



I hereby give notice that an ordinary meeting of the Hibiscus and Bays Facilities and Reserves Committee will be held on:

**Date:** Friday, 13 February 2015  
**Time:** 1.00pm  
**Meeting Room:** Council Chamber  
**Venue:** Orewa Service Centre  
50 Centreway Road  
Orewa

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## Hibiscus and Bays Facilities and Reserves Committee

### OPEN AGENDA

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#### MEMBERSHIP

<b>Chairperson</b>	Janet Fitzgerald, JP
<b>Deputy Chairperson</b>	Gaye Harding-Kirikiri
<b>Members</b>	David Cooper Julia Parfitt, JP Lisa Whyte

(Quorum 3 members)

**Vivienne Sullivan**  
Local Board Democracy Advisor

**10 February 2015**

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**1 Welcome**

**2 Apologies**

At the close of the agenda no apologies had been received.

**3 Declaration of Interest**

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as a member and any private or other external interest they might have.

**4 Confirmation of Minutes**

That the Hibiscus and Bays Facilities and Reserves Committee:

- a) confirm the ordinary minutes of its meeting, held on Friday, 21 November 2014, as a true and correct record.

**5 Leave of Absence**

At the close of the agenda no requests for leave of absence had been received.

**6 Acknowledgements**

At the close of the agenda no requests for acknowledgements had been received.

**7 Petitions**

At the close of the agenda no requests to present petitions had been received.

**8 Deputations**

Standing Order 3.20 provides for deputations. Those applying for deputations are required to give seven working days notice of subject matter and applications are approved by the Chairperson of the Hibiscus and Bays Facilities and Reserves Committee. This means that details relating to deputations can be included in the published agenda. Total speaking time per deputation is ten minutes or as resolved by the meeting.

At the close of the agenda no requests for deputations had been received.

**9 Public Forum**

A period of time (approximately 30 minutes) is set aside for members of the public to address the meeting on matters within its delegated authority. A maximum of 3 minutes per item is allowed, following which there may be questions from www members.

At the close of the agenda no requests for public forum had been received.

**10 Extraordinary Business**

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

“An item that is not on the agenda for a meeting may be dealt with at that meeting if-

- (a) The local authority by resolution so decides; and
- (b) The presiding member explains at the meeting, at a time when it is open to the public,-
  - (i) The reason why the item is not on the agenda; and
  - (ii) The reason why the discussion of the item cannot be delayed until a subsequent meeting.”

Section 46A(7A) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

“Where an item is not on the agenda for a meeting,-

- (a) That item may be discussed at that meeting if-
  - (i) That item is a minor matter relating to the general business of the local authority; and
  - (ii) the presiding member explains at the beginning of the meeting, at a time when it is open to the public, that the item will be discussed at the meeting; but
- (b) no resolution, decision or recommendation may be made in respect of that item except to refer that item to a subsequent meeting of the local authority for further discussion.”

## 11 Notices of Motion

At the close of the agenda no requests for notices of motion had been received.

## Unauthorised Vehicle Access over Accessway Reserve to Mairangi Bay Presbyterian Church and two Private Properties.

File No.: CP2015/01180

### Purpose

1. To seek approval from the Hibiscus and Bays Facilities and Reserves Committee to formalise vehicle access, (by way of encumbrance), across a council accessway reserve (Lot 242 DP 13311) to the Mairangi Bay Presbyterian Church and properties at 8 and 10 Penzance Road, Mairangi Bay.

### Executive Summary

2. The Mairangi Bay Presbyterian Church (the Church) and three private land owners at 8 and 10 Penzance Road currently obtain vehicle access to their properties through a formed driveway over a council accessway reserve connecting Penzance and Hastings Roads, in Mairangi Bay.
3. The Church is seeking resource consent for activities on its property and council has become aware that vehicle access across the accessway reserve to the Church has never been legalised. This is also the case for the three private land owners at 8 and 10 Penzance Road. Council has been investigating various options for resolving this situation including granting an easement, an encumbrance on private property land titles or termination of access.
4. Following a Hibiscus and Bays Facilities and Reserves Committee workshop on 15 August, 2014, it has been realised that encumbrances registered on the private property titles are an alternative method of formalising access and unlike a registered easement do not create an interest in the land in perpetuity. An encumbrance also provides for the inclusion of covenants, conditions and termination clauses that can alleviate other concerns regarding private use including maintenance, safety and liability.
5. Church representatives have confirmed they wish to formalise on-going access by way of an encumbrance registered on their land title and have requested council waive any requirement for payment for continued use of this accessway.
6. The owners of 8 and 10 Penzance Road have also confirmed they are willing to consider the option of an encumbrance to secure interim access to their properties across this accessway.

### Recommendation/s

That the Hibiscus and Bays Facilities and Reserves Committee:

- a) approve the Manager Local and Sports Parks North entering into negotiations with Mairangi Bay Presbyterian Church and the current owners of 8 and 10 Penzance Road to formalise vehicle access over a section of council accessway, (by way of an encumbrance) including any necessary conditions, covenants and termination clauses connecting Hastings and Penzance Roads (Lot 242 DP 13311).
- b) recommend that the continued use of the land for vehicle access by the Mairangi Bay Presbyterian Church be free of any rental charge.
- c) require any encumbrance instruments registered on the titles of 8 and 10 Penzance Road to include rental charges for continued use and termination clauses that are triggered within 12 months of sale, further development (subdivision or building

reconstruction), or 10 years from establishment.

- d) require all applicants to enter into a cost share agreement for maintenance of the formed vehicle access.
- e) require applicants to meet all reasonable costs incurred by the council relating to establishing the encumbrance.
- f) request that the Manager Local and Sports Parks North reports back to the committee when the final details of the encumbrance instruments are completed for final approval.

## Discussion

### Background

- 7. During a land owner approval assessment relating to the Church's proposed re-development plans, significant use of the reserve for vehicle access by the Church and properties at 8 and 10 Penzance Road was identified.
- 8. It has since been discovered that vehicle access across the reserve to these properties has been occurring for many years (confirmed by aerial photos dating back to the 1950's) with no registered easements or formal access agreements in place.
- 9. Council has been investigating various options for resolving this situation including easement grants, encumbrances on private property land titles and termination of access.
- 10. At a Hibiscus and Bays Facilities and Reserves Committee workshop held on 15 August, 2014, the committee indicated support for formalising long term access for the Church by way of easement grant given the high community value and use of the Church facility. The committee was not supportive of formalising permanent access easements to 8 and 10 Penzance Road; this was subsequently communicated to the owners.
- 11. It has been realised that encumbrances registered on the private property titles are an alternative method of formalising access that does not create an interest in the land in perpetuity. An encumbrance also provides for the inclusion of covenants, conditions and termination clauses that can alleviate other concerns regarding private use such as maintenance, safety and liability.

### Mairangi Bay Presbyterian Church access

- 12. Church representatives have confirmed they wish to formalise on-going access by way of an encumbrance registered on their land title and accept it will include termination clauses, obligations and covenants relating to maintenance and use.
- 13. The Church have requested council waive any requirement for payment of continued use of the accessway however they have agreed to construct the missing part of the pedestrian footpath along the eastern boundary of the accessway as part of their site redevelopment works.

### 8 and 10 Penzance Road access

- 14. Forming vehicle crossings directly to the road from 8 to 10 Penzance Road is possible however there are some implications to be considered.
- 15. 10 Penzance Road is a leasehold (cross-lease) section, currently the access alignment set aside on the title plan includes a number of mature trees that would require removal and other earthworks to create practical access from road to the elevated rear dwelling within the property (refer attachment 1 & 2).



16. Several delineated car park spaces are currently located along the road frontage of both properties. A minimum of four parking spaces would be lost if vehicle crossings to road are created for both properties.
17. During recent discussions with the owners of 8 and 10 Penzance Road the owners have indicated they are willing to consider formalising vehicle access by way of an encumbrance.
18. This option provides a temporary solution that can allow the current owners time to establish the most appropriate alternative access without creating unplanned financial pressure or forcing development of access that may not be appropriate to future development. Furthermore an encumbrance instrument can address maintenance, safety and liability issues associated with unauthorised use of the accessway and include termination clauses that are triggered upon sale, further development (subdivision or building reconstruction) and 10 years from establishment.

## Consideration

### Local Board Views and Implications

19. The process of the council agreeing to an encumbrance involves (in practice) the council agreeing that part of its land can be used by a third party (without disposing of property). On that basis: where the proposed encumbrance relates to a local park, the local board has been allocated responsibility for these decisions.
20. Under the Local Board Delegations Protocols, the decision to grant landowner approval can be delegated to staff, provided that the local board portfolio holder (elected member) is consulted. This decision can still be referred back to the local board, at the portfolio holder's request.

### Implementation Issues

21. The applicants are aware of the process council must follow should formalisation by way of encumbrance be approved and costs involved which they will be expected to meet; including legal and survey, administrative, documentation fees and financial consideration.
22. Financial consideration at current market rate will be required for on-going use and determined via valuation.
23. If approved, council's legal team will work with the applicant to formalise the encumbrance instrument.

## Attachments

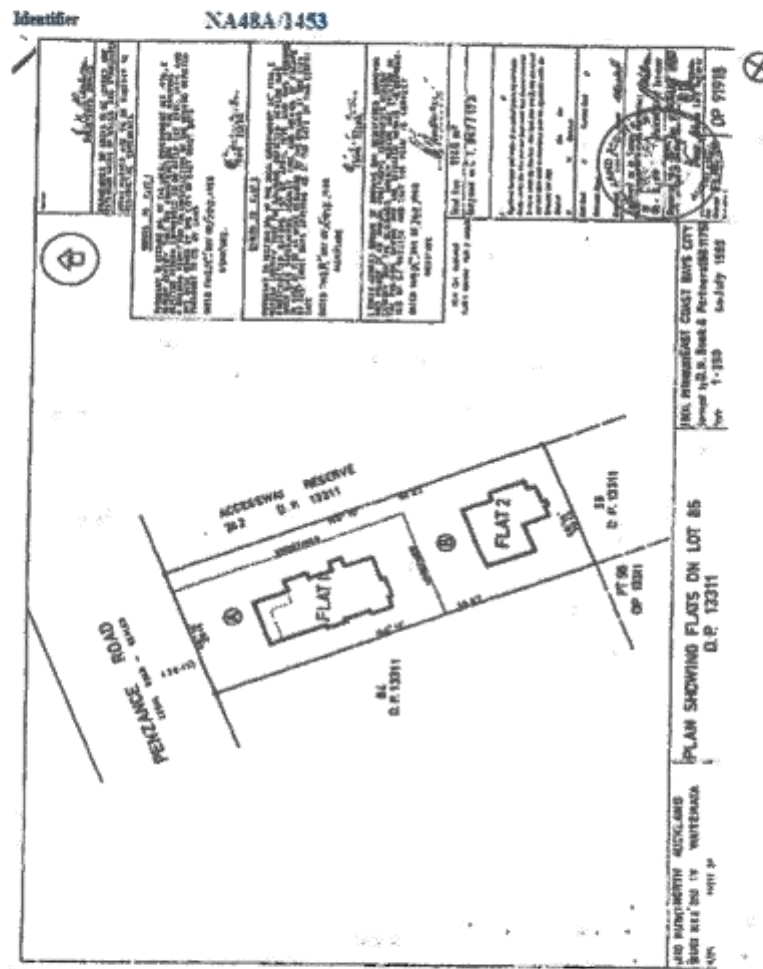
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## Signatories

Authors	Dafydd Pettigrew – Parks and Open Space Specialist
Authorisers	Lesley Jenkins - Relationship Manager Ian Maxwell - General Manager Parks, Sports and Recreation



Attachment 1: 10 Penzance Road Cross lease exclusive use areas





Attachment 2: 8 & 10 Penzance Road Site Photos



8 Penzance Road



10 Penzance Road



10 Penzance Road



Attachment 3: Site Aerial

