

Statement of Proposal

DRAFT PARKS AND RESERVES BYLAW 2018

Introduction

The Whakatāne District Council (the Council) has reviewed Part 17: Parks and Reserves of the Consolidated Bylaw 2008 that expired on 30 June 2018. Under the Local Government Act 2002, Council has twelve months beyond this date to review this bylaw.

The Council seeks your views on the Draft Parks and Reserves Bylaw 2018.

Proposal

The Council proposes to revoke Part 17: Parks and Reserves of the Consolidated Bylaw and replace it with a stand-alone bylaw.

The Draft Parks and Reserves Bylaw 2019 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 Parks and Reserves Bylaw 2019 forms part of this Statement of Proposal.

PLEASE NOTE: Restrictions relating to freedom camping or overnight parking are not part of this bylaw. These issues are out of scope for this review and will not be considered.

In December 2017, Council received funding of \$136,000 from the Tourism Infrastructure Fund established by Central Government for the provision of toilet facilities at Pikowai Campground. We are currently waiting for Government to make a decision regarding whether a review of the Freedom Camping Act 2011 will be undertaken before making any changes to provisions in our Public Places Bylaw on freedom camping or overnight parking.

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 17: Parks and Reserves Bylaw 2008 and consider that while some of the bylaw is relevant and working well, much of it duplicates other bylaws or prohibits activities already

covered by legislation. Therefore the most significant change proposed in this Draft Bylaw is the deletion of 14 sections from the existing bylaw.

Other key changes from the existing bylaw include:

- Expanding the section *Interpretation* to include all relevant terms and definitions;
- Clarifying within each section that the restrictions apply in parks as well as reserves. The current bylaw refers only to reserves;
- Adding clauses to the *Waste* section prohibiting the disposal of household waste in waste receptacles located within parks and reserves, and prohibiting the discharge of waste or stormwater onto parks or reserves from adjoining properties. This has been a problem in some locations;
- Removing the prohibition on the use of playground equipment by individuals over the age of 12 years old. This is because of stricter playground standards (i.e. modern playground equipment is designed to take greater weights), and because caregivers will often play with children on these facilities; and
- Re-ordering the sections so they follow a natural progression through the bylaw.

Specific changes made in the Draft Parks and Reserves Bylaw 2018

The table below outlines all specific changes that have been made to the existing bylaw:

| 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 | All relevant information is contained in a single document. | S1 Short Title and Commencement S2 Revocation |
| New Section: Purpose | Current bylaw does not acknowledge the overlap between this bylaw and the Public Places 2015 Bylaw, and the District Reserve Management Plan. | Add new clause: (3) The Parks and Reserves Bylaw should be read in conjunction with the Public Places Bylaw 2015, and the District Reserve Management Plan. | Readers of this Bylaw are made aware that there is information relevant to Parks and Reserves contained in the Public Places Bylaw 2015 and the District Reserve Management Plan | S3 Purpose |

| | | | | |
|-----------------------|--|---|---|----------------------------------|
| S17.1 Interpretation | Current bylaw contains interpretation of a single term. | Define all terms needed for complete understanding of the bylaw within a single document. | All relevant information is included within the bylaw document. | S4 Interpretation |
| S17.2 Access | Current bylaw refers only to reserves, does not refer to parks. | Add 'park or' in front of 'reserve' in each line item of this section. | Clarifies that all requirements for access are applicable to parks as well as reserves. | S5 Access |
| S17.4 Litter | Current bylaw does not prohibit household waste being placed in waste containers. Current bylaw does not prohibit the discharge of water onto a park or reserve. | Add new sections: (2) No household waste shall be placed in any waste receptacle in any park or reserves. (3) No person shall discharge any water, including wastewater or stormwater, directly onto any park or reserve. (4) This restriction does not apply to self-contained motor-homes or caravans dumping waste water into a designated public dump station. | Prohibits the placing of household waste in rubbish bins and individuals diverting waste or stormwater away from their properties onto adjoining parks or reserves. | S11 Waste and Discharge of Water |
| S17.5 Dogs | This section duplicates requirements outlined in the Dog Control Bylaw 2018 | Delete this section. | Removes duplication with other bylaws. | |
| S17.6 Water | This section is outdated and cannot be enforced. | Delete this section. | Removes an outdated requirement. | |
| S17.7 Wandering Stock | This section duplicates the Control of Animals (excluding dogs), Bees and Poultry Bylaw 2018 | Delete this section. | Removes duplication with other bylaws. | |

| | | | | |
|---|--|---|---|--|
| S17.9 Notices and Signs | This requirement is covered under S3 of the Public Places Bylaw 2015. | Delete this section. | Removes duplication with other bylaws. | |
| S17.10 Bathing | Legal advice is that the bylaw should define when swimming or wading is prohibited. | Change text to: No person shall swim or wade in any water within a park or reserve if a notice has been placed there by Council stating that <i>Swimming or Wading is Prohibited</i> , or similar wording. | Clarifies when restriction comes into force. | S14 Swimming or Wading |
| S17.11 Lighting Fires | All land covered by this bylaw falls under the definition of 'reserve' in the Reserves Act 1977 and is therefore covered by S94 of that Act. It is also covered under the Summary Offences Act 1981. | Delete this section. | Removes prohibitions that are already covered off by legislation. | |
| S17.12.1 Erection of Tents and Stalls and Other Structures. | This clause is covered under S3.7.1(a) of the Public Places Bylaw 2015 | Delete this clause. | Removes duplication and overlap between bylaws. | |
| S17.12.2 Erection of Tents and Stalls and Other Structures. | No reference is made to parks in the current bylaw. Current restrictions would prohibit shade protection such as sun umbrellas. | Add 'park or' in front of 'reserve'. Add: 'This does not include temporary shade protection.' | Clarifies that restrictions apply in parks and reserves. Enables the use of temporary sun shade. | S12 Erection of Tents and Stalls and Other Structures. |
| S17.14 Misbehaviour | This requirement is covered by the Summary Offences Act 1981 and is therefore unnecessary. | Delete this section. | Removes prohibitions that are already covered off by legislation. | |

| | | | | |
|---|---|--|---|---------------------------------|
| S17.15 Children's Apparatus | We recommend removing the restriction due to stricter playground standards (i.e. modern playground equipment is designed take greater weights), and because caregivers will often play with children on these facilities. It is also unenforceable. | Delete this section. | Removes unnecessary and unenforceable restriction. | |
| S17.16 Destruction of Birds | This section is covered under S94(1(i) of the Reserves Act 1977. | Delete this section. | Removes prohibitions that are already covered off by legislation. | |
| S17.17 Parades and Assemblies | Duplicates the requirements in S3.4(c) of the Public Places Bylaw 2015. | Delete this section. | Removes duplication with other bylaws. | |
| S17.18 Interference with Employees and Contractors | This section is unnecessary and unenforceable. It is also covered by the Summary Offences Act 1977. | Delete this section. | Removes an unenforceable requirement. Covered by the Summary Offences Act 1977. | |
| S17.20 Firearms and Weapons | This section is unnecessary. The Firearms Code prohibits the dangerous use of firearms and all offences outlined in the current bylaw would be an offence under the Summary Offences Act 1981. | Delete this section | Removes prohibitions already covered by legislation. | |
| S17.21 Model Aeroplanes | Current bylaw does not refer to drones. | Add requirement that drones can only be flown in parks or reserves in accordance with Civil Aviation Authority Guidelines and regulations. | Updates bylaw to take into account new technology. | S17 Model Aeroplanes and Dones. |

| | | | | |
|--|---|---|---|------------------------------------|
| <p>S17.23 Local Authority Officers</p> | <p>This section is covered under a new section: Exemptions</p> | <p>Add new section 'Exemptions':</p> <p>'This bylaw does not apply to any person who commits an act that is done:</p> <p>(a) In their role as an officer or employee of the Council;</p> <p>(b) In accordance with a valid contract for services with the Council; or</p> <p>(c) By a member of the emergency services in the course of carrying out his or her duties as a member of the emergency forces.</p> | <p>Updates bylaw to ensure appropriate exemptions are stated.</p> | <p>S21 Exemptions</p> |
| <p>S17.26.3 Charges on Special Occasions and for Particular Purposes</p> | <p>This clause is unnecessary.</p> | <p>Delete this clause</p> | <p>Removes unnecessary clauses.</p> | |
| <p>S17.28 Offenders Required to Give Names</p> | <p>This section is unnecessary and unenforceable.</p> | <p>Delete this section.</p> | <p>Removes unenforceable clauses.</p> | |
| <p>New Section: Offences</p> | <p>Current bylaw does not state what the penalties are for breaching the bylaw.</p> | <p>Add new section:</p> <p>'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>Ensures all information relevant to the Bylaw is contained within a single stand-alone document.</p> | <p>S 21 Offences and Penalties</p> |

Other Options to the proposed bylaw considered

Council considered two other options:

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

Council considers that the proposed bylaw is the most appropriate method to manage the parks and reserves in the District.

Having no bylaw would remove Council's ability to deal with issues arising in the management of all parks and reserves in the District.

Council's Ability to make a Parks and Reserves Bylaw

The Act 2002 sets out the procedure for making a bylaw.

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 management of the District's parks and reserves 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.

Adopting the Proposed Bylaw

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

Consultation and Submissions

The formal consultation process will take place from **19 October to 20 November 2018**. Council will hold a hearing in December 2018.

Any person or organisation is welcome to make a submission on the Draft Parks and Reserves Bylaw 2018. The Council take all submissions into account 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

Consultation will take place during the period from **19 October to 20 November 2018**.

Formal submissions may be made:

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

Post to: Draft Parks and Reserves Bylaw, Private Bag 1002, Whakatane 3158.

Deliver to: Draft Parks and Reserves 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 Tuesday 20 November 2018.

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

Your 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.