

16 March 2021

Ōpōtiki District Council
PO Box 44
ŌPŌTIKI

By email: info@odc.govt.nz

Submission – Joint request from Te Arawhiti & Te Whānau a Apanui

Introduction

1. We are the seven owners of lot 19, a beach front property in the middle bay of Whanarua Bay. We are the children of Nancy Gardiner. In 1966 our mother and her first husband (Stewart Abernethy) purchased lot 19 from Romio Wirepa. In 1968 Stewart died. In 2012 our mother Nancy gifted lot 19 to us. Sadly, our mother passed away earlier this month aged 90. We make this submission on behalf of ourselves, our partners, our 23 children and our 11 grandchildren. We number 48.
2. Our submission concerns the proposal to transfer lots 66 and 80 of the Whanarua Bay Recreation Reserve to Te Whānau a Apanui:



3. In principle we support the re-vesting of land at Whanarua Bay in Te Whānau a Apanui. We have had good relationships with the Wirepa whānau and hope they will benefit from the Treaty settlement.
4. We do not, however, support the precise way the Crown and Te Whānau a Apanui propose lots 66 and 80 be re-vested. We would support the transfer of lots 66 and 80 if changes were made, which we set out below. We think those changes strike a fair balance between the interests of tāngata whenua and of landowners whose properties are literally in Whanarua Bay.
5. We feel strongly about this issue. We would like the opportunity to speak to the councillors who are considering this submission. If possible, our preference is for one or two representatives of our family to speak by way of Zoom.

Part lot 80 (urupā)

6. We do not support the proposal that the part of lot 80 where the urupā is should vest unencumbered in Te Whānau a Apanui because:
 - 6.1 The proposal does not define what part of lot 80 land would transfer unencumbered.
 - 6.2 The proposal merely states that “Lot 80 (urupā)” would vest in this way.
 - 6.3 Our family respects the area that is fenced off at the bottom of the driveway on the seaward side of lot 75 where a sign indicates there is a wāhi tapu on a rocky headland.
 - 6.4 We would have no issue with that specific area being re-vested unencumbered.
 - 6.5 But where would the lines be drawn for that area? Would it extend into the car park which is also part of lot 80 where there is no urupā?
 - 6.6 The Crown and Te Whānau a Apanui should have provided a map showing precisely what area it is proposed should transfer in this way, but they have not, and it is only fair that we ask for clarity.
7. We suggest the ODC specifies on a map the rocky headland that is proposed to be transferred unencumbered and then gives people the opportunity to comment further. That is only fair. It is quite possible many would support an unencumbered transfer if the area were clearly defined.

Balance of lot 80 and lot 66 transferring subject only to the Reserves Act

8. We do not support the proposed transfer of the balance of lot 80 and lot 66 transferring to Te Whānau a Apanui subject only to the Reserves Act because:
 - 8.1 We understand the Reserves Act would not guarantee us vehicular access over lot 66 and to the car park in lot 66, but an easement would.
 - 8.2 Our property (and other properties) is effectively land locked from SH35 – the cliff behind our property is treacherous and almost impossible to navigate.
 - 8.3 For about 40 years now we have used lot 66 to access our properties.
 - 8.4 For an even longer time (as far as we can remember) we, in the middle bay, have parked our cars on lot 66 and accessed our properties from there.

- 8.5 For a very long time we, with other beach front owners, have requested an easement be placed on lot 66 to guarantee legal vehicular access over lot 66 to ensure we can access our properties.
 - 8.6 We understand that in 2002 ODC decided to grant this easement in favour of us and the owners of lot 75.
 - 8.7 We understand an easement of this kind was prepared by the ODC and discussed with solicitors acting for the beach front owners.
 - 8.8 We just do not understand why the ODC now refuses to grant us this easement which is an entirely reasonable request. The point of the easement is that it gives us the legal certainty, that the Reserves Act cannot give, that we can drive vehicles over lot 66 and park our cars in the car park at the base of lot 66, adjacent to lot 75.
 - 8.9 Some might consider the driveway on lot 66 to be unfit for vehicles. It currently is safe and fit for purpose. If it were to become unsafe then, of course, no one should drive vehicles over it. But whether lot 66 were to become unsafe is not the point: it currently is and we have used it for 40 or so years safely. Granting us an easement does not mean we would use the driveway if it were to become unsafe at some point in the future.
 - 8.10 We are genuinely concerned that, following the Treaty settlement, we could be denied reasonable vehicular access over lot 66 to the car park and our properties. We say this because access has been denied in the past to access the beach front properties via the Whanarua Stream, access has been denied to access the sea in the western bay of Whanarua Bay and (more recently) the ODC received submissions on its reserves management plan that suggested there be no vehicles on lot 66. We know the Wirepa whānau – with whom we have an agreed Heads of Agreement – but we do not know who would have the legal control of lots 66 and 80 following the Treaty settlement. Our concern is genuine.
9. We suggest the ODC agrees to the transfer of the remainder of the Whanarua Recreation Reserve in Te Whānau a Apanui on the condition that the transfer will, in addition to being subject to the Reserves Act, be subject also to an easement to be made in favour of the beach front owners and the owners of lot 75. This request is entirely reasonable:
- 9.1 It is consistent with the ODC's previous decision to grant an easement of this kind.
 - 9.2 It is fair because it ensures property owners who are effectively landlocked are guaranteed vehicular access to their properties and the car park on lot 66.
 - 9.3 It is fair because it reflects the situation at Whanarua Bay of about 40 years now.
 - 9.4 It is consistent with the proposal to grant an easement over the Waihou Bay Boat ramp in favour of the ODC and the general public. We can only presume it was thought that the protection under the Reserves Act there was insufficient such that a particular easement was needed to guarantee legal vehicular access for the ODC and the general public.
 - 9.5 It returns title to the land to iwi.

- 9.6 It means no cost is borne by the ODC: the cost of finalising the easement (if there is any) would be borne by the Crown. As we note above, we understand a draft easement was prepared and discussed meaning there should be little cost in finalising an easement. Furthermore, we do not see why there would be any ongoing cost to the ODC for maintaining the driveway.
- 9.7 Finally, the ODC would have delivered on its promises to grant this easement.

Joint administration

10. We do not support the proposal that the ODC would have no future role in administering the Whanarua Recreation Reserve under the Reserves Act. Instead, we ask that the ODC be a joint-administrator with Te Whānau a Apanui because:
- 10.1 There ought to be a partnership between the wider community (represented by ODC) and mana whenua in the care of such a critical piece of land. That is consistent with the principle of partnership in the Treaty of Waitangi.
- 10.2 If the ODC were to have some form of joint administration over the Whanarua Recreation Reserve it would mean there would be an aid to better communication locally. Having the Council remain involved will provide an added voice from the community in ensuring the Bay is safe for all people to use and access under the Reserves Act.
- 10.3 The very people who own the very properties in Whanarua Bay should have a voice, even if an indirect voice, on the future management of Whanarua Recreation Reserve. We are, after all, the property owners whose properties literally adjoin the reserve. The only mechanism for that voice is through the ODC.
- 10.4 There are passionately held views about Whanarua Bay from numerous locals – both Maori and non-Maori – in Whanarua Bay. The ODC has a legitimate role as being a moderator of these viewpoints so the Whanarua community can address issues in a constructive way. If the ODC is not there, we risk only one view point prevailing.

Summary of our submission

11. In sum, our submission is:
- 11.1 We do not support the unencumbered vesting of part of lot 80 where the urupā is because that area has not been defined in a map.
- 11.2 The ODC should produce a map showing the rocky headland that is proposed to transfer unencumbered and people should be given a further chance to comment.
- 11.3 We do not support the vesting of the balance of lot 80 and lot 66 subject only to the Reserves Act.
- 11.4 If the ODC does support the transfer of these lots, we ask the ODC to agree to a transfer of those lots that, in addition to being subject to Reserves Act, is also subject to the condition that an easement be granted in favour of beach front owners and the owners of lot 75 guaranteeing vehicular access over lots 66 and 80.

11.5 We ask that ODC be a joint-administrator of the Whanarua Recreation Reserve together with Te Whānau a Apanui.

12. One final point is this: we, and others in the Whanarua community, noticed that the ODC councillors adopted all the proposals made by staff to them on the draft reserves management plan unamended without any changes or exceptions. That was a surprise given the vast range of opinions expressed through submissions. In this context, we hope that the councillors carefully consider making changes to the proposal that the Crown and Te Whānau a Apanui has put to the ODC. You can make changes that better reflect the concerns from within your – that is, our – community. We hope that our submission provides a pathway forward that can resolve the genuinely held concerns of both Māori and non-Māori once and for all. Without making changes to the proposals, we fear there will be ongoing tension and a new sense of grievance within our community.



David Abernethy



James Abernethy



Peter Abernethy



Stephen Abernethy



Andrew Abernethy



Jonathan Abernethy



Rachel Irwin (nee Gardiner)