

Submission to Opotiki District Council on the Statement of Proposal concerning the Te Arawhitu and Te Whanau a Apanui joint request for Whanarua Bay Reserves.

As joint owner of Lot 1 on the Whanarua Bay beachfront, I am primarily concerned to maintain vehicle access through the reserve, Lot 66.

I understand that historically some errors have been made resulting in the current situation that the only vehicle access to the 14 baches in the bay is by a road formed through the reserve without Council consent. This happened because at the time of the subdivision proper legal access was not secured down the Whanarua stream. In addition lot 75, the common access strip for all the properties, was inadvertently returned to the WiRepa family. Subsequently, the properties have been granted an easement over lot 75.

With the proposal to return lot 66 to Iwi as a treaty settlement there is a questionmark over whether the new owners would grant an easement so that the bachowners had secure access. In 2002 an easement was granted to the bach owners over lot 75 which is owned by the WiRepas.

I believe that the best outcome for the most people would be retaining the status quo, that is vehicle access through lot 75 for everyone – the general public, all upper Whanarua Bay residents and the lower bay bachowners. This situation has worked for more than 30 years, with the road maintained by the group most incentivised to keep it in top condition – the lower bach owners. This arrangement has stood the test of time. Even though access over the privately owned lot 75 is legally only for the bach owners, the general public has never been prevented from having vehicle access too. I see no reason why either the Council or the Iwi could not in the interests of community harmony, continue this situation.

To me the complicating factor is the urupa/wahi tapu on lot 80. Like many others I am very concerned that the exact extent of this area has not been defined. This needed to happen before submissions were called for as we can't comment on something this imprecise. If the urupa extends beyond lot 80 then it would be onto lot 75, not lot 66. At the time that the easement was granted over lot 75, mention was made by the WiRepa's of the urupa encroaching on lot 75, but no mention of lot 66. The court order granting the lot 75 easement was made in spite of this and the easement rights of the lower bach holders can not be taken away. If through all this a urupa on lot 66 was never mentioned then it cannot seriously be used as an argument now for not granting an easement over lot 66. Also, if travel over lot 75 has been allowed for the general public, who don't have a legal right, then the owners are not serious about protecting any section of the urupa on lot 75 either.

I would suggest that the reason for this is the impracticality of putting a gate at the bottom of lot 66 where it meets lot 75, and the inability of the lot 75 owners to put a gate at the top of lot 66, because they don't own it, the council does. In short either no one uses the road through lot 66 and it is removed or everyone uses it unrestricted. I'm sure that the WiRepa's don't want the former because they and their friends want the convenience of vehicular access to the beach through a free road.

Restricting vehicle access to the beach, after it has been available for so long, sends a really bad message to the community - that in redressing any historical wrongs by a treaty settlement, the council has favoured one group of ratepayers over another. The whole Whanarua situation has the potential to inflame race relations nationwide. It is not a good look when a treaty settlement removes the access rights to 14 pakeha- owned dwellings which have no other feasible road access, but allows continued beach access to Maori, access to whose houses is on the main road and thus not dependent on going through the reserve at all.

If the Council were to give away ownership of the reserve lot 66, without first granting an easement to the 14 bachowners, the whole consultation process would have been a fraud from the start. First, the glossy cover of the 2020 reserve management plan was of Whanarua Bay, a reserve we believe the Council were already considering giving away in a treaty settlement. Second, the management plan for Whanarua Bay attracted far more submissions than any other reserve, but submitters who mentioned their concerns about gaining legal access were repeatedly told (21 times in the first 16 pages of the meeting report) that the Council was developing an 'easements on reserves policy' and no progress could be made until April when that was expected to be ready. If the treaty claim is settled before this happens, it would show bad faith on the Council's part. Third, I believe that an easement has recently been granted over a reserve in Waihau Bay to enable legal use of the boat ramp. If this is so, then the Council had no need of an 'easement policy', it looks as though it was granted because fishermen at Waihau have much more sway over the council than a few residents at Whanarua Bay.

Fundamentally I do not mind who owns lot 66, as long as we have an easement over it allowing vehicle traffic. Our experience with access over the privately owned lot 75 has been positive, so I can't see why it couldn't be the same with an iwi-owned reserve, with a similar easement. Of course the Council who have an obligation to all ratepayers differs from the Iwi who have an obligation to members of that Iwi (which we are not), therefore without an easement on the reserve at the time of handover we would be disadvantaged in any negotiations for secure access after the handover.

I imagine that the reluctance of the Council to grant us an easement could be based on 1. A consequent onus to contribute to maintaining it as it is able to be used by all ratepayers. 2. A health and safety responsibility because the road is not up to council standard. The granting of an easement at the same time as a transfer to the Iwi would absolve the council from these responsibilities, with the Iwi, being more like a private owner, would not be bound by, if the required notification was installed at the entrance.

I believe that legally the bach owners have a stronger case for an easement than residents in the upper part of Whanarua Bay. But in the interests of community harmony, I feel that it is important to give secure access to everyone. Whanarua Bay has a racially diverse community and given the right decisions by Council, it could become an example of genuine kiwi unity; but with divisive decisions made, the chance for that will be lost for a long time.

Finally there is the issue of custom and practice: The Council has, for at least 30 years, turned a blind eye to the use of an illegal road, just as the WiRepa's have not stopped the public from coming over their private land. Moreover, in not contributing to maintenance of the road, which is used by tourists, the Council has taken advantage of a road, built by us, to bring money into the region. The tourist guidebook "Opotiki to Gisborne", calls Whanarua Bay "Arguably the prettiest bay" on the coast. It also mentions that parking is limited. Although it is suggested that people walk down, it is clear that driving down is OK too. This is underlined by the Council notice at the top of the road limiting vehicle weight, which also suggests that they approve of driving down if you only have a passenger car. As well the Council has agreed on several occasions to proceed with granting an easement, only to prevaricate when it came to the last step.

Everyone has got used to the current system for the road in lot 66. The Bay is a gem of the region and any curtailing of chances to enjoy it will lead to ill-feeling.

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