

6.4 KOUTU MONGERO PICNIC AREA ENCROACHMENT**File Number: A3540785****Author: Rochelle Deane, Manager - Environmental Services****Authoriser: Dean Myburgh, General Manager - District Services****TAKE PŪRONGO / PURPOSE OF THE REPORT**

To seek approval of the recommendation that the Koutū Mongero Picnic Area be managed by a Kaitiaki Agreement.

WHAKARĀPOPOTO MATUA / EXECUTIVE SUMMARY

- In April 2021 Council Monitoring Officers responded to a complaint that an area of unformed road known as Koutū Picnic Area was being used illegally as a campground. A site visit was carried out which confirmed the presence of illegal structures and signage relating to a campground. The kaitiaki occupiers have been mowing and maintaining the picnic area.
- The Monitoring Team and the Northern Transport Alliance (NTA) seek direction from Council about the future use of the picnic area. Staff recommend that Council support Option 1 and engage with the kaitiaki occupier to formalize a Kaitiaki Agreement. Further, that Council assists the occupier to obtain the necessary consents to legalise the use of the Koutū Picnic Area as a campground.
- On 6 October 2021 the Kaikohe-Hokianga Community Board resolved to support Option 1 of this report.
- This is the final report to Council for a decision.

TŪTOHUNGA / RECOMMENDATION**That Council**

- a) **engage with the kaitiaki of the Koutū Mongero Picnic Area to formalise a Kaitiaki Agreement for the lawful use of the area as a campground; and**
- b) **engage with the kaitiaki to obtain the necessary consents under the Resource Management Act, Local Government Act and Health Act to facilitate the lawful use of the area as a campground.**

1) TĀHUHU KŌRERO / BACKGROUND

In April 2021 Council Monitoring Officers responded to a complaint that an area of unformed road known as Koutū Picnic Area was being used illegally as a campground (see fig.1 on the next page).

A site visit was carried out which confirmed the presence of illegal structures and signage relating to a campground. The kaitiaki occupiers have been mowing and maintaining the area (fig.4).



Fig.1 Location of area of unformed road known as Koutū Picnic Area



Fig.2 Signage relating to illegal campground



Fig.3 Illegal Structures



Fig.4 The site has been mowed and maintained by kaitiaki occupiers

Timeline of Events Relating to Koutū Mongeroa Picnic Area

11 Dec 2014

Council resolved

“THAT the person responsible for the structures on Koutū Point unformed legal road be given 21 days to have them removed;

AND THAT failure to do so will result in Council issuing a Trespass Notice to this person and having the structures removed at the occupier’s expense (as per Policy #5108 - 2014 - Encroachments on Council Administered Land).”

A trespass notice was duly served on the occupier, and he was given 21 days to remove all structures from the Reserve.

Reports from community members and the NZ Police indicated that a land occupation was to be undertaken by the occupier and supporters, and matters could become unpleasant.

10 June 2015

Then Chief Executive Officer (Acting) Colin Dale met with the occupier and their legal representatives to endeavour to achieve an amicable outcome. The outcome of this meeting was that the family and hapū, with Council's assistance, convene a public meeting in Opononi to get the views of the wider community.

23 October 2015.

Approximately fifty people attended the public meeting chaired by Mark Ambler (elected from the floor). FNDC representatives, Chief Executive Officer (Acting), Colin Dale, George Swanepoel (Legal Counsel), Phill Grimshaw (Manager Strategic Iwi Relationships), and Mike Colebrook (Manager Facilities Operations) briefed the meeting on the history of the encroachment and Council's obligations under Local Government legislation, to address the public complaints that had been received.

Members of Ngāti Korokoro outlined their claim under the Treaty of Waitangi, and advised that by June 2016, they would have proof showing hapū ownership.

Colin Dale confirmed that Council was happy for the Treaty claim to progress as it was the correct and lawful process, but on receipt of the complaints regarding illegal structures, illegal camping, and other health and safety concerns, it had to act to protect the wider community.

The meeting then agreed that the whānau and Council had heard the arguments raised by the hapū and wider community, and that the parties concerned should continue to work towards a resolution of the concerns that had been raised (Council Report A1647876).

May 2016

Phil Grimshaw and George Swanepoel met with occupier Syd Mathews, and it was agreed:

1. That although council was happy for Mr Mathews to be the caretaker of the block it has to be open to all the public and that the accosting and abuse of members of the public was unacceptable.
2. That Mr Mathews would remove the signs and that Council would assist with the removal of the container and the porta cottage.
3. Council would explore the installation of toilets as this destination was popular with freedom campers.
4. Council would look at some type of secure post box where campers could leave a koha which would help Syd pay for the maintenance of the area.

May 2016 – Present

The conditions of the informal Agreement were not progressed, and no formal Kaitiaki Agreement was finalised. The occupation of the area diminished without further action from FNDC. Due to staff changes and an absence of complaints, enforcement of the removal of the encroachment did not occur.


Treaty Claim

Independent historical research commissioned by FNDC and conducted by Schwarz Consultancy Ltd concluded the Koutū block was a private transaction between Māori and European settlers and did not find anything untoward that would suggest a Treaty claim was appropriate. In addition, land vested in Council is not Crown land for the purposes of Treaty settlements.

Public Use and Legislation

The site is currently advertised on the internet and social media as a campground. Figure 5 is a screen snip from <https://nzcamping.com/camp-directory/camp-listing/north-island/far-north/Koutū-mongero/>.

> KOUTU MONGERO <



CONTACT INFORMATION

📍 **Address:**
 Koutu Point Road, Opononi, Far
 North, North Island

📄 **DESCRIPTION:**

4km north of Opononi turn off SHwy12 onto Koutu Loop Road. The camping and picnic area is 3km from the highway. This is no frills camping on a grassy plateau, surrounded on 3 sides by the Hokianga Harbour, with superb views. You will need to be fully self-contained as the only facilities are some picnic tables. There is no water, or power but there is a long drop toilet. There is a boat ramp nearby. Camping costs \$10 per night per van and can be put in the honesty system at the small shed at the entrance. Big area of sites. Sid and Donna live at 825 Koutu Loop Rd which is the first house on the road from the main road.

☰ **Categories:** Campground

Figure.5 The picnic area is advertised as a campground on the internet

The site is public land, so it is desirable to maintain public access and enjoyment of the picnic area. However, Section 357 of the Local Government Act (LGA) provides that it is an offence to encroach on a road for example by erecting buildings or fences. Council has received multiple complaints since 2016 regarding the encroachment preventing access to the picnic area.

Council's Monitoring and Compliance Team and the Northern Transport Alliance (NTA) seek Council's direction on options to resolve the encroachment and address complainants' concerns.

2) MATAPAKI ME NGĀ KŌWHIRINGA / DISCUSSION AND OPTIONS

Council Monitoring Staff have met with Northern Transport Alliance (NTA), Te Hono and Legal staff to identify options for the future use of the Koutū picnic area. It is noted that the unformed road is not required for roading purposes. However, any alternative use of public land requires elected member direction. The options are as follows.

- Option 1 Engage with kaitiaki occupier to formalize a Kaitiaki Agreement and seek necessary consents to legalise the campground; or
- Option 2 Take enforcement action to remove illegal structures and prevent campground use: or
- Option 3 Investigate changing status of area from road to reserve

Option 2 is not recommended because:

- Enforcement action is unlikely to resolve the demand for campervan parking at the picnic area. Even if encroachments are removed it is likely that campervans would still use the area. Complaints from Koutū Point residents about camping at the site would not necessarily be resolved.
- Enforcement action may alienate the kaitiaki who have been maintaining the area. This is not consistent with Treaty of Waitangi principles of Tino Rangatiratanga and Partnership.
- Enforcement Action would not provide for the ongoing maintenance of the area. NTA have no interest in or budget for maintaining the picnic area.

Option 3 is not recommended because:

- Changing the status of the land would require a formal legal process of road stopping.
- Reserve status would not resolve the demand for campervan parking in the area.
- Changing status of the land to Reserve would not provide for the ongoing maintenance of the area. There is no budget in the LTP for additional reserve maintenance.

Take Tūtohunga / Reason for the recommendation

Option 1 is the preferred option because:

- The Kaitiaki Agreement can document Council's expectations relating to public access and maintenance of the area.
- Council can work with kaitiaki to assess compliance with the requirements of the Resource Management Act 1991 (RMA), s.120B of the Health Act 1956 (Campground Regulations) and s.357 LGA. It is likely that resource consent and health licensing would be required.
- If compliance is achieved, the Kaitiaki Agreement can provide for both campervan parking and public access to the coast. Resource consent and health licensing conditions would also apply.
- An agreement would recognise the role of local kaitiaki and be the focus for constructive dialogue between Council and the kaitiaki occupier. This aligns with the Treaty of Waitangi principles of Tino Rangatiratanga and Partnership.
- Other government agencies, for example the Department of Conservation (DOC) have kaitiaki Agreements delegating functions to community groups. For example, the management of the Urupukapuka Island campground by hapū from the Bay of Islands/Rāwhiti area.
- Enforcement action to remove structures and exclude kaitiaki is likely to result in ongoing conflict and occupations. If the kaitiaki were not permitted to occupy and maintain the area it is unlikely to be maintained by NTA and public amenity would be reduced.

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

Council will need to fund technical and legal support to assess whether the proposed campground can achieve compliance with the requirements of the Resource Management Act 1991 (RMA), 120B of the Health Act 1956 and LGA.

The Kaitiaki agreement would likely set the scope for how much development and use is expected.

- Indicative costs:
- Resource consent application preparation \$3,500
- Resource consent processing \$3,500

- Campground Health Licence \$341/year
- Building consents may be required depending on what structures remain/ are introduced.
- There is no existing budget available for this work, however the recommended option (option 1) would have similar budget and staff capacity implications as an enforcement proceeding.

ĀPITI HANGA / ATTACHMENTS

Nil

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:

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	Medium – The occupation of the Koutū picnic area previously received media attention and was the subject of a public meeting. The future management of public land may be of interest to the community.
State the relevant Council policies (external or internal), legislation, and/or community outcomes (as stated in the LTP) that relate to this decision.	There is no budget for the management of this area of unformed road. It is likely that resource consent under the RMA and a license under the Health Act will be required before the area can lawfully be used as a campground.
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.	District Wide Relevance This reports recommended option has been supported by the Kaikohe-Hokianga Community Board.
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.	This report has considered how kaitiaki Māori can be included in decision making about the future use of the Koutū Picnic Area. This aligns with the principles of Tino Rangatiratanga and Partnership.
Identify persons likely to be affected by or have an interest in the matter,	Potentially affected parties include residents of Koutū Point, hapū, kaitiaki, and members of the public wanting

and how you have given consideration to their views or preferences (for example – youth, the aged and those with disabilities).	access the picnic area and coastline. NTA does not consider themselves affected as they have no plans for the unformed road.
State the financial implications and where budgetary provisions have been made to support this decision.	As covered in report. Financial implications of Option 1 are similar to Options 2 and 3.
Chief Financial Officer review.	The Chief Financial Officer has reviewed this report