



**Far North
District Council**



Te Kaunihera o Tai Tokerau ki te Raki

AGENDA

Supplementary Reports Extraordinary Council Meeting

Monday, 9 May 2022

Time: 3:00 pm

Location: Virtually via Microsoft Teams

Membership:

Mayor John Carter - Chairperson
Cr Ann Court
Cr David Clendon
Cr Dave Collard
Cr Felicity Foy
Cr Mate Radich
Cr Rachel Smith
Cr Kelly Stratford
Cr Moko Tepania
Cr John Vujcich

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5 REPORTS

5.2 1A SEAVIEW ROAD, PAIHIA - APPROVAL TO GRANT EASEMENT ON LOCAL PURPOSE ESPLANADE RESERVE UNDER THE RESERVES ACT 1977

File Number: A3701981

Author: Carla Ditchfield, Legal Services Officer

Authoriser: Andy Finch, General Manager - Infrastructure and Asset Management

TAKE PŪRONGO / PURPOSE OF THE REPORT

The purpose of this report is to seek Council approval to grant an easement under the Reserves Act 1977 on Local Purpose Esplanade Reserve, to address an imminent safety risk to a dwelling at 1A Seaview Road, Paihia. The easement is required to accept necessary reinforcing works to support a dwelling currently at risk of further damage.

WHAKARĀPOPOTO MATUA / EXECUTIVE SUMMARY

- Application EBC-2022-1188/0 has been submitted to Council to address setback from boundaries, sunlight and water setback
- The application involves the construction of 2 x retaining walls at 1A Seaview Road, Paihia (Lot 2 DP 124280 – NA72C/345 Freehold)
- The retaining walls will strengthen the foundations of the dwelling at 1A Seaview Road, Paihia.
- Stabilising the dwelling has become critical (according to Bay of Islands Planning)
- One of the reinforcing retaining walls encroaches on Local Purpose Esplanade Reserve, Lot 3 DP 124280
- The Reserves Act 1977 provides a mechanism for Council to consider approving the granting of an easement to accept the encroachment proposed by EBC-2022-1188/0 application.
- Under the Reserves Act 1977 it is for Council to consider approving the granting of an easement to accept the encroachment on Local Purpose Esplanade Reserve (Lot 3 DP 124280) for the purpose outlined.

TŪTOHUNGA / RECOMMENDATION

That Council approve the granting of an easement pursuant to section 48(1)(f) of the Reserves Act 1977 on Local Purpose Esplanade Reserve Lot 3 DP 124280 for the purpose of accepting works proposed and applied for pursuant to application EBC-2022-1188/0 affecting 1A Seaview Road, Paihia.

1) TĀHUHU KŌRERO / BACKGROUND

An application for resource consent EBC-2022-1188/0 attaching to 1A Seaview Road, Paihia (Lot 2 DP 124280) to build 2 x retaining walls has been received. Please refer to attachments A through F for expert opinion as to why the works under EBC-2022-1188/0 is considered necessary and urgent.

1A Seaview Road, Paihia (Lot 2 DP 124280) is contiguous to Local Purpose Esplanade Reserve Lot 3 DP 124280. Application EBC-2022-1188/0 outlines that one of the two retaining walls encroaches on the aforementioned Reserve.

The applicant has requested that Council consider accepting the encroachment for the purpose of the retaining wall so as to support and strengthen the foundations of the dwelling at 1A Seaview Road, Paihia.

The appropriate legal mechanism for Council consideration in accepting such encroachment is by granting easement under the Reserves Act 1977. Section 48(1)(f) states:

Section 48(1) Subject to subsection (2) and to the [Resource Management Act 1991](#), in the case of reserves vested in an administering body, the administering body, with the consent of the Minister and on such

conditions as the Minister thinks fit, may grant rights of way and other easements over any part of the reserve for—

(f) providing or facilitating access or the supply of water to or the drainage of any other land not forming part of the reserve or for any other purpose connected with any such land.

In accordance with section 48(3), public notification is not required if the Reserve is not likely to be materially altered or permanently damaged and the rights of the public (in respect of the reserve) are not likely to be permanently affected by the establishment and lawful exercise of the easement.

In accordance with section 48(1) and the subsequent Minister of Conservation's 2013 instrument of delegation for Territorial Authorities, a Territorial Authority as an administering body of a reserve, maintains the delegated authority (by the Minister of Conservation) to grant easements pursuant to section 48(1) of the reserves Act 1977.

Therefore, Council can consider and approve to grant easement under the Reserves Act 1977 for the purpose of encroachment in this instance, should it see fit to do so.

2) MATAPAKI ME NGĀ KŌWHIRINGA / DISCUSSION AND OPTIONS

Option 1 – Approve to grant easement for the purpose of encroachment of retaining wall and works under EBC-2022-1188/0 on Local Purpose Esplanade Reserve Lot 3 DP 124280.

Option 2 – Not approve to grant easement for the purpose of encroachment of retaining wall and works under EBC-2022-1188/0 on Local Purpose Esplanade Reserve Lot 3 DP 124280.







Take Tūtohunga / Reason for the recommendation

Option 1 – Approve to grant easement for the purpose of encroachment of retaining wall on Local Purpose Esplanade Reserve Lot 3 DP 124280. Refer to attachments A through F for expert opinion as to why the retaining wall is urgent and necessary. Should Council consider the construction of the retaining wall under EBC-2022-1188/0 necessary, section 48(1) of the Reserves Act 1977 provides Council with the legal mechanism to accept and legalise the encroachment of the works.

3) PĀNGA PŪTEA ME NGĀ WĀHANGA TAHUA / FINANCIAL IMPLICATIONS AND BUDGETARY PROVISION

None. Cost of easement, easement agreement and registration will be incurred by the applicant/landowner.

ĀPITIHINGA / ATTACHMENTS

1. Bay of Islands Planning – Resource Consent application supporting report 6 April 2022 - A3702180 [↓](#) 
2. Northland Geotech Specialists - Geotechnical Design Report for Landslip Mitigation - 11 March 2022 - A3702188 [↓](#) 
3. WSP - Claim for Natural Disaster (Landslip) Damage 1A Seaview Road, Paihia - June 2021 - A3702191 [↓](#) 
4. Revised Plan 1A Seaview Road Survey Lot DP 124280 - A3702199 [↓](#) 
5. Map identifying property boundary and retaining wall encroachment - A3702200 [↓](#) 
6. Photos - A3702201 [↓](#) 

Hōtaka Take Ōkawa / Compliance Schedule:

Full consideration has been given to the provisions of the Local Government Act 2002 S77 in relation to decision making, in particular:

Item 5.1 - 1A Seaview Road, Paihia - approval to grant easement on Local Purpose Esplanade Reserve under the Reserves Act 1977

1. A Local authority must, in the course of the decision-making process,
 - a) Seek to identify all reasonably practicable options for the achievement of the objective of a decision; and
 - b) Assess the options in terms of their advantages and disadvantages; and
 - c) If any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water sites, waahi tapu, valued flora and fauna and other taonga.
2. This section is subject to Section 79 - Compliance with procedures in relation to decisions.

He Take Ōkawa / Compliance Requirement	Aromatawai Kaimahi / Staff Assessment
State the level of significance (high or low) of the issue or proposal as determined by the Council's Significance and Engagement Policy	Low.
State the relevant Council policies (external or internal), legislation, and/or community outcomes (as stated in the LTP) that relate to this decision.	Reserves Act 1977.
State whether this issue or proposal has a District wide relevance and, if not, the ways in which the appropriate Community Board's views have been sought.	
State the possible implications for Māori and how Māori have been provided with an opportunity to contribute to decision making if this decision is significant and relates to land and/or any body of water. State the possible implications and how this report aligns with Te Tiriti o Waitangi / The Treaty of Waitangi.	
Identify persons likely to be affected by or have an interest in the matter, and how you have given consideration to their views or preferences (for example – youth, the aged and those with disabilities).	
State the financial implications and where budgetary provisions have been made to support this decision.	None. Any cost to be incurred by the landowner.
Chief Financial Officer review.	Yes.

