

# MICHAEL SMITH

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20-2-2021

**Re :- In the matter of the Opotiki District Council considering the transfer of ownership of properties in six locations in the East Cape area to Te Whanau a Apanui, as part of Treaty of Waitangi settlement negotiations.**

**My submission is in reference to Lot 66 and Lot 80 at Whanarua Bay.**

I own Lot 2 -1/8461 State highway 35. This piece of land has an existing house on the property on the beachfront of Whanarua Bay.  
This land is 'Fee Simple' and is part of a subdivision formed in the 1960's.

When the subdivision was formed, a road to the properties was legally put in place to give reasonable vehicle access to our property boundary.(part of subdivision requirement). That road was originally via the Whanarua stream. Reserves were also formed as was mandatory and proper for subdivisions at that time, as it is now.

At some point in time, after first forming the subdivision, access to the beachfront properties was blocked by the installation of a gate by members of the neighbouring hapu. The council offered the subdivision no alternate reasonable road access at that time.

I believe the Council failed in their duty to retain road access to the land properties that formed the subdivision.

In order to continue to access and enjoy their properties, the landowners of the subdivision took it upon themselves to form a road up through Lot 66, as a practical means of gaining immediate road access, whilst the failure of the Councils actions were an ongoing legal dispute.

The access road through Lot 66 has never been acknowledged by the Council, so all maintenance of this access road has been paid by the Subdivision Land owners. This non-recognition of the access road through lot 66, by Council, meant that the subdivision was still legally land locked.

The Council finally acknowledged that this access road existed, and said they would consider giving an easement over the road access in favour of the land owners of the subdivision. That was around 18 years ago, and yet no such easement has ever been given.

Even though the subdivision was illegally land locked by the failings of the Council, the Subdivision owners believed that the Council would issue an easement over the access road through lot 66, and allowed time to pass. The subdivision land owners now realize their mistake in trusting a Council to give them a legal road access to their properties.

This time lapse does not remove the Council's responsibility in failing to give the correct legal reasonable vehicle access road to their property, as per the rules of a subdivision.

If the Council were to agree that Te Arawhiti could hand Lot 66 over to Te Whanau a Apanui, as part of a Treaty settlement, without first giving the easement over the access road through lot 66, so recognizing the road as a legal road access to the subdivision, then the Council would be acting with the knowledge that they may 'land lock' the subdivision permanently, with no alternative solution to correct their duty of care. That move will mean that the Council have failed in their duty of care to the landowners of the subdivision. The vehicle access road to 'Fee Simple' titles that form a subdivision, are, in law, to remain in perpetuity. Any Council that changes that, is liable for their actions.

This stand off has gone on too long. The Council need to recognize the current vehicle road access through lot 66 as a legal access and issue an easement to ratify its legal status.

It is my submission that Lot 66 cannot be considered for transfer until such time as an appropriate easement has been put in place for the benefit of the owners of beachfront properties as well as the Wirepa Family Trust, as owners of Lot 75.

In regards to lot 80:-

Whilst the Council retain Lot 80 as a reserve, the full use of the beach is expected to continue as it has for many many years. The Beach front owners respect the beach and the preserving of its natural beauty, and my observations suggest any damage that may occur is most likely caused by the public at large. The beachfront owners help in repairing any damage, and or removing of human made rubbish, so helping to retain its pristine condition.

I am very concerned that Te Whanau a Apanui may Restrict/deny access over Lot 80, stopping access to the beach shore line for :-

- a) recreational purposes for pedestrian traffic to enjoy the shoreline.
- b) vehicle access to launch boats for water craft pleasure and fishing.

To look at a beach and be denied access across Lot 80, would destroy peoples enjoyment of Whanarua Bay.

I am very concerned that, if Lot 80 is handed to Iwi or to hapu there may be restrictions placed on crossing over Lot 80 to enjoy the sea shore as we have up until now.

My submission is that Council should retain the reserve to maintain the use of the beach for ALL people.

Michael Smith

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**Opotiki District Council**  
STRONG COMMUNITY STRONG FUTURE

## Statement of Proposal Joint Request – Te Arawhiti and Te Whānau a Apanui

Opotiki District Council has received a Joint Request from Te Arawhiti: the Office for Māori Crown Relations (Te Arawhiti) and Te Whānau a Apanui. The Joint Request is in relation to the transfer of ownership of properties in six locations in the district from Council to Te Whānau a Apanui, as part of Treaty of Waitangi settlement negotiations.

Council is carrying out public consultation about the Joint Request, in order to gather and consider the views of persons interested in the matter and for the Council to fully consider the advantages and disadvantages of accepting the Joint Request, to inform its final decision.

Your views can be provided to Council by any of the following methods:

- writing to Council at PO Box 44, Opotiki 3162
- Emailing [info@odc.govt.nz](mailto:info@odc.govt.nz)
- completing an online submission at [www.odc.govt.nz](http://www.odc.govt.nz)
- completing a hardcopy submission form, which are available at the Council's offices at 108 St John Street, Opotiki.

**Consultation opens 9.00am Thursday 4 February and closes 4.00pm Thursday 4 March 2021.**

All submissions will be made available to the Council and they will take them into consideration when making decisions.

Aileen Lawrie

**Chief Executive**

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