2020, the West Coast Regional Council merged the Lower Waiho and Franz Josef Rating Districts to fulfil the co-funding requirements of a Crown Infrastructure Projects grant for flood protection improvements at Franz Josef. As part of this process, the Council proposed crediting the balance of the Franz Josef Rating District's prudent reserve to its ratepayers. A letter sent to ratepayers in September 2020 outlined this proposal, stating a refund amount based on the capital value of their properties.

The consultation, however, did not explicitly invite feedback on this refund proposal. Despite this, the 2021 Annual Report's audit opinion referenced the refund as a liability to be paid in 2022. The current balance of this liability stands at \$414,000, but it has yet to be disbursed.

Separately, there is a rock stockpile in Franz Josef, originally an asset of the Franz Josef Rating District before its merger with the Lower Waiho District. The September 2020 letter to ratepayers also proposed that this rock be sold to the Franz Josef Flood Protection Scheme Project (Stage 1) with the funds from the sale distributed to Franz Josef Rating District members. The sale and reimbursement of rating district members has not yet occurred. This stockpile, tonnes, is now considered for repurposing in ongoing flood protection projects.

Current situation

Legal Opinion on Refund Liability:

Jonathan Salter's preliminary legal opinion affirms that former Franz Josef District ratepayers have a legitimate expectation of receiving the proposed refund. This expectation is grounded in the 2020 consultation materials and the subsequent Council actions. The legal opinion cautions that failing to proceed with the refund could expose the Council to legal risks, as ratepayers may seek to enforce their legitimate expectations.

A copy of the full legal opinion is included as attachment 1.

Rock Stockpile Management:

The Franz Josef rock stockpile is understood to consist of two separate stockpiles totalling approximately 5,300 tonnes of rock, with the possibility that a 1,000-tonne stockpile previously noted in past Council records may have been used and is no longer existent. The stockpile was originally part of the Franz Josef Rating District assets before being used and replaced by the New Zealand Transport Agency (NZTA) for an urgent repair.

The repurposing of the existing rock stockpile is proposed to support the deepening of the Havill wall stopbank toe-rock, which is part of the Franz Josef Flood Protection Scheme Project (Stage 1) currently underway.

Options Analysis

Refund Liability:

- **Proceed with the Refund:** This option aligns with the legitimate expectations of the ratepayers and mitigates legal risks.
- **Revisit the Proposal:** This option involves engaging in further consultation or considering alternative uses for the funds. However, it carries significant legal risks as it may be perceived as a breach of the original consultation commitments.

Rock Stockpile:

1. Use the rock to upgrade the Havill wall stopbank toe-rock at no cost, thereby reducing the overall project cost.
2. Provide the rock to the project at the current market rate, replenishing the FJCRD reserve funds accordingly.
3. Provide the rock to the project at the current market rate and reimburse the beneficiaries of the former Franz Josef Rating District as per the consultation document dated 11 September 2020.

Costs and Benefits

Refund Liability:

- **Proceeding with the Refund:** The primary cost is the disbursement of the \$414,000 liability. The benefit is the elimination of legal risks and the fulfilment of ratepayer expectations.
- **Not Proceeding:** This could potentially save the \$414,000 but at the cost of legal challenges and reputational damage.

Rock Stockpile:

- **Option 1:** Minimises project costs but does not replenish reserves.
- **Option 2:** Replenishes reserves, supporting future district needs.
- **Option 3:** Consistent with the proposal to refund former ratepayers as set out in the consultation document dated 11 September 2020 .

Considerations

Implications/Risks

Not proceeding with the refund presents a high legal risk, as the ratepayers' legitimate expectations could be enforced through legal action. Additionally, there may be reputational risks associated with not fulfilling commitments made during the 2020 consultation.

The rock stockpile management decision has implications for both the financial health of the FJCRD and the fulfilment of commitments to former ratepayers.

Significance and Engagement Policy Assessment

There are no issues within this report which trigger matters in this policy.

Tangata whenua views

The views of tangata whenua have not been sought in the preparation of this paper. However, Te Rūnanga o Makaawhio are represented on the Joint Committee and have the opportunity to make their views known at the Joint Committee meeting.

Views of affected parties

Ratepayers within the former Franz Josef District are likely to be significantly affected by any decision regarding the refund. Their views, as inferred from the 2020 consultation, support the refund proposal.

Financial implications

Current budget

The liability of \$414,000 has been recognized in the Council's financial statements. The liability of \$414,000 has been recognized in the Council's financial statements.

Future implications

Disbursing the refund will reduce the Council's cash reserves but fulfil the commitment made during the 2020 consultation. The choice of how to manage the rock stockpile will impact future reserve levels and potentially the financial contributions required from ratepayers.

Legal implications

The legal opinion highlights the enforceability of ratepayer expectations and advises that the Council could face legal action if the refund is not provided as proposed. The Committee should carefully consider these legal risks before making any decision. The decision regarding the rock stockpile also needs to consider potential legal obligations to former ratepayers.

Attachments

Attachment 1: Legal Opinion by Jonathan Salter, Simpson Grierson