

**WAIMAKARIRI DISTRICT COUNCIL**

**REPORT**

**FILE NO:** POL-02 / 090713020751

**REPORT TO:** The Council

**DATE OF MEETING:** 4 August 2009

**FROM:** Janet Fraser, Policy Analyst

**SUBJECT:** Coastal Vehicle Access Restrictions - Approval of Draft Bylaw for Consultation

**SIGNED BY:**  
(for Reports to Council or Committees)

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Department Manager

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Chief Executive

**1. SUMMARY**

The purpose of this report is to request the Council to approve a draft bylaw for public consultation that will restrict vehicle access and enable the Council to regulate driver behaviour, horse riding and camping activity on the District beaches. The bylaw also includes some general provisions for environmental protection. The proposed bylaw will enable vehicle access along a prescribed route from the Waikuku Beach car-park to the Ashley/Rakahuri river mouth for fishing, boating and mahinga kai gathering, at specified times of the year.

The Council has previously indicated its support for the use of this prescribed access route for vehicles across the foreshore and dunes, as determined by the Northern Pegasus Bay Working Party, and in order to enforce the use of this to minimise the environmental damage that otherwise occurs from vehicle activities in these areas, a bylaw is required. It has also resolved to consult on changes to the District Plan and a draft Waikuku Beach Reserves Management Plan which have or are being reported to the Resource Management and Regulation Committee in July and September and Community and Recreation Committee in August.

The Council is also requested to appoint three Councillors to hear submissions on the proposed Bylaw together with two other statutory processes, and to make recommendations on these proposals for the consideration of the Council. Hearings are, at this stage, proposed for 23 and 24 February 2010 with deliberations proposed for 4 March 2010. A majority of the panel will need to have completed the Ministry for the Environment's "Making Good Decisions" Resource Management Act training, as a District Plan change is involved.

Public consultation on the three statutory processes is at this stage expected to commence, with notification, on 26 September 2009, subject to approval of the extension of the District boundary.

**Attachments:**

- i. Draft Waimakariri District Council Northern Pegasus Bay Bylaw 2010 TRIM no. 090720021408
- ii. Map W1, attachment to the Draft Bylaw
- iii. Statement of Proposal
- iv. Report on Northern Pegasus Bay Working Party submission, report no. 090423011200
- v. Resolution of Environment Canterbury Regarding Access Issues at the Ashley River/Rakahuri Estuary from its 25 June 2009 meeting.

## 2. **RECOMMENDATION**

**THAT** the Council:

- (a) **Receives** report N° 090713020751.
- (b) **Approves** the Proposed Draft Waimakariri District Council Northern Pegasus Bay Bylaw 2010 for public consultation, subject to approval by the Minister for Local Government of the extension to the District boundary to Mean Low Water Springs (MLWS).
- (c) **Authorises** the CEO to make minor amendments to the Proposal as may be required to adjust the timetable to provide for District boundary extension approval.
- (d) **Approves** the form of the Summary Statement of Proposal for public consultation, to include the following matters:
  - Statutory Information
  - Summary of Information
  - Reasons for the Proposed Bylaw
  - Relationship with Other Required Statutory Processes
  - Consultation Information
- (e) **Appoints** Councillors ....., ....., and .....to a hearing panel for the consideration of submissions on the Draft Waimakariri District Council Northern Pegasus Bay Bylaw 2010, the Draft Waikuku Beach Reserves Management Plan and Proposed Plan Change 26 to the District Plan and recommend decisions to the Council on the Bylaw, the Reserve Management Plan proposals, and the Proposed District Plan Change.
- (f) **Nominates** Councillor ..... as Chairperson of the hearing panel.
- (g) **Circulates** a copy of this report to the Woodend Ashley Ward Advisory Board and the Kaiapoi Community Board and provides a verbal update to each following this Council meeting.

## 3. **ISSUES AND OPTIONS**

- 3.1 The Council, at its meeting on 13 May 2009, resolved to undertake several statutory processes to give effect to the access provisions it has adopted as part of implementing the Northern Pegasus Bay Coastal Management Plan. The decisions of the Council reflect the agreed approach to implementation of the Plan by the Northern Pegasus Bay Working Party, comprising representatives from Environment Canterbury, Hurunui District Council and Waimakariri District Council, among others. The submission from the Northern Pegasus Bay Working Party, which explains the circumstances that have led to the requirement to undertake these statutory processes is provided within the attached report no. 090423011200 (attachment iv).
- 3.2 The Council, in accordance with the resolutions from its meeting on 13 May 2009, has requested approval from the Minister of Local Government to extend the boundary and area of jurisdiction for the Waimakariri District Council from the current seaward boundary set at Mean High Water Mark (MHWM) (this was formally inaccurately understood and referred to as Mean High Water Springs (MHWS)) down to Mean Low Water Springs (MLWS). This approval will allow the Council to develop appropriate regulation in the form of bylaws that will promote public health and safety on the beach, to avoid nuisance, and to protect the natural environment. It is

understood from discussion with staff at the Department of Internal Affairs that approval for the extension should be granted by the end of August at latest.

- 3.3 The statutory processes the Council will need to undertake to give effect to these provisions are, upon approval of the District boundary extension, establishment of a Bylaw that will enable control of vehicle access to the District beaches, and in association with this Bylaw consultation process, revision of the Waikuku Beach Reserves Management Plan and preparation of a related Plan Change to the District Plan, all involving public consultation and in accordance with the appropriate legislation.
- 3.4 The intention to prepare the Plan Change was signalled to the Resource Management and Regulation Committee on 21 July 2009, and a further report will be presented to this Committee on 15 September seeking approval to publicly notify the Proposed Plan Change, following completion of any required pre-consultation that was undertaken. The proposed revision to the Draft Reserves Management Plan will be reported to the Community and Recreation Committee of the Council on 18 August 2009, for approval for public consultation.
- 3.5 Approval of the proposed bylaw for consultation will give effect to the agreements arising from the Northern Pegasus Bay Coastal Management Plan. It will enable management of controlled vehicle access for some recreational and cultural activities such as mahinga kai gathering, fishing and boating along the beaches and around the Ashley/ Rakahuri River mouth area (see map W1, attached to the bylaw). This would enable access for legitimate recreational activities whilst providing protection to an ecologically sensitive dune and coastal marine area.
- 3.6 In parallel with the process for bylaw adoption, the Council resolved to undertake a Plan Change to the District Plan and a revision of the Draft Waikuku Beach Reserves Management Plan to enable it to implement the Northern Pegasus Bay Coastal Management Plan provisions. It is anticipated that all three statutory processes will be co-ordinated so as to enable public participation at the same time and an integrated approach to hearing of submissions. A draft timetable for these processes has been prepared and is outlined below. This timetable is subject to change, depending on the number of submissions received across the three concurrent processes, as they are publicly consulted, and the length of time taken to obtain Government approval for the District boundary extension.

21 July	Report to Resource Management and Regulation Committee advising preparation of a District Plan Change, including commencing 1 <sup>st</sup> schedule pre-consultation if required.
4 August	Report on Draft Waimakariri District Council Northern Pegasus Bay Bylaw 2010, including Statement of Proposal and seeking Councillor nominations for the Hearing Committee, for adoption for public consultation.
18 August	Revised Draft Waikuku Beach Reserves Management Plan reported for public notification to the Community and Recreation Committee.
15 September	Recommendation of the Proposed District Plan Change no.26 to the Resource Management and Regulation Committee of Council including approval for public notification, and a summary of any 1 <sup>st</sup> Schedule pre-consultation undertaken.
26 September	Consultation and receipt of public submissions commence for the following:

- Draft Waikuku Beach Reserves Management Plan (2 months): pursuant to requirements of the Reserves Act 1977
- Draft Waimakariri District Northern Pegasus Bay Bylaw (1 month): pursuant to requirements of the Local Government Act 2002 and subject to approval of District boundary extension
- Proposed Change to the District Plan (20 days and further 20 days for cross submissions): pursuant to requirements of the Resource Management Act 1991

30 November 1<sup>st</sup> round consultation is completed for the three statutory processes  
Processing and analysis of submissions underway. Cross submissions on proposed change early-November to early-December.

23/24 Feb 2010 Hearing of submissions to the three statutory processes

4 March 2010 Deliberations by the Council

April 2010 Council adoption of the Waikuku Beach Reserves Management Plan, Waimakariri District Northern Pegasus Bay Bylaw, and District Plan Change (subject to appeals to the Environment Court on the District Plan Change).

1 July 2010 Bylaw comes into force

- 3.7 The Council could choose to retain the status quo approach to managing issues at the District beaches including education or advocacy and continuing its liaison with other interested agencies. This would not however enable the Council to address the environmental issues currently being experienced or to resolve the ongoing access concerns that have been expressed by some affected groups.

As noted in the Statement of Proposal, the alternative regulatory options such as those available under the Resource Management Act 1991 and the permit system that was originally considered through the development of the Northern Pegasus Bay Coastal Management Plan, are neither as simple or efficient to administer, than is the use of a Bylaw to effectively control public behaviour.

The Council has the option of adopting a bylaw that will help it achieve good outcomes for beach users and the environment.

- 3.8 The Government has undertaken a Ministerial Review of the Foreshore and Seabed Act 2004. The review panel has taken the position that there is a need to balance Maori property rights and customary interests in the foreshore and seabed with public rights and public expectations, and seeks the repeal of the legislation and reconsideration of the issues.

The review has identified options that would assist in balancing customary rights with public interests in the coastal marine area, and for streamlining the processes that recognise and provide for these interests. This process could result in revised legislation that may impact on some aspects of the ownership, title, status, use, management or control of the foreshore and seabed area. The review also supports the reconsideration of coastal marine law as a whole. How the review may ultimately impact on the extended jurisdiction of the Waimakariri District Council to MLWS is not yet apparent.

- 3.9 For those members of the community who wish to access the Ashley/Rakahuri River mouth during the latter months of 2009 and first part of 2010, by vehicle, for the purposes of fishing, boat launching or mahinga kai gathering, access will be possible along the marked access route across the dunes, as has occurred in previous years. Environment Canterbury have confirmed, by resolution from their 25 June Council meeting (see attachment v.), that they do not intend or are unable to enforce the relevant provisions of their Regional Coastal Environment Plan and in a similar manner, Waimakariri District Council could continue not to enforce the relevant provision of its District Plan, that effectively currently requires any person wishing to traverse an active dune to first obtain resource consent.

Public behaviour can still be modified by police enforcement and intervention as deemed necessary, and the marked access route will continue to be actively promoted to those undertaking fishing or mahinga kai gathering, by the Waimakariri District Council and Environment Canterbury, as the most appropriate interim solution to access issues.

- 3.10 Hurunui District Council is also preparing to promote and effect a bylaw to apply to its beach areas, to a similar timeframe to that proposed for this Council. General provisions of Hurunui District's draft bylaw provide for control of vehicles, horses and camping, including access to beaches, speed limits and excluded areas. Specific provisions apply to separate parts of Northern Pegasus Bay relating to access and driving to and from the last high tide mark. A prohibited area at the Waipara River mouth is included. Provisions that would apply within the Hurunui District's jurisdiction to the north of the Ashley Rakahuri river mouth are complementary to those proposed through this report that would apply to the Waimakariri District coastal area.
- 3.11 The Management Team/CEO has reviewed this report and supports the recommendations.

#### **4. COMMUNITY VIEWS**

- 4.1.1 There has been substantial community involvement over many months in the development of the Northern Pegasus Bay Coastal Management Plan. This Plan sets out the common desired approach to managing coastal issues for Canterbury Regional Council (ECan), Hurunui District Council, Waimakariri District Council, Te Kohaka O Tuhaitara Trust, Te Runanga O Tuahuriri, Department of Conservation, and a number of community interest groups. The respective parties now wish to progress the implementation of the Plan through the development and adoption of a bylaw for the Hurunui District and Waimakariri District that will enable the provisions of the Plan to be enforced.

In order to ensure the community is aware of this programme the Council will:

- Insert a summary of information including public notice in the Northern Outlook
- Provide relevant information at Council service centres and libraries
- Provide a feature in the North Canterbury News
- Post information on the Council's website
- Ensure that Community and Advisory Boards are aware of the proposals
- Inform the media

Te Ngai Tuahuriri Runanga have been consulted on the draft bylaw, and in order to incorporate their views, revisions to the attached map W1 have been made to provide appropriate access to the Fenton Reserve shown as marked in the Ashley Rakahuri river bed. This provision is consistent with the Ngai Tahu Claims Settlement Act 1998.

#### **5. FINANCIAL IMPLICATIONS AND RISKS**

- 5.1. The cost of preparation of the Draft Bylaw and Statement of Proposal was met by Environment Canterbury and Waimakariri District Council, within existing budgets. The

cost of publicly notifying and consulting on the draft Bylaw will also be met by Waimakariri District Council existing budgets.

5.2. The Council has approved funding as indicated in the following table over the next three years to enable the implementation of the provisions of the Northern Pegasus Bay Coastal Management Plan. This includes developing the infrastructure necessary to support the enforcement of the agreed new access provisions to the District beaches, and to employ personnel to undertake the associated enforcement that will be necessary to ensure the bylaw is effective.

5.3.

		2009/10	2010/11	2011/12
<b>Additional Operating Expenditure</b>	Ranger Service	\$5,000	\$18,250	\$11,250
	Maintenance	\$5,000	\$5,000	\$5,000
<b>Additional Capital Expenditure</b>	Infrastructure car parks, beach reserves	\$93,509	\$96,000	-

Costs for the Ranger service are part funded by the Waimakariri District, along with Hurunui District Council and Environment Canterbury. The bylaw provides the authority for this activity. The risk of not having the ranger service is inadequate enforcement of the new bylaw resulting in damage to the sensitive coastal marine environment, or misuse of vehicles on the beaches posing a risk to public safety.

## 6. **CONTEXT**

### 6.1 Policy

This matter is not a matter of significance in terms of the Council's Significance Policy.

The Council has a number of other bylaws that contain provisions that will become applicable to the area between Mean High Water Mark and Mean Low Water Springs, once the extension to the District boundary has been approved by the Minister. Provisions of these bylaws that currently apply to the whole of the District will extend to cover the District's beaches following the boundary extension, e.g. where issues of general public health and safety, and avoidance of nuisance, are concerned. There do not appear to be any negative unintended consequences relating to the proposed additional area of jurisdiction that each of these Bylaws will encompass.

However, given its expanded jurisdiction as currently provided for in the Draft Waimakariri District Council Fire Control Bylaw 2009, allowance is made for fire permits, special fire permits or exemptions to be obtained where people might wish to light fires on the District beaches in the restricted or prohibited fire seasons, or in accordance with the provisions for lighting fires during the open fire season, at the discretion of an "Authorised Officer" specified in the Bylaw.

With regard to the Draft Dog Control Bylaw 2009 provisions of the bylaw imply some restriction or enforcement could be possible in relation to dogs bathing in the sea and depositing droppings on beaches. For instance:

7.4 *No person shall take into or have in his charge any dog in or on any public swimming pools or other bathing places, except on authorised occasions.*

7.9 *No person being the owner of, or having the control of any dog shall permit the dog to foul any public place with droppings, provided that no offence shall be deemed to have been committed against this bylaw when the person having control of the dog removes the droppings immediately.*

It is noted that this Draft Dog Control Bylaw provides for dogs to be prohibited “*within the area marked by Surf Patrol flags and extending around that area for a distance of 50 meters beyond the flags*”. In some ways the alteration to the District boundary enhances dog control at the beach, as enforcement staff are not restricted by an artificial boundary when resolving a dog nuisance.

In addition the Council will now be able to enforce the relevant provisions of the Litter Act 1979 in the area between MHW and MLWS over which the Council will have expanded jurisdiction.

## 6.2 Legislation

The draft Waikuku Beach Reserves Management Plan is required to be notified for submission pursuant to requirements of the Reserves Act 1977, Sections 119 and 120.

The Draft Waimakariri District Northern Pegasus Bay Bylaw is required to be publicly notified for submission for one month pursuant to requirements of the Local Government Act 2002, Section 83, Section 86 and Section 156. Section 145 of the Local Government Act empowers the Council to make a bylaw for its District to protect the public from nuisance, and to protect, promote and maintain public health and safety, and to minimise the potential for offensive behaviour in public places.

The Proposed Change to the District Plan is required to be publicly notified for submission for 20 working days with a further 20 days for cross submissions pursuant to requirements of the Resource Management Act 1991, 1<sup>st</sup> Schedule.

## 6.3 Community Outcomes

The reviewed bylaw will contribute to the following Community Outcomes:

There is a safe environment for all

- Harm to people from natural and manmade hazards is minimised
- Crime, injury and road accidents are minimised

There are areas of significant indigenous vegetation and habitats for indigenous fauna

- Conservation of significant areas of vegetation and/or habitats is encouraged

Public spaces and facilities are plentiful, accessible and high quality

- There is a wide range of public places and spaces to meet people's needs
- There are wide ranging opportunities for people to enjoy the outdoors

Public organisations give effect to the spirit of the Treaty of Waitangi

- The Council and Te Ngai Tuahuriri Runanga through the Memorandum of Understanding continue to build their relationship.

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