

#### 4.1 INCLUSION OF TE RANGI CROSS ROAD IN THE SCHEDULE OF FAR NORTH DISTRICT COUNCIL - MAINTAINED ROADS

**File Number:** A2418687

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##### PURPOSE OF THE REPORT

To obtain a Council determination on the inclusion of Te Rangi Cross Road, Paihia in the schedule of FNDC-maintained roads.

##### EXECUTIVE SUMMARY

- Te Rangi Cross Road, Paihia was constructed in its current form as part of the development of the Bridgewater Apartments complex in the early 2000's. It was not constructed to the FNDC standard for this category of road. It is located entirely within road reserve (map attached).
- FNDC legal advice confirms that there is nothing that compels Council to take over the formed road as an FNDC asset.
- Residents believe the road either is, or should be, a Council asset and have taken legal advice that supports their position.
- To any casual observer, whether motorist or pedestrian, the road appears no different to any other local road accessed off the state highway in that vicinity.
- Parts of the road are currently in a state of disrepair that could cause damage to vehicles or create a road safety hazard. This state of disrepair can be expected to worsen as winter approaches.
- FNDC policies provide for Council to either take over the road as a maintained asset or not, at Council's discretion.
- This report concludes that on balance the road should be included in FNDC's schedule of maintained roads.

##### RECOMMENDATION

**That Council approves that Te Rangi Cross Road is to be included in the schedule of FNDC - Maintained Roads.**

##### 1) BACKGROUND

Te Rangi Cross Road was constructed in the early 2000's as part of the development of the Bridgewater Apartment complex (Attachment 1) Refer Attached Map.

The entire carriageway is constructed within the legal road alignment.

Residents hold the view that the road was initially maintained by Council but that this stopped at some point in the past. Council records do not provide any evidence to support this view. The implication is that if Council contractors were undertaking maintenance it was not being paid for directly; rather the costs were being 'absorbed' in some way either by the contractor or through incorrect coding into other parts of the roading network.

Complaints about the lack of maintenance led to an internal investigation during 2018 that concluded with an internal legal opinion that there is no documentation contained in the resource consent that states the road was to be taken over by Council. For completeness it must also be noted that there is no definitive statement that the road shall be maintained as a private road.

Note that it is relatively common to see requirements for a body corporate, or similar, to take ownership of a critical asset of this nature when it is to be maintained in private ownership – that has not occurred in this case.

The road is not constructed to FNDC standards for the class of road. The Resource Consent required a 6m wide sealed carriageway. FNDC standard for the class of road would be an 8m wide sealed carriageway.

There is however, some ambiguity. Prior to construction of the current sealed road, the 'road' did exist in some form and was used as access to existing properties. The resource consent requires "...upgrading of the legal road...", rather than (for instance) '...construction of a new road...'

During the investigation for this report, the customer who initiated the most recent investigation (Ms. R. Stent) provided a legal opinion (attached) supporting the position that the road should be taken over by Council.

## 2) DISCUSSION AND OPTIONS

The principal options are:

1. Status quo (i.e. confirms Te Rangi Cross Road is not included in the schedule of FNDC-maintained roads).
2. confirm the inclusion of Te Rangi Cross Road in the schedule of FNDC-maintained roads.
3. that if the residents are prepared to form the road to the appropriate council standard at no cost to Council, then Council will include it in its maintained road schedule.

### Option 1: Status Quo

#### Description

Council confirms Te Rangi Cross Road is not maintained by FNDC

#### Costs

FNDC incurs no ongoing maintenance 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 adjacent to the state highway.
- Potential costs to Council to compel maintenance of the road by 'owners' to avoid safety risks noted above

### Option 2: Accept Te Rangi Cross Road as part of the FNDC Roding Network

#### Description

Council confirms Te Rangi Cross Road as part of the schedule of FNDC-maintained roads.

#### Costs

FNDC incurs ongoing maintenance costs.

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.

### **Option 3: Residents to upgrade Te Rangi Cross Road to Council standards prior to Council accepting as part of the FNDC Roding Network**

Description

Council confirms Te Rangi Cross Road as part of the schedule of FNDC-maintained roads, providing the residents upgrade the road to meet Council standards.

Costs

FNDC incurs ongoing maintenance 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.

**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. However, the road has been formed to the standard required by Council through the resource consent. The policy allows Council to include the road in the schedule of FNDC-maintained roads at its discretion.

Council Policy #4103 states that:

*2. The 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 above;

- The formed carriageway is entirely within legal road reserve
- Clause 2.2 would seem to ignore the possibility of connection to state highway rather than other local road. Te Rangi Cross Road joins the state highway.
- Clause 2.3 is where the principal ambiguity arises. The carriageway is not formed to meet the FNDC engineering standards of the time; however, it has been formed to a standard the Council of the day deemed "...appropriate to the planned use...", as required by the resource consent.
- There is no alternative access to the properties on Te Rangi Cross Road.

In consideration of all the information available, Option 2 is the most practical option.

**Reason for the recommendation**

Based on the information available Option 2 is the preferred and lowest risk option. Furthermore, Option 2 makes the most practical sense because to any and all road users this looks and feels like a public road. It is accessed directly from the State Highway in an area that has high visitor and tourist numbers. There is significant use of the road by the general public. Note that the general public has the right to access legal roads regardless of their formation or who maintains them.

The lessons from this case should be used to inform clearer drafting of future resource consent conditions; and the review of the abovementioned roading policies will be similarly informed. In the present, the weight of evidence suggests that on balance Option 2 is the appropriate course of action.

### 3) FINANCIAL IMPLICATIONS AND BUDGETARY PROVISION

A typical sealed residential road with low volumes of heavy vehicles will incur minimal annual maintenance costs – less than \$1,000/year over the long run.

Resealing can be expected approximately every 10 – 15 years at a rough order cost of less than \$10,000.

Reconstruction may be required at some point in the next 25-30 years at a rough order cost of \$65,000. At that time FNDC may elect to carry out additional upgrades (e.g. widen the carriageway).

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.

Note that road maintenance and renewal costs would attract NZTA subsidy which is currently 66%.

### ATTACHMENTS

1. Te Rangi Cross Road - Service Map - A2418580
2. Letter BE Brill (Barrister) to R.Stent (Resident) - A2418591

#### Compliance schedule:

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

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.

Compliance requirement	Staff assessment
State the level of significance (high or low) of the issue or proposal as determined by the <a href="#">Council's Significance and Engagement Policy</a>	The matter has 'low significance' in the context of the policy. It is a localised matter directly affecting a small number of residents and a greater number of visitors/tourists
State the relevant Council policies (external or internal), legislation, and/or community outcomes (as stated in the LTP) that relate to this decision.	Council policies in order of relevance are: 4103 – Limits of Council responsibility for formation / maintenance of roads 4105 – Private Roads and Right of Ways 4112 – Community Initiated Infrastructure – Roding Contribution Policy  It is noted that all of the above policies are designated

	as 'under review'.
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.	"...the roading network..." is a specific exclusion to the delegations to community boards. Specific community board views on this issue have not 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.	The decision is of low significance (see above), does not relate to land use, water use, or any change to land or water use. The decision relates solely to funding of maintenance to an existing asset. Specific advice has not been sought regarding implications for Māori.
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.	The principal affected parties are residents of Te Rangi Cross Road. Those persons have initiated the process that has led to this report. Discussions have been held with the initiator to ensure her position is understood and fairly conveyed.
State the financial implications and where budgetary provisions have been made to support this decision.	Sporadic maintenance activity on the road and 'renewal' activity over the life of the asset. Refer to financial implications section of the report. Any financial implications would be incorporated into overall roading budgets.
Chief Financial Officer review.	<b>Type here</b>