

Meeting: Council – 15th December 2021
Name of Item: **Road Maintenance of the upper section of Road – Peninsula Parade, Hihi**
Author: Cushla Jordan (NTA Asset Manager)
Date of Report: 8th November 2022

1 Purpose

The purpose of this report is to obtain a Council resolution for the inclusion of the upper unsealed section of Peninsula Parade, Hihi RP517-810m, additional length of 293m into the schedule of FNDC-maintained roads.

2 Recommendations

That the Council:

- a) **Receives the NTA Report dated 8th November 2022 – Road Maintenance of the upper section of Road – Peninsula Parade, Hihi**
- b) **And that Council determines the preferred option of those provided below:**
 - i. **Option 1 - Status quo (i.e., confirms Peninsula Parade RP517-810m is not included in the schedule of FNDC-maintained roads).**
 - ii. **Option 2 - Confirm the inclusion of Peninsula Parade RP517-810m in the schedule of FNDC-maintained roads at the cost to Council to bring it up to standard**
 - iii. **Option 3 - Confirm that Council will include Peninsula Parade RP517-810m in the schedule of FNDC-maintained roads, subject to the residents first forming this section of road to the appropriate council standard at no cost to Council.**

3 Background

FNDC maintains the sealed section of Peninsula Parade, Hihi RP0-517m.

The upper unsealed section of Peninsula Parade RP517-810m is in part an unformed legal road that was dedicated as legal road reserve in 2004 as part of a request by the owners who purchased four separate titles at the end of Peninsula Parade, Hihi. (Attachments 1 & 2)

This section of road has been formerly vested in Council", with the official status of Peninsula Parade Extension (Lot 4) subsequently confirmed as an unmaintained legal road by way of Sec 111 Reserves Act, however, it has not been constructed to FNDC standards.

On 25 February 2000, the "FNDC Works Committee Meeting Agenda states "*Consent is conditional on any proposed work on the unformed road to be with the consent of the Roading and Drainage Manager and Council having no obligation to maintain this part of Peninsula Parade*". (Attachments 3 & 4)

To date this section of road has not been adopted as a Road Asset into the Council's Road Maintenance List (the list provides details of each road and the specific length maintained and is part of the Road Maintenance Contracts).

Residents acknowledge the status of road, but now believe that FNDC should begin maintaining it due to the number of properties it serves, and that Council recently agreed to develop a bespoke management plan for the Rangitoto Recreation Reserve (RRR), aka Allotment 71 Parish of Mangonui East, (in line with its legal obligation to do so per S.41 of the Reserves Act 1977).

4 Options

The Options available to Council are:

Option 1: Status Quo

Description

Council confirms Peninsula Parade RP517-810m is not maintained by FNDC.

Costs

- FNDC incurs no ongoing maintenance or renewal costs.
- FNDC may consider it prudent to incur the relatively minor costs of installing and maintaining signage that indicates the privately maintained status.
- Further costs (legal/staff time etc) may be incurred as a consequence of actions by others (see risks, below).

Risks

- Potential ongoing complaints from residents – ongoing staff time, adverse publicity for Council.
- Potential legal action by residents.
- Potential claims/complaints from other road users if/when the road continues to deteriorate and creates a safety hazard
- Risk to the general public from an unsafe road accessing the properties and FNDC Reserve
- Potential costs to Council to compel maintenance of the road by 'owners' to avoid safety risks noted above.

Option 2: Confirm the inclusion of Peninsula Parade RP517-810m as part of the FNDC Rooding Network at the cost to Council to bring it up to standard

Description

Council confirms Peninsula Parade RP517-580m as part of the schedule of FNDC-maintained roads with the cost incurred by Council to bring it up to standard.

Costs

- FNDC incurs the costs to bring this section of road up to Council standard. This cost is estimated at \$38,366.59 and is detailed under the Financial Implications section.
- FNDC incurs ongoing maintenance and renewals costs. A typical unsealed road with low volumes of vehicles will incur minimal annual maintenance costs – less than \$2,000/year (excluding routine lump sum items grading, inspections etc ordered works).

Risks

- The most substantial risk is that of precedent. Where other 'private roads' have been developed the question might quite justifiably be asked why they would be treated differently.

Unmaintained Legal Roads – legal (paper) roads that are not formally adopted as part of the road network and therefore unfunded and not maintained.

Private Roads – roads which are not within legal road reserve and are the responsibility of the property owners to maintain e.g., Kauri Cliffs. There are also private right-of-ways (ROW) that are maintained by all property owners that use them.

Option 3: Council to include Peninsula Parade RP517-810m in the schedule of FNDC-maintained roads, subject to the residents first forming this section of road to the appropriate council standard at no cost to Council

Description

Council confirms Peninsula Parade RP517-810m as part of the schedule of FNDC-maintained roads, conditional upon the residents first upgrading the road to meet Council standards.

Costs

- FNDC incurs future ongoing maintenance and renewal costs.
- Council may also consider a cost-share arrangement in the upgrade of the road to meet our standards.

Risks

- Residents feel aggrieved that they have to pay for the road upgrade.

5 Discussion

Council's policies do not provide a definitive position. The road does not meet the policy standard where Council has stated it will take on responsibility for maintenance as it has not been formed to the standard required by Council.

Under Policy #4103 it does state that when public roads are formed the Council does have some responsibility in relation to maintenance particularly when and where the public have general access to such roads as it has a general duty not to allow the continuance of a public nuisance.

Council Policy #4103 states that:

1. Council will continue to maintain those roads listed in its current road maintenance schedule as the Council may from time to time determine, and
2. Council will maintain other formed roads subject to the following criteria being met:
 - 2.1 The road is within a legally defined public road reserve;
 - 2.2 The road connects with a road which is presently being maintained by the Council;
 - 2.3 The road has been or will be formed to a standard appropriate to the planned use of the road to the satisfaction of, and, unless otherwise resolved by Council, at no cost to the Council; and
 - 2.4 There is no alternative access to the properties which the road serves.

In relation to the this policy;

- With this road not being on the current maintenance schedule, Item 1 does not apply.
- Clauses 2.1, 2.2 and 2.4 seem to have been met in this case
- Clause 2.3 is where the principal ambiguity arises. The carriageway is not formed to meet the FNDC engineering standards of the time. FNDC Works Committee Meeting Agenda 25.02.00” (provided in original response) which states *“Consent is conditional on any proposed work on the unformed road to be with the consent of the Roding and Drainage Manager and Council having no obligation to maintain this part of Peninsula Parade”*.

The legal status of a road (i.e., legal road owned by Council) does not automatically determine whether a road is maintained or not, with several legal roads holding the status of “unmaintained” across the district.

Preferred Option

It is requested that Council determines the preferred Option as provided above. All Options provided carry Risks, with Option 2 having more of a risk by setting a precedent, noting that if this situation related to a new development, it would be requested via the development process that the road be formed and brought up to Councils standards for acceptance of maintenance.

It is Council’s decision to determine the preferred option.

6 Financial Implications

An inspection of the upper unsealed section of this road has been completed and an unbudgeted capital expense will be required for the road upgrade. It is estimated that this will cost approximately \$38,366.59 to complete this work.

Existing 293m to be upgraded to 6m in width currently averaging 3.5m. Existing aggregate depth is of sufficient depth to provide a structural base, maintenance aggregate to be applied to create shape and wearing surface.

Works identified are as follows:

	Total
Carriageway	
Undercut for widening to achieve 6m carriageway at 100mm in depth, supply, place and compact GAP 40 to existing road height (Solid measure)	\$4,761.25
Supply and place wearing surface aggregate (loose measure)	\$14,503.50
Stormwater	
Create roadside drain	\$2,197.50
Supply and install culvert crossing (land entry agreement may be required) 375mm dia	\$4,500.00
Supply and install vehicle crossing culvert location 70 Peninsular Parade 300mm dia	\$2,400.00
Vegetation	
Remove dangerous trees	\$5,000.00
Contingency	\$5,004.34
TOTAL	\$38,366.59

If the road were part of the FNDC road network these costs would not be separately budgeted for. The road would simply be part of the overall optimisation of available funds to

deliver the agreed level of service and the road maintenance and renewal costs would attract Waka Kotahi NZTA subsidy which is currently 69%.

7 Report Approval

Approved by:



Calvin Thomas - NTA General Manager