

Statement of Proposal

BEACHES BYLAW 2018

Introduction

The Whakatāne District Council (the Council) has reviewed Part 13: Beaches of the Consolidated Bylaw 2008 that is due to expire in 2018.

The Whakatane District Council seeks your views on the Draft Beaches Bylaw 2018.

Proposal

The Council proposes to revoke Part 13: Beaches of the Consolidated Bylaw and replace it with a stand-alone Beaches Bylaw. The Draft Beaches Bylaw 2018 is being released for consultation using the Special Consultative Procedure as outlined in section 86 of the Local Government Act 2002 (the Act).

In accordance with section 86 (2) of the Act, Council is required to include the following in a Statement of Proposal:

- A draft of the proposed bylaw;
- The reasons for the proposal; and
- A report on any relevant determinations by Council under section 155 of the Act.

The attached copy of the proposed Whakatane District Council Draft Beaches Bylaw 2018 forms part of this Statement of Proposal.

Reasons for the Proposal

Under sections 158 to 160 of the Act, the Council is required to review all bylaws within five years of their adoption and every ten years thereafter.

Council staff have reviewed Part 15: Beaches Bylaw 2008 and consider that overall, the bylaw is fit for purpose. The key changes that have been made in the Draft Beaches Bylaw 2018 include:

- Enabling Council to prohibit horses on certain areas of the beach for public health or safety reasons;
- Requiring anyone wishing to hold a public meeting or organised event on a beach that unduly restricts other people's use of the beach to get prior written permission from Council;
- Prohibiting camping on beaches and in the sand-dunes;
- Deleting the current prohibition on anyone over 8 years old using/entering a changing area set aside for the use of the opposite sex on the basis that this could contravene the NZ Bill of Rights.
- Restricting activities on the beach that might cause damage to the beach environment.

Specific changes made in the Draft Beaches Bylaw 2018

The table below shows the specific changes that have been made in the Draft Beaches Bylaw 2018.

Section in existing bylaw	Reason for proposed change	Proposed Change	Outcome if change approved	Section in Draft Bylaw
New Sections	Current Bylaw is part of the Consolidated Bylaw and does not contain these sections.	Add new sections: - Short Title and Commencement - Revocation - Purpose - Interpretation	All relevant information is contained in a single document.	S1 Short Title and Commencement S2 Revocation S3 Purpose S4 Interpretation
S13.1 Rubbish	Heading 'Rubbish' has a narrow meaning and is not aligned to Waste Minimisation Act 2008.	Change title of this section to 'Waste'. Add new clause: (a) 'Leave waste matter of any form;	Prohibits waste material of any form being left on any beach.	S5 Waste
13.3.2(c) Vehicles and Vessels	Current bylaw specifies speed limit (20k/hr) but does not prohibit driving that could endanger public safety.	Add following sentence: ' Those vehicles referred to in clause 7(2) shall not be driven on any part of the beach at a speed in excess of 20km/hr and should not endanger public safety.'	Focuses purpose of restrictions on public safety.	S7(3) Vehicles and Vessels
S13.4 Animals and Dogs	Requirements in current bylaw around dogs on beaches duplicates the Control of Dogs Bylaw 2018. Council currently cannot prohibit horses in areas of the beach for health and safety reasons Clause (d) in current bylaw which prohibits any horse or other animal from swimming in any part of the beach likely to be used for swimming is difficult to enforce. Clause (e) is a duplication of the Control of Animals (excluding dogs), Bees and Poultry bylaw.	Change heading to 'Animals' and remove clause (b) and other references relating to dogs. Add the following clause: 'The Council may prohibit horses on areas of the beach for public health or safety reasons. Delete clause (d) Delete clause (e)	Removes duplication between bylaws and removes clauses that are difficult to enforce. Council will have ability to prohibit horses in areas where there are health and safety concerns.	S8 Animals.
S13.6 Changing Areas	Clause (c) is potentially controversial as it touches on the use of	Delete clause (c).	Removes potentially	S10 Conduct

	gendered toilets by transgender persons and could contravene the NZ Bill or Rights.		controversial clause	
S13.7 Reserved Areas for Particular Activities	Council has responsibility down to the mean low tide mark. BOPRC has responsibility for activities in the water. This section refers to surfing which takes place in the water.	Delete entire section as it is not relevant to Council	Inaccurate and unnecessary clauses removed.	
S13.8 Surfboards and other Objects	Prohibiting nuisance in any form is covered in S9 Conduct. This section is unnecessary.	Delete entire section.	Removes duplication and unnecessary clauses.	
New section	Council currently has no authority to manage and control any public meeting or activity on a beach that could damage the beach or affect other users.	Add new section: 'Organised Events: Without the prior written permission of an Authorised Officer, no person shall on any beach: (a) Hold, conduct or take part in any public meeting, or assembly of any kind that causes damage or unduly restricts other people's use of the reserve or beach; or (b) Hold, conduct or take part in any organised sporting event or games, or other organised event.'	Enables Council to manage and control organized activities on any beach.	S11 Organised Events
New Section	Current bylaw does not restrict activities that might damage the beach environment.	New Section: 'Protection of Beach Environment': (1) No person shall interfere or remove any portion of any protective works or other structures erected on the foreshore for the control of sand or shingle or for the prevention of erosion. (2) No person shall enter areas that have been closed off for dune protection or during for the protection of breeding birds. (3) No person shall interfere with birds, nests or eggs on a beach.	Gives Council powers to ensure beach environment is protected.	S12 Protection of Beach Environment

		<p>(4) No person shall set fire to any vegetation on a beach or dune, or allow any untended fire to remain alight on a beach.</p> <p>(5) No person shall remove any vegetation from the beach or dunes without written permission from an Authorised Officer of Council.</p> <p>(6) No person shall cause damage to any part of the beach.'</p>		
New Section	Current bylaw does not prohibit camping on beaches.	<p>Add new section: 'Camping:'</p> <p>(1) No person shall build or place any structures of any kind, including but not limited to tents, stalls or amusement devices on any beach and allow those structures to remain overnight except with prior written permission of an Authorised Officer.</p> <p>(2) No person shall camp overnight on any part of any beach unless that person has obtained the prior written approval of an Authorised Officer.'</p>	Gives Council the authority to remove people camping on any beach or dune area.	S13 Camping
S13.9.1 (b) Lifesaving	Council does not provide lifesaving equipment on any beach.	Delete this clause.	Aligns bylaw with current practice.	S14 Lifesaving
S13.11 Penalties	Current bylaw does not outline penalties for committing an offense against this bylaw.	<p>Change title to 'Offences and Penalties'.</p> <p>Delete Clause 13.11.1 requiring a person in breach of the bylaw to give their name and address to an authorized officer.</p> <p>Add following clauses:</p> <p>(1) Any person who commits an offence under this bylaw shall be liable to be prosecuted and liable to a fine not exceeding \$20,000.</p> <p>(3) Any vehicles, vessels or articles which are on a beach in breach of this Bylaw may be removed</p>	Updates bylaw and ensures it contains all relevant information.	S15 Offences and Penalties

		<p>by any Authorised Officer or Police Officer and impounded at the expense of the driver or owner.</p> <p>(4) This Bylaw authorises any member of the New Zealand Police to assist an Authorised Officer in the performance of the enforcement measures provided for in this part of the Bylaw.</p>		
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Other options to the proposed bylaw considered

Council considered two other options:

- Keeping the existing bylaw; and
- Having no bylaw at all.

Council considers that the proposed bylaw is the most appropriate method to address all issues relating to the management of public health and safety and to protect beaches in the District from damage.

Without a bylaw, Council would be unable to fulfil its responsibilities under section 145 of the Act to protect the public from nuisance, protect, promote, and maintain public health and safety and to minimise the potential for offensive behaviour in public places, and to protect the beaches under its control from damage.

Council's ability to make a Beaches Bylaw

The Act sets out the procedure for making a bylaw. The Council is required under section 155 of the Act to determine whether a bylaw is the most appropriate way to address perceived problems. Section 155 (1) of the Act requires the Council to determine whether a bylaw is the most appropriate way to address perceived problems and section 155(2) requires Council to determine whether the proposed bylaw:

- Is the most appropriate form of bylaw; and
- Gives rise to any implications under the New Zealand Bill of Rights Act 1990.

The proposed bylaw is the most appropriate form to address issues relating to controlling nuisances and promoting and managing public health because it meets the following tests:

- The bylaw is authorised by statutory authority under the Local Government Act 2002;
- The bylaw is not repugnant to the general laws of New Zealand;
- The proposed bylaw is certain and provides clear direction;
- The bylaw is reasonable; and
- The bylaw is not overly restrictive, onerous on any one person, or impractical.

There are no implications under the New Zealand Bill of Rights Act. The draft bylaw does not place any limits on freedom of movement, expression or association, and does not isolate any particular social group in terms of the Act. In addition, any offences under the bylaw will require a judicial process through the Courts.

Section 156 of the Act requires the Council to use the Special Consultative Procedure set out in section 83 of the bylaw and continues to apply.

Consultation and Submissions

Council invites the community to give us feedback on the proposed Bylaw to assist it in the decision-making process.

The formal consultation process will take place between **12 March and 12 April 2018**. Council will hold a hearing in May 2018.

Any person or organisation is welcome to make a submission on the Draft Beaches Limits Bylaw 2018. The Council take into account all submissions when it decides on the final content of the bylaw.

Copies of the Statement of Proposal are available on Whakatane District Council's website <http://www.whakatane.govt.nz>

Hard copies are available from:

- Whakatane District Council 14 Commerce Street, Whakatane
- Whakatane Library 49 Kahahoroa Drive, Whakatane
- Edgecumbe Library 38 College Road, Edgecumbe
- Ohope Library 4 Harbour Road, Ohope
- Murupara Library / Service Centre Civic Square, 48 Pine Drive, Murupara

Formal submissions may be made:

Online: <http://www.whakatane.govt.nz>

Post to: Beaches Bylaw, Private Bag 1002,
Whakatane 3158.

Deliver to: Beaches Bylaw, Whakatane District Council, 14 Commerce Street,
Whakatane.

Email to: submission@whakatane.govt.nz Attention Bylaw Review

Informal submissions can be made by commenting on our Facebook page at:
<http://www.facebook.com/WhakataneDistrictCouncil>

Submissions close at 5pm on Friday 12 April 2018.

Submitters should note that their submission will be copied and made available to the public after the submission period closes.

Submission should include your name, address, telephone number and email address and should state if you wish to speak to Council in support of your submission. The Council will contact in writing, all submitters who wish to be heard to advise the confirmed time, date and venue of the hearing.