

# SUBMISSION

To: Ōpōtiki District Council

From: Mark Stringfellow

Date: 18 March 2021

## Statement of Proposal – Whanarua Bay Recreation Reserves

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### INTRODUCTION

1. The ODC *must* address legal vehicular access for the Whanarua beachfront properties. Whatever decision you make about the Crown-Te Whānau a Apanui proposal, the access issue must be addressed now. The issue has been unresolved since the late 1950s. Beachfront lot owners need, and do not yet have, the legal right to drive a car to their properties from SH35. The issue cannot be delayed any more.
2. The most obvious and reasonable thing to do is to ensure an easement is put on lot 66 giving that legal right to beachfront lot owners. You can do this.
3. It is clear the Crown expects the ODC to address this issue and find a solution. Minister Andrew Little has said as much. Because the easement does not yet exist, the Crown is most unlikely to grant one. This is why the ODC must address the issue of access.

4. You need to give yourselves the time to reach the right decision. So much is at stake. So many people stand to be affected.
5. You are not bound to accept or reject the proposal put to you. You can explore options beyond those proposed. There are options for a win-win solution.
6. I remain absolutely committed to exploring options with any of the relevant parties, including councillors and council staff. I am able to do so on behalf of the beachfront owners.
7. I make this submission, however, as an individual who lives year round at Whanarua Bay. Beachfront owners feel so strongly about this issue they have made their own individual submissions. We have also instructed our lawyer to make a submission to focus on some of our key common concerns.
8. In this submission:
  - 8.1. I explain the situation that beachfront lot owners find themselves in;
  - 8.2. I set out some broad comments on the proposal;
  - 8.3. I set out my specific comments on the proposal; and
  - 8.4. I encourage Councillors to work towards a win-win solution.

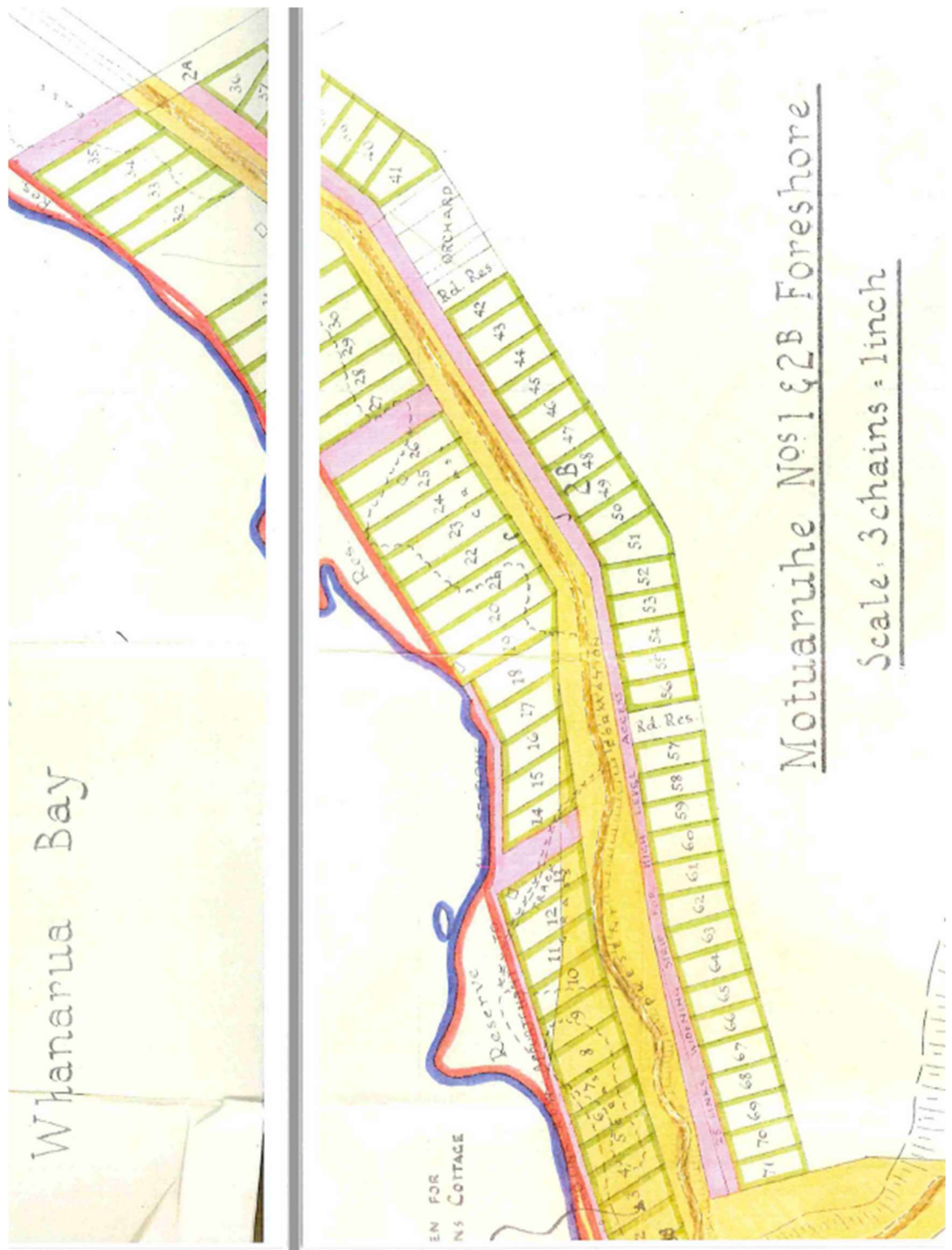
## THE SITUATION OF BEACHFRONT LOT OWNERS

### *Origins of the Whanarua subdivision 1950s*

9. In the 1950s Mr Romio Wi Repa sought to subdivide about 25 acres within part of the Motuaruhe No. 2B Block. In 1956 the Māori Land Court approved his application that the land vest in the Maori Trustee to enable its survey and subdivision of the land into residential seaside sections.
10. I **attach** a full version of the plan that was attached to the 1956 order. This was the first plan for the subdivision. A section of the plan is this:<sup>1</sup>

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<sup>1</sup> I obtained this plan from the Māori Land Court. It is an exhibit to the Māori Land Court's decision of 12 August 2002 (Minute Book 79 Opotiki 189). It was also attached to the Māori Land Court's original order of 18 March 1956 (33 OPO 359-360) approving Mr Wi Repa's application. Unfortunately, the plan provided to me does not include the western side of the proposed subdivision, including the Whanarua Stream. I have asked the Court to find this side of the plan.

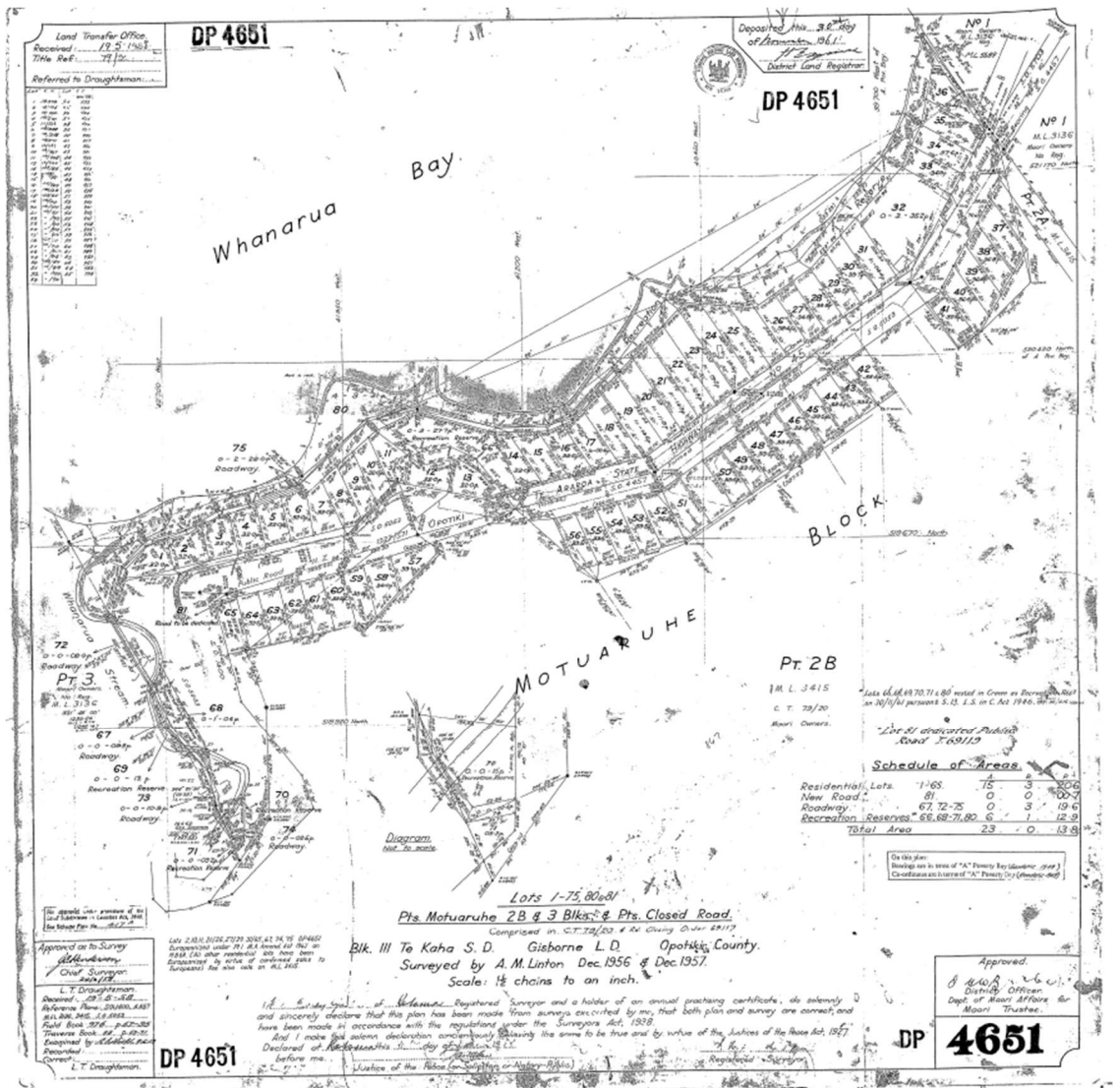


11. The plan showed:
  - 11.1. the various lots that would be offered for sale;
  - 11.2. certain areas (in pink) where there would be access from the existing state highway into the bay; and
  - 11.3. certain reserves (in red) along the seashore.

12. The original plan showed access along the front of the seaside sections including through what later became lot 66. You can see that what became lot 66 was originally shown in pink and was not originally intended to be a reserve.
13. The subdivision had to comply with the (now repealed) Land Subdivision in Counties Act 1946. That Act required the following for any subdivision:
  - 13.1. Reserves had to be set aside along the seashore and the banks of any rivers or streams (s 11);
  - 13.2. Reserves had to be set aside for public purposes (s 12);
  - 13.3. Before any lots could be sold or offered for sale a scheme plan had to be approved (s 3(2));
  - 13.4. The scheme plan had to show where the proposed lots, reserves, and roads would be (s 3(3));
  - 13.5. The scheme plan had to be provided to the relevant local authority for comment before it was approved (s 3(4)); and
  - 13.6. The owner was required to form and completely construct to the satisfaction of the controlling authority all proposed roads shown on the scheme plan (s 9(3)).
14. The Chief Surveyor completed many of these subdivision formalities that these days are now performed by territorial authorities. The local authority (then the Ōpōtiki County Council) was to provide comments to the Chief Surveyor of the Lands and Survey Department, Gisborne.
15. In 1956-1958 a formal and detailed survey was completed and a scheme plan (DP4651) prepared. I **attach** a full copy of that plan.<sup>2</sup> (It is best viewed in full on an A3 sheet of paper). The plan looked like this:

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<sup>2</sup> The plan is attached to the current record of title for the Whanarua Recreation Reserves (lots 66, 68-71).



16. The plan set out:

- residential lots, being lots 1-65;
- a "roadway", being lots 67, 72-75; and
- recreation reserves, being lots 66, 68-71 and 80.

17. The roadway (lots 67, 72-75) would connect SH 35 to the residential lots 1-19 via the Whanarua Stream, which it crossed a number of times.

18. There was, however, a problem with this proposed roadway that was not appreciated at the time. Romio Wi Repa owned the land on the eastern side of the Whanarua Stream. He did not own lots 72 and 73 on the land on the western side where part of the proposed road was to go. This land was part of the Motuaruhe No 3 Block and was owned (in part) by the Parks whānau.

**Problems arise with the roadway lots – 1960s-1970s**

19. **1961:** The Minister of Māori Affairs approved the scheme plan.

20. **1962:** The sale of lots commenced in 1962. Purchasers bought lots on the basis of the 1958 survey plan showing how they would gain access to their lots via the proposed roadway, which followed the existing track already used for access and which criss-crossed the Whanarua Stream.
21. **1965:** In 1965 an application was made to the Maori Land Court to have the “unsold” residential lots vested in Mr Wi Repa. This is when another mistake occurred. Instead of just the unsold residential lots being vested in Mr Wi Repa, the Māori Land Court also vested the recreational reserves (lots 66, 68-71 and 80) as well as lots that were to form the roadway (lots 67, 74 and 75) on the eastern side of the Whanarua Stream.
22. **1966:** Issues then arose with the width of the proposed roadway over the Whanarua Stream. The Opotiki County Council directed an investigation to be carried out at a meeting held on 12 July 1966. The then County Clerk’s report dated 22 July 1966 records that the Council was not prepared to accept responsibility for the access to the beach because of its dimensions.
23. While the mistake was clearly recognised at that stage, it appears nothing was done to remedy the matter.
24. **1970:** In 1970 the recreation reserve lots (66, 68-71, 80), which had been mistakenly vested in Romio Wi Repa in 1965, were collected into a separate title (CT3C/615) in the name of the Ōpōtiki County Council. This corrected part of the mistake. The access lots (lots 67, 74 and 75), however, remained with Romio and clear title to the lots on the western side of the stream (lots 72 and 73) remained unresolved.
25. To summarise at this point:
  - 25.1. the law required the subdivision to have a number of reserves and roadways clearly shown in a scheme plan before any lots could be offered for sale;
  - 25.2. owners purchased beachfront lots on the clear understanding there was guaranteed legal access by a roadway to be formalised over an existing track that criss-crossed the Whanarua Stream;
  - 25.3. there was not, however, clear title to the proposed roadway as it crossed on to the western side of the stream (lots 72 and 73);
  - 25.4. the other roadway lots (67, 74, 75) and the reserves (lots 66, 68-71, 80) were mistakenly vested in Romio Wi Repa as his private property;
  - 25.5. the reserves were later properly set aside as reserves under the Reserves Act; but
  - 25.6. the roadway was never formed to the satisfaction of the Ōpōtiki County Council; and

25.7. the roadway lots (67, 74, 75) remained in private ownership.

26. Vehicular access to the Bay via the Whanarua Stream continued for some time. But in the 1970s things came to a head. The adjoining landowners (of the Motuaruhe No 3 Block) demanded money from beachfront property owners. Access was shut off. It was then that the beachfront property owners constructed a road through Lot 66 (the recreation reserve). That access was subsequently tar-sealed and remains in use to this day, more than 40 years later.

***Access is cut off – ODC decides to provide an easement over lot 66 – 2000-2007***

27. For its part the former County Council and now the Ōpōtiki District Council have been aware of the access problems since the 1960s and the owners of the beachfront properties have looked to those Councils to resolve the issue.
28. Since the 1960s a number of attempts were made to deal with the lot 75 roadway situation through applications to the Māori Land Court. A procedure started by the Council under the Public Works Act to try and deal with the matter was abandoned. The Council also made an application for an order laying out a Māori roadway which was dismissed by the Māori Land Court because it had no jurisdiction to make such an order.
29. Perhaps 20 years ago, the ODC installed a sign (since painted over) at the top of the accessway over lot 66 where it meets SH35. The sign signalled that roadway users may proceed “at your own risk”. I note that the wording suggested that vehicles of less than 5,000 kg could use the access way – and it linked this to the use of a reserve which is a public asset. It implied that ODC did have responsibility for the access-way as it was imposing a rule about the form of access across the reserve.



30. In 2000 Mayor Don Riesterer of the ODC wrote to the Prime Minister seeking central government funding to rectify the mistake of the vesting of the roadway lots, including lot 75, in Mr Wi Repa.<sup>3</sup> The ODC then was seeking to have lot 75 set

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<sup>3</sup> Letter of 1 December 2000 of Mayor D J Riesterer to the Prime Minister; ODC's reference C5/2.

aside as a roadway. The Mayor acknowledged the mistake removed practical access to beachfront lots:

*“After sufficient sections had been sold the Trustee returned the balance of Lots to Mr Wirepa and in error also included Lot 75, which was the road to the subdivision. The effect of this error was to remove legal access to the recreation reserves and practical access to many of the already sold residential lots.”*

31. In the summer of 2001/02 extended members of the Wi Repa whanau and Kahurautao hapū erected a fence between the seaward side of the Lot 75 access way and the Lot 80 beachfront reserve thereby blocking off boating access to the sea.
32. In 2002 the ODC acknowledged the situation beachfront lot owners were in and the reliance they had in access via lot 66. In March 2002 Chief Executive P J Guerin stated:

*“It has long been accepted by Council that there is a need for some property owners to use the track through recreation reserve (Lot 66) to obtain access to their properties. These properties have legal access from State Highway 35 but this is impractical and therefore their only practical access is through Lot 66.”*

*“Council appreciates this is as a result of a Maori Trustee mistake in the 1950’s.”*
33. On 25 June 2002 the ODC moved to get easements over Lot 66 underway when it resolved:

*“... that Council work towards establishing appropriate access easements across Lot 66 to be in favour of the Whanarua Bay property owners, the Maori owners and the Council.”*
34. An easement was not, however, progressed or placed on the title to lot 66.
35. Also in 2002 the Whanarua beachfront property owners initiated High Court action to recognise and properly legalise their access over lot 75. This action was subsequently transitioned through the Māori Land Court.
36. In August 2002, the Māori Land Court recognised the 1965 vesting of the roadway lots in Mr Wi Repa was a mistake. Our lawyer submitted, and the Court accepted, that the subdivision could not have proceeded, and nor would many of the residential lots have been sold, without some guaranteed legal access.<sup>4</sup>
37. The Court noted that the beachfront lot owners now accessed their properties via lots 66 and 75. The Court found that the beachfront owners had legal rights of way

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<sup>4</sup> See Māori Land Court Minute Book 79 Opotiki 189: “That subdivision could not have proceeded and nor would many of the residential lots have been sold without some guaranteed legal access. I agree that it was important to take this into account ...”



over lot 75. The decision was clearly premised on lot owners having legal and effective access over lot 66.

38. In November 2006 Vaughan Payne, ODC's Chief Executive Officer stated:  
*"... we consider that the continued use of the access in this way, contributes to a favourable resolution of the access issue."*
39. An easement was not, however, placed on lot 66.
40. In 2007 negotiations followed the Māori Land Court's decision. In March 2007 legal (right of way) access over lot 75 was finally achieved when the Māori Land Court memorialised the appropriate rights of way against beachfront titles. This solution is absolutely dependant on beach front owners having access over lot 66.
41. In 2012 the ODC resolved, by way of its 2012 Coastal Reserves Plan, that future development of the reserves includes:  
*"Options to formalise access rights over lot 66 for 'lower' Whanarua Bay house owners will be explored by Council and; implemented where practicable."*
42. An easement over lot 66, however, was not implemented.

#### ***Negotiations for an easement over lot 66 – 2018-2019***

43. In 2018, representatives of the 15 beachfront properties (finally) met first with Mike Houghton (ODC Reserves Manager) and subsequently with Michael Homan (ODC Property Group Manager). Over a 3 month period in 2019 we were able to progress options towards a draft easement document that would provide for:
  - 43.1. Access over Lot 66 in favour of the 15 beachfront property owners and the owners of Lot 75.
  - 43.2. The ability for beachfront owners to carry out surface titivation maintenance using hand operated machinery, without the need for approval from ODC.
  - 43.3. No requirement for Council to fund maintenance or repairs.
  - 43.4. A clause that allows beachfront owners to request financial assistance from Council but no requirement for ODC to agree.
  - 43.5. Beachfront owners to manage their own liability but not be liable for public or others.
  - 43.6. A requirement that repairs requiring heavy machinery would require ODC approval – to give ODC the opportunity to consult with others if appropriate.
44. This nearly-negotiated easement document has not been finalised.

#### ***Exploring options with the Crown (Te Arawhiti) 2019-2020***

45. Meanwhile, in about 2018 or early 2019 beachfront owners became aware of the possibility that title to the Whanarua Bay Recreation Reserve might be transferred

to Te Whānau a Apanui through a Treaty settlement. We raised our concerns directly with Crown officials.

46. In May 2019 we met with Crown officials and openly explained that we were in discussions with the ODC over an easement for lot 66.

47. After that meeting, Crown officials met with the ODC and asked the ODC not to progress the easement over lot 66.

48. In August 2019 the ODC advised us it would not progress an easement over lot 66 to allow recent discussions with Te Whānau a Apanui to continue.

49. We were, unstandably, incensed!

50. In September 2019 we wrote to the Mayor and the Minister expressing that frustration.

51. By then, the Crown had reached (in June 2019) an agreement in principle with Te Whānau a Apanui. That agreement in principle records that:

51.1. The ODC has agreed in principle that certain properties, including the Whanarua Bay Recreation Reserve, “being explored” for inclusion in the Treaty settlement as cultural redress properties.

51.2. The inclusion of the Whanarua Bay Recreation Reserve in the Treaty settlement “is subject to agreement with Opotiki District Council”.

52. We have remained committed to exploring options for solving access to our properties without stopping Treaty settlement discussions. To that end, we have been clear to the Crown that we support a Treaty settlement with Te Whānau a Apanui, but that we do not support a settlement that affects our rights and ability to access our properties. And we have remained, wherever possible, open to discussions with the Crown, the ODC, iwi, hapū and whānau representatives and other residents of Whanarua Bay.

53. In these discussions the Crown has said:

*“All parties want long-term certainty on arrangements to resolve access and provide for cultural and conservation issues in Whanarua Bay.”*

54. I agree with that statement. I hope the ODC does too.

55. Te Arawhiti went on to suggest:

*“To ensure a durable long-term solution, discussion of what arrangements need to be in place should include whether the following interests can be satisfied:*

- *Return of land to Te Whānau a Apanui*
- *Protection of urupā and wāhi tapu*

- ***Security of access to beachfront baches***
- *Reserve classification is appropriate for the site*
- *Arrangements that do not undermine good neighbourly relations.”*

56. In January 2020 the Crown prepared a discussion document. I understand ODC staff received this document, as did beachfront owners and hapū and iwi representatives.

57. The document stated:

*“Whanarua Bay bach owners currently only have informal access to their properties via Lot 66 of the Recreation Reserve.”*

58. The document offered 3 potential options for discussion:

Option 1 Build a private road over the roadway near the Whanarua Stream.

Option 2 Formalise access for bach owners over Lot 66 (with restrictions).

- This option recognised the need for an easement over Lot 66 for bach owners as well as the owners of Lots 75 and 80.
- This option is based on returning Lot 66 to iwi
- This option signalled that a “Joint reserve Board” might be one option for administration

Option 3 Part of the reserve vests in Te Whānau a Apanui but Lot 66 is retained by the ODC.

- This option signals that Lot 66 could be retained by ODC but Lot 80 might transfer to iwi.
- The option also presents that a Joint Reserve Board (Te Whānau a Apanui and the ODC) might be a suitable administrator for both lot 66 and 80.

59. I note that options 2 and 3 include suggestions that have merit for each of the interested groups: beachfront property owners, iwi, hapū and Council.

60. Our discussions with the Crown have, it seems, stalled. As we understand it, the Crown’s current position is:

60.1. Crown policy, as stated in the agreement in principle, is that the Crown needs the consent of the ODC to transfer title to the Whanarua Recreation Reserves to Te Whānau a Apanui.

60.2. The Crown will ensure reserves are transferred subject to “existing” rights of access.

60.3. This means the Crown will require the transfer of the Whanarua Recreation Reserve lots to be subject to the Reserves Act.

- 60.4. Because the beachfront owners do not have a current easement over lot 66, the Crown will not require the placement of an easement on lot 66.
61. The ODC has also recently resolved to prepare an 'Easements and Access Policy'. This policy has been suggested as being relevant to the easements being sought by beachfront owners at Whanarua Bay more recently.
62. We asked the Crown to pause its discussions on the transfer of title to the reserves until the ODC could complete its Easements and Access Policy. On 6 October 2020 Minister Little (the Minister for Treaty of Waitangi Negotiations) declined to do so, saying:  
*"The question of how the access issues are resolved are best left to the Ōpōtiki District Council, and I understand they are working on this issue at the moment.*  
...  
*Our discussions are ongoing and I expect Ōpōtiki District Council and Te Arawhiti will continue to update you as appropriate."*
63. It almost seems as though the ODC proposed the Easements and Access Policy so as to deflect from having to make a decision over whether there should be an easement over lot 66. If that is so, that would be viewed as an act of extreme bad faith. Legal access over lot 66 must be addressed before the ODC makes any decision to divest itself of ownership of lot 66.

***ODC's exploration of the options***

64. The June 2019 agreement in principle says the ODC agreed in principle to explore options for the vesting of the reserves. The ODC may have explored options with the Crown but there has been very little exploration to date with beachfront owners. People appreciated the chance to "drop in" at the two meetings that were organised, but there has to date been almost no engagement by the ODC on what the actual options for resolution might be. Again, you owe it to people to explore what options exist beyond the proposal put to you by the Crown and Te Whānau a Apanui.
65. There are options for a win-win solution. In addition to this written submission I remain absolutely committed to exploring options with any of the relevant parties, including councillors and council staff. I am able to do so on behalf of the beachfront owners. You may consider that everything should pause while these discussions occur.
66. It is difficult for those of us outside the ODC to know quite what options the ODC and its staff have considered. In its 19 January 2021 report to Council, staff identified the advantages and disadvantages of each ownership and management arrangement. The table below is taken from that report:

Ownership arrangement	Management arrangement	Advantages	Disadvantages
Council owns the reserves	Council remains the sole management body.	Council retains reserves as a strategic assets.	The ongoing cost of managing and administration of the reserves continues to be met by Council.  Te Whānau a Apanui does not have ownership of the reserve land which would not fulfil the Crown and Iwi's Treaty redress aspirations.
Council owns the reserves	The reserves are managed jointly by Council and Te Whānau a Apanui	The cost of maintaining the reserves is shared  Council retains reserves as a strategic assets.	Administrative costs associated with the management body.  Te Whānau a Apanui does not have ownership of the reserve land which would not fulfil the Crown and Iwi's Treaty redress aspirations
Te Whānau a Apanui owns the reserves	Te Whānau a Apanui is the sole management body.	Council is not required to meet the cost of ongoing maintenance of the reserves  Council is compensated for the handing over of the reserves.  Gives full effect to the Joint Request and therefore fulfils the Crown and Iwi's Treaty settlement aspirations	Council loses several of its strategic assets.
Te Whānau a Apanui owns the reserves	The reserves are managed jointly by Council and Te Whānau a Apanui	The cost of maintaining the reserves is shared.  Gives partial effect to the Joint Request and therefore goes some way to fulfilling the Crown and Iwi's Treaty settlement aspirations	Council loses several of its strategic assets.  Administrative costs on both Council and Te Whānau a Apanui to administer reserves.

67. I think more could have been done to identify advantages and disadvantages under the different arrangements. For instance, in addition to the solitary advantage noted for the ODC remaining the sole owner and administrator of the reserves, the following could have been identified as advantages (to name but a few):

- 67.1. the entire community, through the ODC, would have a voice on how the reserves would be administered;
- 67.2. the ODC could grant access, by way of an easement, for beachfront lot owners over lot 66;
- 67.3. the ongoing cost of administering reserves open to the general public under the Reserves Act would be borne, not by Te Whānau a Apanui, but by the entire community, through the ODC;

- 67.4. there would be options for the ODC improving its relationship with Te Whānau a Apanui and ensuring tāngata whenua have a clear voice on the administration of the reserves;
- 67.5. ongoing public access can be ensured and fostered in an area of the coastline where there are few places the public can access the coast; and
- 67.6. recreation and tourism can be encouraged in a way that respects the cultural qualities of the reserves (such as, for instance, the wāhi tapu on lot 80).
68. I note that in the staff report to the ODC of 17 December 2020, staff acknowledge the stakeholder interest in the Hoani Waititi Reserve and the need for “further direct engagement”. There are parallels with the reserves at Whanarua and the “heirs and successors of the former owner” (Romio Wi Repa) yet there is no acknowledgement of Romio Wi Repa in this case. This appears to be an inconsistency and (I suggest) an error.

In addition to and Te Whānau a Apanui, it is proposed that there will also be further direct engagement with Te Arawhiti and with the heirs and successors of the former owner of the Hoani Waititi property.

69. I note that it has been suggested that “lot 66 doesn’t go anywhere.” The point being that because lot 66 is separated from lot 80 by the privately owned lot 75, lot 66 does not provide the general public with legal access to the coast via lot 80.
70. In the case of the beachfront properties lot 66 connects with lot 75 over which beachfront owners have a legal easement. Accordingly, it is more correct to say that (for the beachfront owners and the lot 75 owners) lot 66 definitely goes somewhere. It is how we access our properties and how I get home. And the ODC has acknowledged in the past as the earlier statements I set out above show.

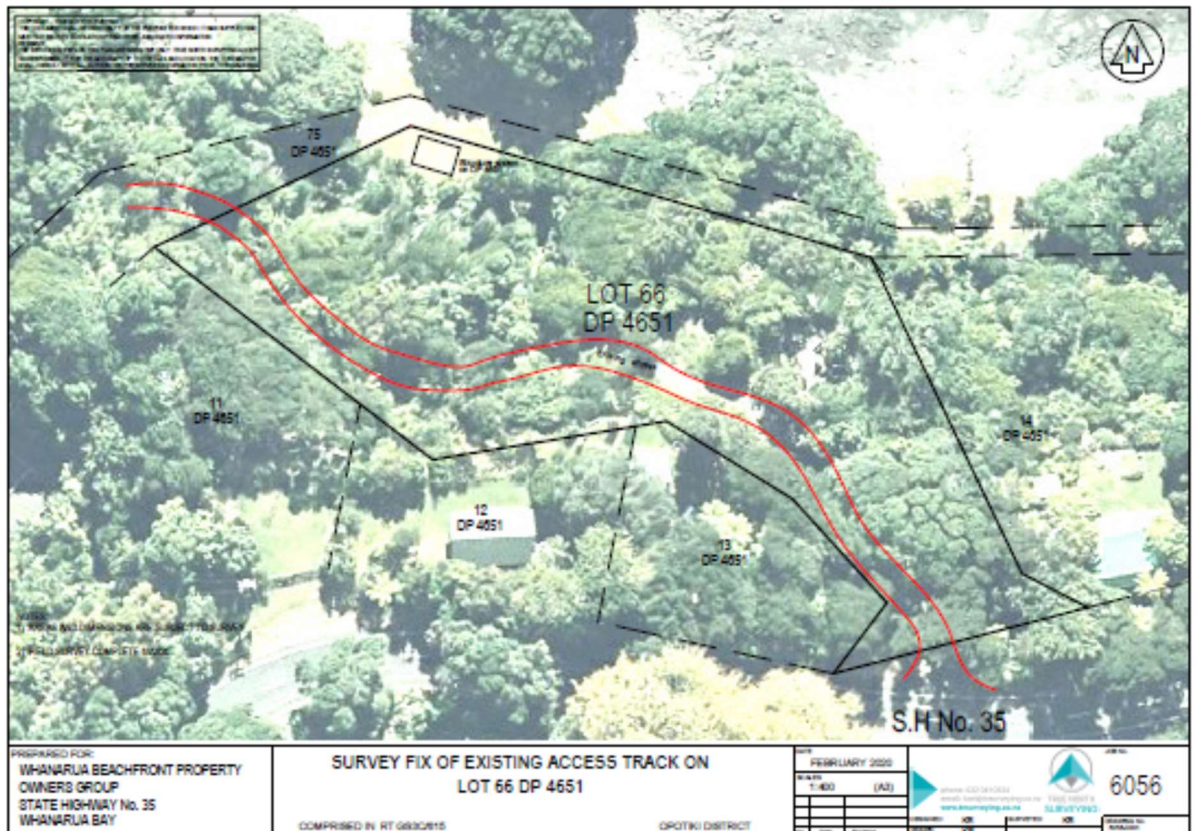
***Update to ODC’s Reserves Management Plan – 2020***

71. Returning to 2020, in that year the ODC consulted on a proposed Reserves Management Plan.
72. Submissions made by Te Whānau a Rangi-i-Runga (Submitter number 32) sought in 3 places that vehicle access over lot 66 be stopped. Despite regular vehicle use of the driveway themselves, the hapū submitted:
- At topic T166 - “Seek that all vehicle access to the reserve is prohibited.”
  - At topic T168 - “This includes the exclusion of vehicles from the reserve.”
  - At topic T169 - “All physical vehicle access through Lot 66 and Lot 80 must cease immediately ...”
73. The staff response to T 168 was “accept”.
74. Beachfront owners are therefore justifiably concerned that, without the legal guarantee of an easement over lot 66, they will be prevented from driving vehicles over lot 66 by a new administering body. The Reserves Act does not guarantee vehicular access.

75. In updating the reserves management plan, the ODC gives no detail as to the status of this plan for each of the options provided in the proposal put to the ODC by the Crown and Te Whānau a Apanui.
76. No detail has been given as to whether a new administrator will seek to produce new reserves management plans with provision for public input.

***Wāhi tapu on lot 80***

77. During recent discussions with the Crown and hapū representatives it has been suggested that there is a wāhi tapu on lot 66.
78. I am aware of the wāhi tapu on the rocky headland on lot 80 at the bottom of the access way. Part of the area has been fenced off. A sign was put on the fence indicating there is a wāhi tapu. The area does not adjoin lot 66. It is on lot 80 and is close to the boundary with lot 75.
79. I am unaware of evidence that there is an urupā or wāhi tapu on lot 66. It is possible some people are unaware of the precise boundaries of lot 66 in suggesting there may be an urupā or wāhi tapu on that lot.
80. In her 28 June 2002 High Court brief of evidence, Rosanna Wi Repa (Trustee of the Wi Repa family trust) refers to lot 75 and lot 80 in respect of urupā or wāhi tapu sites. No mention is made of an urupā or wāhi tapu on lot 66. This is significant. If one existed on lot 66, one would have expected it to be noted.
81. I show below the existing accessway over lot 66 in red. Also shown is a rectangular building that was noted in the December 1956 survey of the area. The 16 December 1956 survey field book, of what was to become Romio Wi Repa's subdivision, records a small rectangular "bach" in the area at the base of Lot 66. That building is also shown in the scheme plan of 1958. This area:
- is the area now used as a carpark by beachfront property owners of lots 16 – 20, and others;
  - is an area that included a whare paku and a dwelling in the same location – a dwelling and 'out-house' used by a 'Mr Cappy Ricks' in the 1950s;
  - included a building erected and lived-in during the time that Romio Wi Repa was an active owner of the land;
  - is an area that became the Lot 66 recreation reserve we know today;
  - is an area that was not recorded as an urupā or wāhi tapu in the 6 December 1956 surveyors field book; and
  - is an area not indicated by Rosanna Wi Repa as being a wāhi tapu in her evidence to the High Court of 2002.



***Access over lot 66 today – a summary of our frustrations***

- 82. To this day legal access through lot 66 remains unresolved. Beachfront property owners have proposed options including legal easements over lot 66 as well as the option of outright ownership of lot 66 by the beachfront property owners on the basis that lot 66 should never have been created as a reserve as it was the most likely practical alternative to the Whanarua stream access that was fraught from day one, as the original plan for the subdivision showed.
- 83. Because there is no legal access to beachfront properties through the Whanarua Stream, the beachfront owners now rely on access via lot 66. In the western part of Whanarua Bay, beachfront owners can drive cars to their properties via lots 66 and 75. In the middle bay, beachfront owners can drive cars down lot 66 and over lot 75 to the car park on lots 66 and 80. They then have level access to their properties.
- 84. Our frustrations should be evident from the foregoing chronology. I would summarise the key frustrations that we have as being these:
  - 84.1. We are paying for the failures of others. The subdivision was based on legal access to the beachfront lots so cars could be drive to those properties in the western bay or to the car park in the middle bay. The roadway through the stream was never finalised. The other roadway lots were by mistake vested into private ownership.
  - 84.2. We absolutely rely on access over lot 66 to get to our properties, but we do not have the legal guarantee that we will be able to drive our cars over lot 66 into the future. We are legally landlocked and have no other options.



- 84.3. We rely on access via lot 66 for emergency and maintenance services including fire, police, ambulance, power and telephone. We are concerned that any threat to our access is a threat to our safety. Ambulances have attended on two separate occasions this summer. The police are also required to attend from time to time.
- 84.4. Past ODC resolutions have not been actioned by staff. Despite acknowledging our plight on a number of times and despite deciding to grant us an easement over lot 66 the ODC has never actually finalised an easement.
- 84.5. Now it seems as though the ODC is exploring divesting itself of the problem by agreeing to the transfer of lot 66 through the Treaty settlement.
- 84.6. The Crown will not grant an easement – it sees issues of access as being before the ODC.
- 84.7. Indeed, there is a long held view that the ODC is best suited to resolve the access problems that have dogged this subdivision since its inception. The view is often plainly put as “If ODC doesn’t sort it out, it will never be sorted.”
- 84.8. Historical incidents give us cause for concern. The 1970s blocking of access to the Bay, the demands for an annual payment to access our properties, and the fencing of the lot 80 reserve in 2001/2002 are still fresh in the minds of some owners here and have been understandable motives to lobby to resist the transfer of the reserves land at Whanarua.
- 84.9. More recent statements also raise our concerns. As above, the hapū has formally suggested that vehicular access be prevented over the Whanarua Recreation Reserve. That includes lot 66.
- 84.10. If it suits Waihau Bay, why not Whanarua Bay? Owners have noted that the proposals include the development of an easement for the ODC and the general public providing access to the Waihau Bay boat ramp. They rightly ask why, after 19 years of inaction at Whanarua, is the ODC able to write itself an easement, with such apparent ease, for Waihau Bay? Council staff have confirmed that the reason an easement is being provided at Waihau Bay is to ensure vehicular access is guaranteed for the public. The clear inference is that the Council acknowledges that the Reserves Act does not guarantee vehicular legal access.

#### **BROAD COMMENTS ON THE PROPOSAL**

85. I want to make some broad comments.
86. It is clear the Crown expects you to address the issues around access and to find a solution. As set out above, Minister Little has said so. Because the easement does not yet exist, the Crown is most unlikely to grant one. If you do not grant an easement over lot 66, it is possible no one will.
87. This issue is so important you should take the time to ensure you make the right decision. You should make sure you have sufficient time to read and engage with all the submissions put to you. You should ensure there is sufficient time between

the provision of a staff report and summary of submissions to you and the time when you need to make a decision.

88. You should hold a hearing. Too many people are worried that you might not understand or fully appreciate their views (and frustrations). You owe submitters the chance to present to you at a hearing. A hearing also gives you the chance to engage with submitters and to explore options.
89. You are not bound by the joint proposal. The joint proposal has been generated by the Crown and Te Whānau a Apanui. You do not have to agree with it. You can decline it or parts of it. You might, for instance, decline the proposal that lot 66 and Lot 80 transfer to Te Whānau a Apanui. If you do think that title to certain lots should transfer, you can place conditions on that transfer.
90. There are options for a win-win solution. In addition to this written submission I remain absolutely committed to exploring options with any of the relevant parties, including councillors and council staff. I am able to do so on behalf of the beachfront owners. You may consider that everything should pause while these discussions occur.

#### SPECIFIC COMMENTS ON THE PROPOSAL

91. The following section is copied from the Whanarua Bay section of Council’s ‘Statement of Proposal’ dated Tuesday 26 January 2021 and referenced A225527:

<b>Whanarua Bay Recreation Reserves</b>	<span style="border: 1px solid black; border-radius: 50%; padding: 5px; display: inline-block; width: 30px; height: 30px; line-height: 30px;">1</span>	<p>It is proposed that the seven land parcels comprising this reserve be transferred from the Ōpōtiki District Council to Te Whānau a Apanui.</p>
	<span style="border: 1px solid black; border-radius: 50%; padding: 5px; display: inline-block; width: 30px; height: 30px; line-height: 30px;">2</span>	<p>It is proposed that Lot 80 (urupā) and all of Lot 71 would be vested in Te Whānau a Apanui unencumbered, without any reserve status and without any public access requirements.</p>
	<span style="border: 1px solid black; border-radius: 50%; padding: 5px; display: inline-block; width: 30px; height: 30px; line-height: 30px;">3</span>	<p>The remaining lots being 66, 68, 69, 70, balance of Lot 80 DP 4651 and Lot 3 DP6108 would be vested in Te Whānau a Apanui as historic reserves under the Reserves Act 1977. The public rights of access to those parcels, would be as per that Act as is currently the case. Implementing this part of the proposal would be subject to the Council first being satisfied as to how any existing encroachments are addressed prior to the land being transferred.</p>
	<span style="border: 1px solid black; border-radius: 50%; padding: 5px; display: inline-block; width: 30px; height: 30px; line-height: 30px;">4</span>	<p>It is proposed that Te Whānau a Apanui would be the sole administering body for the reserves.</p>

#### Proposal 1

*That 7 parcels of land at Whanarua are transferred.*

#### **Support in Part**

I submit that lot 66 must not transfer OR must not transfer until such time as easements are put in place for the owners of beachfront properties and lot 75.

I also submit that the argument for the transfer of Lot 80 has not been made.

#### Proposal 2

*That the urupa on Lot 80 is vested in Te Whanau a Apanui unencumbered.*

### **Support in Part**

The urupa is significant to Maori but currently has no protection. The proposal offers the protection but hasn't defined the area of the urupā. I support the concept of this proposal in principle but note that the area of the urupā is undefined and therefore I limit my support for the proposal only for that reason. I also wonder how staff can expect councillors to make a decision on something that is not surveyed and therefore so undefined.

### Proposal 3

*That Lot 66 and the remainder of Lot 80 (and others) are vested in Te Whanau a Apanui as historic reserves under the Reserves Act.*

### **Support in Part**

I (and others) understand this land has significance to Te Whānau a Rangi-i-Runga but I seek the acknowledgement that properties here were purchased in good faith from Mr Wi Repa and purchased on the clear understandings that lot owners would have guaranteed legal access to their properties and that the reserves could be enjoyed by all. The greater argument is for Lot 66 to be retained by Opotiki District Council at least until such time as practical legal access is arranged for bach owners and owners of Lot 75.

If Te Whanau a Apanui argue that lot 66 should be transferred as-is (i.e. unencumbered by an easement in favour of beachfront owners) then perhaps the question is "Why?". Why would Iwi be so opposed to beachfront owners having legal access to their properties?

Additionally, I submit that the argument for the reclassification and transfer of lot 80 has not been made.

### Proposal 4

*That Te Whanau a Apanui be the sole administering body for the reserves.*

### **Not Supported**

I do not support the fourth proposal in respect of lots 66 and 80 for the following reasons:

- Whoever administers the reserves must do so on behalf of all community interests in the reserves.
- The access and reserves at Whanarua Bay are an ongoing 'niggle' which has never been resolved since Romio Wi Repa sold his land and the subdivision was incompletely constituted.
- The reserves are presently administered by the ODC, an organisation to which we pay our rates and an organisation to which we look for elected officials working in the best interests of the district.

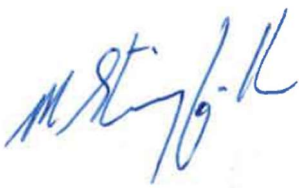
- Under the purpose of the Local Government Act (section 10), the ODC has a responsibility to act on behalf of all its communities. In this case, any decision to transfer reserve lands requires consideration of the needs of people (both current and future) within the communities of bach owners, public users of the coastal area, local land owners, the Wi Repa whānau and the local hapū. It is clear that there is not just one community of interest in this case and it is important that the ODC considers both the well-being of all the communities who will be affected by this decision as well as how their needs can be best met.
- As part of the reserves management plan review Te Whānau a Rangi-i-runga submitted that vehicle access down Lot 66 should cease. This is the access to my home.
- In the past, members of the local hapū have placed gates and fences to block access to our properties. Based on past events, I am not assured that there will not be a repeat of these actions and am also not assured there will be reasonable provision for open dialogue and disputes resolution.
- The Te Whānau a Apanui website indicates that the role of the Rūnanga is “to advance the interests of Te Whānau a Apanui iwi and its hapū, individually and collectively.” That is entirely understandable. But this indicates that Te Whānau a Apanui would administer the Whanarua reserves in the interests of the iwi and hapū. This would be a limited interest in such a broad community of interest.
- Councillors are democratically elected and operate within the requirements of the Local Government Act in the interests of all the communities who will be affected. On the other hand, Te Whānau a Apanui’s mandate is limited to the interests of “Te Whānau a Apanui Iwi and its hapū, individually and collectively.” For the Whanarua community as well as the beachfront owners this would in effect be a very limited form of administration and governance which ignores the (at times) conflicting aspirations at Whanarua Bay.
- The proposal would gain support if it were based on a Joint Reserve Board over lots 66 and 80, if that Joint Reserve Board included beachfront representation.

## LOOKING FOR SOLUTIONS

92. Despite a nearly agreed negotiated easement over Lot 66, all but presented to Council in August 2019, beachfront owners are now faced with the prospect that Council may choose to transfer an access road to an organisation that does not represent all interests at Whanarua Bay. I see this as an abrogation of responsibility for an error attributed at least in part to the Opotiki County Council.
93. Beachfront owners look to Council to take the lead and progress towards a long-term solution which recognises Te Arawhiti’s aspirations for the return of [some] land to Te Whānau a Apanui as well as security of access to beachfront baches.

94. My submission is that with the will of Councillors, an option can be developed that would:
- 94.1. recognise the aspirations of iwi;
  - 94.2. acknowledge the descendants of Romio Wi Repa over their traditional whenua;
  - 94.3. establish formal easement over lot 66 for beachfront owners to access their properties; and
  - 94.4. establish a formal easement over lots 66 and 75 for hapū to access their ancestral wāhi tapu.
95. The nearly-negotiated easement agreement between ODC and landlocked beachfront owners demonstrates that a workable solution can be found.
96. Here is the opportunity for Councillors to correct at least one of the errors of the past, by providing legal security of access to our home and concurrently working part way towards the Crown and Te Whānau a Apanui's joint request.

I wish to present this submission to Council in person.



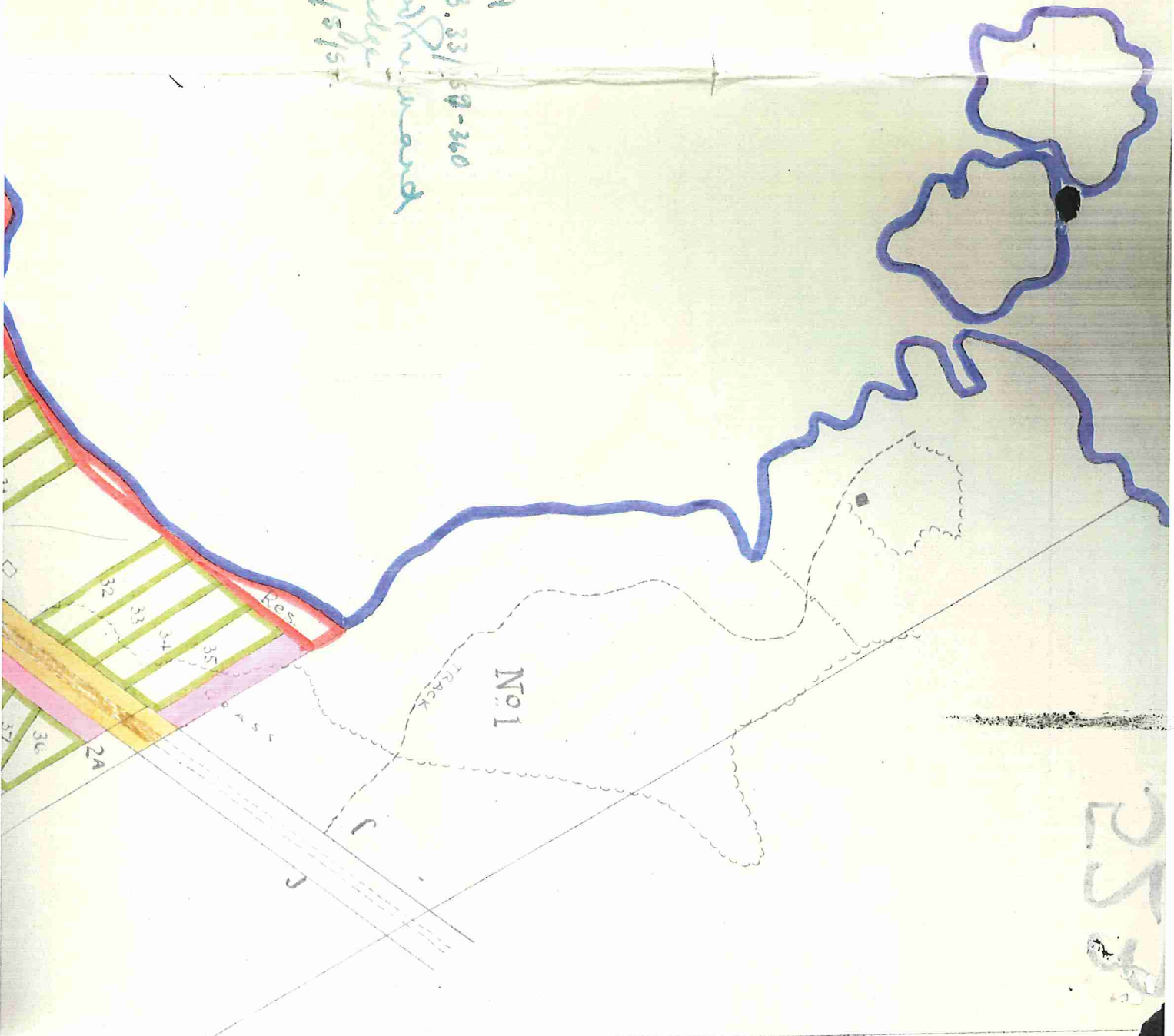
Mark Stringfellow  
**Whanarua Bay**

Plenty

"A"

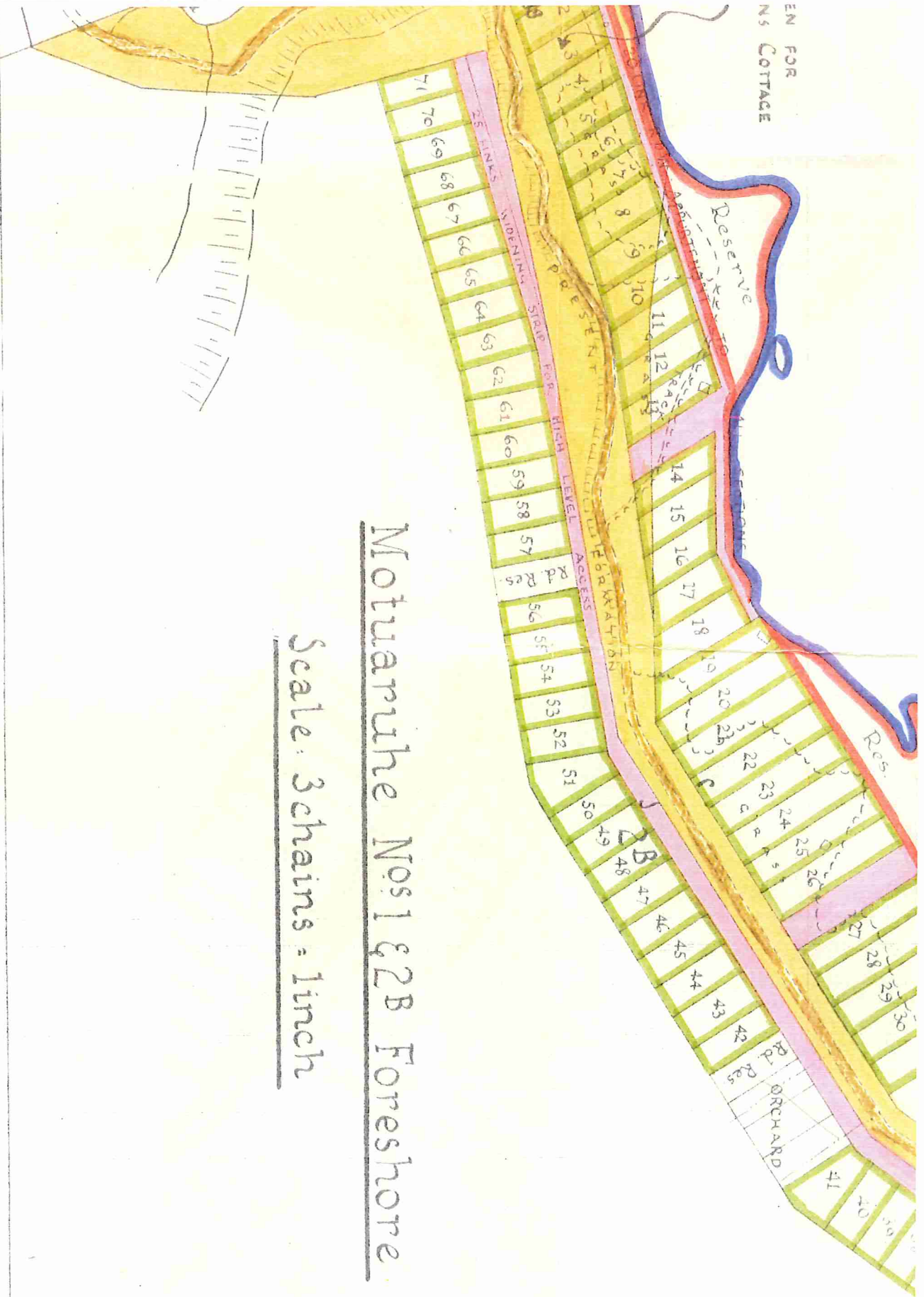
Whanarua Bay

Exhibit A  
Opotiki M.B. 33/59-360  
J. W. Hayward  
Judge  
18/5/57



258

EN FOR  
NS COTTAGE



Motuaruhe Nos 1 & 2B Foreshore

Scale: 3 chains = 1 inch

392

110

Land Transfer Office.  
 Received: 1951  
 Title Ref:  
 Referred to Draughtsman:

**DP 4651**

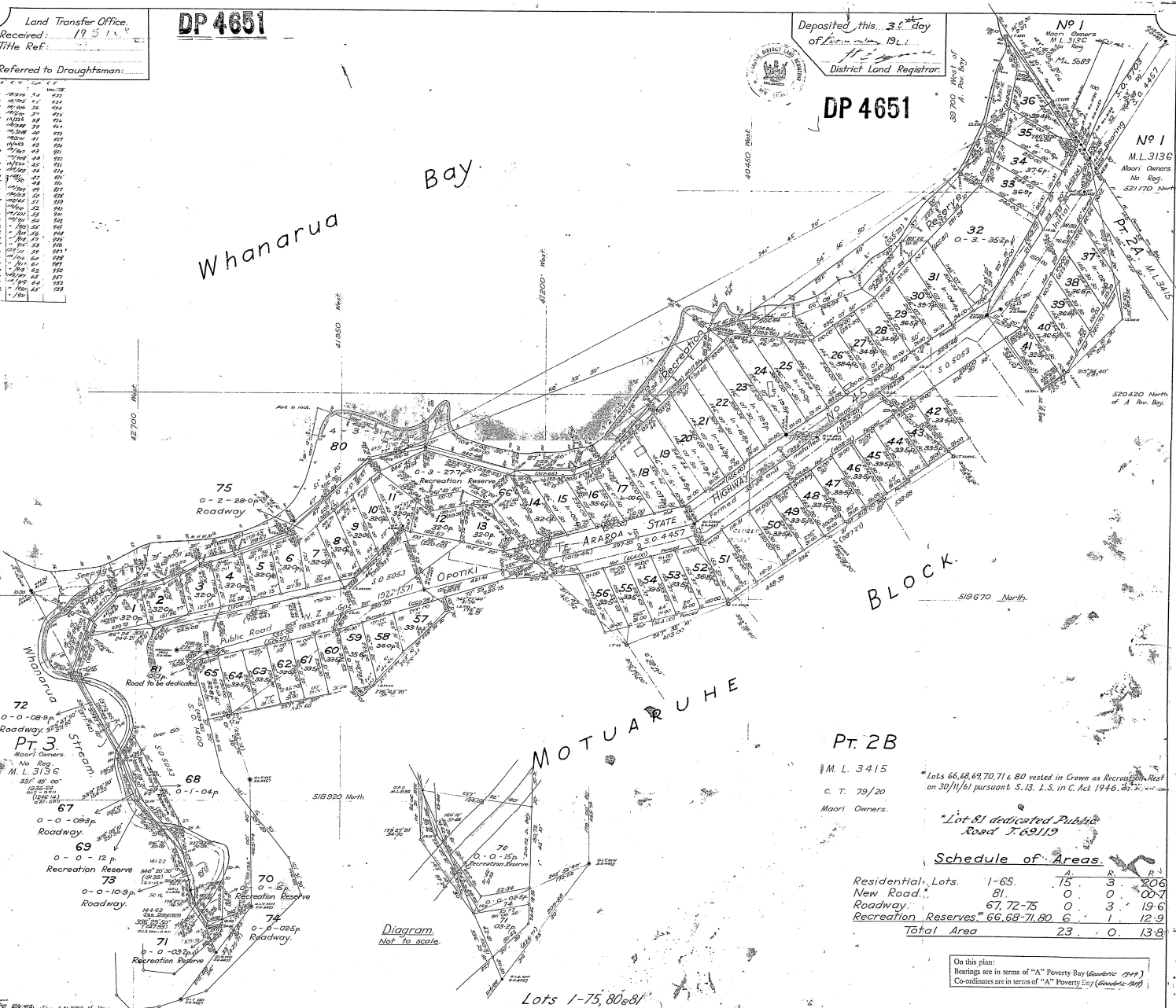
Deposited this 31 day  
 of 1951  
 District Land Registrar

**DP 4651**

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Bay

Whanarua



BLOCK

Pt. 2B

M. L. 3415  
 C. T. 79/20  
 Maori Owners.

Lots 66, 68, 69, 70, 71 & 80 vested in Crown as Recreation Reserve on 30/11/61 pursuant S. 13, L.S. in C. Act 1946, 24/3/51

Lot 81 dedicated Public Road T. 69119

Schedule of Areas

	A	B	P
Residential Lots	1-65	15	3
New Road	81	0	0
Roadway	67, 72-75	0	3
Recreation Reserves	66, 68-71, 80	6	1
<b>Total Area</b>		<b>23</b>	<b>0</b>

On this plan Bearings are in terms of "A" Poverty Bay (Gazette 1949) Co-ordinates are in terms of "A" Poverty Bay (Gazette 1949)

Lots 1-75, 80 & 81  
 Pts. Motuaruhe 2B & 3 Blks. & Pts. Closed Road.  
 Comprised in S.T. 79/20 & Rd. Closing Order 69117

Blk. III Te Kaha S. D. Gisborne L. D. Opoitiki, County.  
 Surveyed by A. M. Linton Dec. 1956 & Dec. 1957.  
 Scale: 1/2 chains to an inch.

I, A. M. Linton, of Gisborne, Registered Surveyor and a holder of an annual practising certificate, do solemnly and sincerely declare that this plan has been made from surveys executed by me; that both plan and survey are correct, and have been made in accordance with the regulations under the Surveyors Act, 1938.  
 And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Justices of the Peace Act, 1927.  
 Declared at Gisborne this 12 day of Dec 1957.  
 before me, A. M. Linton  
 Justice of the Peace (or Solicitor, or Notary Public)

Approved as to Survey  
A. M. Linton  
 Chief Surveyor  
 2/12/57  
 L. T. Draughtsman  
 Received: 29.5.58  
 Reference Plans: S.O. 1400, 1457  
 M.L. 336, 346, S.O. 2953  
 Field Book 276, p. 67-25  
 Traverse Book 26, p. 62-22  
 Examined by A. M. Linton  
 Correct:  
 L. T. Draughtsman.

Approved.  
A. M. Linton  
 District Officer  
 Dept. of Maori Affairs for  
 Maori Trustee.

**DP 4651**

**DP 4651**