



# HOLLAND BECKETT

L A W

19 March 2021

Ōpōtiki District Council  
PO Box 44  
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**BY EMAIL**  
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Tēnā koe

## Statement of Proposal - Te Arawhiti and Te Whānau a Apanui Joint Request regarding Ōpōtiki District Reserve Land

1. We act for Whanarua Bay Ratepayers Association Incorporated (**WBRAI**). We write in relation to the Ōpōtiki District Council's (**ODC**) invitation for members of the public to express their views in relation to the Statement of Proposal – Te Arawhiti and Te Whānau a Apanui Joint Request regarding Ōpōtiki District Reserve Land (**the Statement of Proposal**).

### WBRAI relationship with Whanarua Bay

2. As you are aware, the WBRAI is a group of property owners that own properties at Whanarua Bay. Some of these properties were created through a subdivision in the early 1960's when the owner Romio WiRepa subdivided land at Whanarua Bay (**the WiRepa subdivision**). The objects of the WBRAI include following up on issues of interest to the community at Whanarua Bay and supporting the wider community in matters where it is in the interests of the Whanarua Bay community.
3. As you are also aware, Lot 66 provides the only access from the road (State Highway 35) to the beachfront properties and the coastal marine area at Whanarua Bay in conjunction with Lot 75 and Lot 80.<sup>1</sup> The construction of the vehicle access at Lot 66 was undertaken by the property owners within the WiRepa subdivision in the early 1980s. Ōpōtiki County Council were fully aware of the work being carried out, as they had been advised prior to the work commencing and raised no objection.
4. The access is in the form of a narrow road and traffic light system. This accessway is used by residents, the local community and visitors for vehicle access, pedestrian access, boat launching, as well as access to beachfront houses.
5. Lot 80 provides the only direct access to the coastal marine area at Whanarua Bay. WBRAI's understanding is that as part of the WiRepa subdivision, it was a requirement of the subdivision to set aside a reserve for public purposes along the mean high-water springs mark as per Section 11 of the Land Subdivision in Counties Act 1946 and that reserve is Lot 80. We also note the Maori Trustee determined that Lot 80 should be classified as recreation and not historic as now proposed.

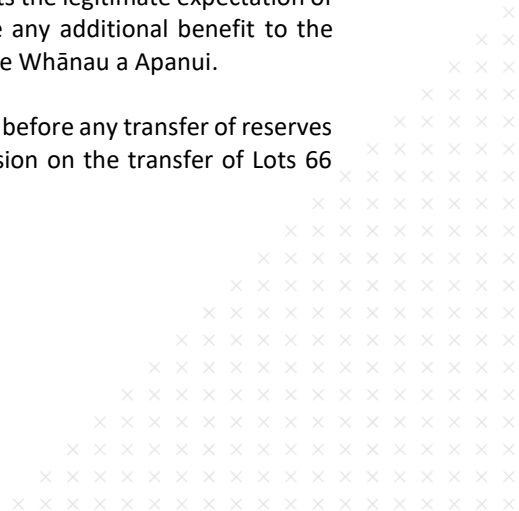
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<sup>1</sup> Lot numbers referenced in accordance with the Statement of Proposal.

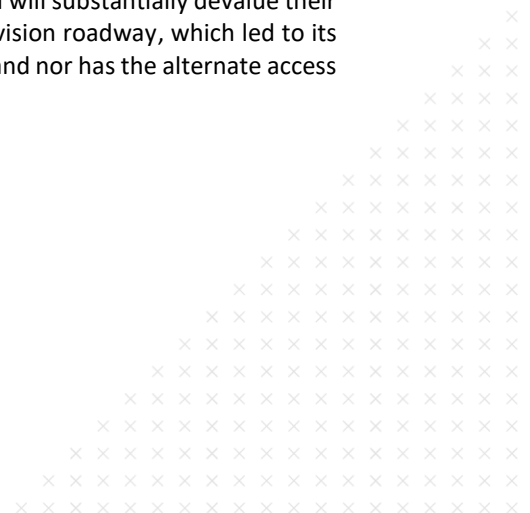
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**Comments on the Statement of Proposal**

- 6. Having reviewed the Statement of Proposal, the WBRAI wishes to raise its concerns in relation to the proposal to transfer any or all of the district reserve land at Whanarua Bay (**the reserves**) to Te Whānau a Apanui.
  
- 7. In particular, the WBRAI wishes to raise the following issues on the transfer of the reserves to Te Whānau a Apanui generally:
  - (a) WBRAI considers that the access to the WiRepa subdivision properties and the coastal marine area from the road must be resolved prior to any transfer of the reserves occurring, and is particularly concerned about the transfer of Lots 66 and 80. ODC has previously indicated that it is committed to resolving the access issues at Whanarua Bay and this is a step further away from reaching a resolution. WBRAI notes that:
    - (i) The ODC Reserve Management Plan contains a commitment to address the access issue, and further ODC’s Chief Executive has acknowledged ODC’s intention to address access.
  
    - (ii) ODC has recently conducted a review of its Reserve Management Plan. In a hearing associated with this review, multiple submissions were made by beachfront property owners regarding the need for legal access to their properties, and Whanarua Bay community property owners for access to the beach through an easement to be established across Lot 66 to formalise access. However, ODC stated multiple times in the report issued summarising these submissions that no decisions could be made in relation to easements until ODC had developed an easement and access policy. That policy still has not been developed and any transfer of reserves must not occur until an access arrangement, most likely in the form of an easement, has been established.
  
    - (iii) In 2014, an ODC Land Information Memorandum (LIM) for a property within the WiRepa subdivision issued noted that “access through the reserve for recreational purpose, such as via a passenger car is considered by the Council as acceptable practice and is within the Council’s authority to allow without conditions in terms of the Reserves Act”. As ODC will be aware, LIMs are often relied upon in the purchase of properties and WBRAI considers that it is unacceptable for access arrangements to change by way of a transfer of Lot 66 without the access issue resolved.
  
    - (iv) For a number of years the beachfront property owners have sought to formalise the access arrangement at Whanarua Bay and for the commitments made over time by ODC to be honoured. Formalising the access would only ratify a situation that currently exists and reflects the legitimate expectation of Whanarua Bay residents. It would not provide any additional benefit to the members of WBRAI, or detriment to ODC and Te Whānau a Apanui.
  
    - (v) These access issues should be formally resolved before any transfer of reserves is considered, but particularly before any decision on the transfer of Lots 66 and 80.



- (b) In recognition of the access requirements to support the WiRepa subdivision, a November 2006 Court decision under Te Ture Whenua Māori Act 1993 established an access easement across Lot 75 (accessed via Lot 66) to provide vehicle access to residential beachfront properties and to/from Lot 80. If Lot 80 is transferred unencumbered to Te Whānau a Apanui and coastal access removed, the value of this access easement will be greatly reduced.
- (c) WBRAI is concerned that transferring the reserves at Whanarua Bay will lead to a loss of input from the wider community and stakeholders regarding reserve access, use and maintenance.
- (d) Activities involved in the management of reserves includes maintenance such as predator and weed control, removing rubbish dumped on the reserves, monitoring and addressing erosion, maintaining signage and maintaining access roadways and pedestrian tracks. WBRAI is concerned that a sole Te Whānau o Apanui management structure would not address these ongoing issues and could ultimately result in degradation of the reserves if these activities are not carried out.
- (e) WBRAI also considers that the reserves should not be changed from 'recreational reserves' to 'historic reserves' as it is concerned that this will affect its ability to carry out recreational activities on the reserves. Council has not provided justification to support this proposed change.
- (f) In relation to Lot 80, we understand that it is the urupā which is to be transferred unencumbered. WBRAI's understanding is that the urupā only covers a small part of Lot 80, not the extent of the lot. In particular, our understanding is that the urupā is confined to the rocky outcrop area adjacent to where Lot 66 road meets Lot 75. Only this part of Lot 80 should be transferred. If that is the proposal, then WBRAI supports that proposal, but notes that it has not seen a plan which clarifies this.
- (g) However, it is proposed that the remainder of Lot 80 be transferred as a Historic Reserve which WBRAI opposes as it should remain as a Recreation Reserve.
- (h) For completeness, we reiterate that Lot 80 provides the only access point to the coastal marine area at Whanarua Bay. If access to this lot is removed through the transfer of Lot 80 to Te Whānau a Apanui unencumbered, this will remove a significant amount of amenity and property value from all properties at Whanarua Bay.
- (i) Aside from the issue of wider community access to the coastal marine area, the properties within the WiRepa subdivision paid for access to their properties at time of purchase as survey plan DP4651 provided access to the properties and sea through lots 67 and 72 to 75. This would have added substantial value to their properties at the time. To remove such access will have the opposite effect, and will substantially devalue their properties. To date the access issues through the subdivision roadway, which led to its closure in the early eighties, have never been resolved, and nor has the alternate access through Lot 66 been formalised.



**Preferred outcome**

8. WBRAI seeks that Te Arawhiti and Te Whānau a Apanui’s joint request regarding Whanarua Bay Recreation Reserves **be declined** until the beachfront properties and sea access issues are resolved and formalised legally as per the intent of the WiRepa seaside subdivision.
9. Following the successful conclusion of the access issues and should the Te Arawhiti and Te Whānau a Apanui joint request still be in place, WBRAI’s preference is for a joint management structure for the Whanarua Bay reserves, incorporating a group of Whanarua Bay property owners, ODC staff and Te Whānau a Apanui Tāngata Whenua. It also considers that the following conditions should be met before any transfer of reserves takes place:
  - (a) Formalised vehicle access and parking is put in place to access the WiRepa subdivision properties and the sea;
  - (b) Lot 80 is removed from the Statement of Proposal and only the urupā (confined to the rocky outcrop area adjacent to where the Lot 66 road meets Lot 75) is returned to Te Whānau a Apanui;
  - (c) Lots 66 and 80 remain as ‘recreational reserves’, rather than historic reserves, at least in respect of those parts not directly connected with the urupā.
10. If it is not possible for Whanarua Bay property owners to be involved in the joint management of the reserves, at a minimum WBRAI requires that the reserves are managed by ODC and Te Whānau a Apanui.
11. WBRAI is willing to meet with ODC and Te Whānau a Apanui in relation to this issue and discuss whether a solution can be found which is acceptable to all parties involved.
12. We look forward to hearing back from you.

Ngā mihi  
**HOLLAND BECKETT LAW**



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