



Council

Meeting of 6 April 2023

Business Unit: Infrastructure
Date Created: 21 February 2023

Opawe Road

Purpose Te Aronga o te Pūrongo

The purpose of this report is to provide an update to Council following objections on the proposed road stopping of part of an unformed legal road adjoining 524 Opawe Road, in Pohangina, and provide recommendations to Council as to next steps with the road stopping proposal.

Significance of Decision Te Hira o te Whakataunga

The Council's Significance and Engagement Policy is not triggered by matters discussed in this report. No stakeholder engagement is required.

Recommendations Ngā Tūtohinga

That the Council:

- (a) Note the contents of this report, including the Recommendation Report of Senior Planner, Ryan O'Leary, from The Property Group (TPG) attached.
- (b) Agrees to rescind the previous Council resolution (MDC 21/742) that gave Council officers approval to initiate the road stopping proposal.
- (c) Agrees not to proceed with the current road stopping proposal.
- (d) Directs Council officers to:
 - (i) investigate different options in light of concerns around enduring public access to Ruahine Forest Park, and other issues raised in submissions.
 - (ii) present a further report to the Council for consideration outlining the outcomes of (i) before taking any further steps with regard to the unformed road.

Report prepared by:
Wendy Thompson
Strategic Infrastructure Planner

Approved for submission by:
Shayne Harris
Chief Executive

1 Contribution to Community Well-being and Council's Community Outcomes Te Tūhono ki ngā Whāinga a te Kaunihera mō te Oranga Hapori me te Whakawhanake Hapori

1.1 Relationship to Council's strategic priorities (community outcomes):

A place to belong and grow He kāinga e ora pai ai te katoa	
A future planned together He kāinga ka whakamaherea tahitia tōna anamata e te hapori tonu	
An environment to be proud of He kāinga ka rauhītia tōna taiao	✓
Infrastructure fit for future He kāinga ka tūwhena tonu ōna pūnahahanga, haere ake nei te wā	✓
A prosperous, resilient economy He kāinga ka tōnui tōna ōhanga	
Value for money and excellence in local government He kāinga ka eke tōna kāwanatanga ā-rohe ki ngā taumata o te kairangi	

1.2 This aligns with Council's strategic priorities ensuring that we have an environment that we can be proud of and suitable access that is provided to the Ruahine Forest Park for the public.

2 Background Ngā Kōrero o Muri

2.1 A report was presented to Council on 1 April 2021 seeking, among other things, approval to initiate a road stopping process for an area of approximately 1.2998 ha adjoining 524 Opawe Road, Pohangina (shown in 'Section 1' of SO Plan 557632) in accordance with section 342 and Schedule 10 of the Local Government Act 1974.

2.2 As part of the road stopping proposal, the Council would secure alternative public access to Ruahine Forest Park (presently accessed via the unformed road), via an easement over Area A depicted in SO Plan 557632. If the road stopping proposal was successful, the stopped road was to be disposed of to the owners of 524 Opawe Road, Maungatau Farm.

2.3 At the meeting on 1 April 2021, the Council resolved (MDC 21/742) to:

- (a) Agree that approximately 1.2998ha of unformed legal road land (Front Section Land) adjoining 524 Opawe Road, Pohangina (shown in 'Section 1' of SO Plan 557632) is not required for road purposes or a public work.
- (b) Approve the disposal of the Front Section Land to the owners of 524 Opawe Road, Pohangina, Maungatau Farm, subject to a successful road stopping process.
- (c) Authorise Council officers to commission a section 40 Public Works Act 1981 report from suitably qualified consultants to identify whether the Front Section Land must be offered

back to its former owner or their successor, or whether exemptions from offer back requirements applies, and delegate to the Chief Executive any related powers under section 40.

- (d) Authorise Council officers to initiate the road stopping process for the Front Section Land in accordance with Section 342 and Schedule 10 of the Local Government Act 1974.
 - (e) Delegate to the Chief Executive the power to formally approve the road stopping, and issue the public notice to declare the Front Section Land stopped as road, subject to all statutory requirements being met and with no objections being received.
 - (f) Note that if objections are received, a further report will be presented to the Council for consideration.
 - (g) Delegate to the Chief Executive the power to negotiate the terms of disposal of the Front Section Land, and enter into any agreement in respect of the Front Section Land, either with the former owner, or their successor, or the owner of 524 Opawe Road, Pohangina, provided any such agreement is conditional upon the road being stopped.
 - (h) Agree to enter into an easement (pedestrian right of way) over land owned by Maungatau Farm Limited (Part Section 9 Block XI Pohangina SD), subject to a successful road stopping process, and delegate to the Chief Executive all powers relating to entry into the easement.
- 2.4 Officers undertook a public consultation process on the road stopping proposal following public notice between 30 April and 9 June 2022. A sign and copy of the public notice was placed near the entrance of the road to be stopped for the duration of the public notice period, and copies of the proposal were made available on Council's website and in libraries.
- 2.5 A total of 61 objections were received. A report detailing those objections is attached to this report, from Ryan O'Leary from TPG. Mr O'Leary has reviewed the submissions, and met with some objectors, following an open invitation to all submitters, and Council officers to gain further understanding of the concerns raised with the road stopping proposal.
- 2.6 Mr O'Leary's Recommendation Report provides an overview of the submissions received, and makes recommendations as to next steps with the road stopping proposal.

3 Discussion and Options Considered Ngā Matapakinga me ngā Kōwhiringa i Wānangahia

- 3.1 Following discussions with Council officers and objectors, Mr O'Leary is of the view:
- (a) The Council wishes to secure enduring public access to Ruahine Forest Park.
 - (b) A large number of objectors are concerned that a pedestrian easement is not a sufficient alternative to the legal road status currently held.
 - (c) Whilst there are a variety of views amongst objectors, a large portion of objectors could see benefits in the alternative location of access due to the preferable terrain and distance from Maungatau Farm buildings.

(d) The issues raised at (b) and (c) above necessitate consideration of alternative options by Council officers, however, these options require further investigation and assessment, which is best undertaken outside of the current road stopping proposal.

3.2 Against this background Mr O'Leary recommends that the Council not proceed with the road stopping proposal in its current form, thereby allowing for the investigation of issues raised through submissions and consideration of further options for the unformed road.

3.3 A further report is proposed for Council's consideration after review of alternative options.

4 Te Kīwai (o te kete)

4.1 Te Kīwai is the engagement process which guides Council's practice and ensures the onus to engage and include Māori is shared between Council and all partners. In this manner, we progress both the articles and principles of Te Tiriti o Waitangi by maintaining the balance between Kawanatanga (Governance) of the Council and Tino Rangatiratanga (Sovereignty) of whānau, hapū, and iwi Māori.

4.2 There are no known cultural considerations associated with the matters addressed in this report. No engagement with Māori is necessary.

5 Community Engagement Te Whai Wāhitanga mai o te Hapori

5.1 Community engagement has occurred through the Schedule 10, LGA 1974 process.

6 Operational Implications Te Whai Pānga Atu ki ngā Kaupapa Mahi

6.1 There are no operation implications

7 Financial implications Te Whai Pānga Atu ki ngā Kaupapa Ahumoni

7.1 There are no significant financial implications. There have been costs incurred to date with the road stopping process; some of which will be met by the landowner, Maungatau Farm.

8 Statutory Requirements Ngā Here ā-Ture

8.1 The Council may determine not to proceed with the road stopping proposal by not referring the objections to the Environment Court for determination in accordance with Schedule 10, LGA 1974. This approach is consistent with the recommendations of Mr O'Leary, having reviewed the submissions, that further investigation of alternatives in light of the issues raised in submissions, is required by Council officers outside the current road stopping proposal.

8.2 Otherwise, if Council decided to proceed with the road stopping process it would need to send the objections together with the plans, and a full description of the proposed alterations to the Environment Court. On deciding to proceed with the road stopping proposal through referral to the Environment Court, any final determination would be made by the Court.

9 Delegations Te Mana Whakatau

9.1 The Council has authority to consider this matter.

10 Conclusion Whakatepenga

- 10.1 Having received the Recommendation Report of Mr O’Leary, this report seeks the Council’s approval to not proceed with the current road stopping proposal for part of unformed Opawe Road, and instead for Council officers to investigate different options in light of concerns around enduring public access to Ruahine Forest Park, and other issues raised in submissions.

11 Attachments Ngā Āpitihanga

- Recommendation Report for Road Stopping – Opawe Road, Pohangina
- SO Plan 557632

Recommendation Report for Road Stopping - Opawe Road, Pohangina

Purpose

1. The Council proposes to stop a portion of unformed legal road in Opawe Road, Pohangina. Following public notification of its proposal the Council have received a number of objections. The purpose of this report is to present to Council options for the road stopping process.

Structure of Report

2. This report provides:
 - (a) a summary of the road stopping proposal;
 - (b) an outline of the public notification process completed;
 - (c) a summary of key themes of objections received; and
 - (d) an outline of, and recommendation regarding, next steps for Council.

Background

3. Opawe Road is a road comprising both formed and unformed sections in Pohangina that provides access to the Ruahine Forest Park. The unformed section traverses land owned by Maungatau Farm Ltd ("Maungatau Farm"), which is legally described as Part Section 9 Blk XI Pohangina SD ("the Land"). The Land is a working farm contiguous to the Ruahine Forest Park.
4. The Council maintains the formed section of Opawe Road, which winds up the Pohangina Valley to the Land. An aerial image depicting the Land is attached in **Appendix 1**.
5. Some members of the public use the unformed section of Opawe Road to access the Ruahine Forest Park. Other members of the public use an alternative poled route, which was installed by the Department of Conservation (**DOC**). The DOC poled route is accessed from a formed portion of Opawe Road and traverses a different path over the Land to the Ruahine Forest Park.
6. Since 2007, the Council has received public complaints relating to use of the unformed section of Opawe Road from time-to-time. Various efforts have been made, including with the landowner, Maungatau Farm, to ensure access across the unformed road. Notwithstanding, problems around use of the unformed road have persisted at times. There are also potential issues with the condition of the surface of the front section of the unformed road and vegetation (stand of trees). The landowner has also raised concerns regarding restrictions on their farming operations.
7. An earlier proposal to stop the unformed portion of Opawe Road involved a replacement access being created along the DOC poled route. Following objections regarding (in general terms) concerns with the width and gradient of the DOC poled route, Council officers consulted with the objectors to find an alternative route (not the DOC poled route) providing access to the Ruahine Forest Park. The alternative access supported by some of the objectors consisted of partly new and partly existing access. DOC and the Walking Access Commission of New Zealand supported the

Council's overall intention to secure practicable and sensible public access that worked for all parties and stakeholders.

8. In May 2013 Council withdrew the road stopping proposal and recommended initiation of a further road stopping procedure adopting the alternative access arising from consultation with objectors. While efforts were made to further the proposal, it did not eventuate at the time.
9. An 'alternative option' with the support of the landowner, Maungatau Farm, and some members of the public was pursued by Council which involved stopping a front section of the unformed road, adjoining land owned by Maungatau Farm at 524 Opawe Road, Pohangina and providing alternative access to the Ruahine Ranges via a right of way easement granted in perpetuity to the Council. The area of road to be stopped was proposed to be amalgamated with the adjoining Maungatau Farm property.

Summary of the road stopping proposal

10. The road stopping proposal involves:
 - (a) Stopping a 1.2998ha (subject to final survey) unformed section of Opawe Road (known as the "**Front Section Land**") under section 342 of the Act, with subsequent disposal of the land; and
 - (b) Subject to a successful road stopping process, the Council securing alternative public pedestrian access to the Ruahine Forest Park via an easement over Area 'A' depicted in SO Plan 557632. This area has been surveyed with the agreement of the landowner, Maungatau Farm.
11. The attached SO Plan depicts the Front Section Land (described above) and the easement in **Appendix 2** (SO Plan 557632).
12. The Council and landowner have agreed to the easement being registered if the Front Section Land is stopped. A copy of the draft easement terms are included in **Appendix 3**. The pedestrian access within the easement area would be fenced off on both sides by the Maungatau Farm and re-graded to facilitate pedestrian access.
13. The road proposed to be stopped is owned by Council. The land is currently in pasture and is used together with the adjoining property for farming purposes. The road has never been formed, fenced off, or used separately from the adjoining Maungatau Farm property. The unformed road does provide public access to the adjoining Ruahine Forest Park.

Council Resolution

14. In a meeting held 1 April 2021 the Council resolved to:
 - (a) Agree that approximately 1.2998ha of unformed legal road land (Front Section Land) adjoining 524 Opawe Road, Pohangina (shown in 'Section 1' of SO Plan 557632) is not required for road purposes or a public work.
 - (b) Approve the disposal of the Front Section Land to the owners of 524 Opawe Road, Pohangina, Maungatau Farm, subject to a successful road stopping process.
 - (d) Authorise Council officers to initiate the road stopping process for the Front Section Land in accordance with Section 342 and Schedule 10 of the Local Government Act 1974 (**the Act**).

- (e) Delegate to the Chief Executive the power to formally approve the road-stopping, and issue the public notice to declare the Front Section Land stopped as road, subject to all statutory requirements being met and with no objections being received.
- (f) Note that if objections are received, a further report will be presented to the Council for consideration.

Publication Notification and Objections Received

- 15. In accordance with Schedule 10(2) of the Act, the road stopping application was publicly notified 30 April 2022 and again on 28 May 2022, calling upon persons objecting to the proposal to lodge their objection in writing with Council on or before 9 June 2022.
- 16. A sign and copy of the public notice was placed near the entrance to the road to be stopped for the duration of the public notice period. Copies of the proposal were also made available in the Ashhurst and Feilding Library.
- 17. A total of 61 Objections were received by Council. It is noted that three (3) of these objections attached separate petitions that were signed by multiple parties in support of the respective objection. Although the Act only call for *objections* to be made to Council (and not submissions in support) it is noted that three (3) of the objections received were stated to be in support of the proposal.
- 18. Council's preference was for the proposal to be independently processed and reported on given the longevity of the issues and earlier involvement of officers in matters relating to the unformed road. The Council engaged Ryan O'Leary, an independent planning consultant from The Property Group Ltd, to consider the objections and prepare a report to Council.
- 19. An open invitation was provided to those objectors who may wish to meet. In addition to receiving the written objections, Mr O'Leary met with a total of 11 of the objectors (in person, phone or video call) to gain further understanding of the matters raised in objections.
- 20. Mr O'Leary also met with Council officers to understand the Council's response to objectors and further background to the road stopping process.

Key themes of Objections Received

- 21. The key themes from the objections received are summarised as follows:

Access to the Ruahine Forest Park

The legal road and the Department of Conservation poled route are both used to provide public access to the Ruahine Forest Park. These routes provide an east-to-west link across the Maharara Peak and is used by various recreational users (trampers, hunters etc) and DOC staff.

Locations where public access to the RFP can be obtained through public land are limited, particularly from the western side of the Ruahine Ranges.

Council Officers advice and the submission of the landowner, Maungatau Farm, confirmed the intention to ensure enduring public access to the RFP.

**Status of an easement vs
Legal Road**

Objectors held concerns that a pedestrian easement would be inferior to the status of the land to be stopped as 'legal road'. Objectors sought for any alternative access to be enduring and secure.

Objectors were concerned that an easement could be cancelled with the bi-lateral agreement of both parties. Some submitters sought for a 3rd Party (such as DOC or *Herenga a Nuku*/Walking Access Commission) to be party to the easement.

Other objectors sought for any alternative access to be held as legal road and not an easement. This was preferred as stopping of unformed road must follow a more open and robust process under Schedule 10 of the Act, including clear processes for public input/objections.

**Fencing and re-grading of
the land**

Some objectors supported the requirement to fence the easement area and to re-grade the surface of the proposed easement area to improve the ease upon which to traverse the terrain.

**Pedestrian Easement
Terms**

Dogs

Objectors expressed concern that the draft easement terms excludes dogs within the easement area. Avian trained/DOC approved dogs are permitted elsewhere within the RFP and easement area would be the only portion of the route from east to west where an exclusion of dogs would apply. The easement terms required fencing on both sides of the pedestrian route and objectors considered dogs on leash would be reasonable.

Closure of Access

Objectors sought reliable 24/7 access within the easement area and were concerned that the landowner would be able to close the access for extended periods of time (lambing etc). Council Officers acknowledged that the easement terms allowed temporary closure in certain circumstances (for instance, an emergency, for maintenance work, at the request of the landowner). However, closure may only occur in accordance with certain terms (consistent with Walking Act legislation), including that it must not be closed for longer than the Council considers necessary.

Exclusion of horses, motorbikes or vehicles

Objectors were concerned that the pedestrian only easement would limit the times of uses where the current legal road provided unfettered access. Some objectors sought the equivalent level of access.

Surrender of the Easement

Objectors were concerned that the easement can be surrendered by agreement between Council and the landowner. The easement specifies that there needs to be public notice and a period of consultation before any surrender of the easement.

Changes to the Easement Terms

Objectors were concerned that changes to the easement terms could be undertaken between Council and the landowner without notification to the public.

Compliance and Enforcement of Easement Terms

Objectors were concerned that the compliance and enforcement provisions in the draft easement terms were inferior and proffered those contained in easement agreements entered into Walking Access Commission an alternative.

Ease of Pedestrian Access Council Officers reported that the difficulty with terrain and topographical features within the existing unformed legal road which resulted in some users entering private property.

Some objectors acknowledged that the terrain of the proposed pedestrian easement would provide more practical physical access and a shorter route in comparison to the current paper road or poled route.

Vehicular access Some objectors accepted that vehicle access along the paper road was not currently possible or appropriate in this location given the destination leads the RFP. Others acknowledged that ground conditions encountered within parts of the unformed legal road may make road construction for vehicle access impractical and expense for Council. However, some objectors were concerned that any opportunity for vehicle access would be lost for future generations/new technologies if the Council were to accept a pedestrian easement rather than legal road.

Other access types Some objectors considered that a pedestrian easement would restrict other potential users (equestrian or 4 wheel drive vehicles).

Signage Objectors considered that appropriate and accurate signage needs to be installed and reflect the terms of any easement agreement.

Width of access Some objectors expressed concern regarding the 10m width of the pedestrian easement area where the current legal road is 20m. Some objectors sought that the area and width of land be 'like for like'. Other objectors could accept a lesser width on the basis that it enabled equivalent means of public access and types of uses.

Public Consultation Some objectors expressed concern that there has not been sufficient public consultation and that the Council should initiate further consultation with interested parties before making decisions on how (or if) to proceed.

Conclusions and Recommended Next Steps

22. Following discussions with Council Officers and objectors the primary conclusions are reached:

- (a) The Council wishes to secure enduring public access to Ruahine Forest Park.
- (b) A large number of objectors are concerned that a pedestrian easement is not a sufficient alternative to the legal road status currently held.
- (c) Whilst there are a variety of views amongst objectors, a large portion of objectors could see benefits in the alternative location of access due to the preferable terrain and distance from Maungatau Farm buildings.
- (d) The issues raised at (b) and (c) above necessitate consideration of alternative options by Council officers, however, these options require further investigation and assessment, which is best undertaken outside of the current road stopping proposal.

23. It is recommended that Council:

- (a) Note the contents of this report.
- (b) Agree to rescind the previous Council resolution to proceed with the road stopping proposal and not proceed with the current road stopping proposal.
- (c) Direct Council officers to investigate different options in light of concerns around enduring public access to Ruahine Forest Park, and other issues raised in submissions.
- (d) Present a further report to the Council for consideration outlining the outcomes of (c) before taking any further steps with regard to the unformed road.

Report prepared by:



Ryan O'Leary
Consultant Planner

Approved for submission by:



Title Plan - SO 557632

Survey Number SO 557632
Surveyor Reference CDS 419 MDC Opawe Road
Surveyor Stephen John Oldfield
Survey Firm Central District Surveys Limited
Surveyor Declaration I Stephen John Oldfield, being a licensed cadastral surveyor, certify that:
 (a) this dataset provided by me and its related survey are accurate, correct and in accordance with the Cadastral Survey Act 2002 and the Rules for Cadastral Survey 2010, and
 (b) the survey was undertaken by me or under my personal direction.
 Declared on 27 Aug 2021 12:58 PM

Survey Details

Dataset Description Section 1 and Easement over Pt Section 9 Blk XI Pohangina SD
Status Approved as to Survey
Land District Wellington **Survey Class** Class B
Submitted Date 27/08/2021 **Survey Approval Date** 30/08/2021
Deposit Date

Territorial Authorities
 Manawatu District

Comprised In
 RT WNB2/1185

Created Parcels

Parcels	Parcel Intent	Area	RT Reference
Area A Survey Office Plan 557632	Road		
Section 1 Survey Office Plan 557632	Road		
	Easement		
	Legalisation	1.3000 Ha	
Total Area		<u>1.3000 Ha</u>	

Schedule / Memorandum

Land Registration District

Wellington

Survey Number

SO 557632

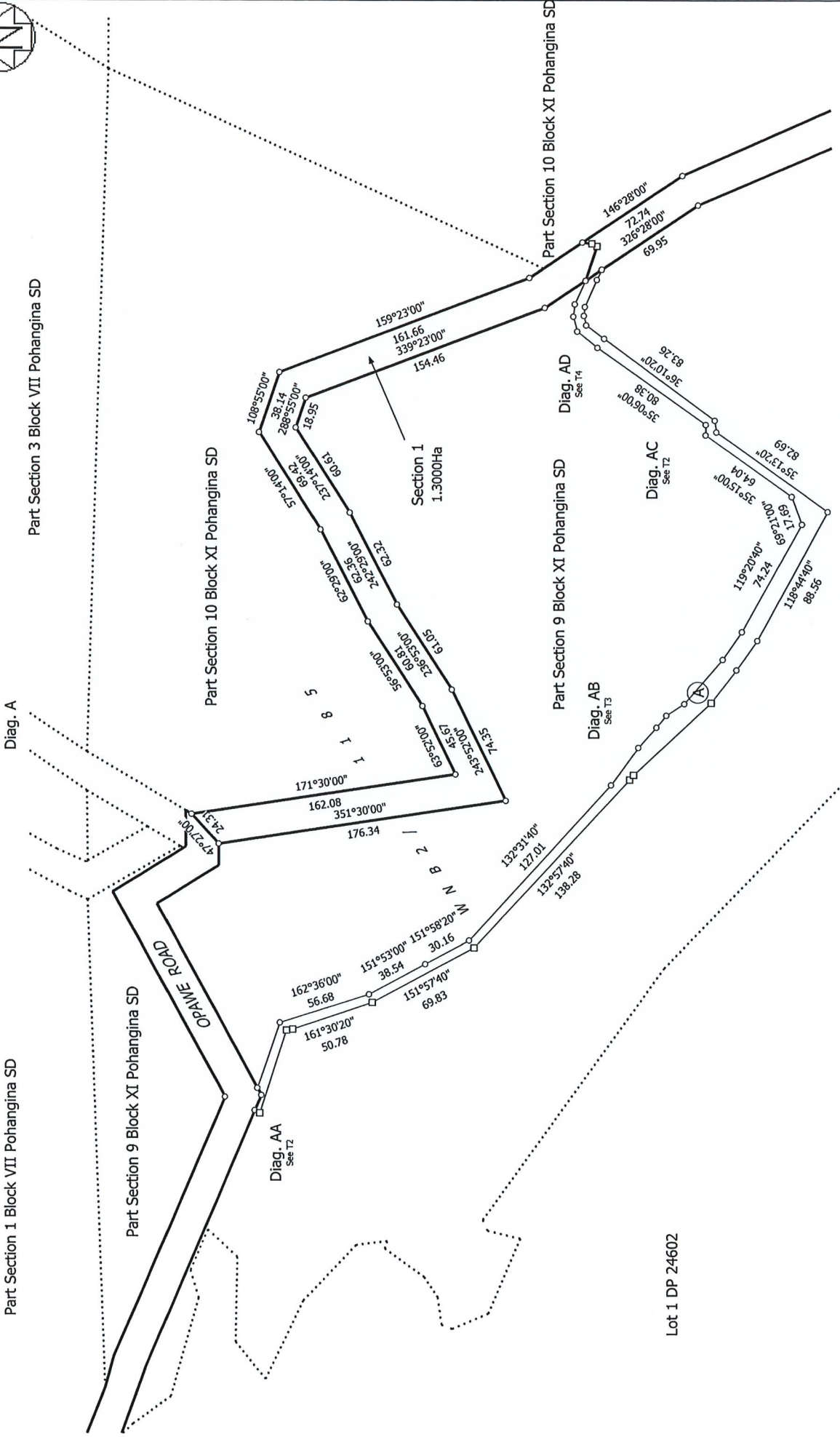
Territorial Authority (the Council)

Manawatu District

Schedule of Easements In Gross

Last Edited: 21 Dec 2020 12:28:57

<u>Purpose</u>	<u>Shown</u>	<u>Servient Tenement (Burdened Land)</u>	<u>Grantee</u>
Pedestrian Right of Way	A	Part Section 9 Block XI Pohangina SD	The Manawatu District Council



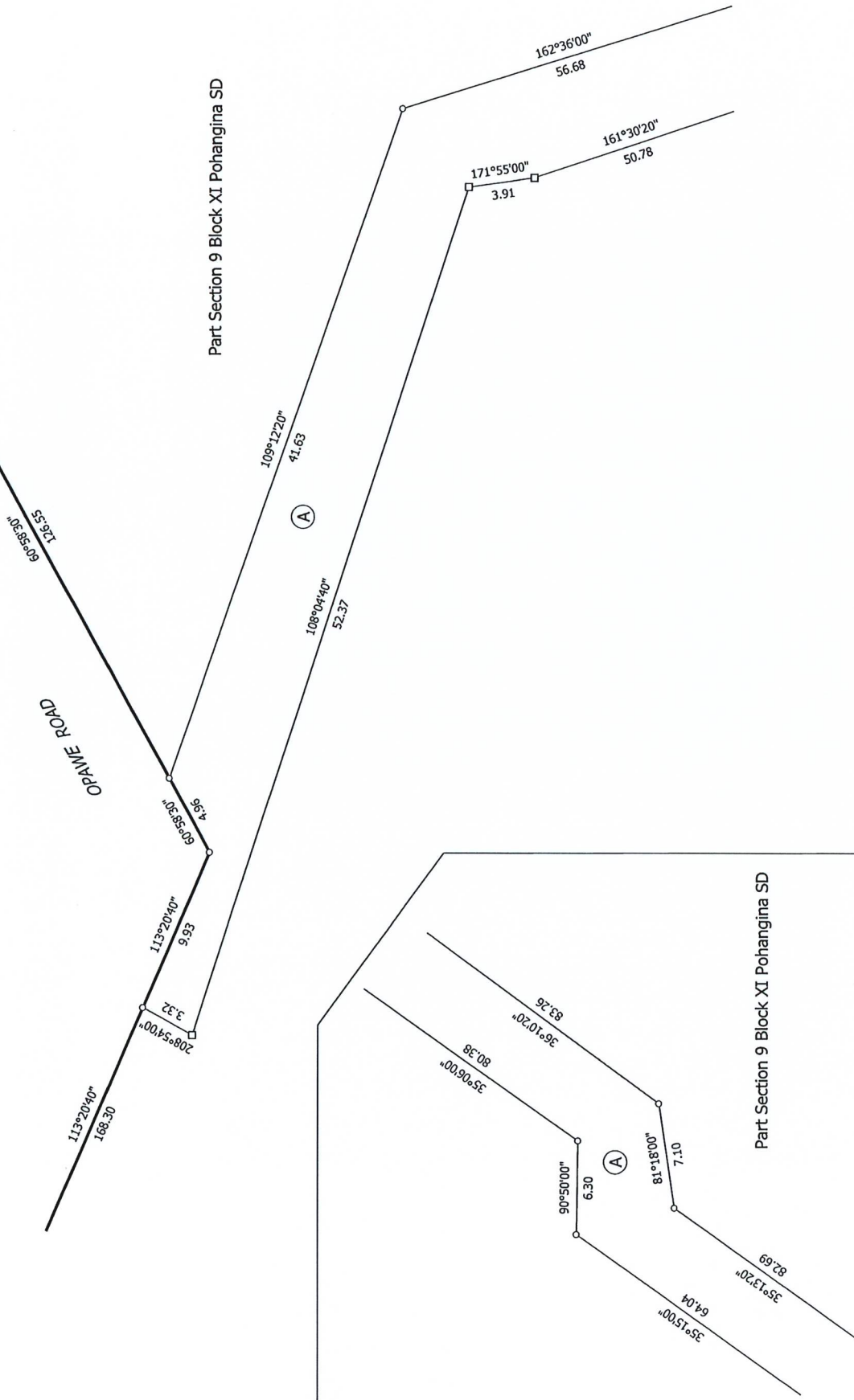
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Section 1 and Easement over Pt Section 9 Blk XI Pohangina SD

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Surveyor: Stephen John Oldfield
 Firm: Central District Surveys Limited

Title Plan
 SO 557632
 Approved on: 30/08/2021



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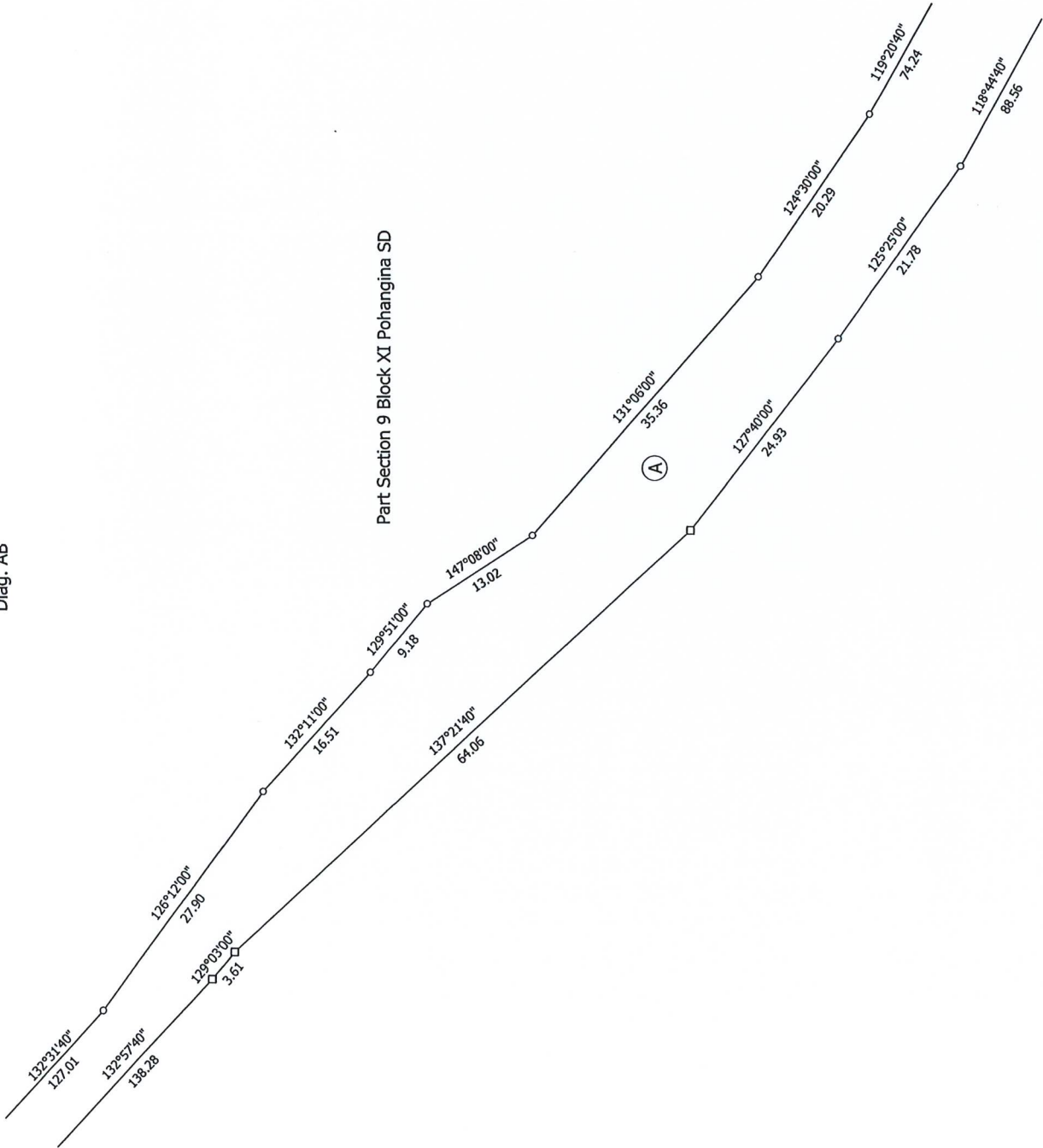
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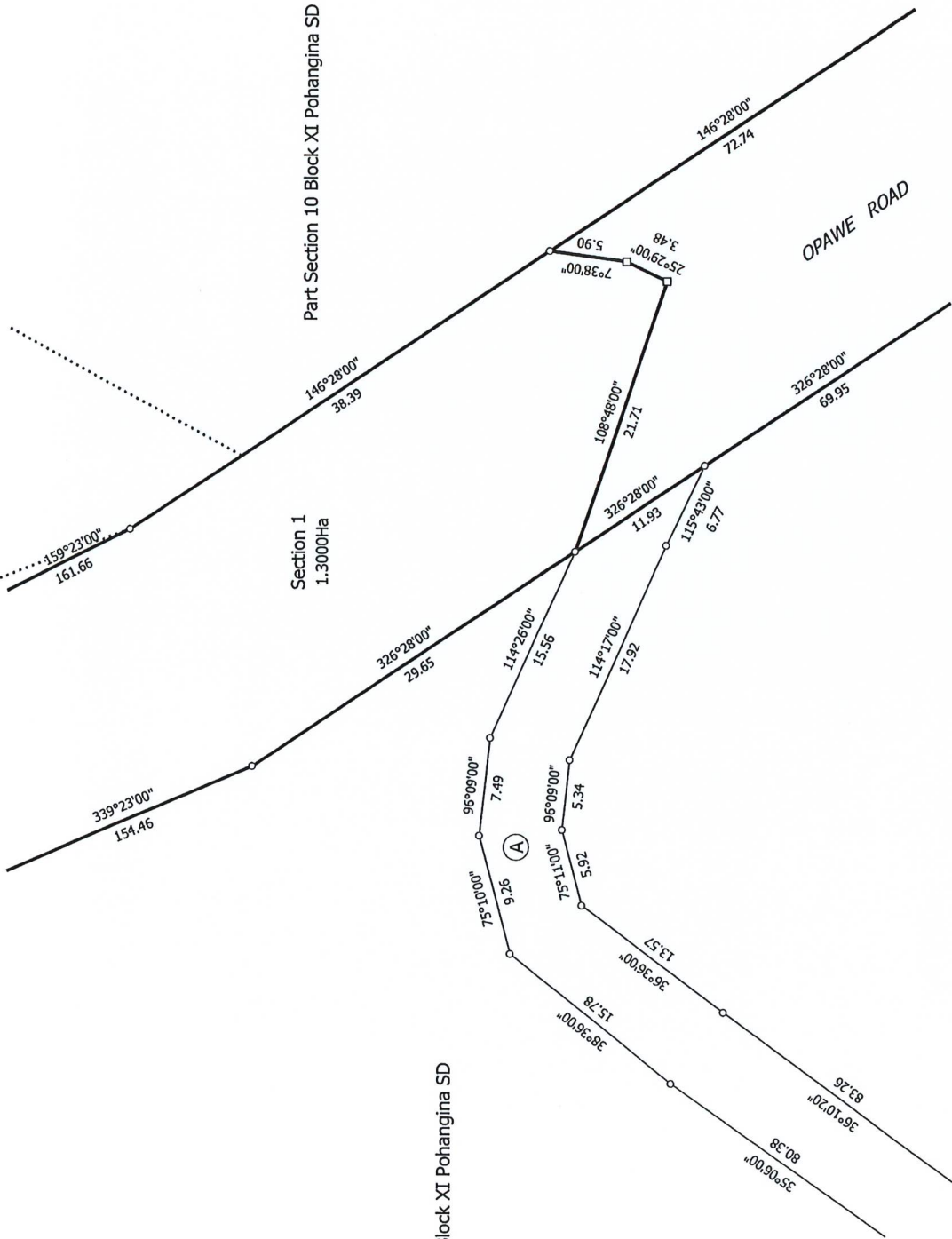
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Part Section 10 Block XI Pohangina SD



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SO 557632
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Surveyor: Stephen John Oldfield
Firm: Central District Surveys Limited

Section 1 and Easement over Pt Section 9 Blk XI Pohangina SD

Land District: Wellington
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