

Barry Edward Brill OBE, JP, LL.M, M.Com Law, OPM (Harv)  
Barrister & Solicitor

PO Box 399  
Paihia 0247  
NEW ZEALAND

19 February 2019

Robyn Stent  
204/7 Te Rangi Cross Road  
Paihia

## **Maintenance of Te Rangi Cross Road**

I understand the Council is finally looking into the question of the long-deferred maintenance of Te Rangi Cross Road and whether it falls squarely within the scope of Policy #4103.

The policy allows the Council to resolve to opt out of responsibility for a formed road "which is within a public road reserve but which serves only to provide access for less than five properties." However, no such Council resolution has been passed.

It is clear from your title (copy attached) that the road now named "Te Rangi Cross" is a "legal road 20.12 wide". It was a condition of the resource consent for the Bridgewater Bay Apartments that this road be formed by the developer and vested in the Council. No other access was available and the consent of the Land Transport Agency must have been obtained as Paihia Road is a limited access highway.

The subsequent building consent application was lodged with FNDC on 30 November 2001 and issued (as ABA20020801) on 18 March 2002. On 5 December 2003, the Council issued a Code Compliance Certificate effectively certifying that all conditions had been satisfied

The adjoining road would have automatically vested in FNDC upon the deposit under the Land Transfer Act of Unit Titles Flat Plan 324525 on 23 December 2003.

The term "properties" as mentioned in the Policy refers to "rating units" as defined in s 5(1) of the Local Government Act 2002. This definition refers on to s 5B(1) of the Rating Valuations Act 1988, which provides: *"For land for which there is a record of title, the land comprised in the record of title constitutes a rating unit."*

There is a record of title for no less than 22 properties at 7 Te Rangi Cross Road, and each of these has always been treated by the Council as a separate rating unit (no doubt the owners would wish otherwise).

In my view, the Council cannot squeeze Te Rangi Cross Road into the exception allowed by Policy 4103. Even if this was possible, the resolution would not have retrospective effect and the Council has already been in breach of its own policy for a long period of time.

Kind regards

**Barry Brill**  
Solicitor