

Council Briefing Agenda

Date: Tuesday, 27 August, 2019

Time: 12:30 pm

Location: Council Chamber
Forum North, Rust Avenue
Whangarei

Elected Members: Her Worship the Mayor Sheryl Mai
(Chairperson)
Cr Gavin Benney
Cr Crichton Christie
Cr Vince Cocurullo
Cr Tricia Cutforth
Cr Shelley Deeming
Cr Sue Glen
Cr Phil Halse
Cr Cherry Hermon
Cr Greg Innes
Cr Greg Martin
Cr Sharon Morgan
Cr Anna Murphy

For any queries regarding this meeting please contact
the Whangarei District Council on (09) 430-4200.

1. Apologies

2. Reports

**2.1 Control of Vehicles on Beaches Bylaw 2009 Proposed
Amendment - Key Issues**

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3. Closure of Meeting

2.1 Control of Vehicles on Beaches Bylaw 2009 Proposed Amendment – Key Issues

Meeting: Council Briefing
Date of meeting: 27 August 2019
Reporting officer: Shawn Baker (Infrastructure Development Contractor)

1 Purpose

To provide council with the background key issues raised in submissions and raised at the hearing meeting, 22 August 2019, prior to a formal deliberation, meeting to be held on 5 September 2019.

2 Background

Council's Control of Vehicles on Beaches Bylaw (the Bylaw) was first made in 2009. The Bylaw was last reviewed at the end of 2016. At its meeting on 27 June 2019, Council decided to consult with the community on a proposed amendment to the Bylaw to restrict vehicle access on part of Langs Beach.

A total of 51 written submissions were received. Council held a hearing on the proposed amendment to the Bylaw on 22nd August 2019, where all 51 submissions were received, and four submitters were heard in support of their submissions.

This briefing provides Councilors with background to the key issues raised in submissions and at the hearing prior to a formal deliberations meeting on 5th September 2019. Key issues raised include:

- Setting a lower speed limit on the beach and enforcing that speed limit
- Creating a new vehicle access point for launching boats nearer the boat launching area
- Restricting access only to vehicles launching or retrieving boats or actively engaged in fishing
- Allowing some vehicle access to the north-western part of the beach during winter and outside peak times.
- Prohibiting vehicles on other beaches, including Uretiti, Waipu Wildlife Refuge and Ngunguru Sandspit
- Environmental issues, including Dotterel nesting and coastal erosion.

3 Discussion

Beach behaviour generally

The issue of beach behaviour, particularly of those in vehicles was raised extensively by two submitters that were heard. The issues range from speeding, littering, inappropriate or dangerous driving and other activities such as camping on the beach.

The Land Transport Act 1998 defines a Road as:

- a) a street; and

- b) a motorway; and
- c) a beach; and
- d) a place to which the public have access, whether as of right or not; and
- e) all bridges, culverts, ferries, and fords forming part of a road or street or motorway, or a place referred to in paragraph (d); and
- f) all sites at which vehicles may be weighed for the purposes of this Act or any other enactment

In accordance with the LTA 1998, all beaches are classified as a road. This is one of the reasons why, in Northland, vehicles are presumed to be able to access beaches, unless specifically prohibited or restricted.

As a legal road, all normal road rules apply, including reckless and dangerous driving as well as speed limits. NZ Police are tasked with enforcing these rules.

Other behaviour such as camping etc. would be enforced through Council's relevant Bylaws, for example, the Freedom Camping Bylaw.

Section 155(1) requires Council to determine whether a bylaw is the most appropriate way of addressing a perceived problem. In this case, issues such as littering is most appropriately addressed by the existing specific Bylaw.

Enforcement and Fines

A vehicle that is in breach of a Bylaw, whether it is the Control of Vehicles on Beaches Bylaw, or another Bylaw, is subject to the penalties set out in that Bylaw. The current consultation does not seek to amend the penalties set out in the Bylaw.

A vehicle that exceeds the speed limit is subject to the penalties set out in the Land Transport Act 1998 and the associated Regulations. Council does not have the authority to set different speed limit penalties. However, as a Road Controlling Authority, Council may set speed limits through its Speed Limits Bylaw.

Enforcement is an issue of resources to enable proper enforcement. NZ Police are the most appropriate enforcement agency for dangerous or reckless driving, and speeding. Council enforcement Officers are the most appropriate enforcement method for vehicles breaching the Bylaw (e.g. accessing the northern part of the beach).

Most reasonable people will comply with a bylaw, or law if they know that it applies. Some vehicle drivers do not recognise that a beach is a road, and all normal road user rules apply. Ensuring clear education and signage, including information for visitors at campgrounds and motels is recommended as part of the solution.

Setting a lower speed limit on the beach

Many submitters have raised concerns over the speed of vehicles on the beach. Speed relates to some vehicles speeding along the hard sand. In addition, when negotiating the soft sand near the access point, vehicles such as lighter four-wheel drive vehicles or two-wheel drive vehicles speed up in order to avoid getting stuck. Generally, tractors with larger wheels and a lower drive ratio do not have the same issue.

Langs Beach meets the definition of a Road in the Land Transport Act 1998. As the Road Controlling Authority, Council can set a speed limit on the beach.

The current speed limit on Langs Beach is 30km/h, which is consistent with speed limits on other beaches in the Whangarei District. The speed limit is set by the Whangarei District Speed Limits Bylaw 2019 and enforced by the NZ Police.

The Speed Limits Bylaw is made under Section 22AB of the Land Transport Act 1998, in accordance with the requirements of the Setting of Speed Limits Rule 2017. The Setting of Speed Limits Rule sets out the matters that must be considered when setting a speed limit,

including national speed management guidance, along with specific consultation requirements.

Council is currently undertaking a review of all speed limits on roads that Council is responsible for in the District. This is part of a wider regional project led by the Northland Transport Alliance; and is also part of the governments Safer Journey's Strategy.

Langs Beach falls within the Waipu – Mangawhai Review Area. There are cross boundary issues within this review area and as such, the review will be co-ordinated with Kaipara District Council. The current review programme anticipates that the review will be undertaken in mid-2020, with the aim of having any new speed limits in place before the 2020/2021 summer season. Consultation will be undertaken as part of the review process.

Key access to the beach

Some submitters have suggested that a gate and key system; or permit system could be used to regulate vehicle access. A key system is utilised at Waipu Cove.

A key or permit system may result in additional layers of bureaucracy and may have issues associated with access to a public road. If Councillors wish to consider this option further, staff can include more detailed background information to assist Council at their deliberations meeting on 5 September.

A gating system would not require any additional changes to the current proposed amendments to the Bylaw and can be investigated at a future date.

New Vehicle Access

Current vehicle access to the beach is primarily from Cove Road near the public toilet block. The access is formed to the start of the beach. Vehicles must cross a section of soft sand and a shallow stream to access the harder sand and boat launching area.

The proposed amendment to the Bylaw will still allow this.

Some submitters have suggested that Council consider installing a new vehicle access closer to the boat launching area so that vehicles launching boats only need to access a small part of the beach. The suggested access point is a shared open space area off Hector Lang Drive.

This green space is privately owned by the Lang Cove Conservation Trust. The Trust seeks to retain this space as community open space and actively discourage vehicles using the site for access purposes.

If Council were to consider creating a new access point, it would require the purchase of land or some form of lease agreement for existing owners. An access would also require significant new infrastructure to meet appropriate engineering standards. Investment in such a facility would normally require Council to include it within its Annual Plan or Long-Term Plan.

Council Parks have no current plans to alter or upgrade vehicle access to Langs Beach.

The creation of a new access point is outside the scope of the Bylaw currently being considered. If such an access point was to be installed in the future, a review of the Control of Vehicles on Beaches Bylaw would be required to ensure that the Bylaw appropriately reflects vehicle access onto Langs Beach.

Restricting access only to vehicles launching or retrieving boats or actively engaged in fishing

There is strong support for continued vehicle access for the purpose of launching and retrieving boats at the south-eastern end of the beach. There is also support for continued access for other vehicles that have a “purpose”, such as boat launching or fishing, to be on the south-eastern end of the beach.

The Land Transport Act 1998 (S. 22AB(1)(f)) enables Council to make a Bylaw that prohibits or restricts the use of vehicles on beaches. Based on the wording of this sub-section of the LTA 1998, Council could restrict the use of vehicles on the beach to only those that are launching and retrieving boats, or actively engaged in a fishing activity.

There are issues with this approach, for example, vehicles or tractors that have launched their boats park above the high tide whilst using the boat, so that it can be easily retrieved on return. Effectively, this would mean that the bylaw would need to allow vehicles to park. This creates an enforcement issue with other vehicles that may be parked.

An option is to put in place the current proposed amendment to the bylaw, along with appropriate signage that discourages other access. The outcome of this approach can be monitored, and Council can then determine if additional restrictions are needed.

Any wording to achieve such a restriction would require legal review to ensure that it achieves the desired outcome; is not overly complicated; and is enforceable.

If Councillors wish to consider this option further, staff can include more detailed background information to assist Council at their deliberations meeting on 5 September.

Allowing some vehicle access to the north-western part of the beach during winter and outside peak times

Some submitters have suggested that some vehicle access to the north-western part of the beach still be allowed outside of peak times, for example, in the early morning, evening or during the winter. These submissions are seeking to allow for easy access to fish off the northern parts of the beach or to come ashore in an amphibious vessel (for example a Sea-legs boat).

Currently there is parking and short pedestrian access along the majority of the north-western part of the beach. This access provides access for people that are fishing, although they would need to park on the roadside and walk a relatively short distance to their fishing place. Such a requirement is common for beach fishers where vehicle access is not always available. Walking access may be more difficult for elderly fishers or people with movement impairments.

Technically the Bylaw could allow for the access suggested. However, this would make the Bylaw more complicated, difficult to enforce and would likely give rise to increased complaints and community frustration.

Issues to consider would include:

- What type of vehicles should have access? (eg: quad bikes vs cars)
- For what purpose do they have access?
- How is it determined whether a vehicle is being used for fishing?

Prohibiting vehicles on other beaches, including Uretiti, Waipu Wildlife Refuge and Ngunguru Sandspit

Requests to prohibit or restrict vehicles on beaches other than Langs Beach is outside the scope of the amendment that was proposed.

If Council wishes to consider prohibiting or restricting vehicles on other beaches, a new Statement of Proposal and consultative procedure would be required. The Control of Vehicles on Beaches Bylaw must be reviewed before 2026 (10 years after its first review), although an earlier review can be undertaken.

Environmental issues, including Dotterel nesting and coastal erosion

New Zealand Dotterel are known to nest on Langs Beach. The Department of Conservation has advised that in a normal year, there are up to six Dotterel nests on the beach. These are normally, but not always located on the northern part of the beach.

Nesting areas are normally fenced to prevent disturbance during the nesting season.

There is no substantive evidence that vehicles on the beach are causing or exacerbating coastal erosion. The primary issue appears to be where vehicles are gaining access to the beach from the established access point. Vehicles need to negotiate a section of soft sand before reaching the harder sand closer to the water.

Vehicles accessing the dune system, or the tow of the dune are likely to cause or exacerbate erosion. The Control of Vehicles on Beaches Bylaw currently prohibits vehicles on the dune system of all beaches.

4 Next Steps

A formal deliberations meeting will be held on 5th September to allow Councillors to debate the issues raised in submissions and at the hearings. Additional background information can be provided at that meeting for any issues that Councillors wish to consider further.

Recommendations from the deliberations meeting will be taken to the September Council meeting where Council can confirm the decisions and make any amendments to the Control of Vehicles on Beaches Bylaw.