

Bylaw Review - Options Analysis

Parks and Reserves Regulation

Interpretation

For the purpose of this document the following interpretations are to be used:

- “Reserves” means land held specifically under the Reserves Act 1977.
- “Parks” means open spaces that are not classified under the Reserves Act as reserves, but frequently fulfil the same purpose.

Context

The general purpose of the Reserves Act is to preserve and manage areas for recreational, wildlife indigenous flora or fauna, landscape, natural, scenic historic, cultural experiences for the public enjoyment.

Parks and reserves (collectively known as open spaces) are broadly defined to include land acquired or managed by Council for community recreation, environmental, cultural and/or spiritual purposes.

Relevant Legislation and Regulation.

Parks and reserves are primarily managed under the Local Government Act as assets of Council.

The Council is required to manage classified reserve lands in accordance with provisions set out in the Reserves Act 1977 - in particular in accordance with the reserves classified purpose. These purposes are:

1. Recreation
2. Historic
3. Scenic
4. Nature
5. Scientific
6. Government Purpose
7. Local Purpose – this may include utilities and esplanades.

Reserve Management Plans prepared under section 41 of the Reserves Act require Council to ensure the use, development and maintenance of a reserve for the purpose for which it is classified. However, it cannot control an individual’s actions and it has no enforcement powers.

The Council had a Reserves Bylaw that regulated reserves. The Reserves Bylaw was revoked in December 2017 under section 160A of the Local Government Act 2002 because it was not reviewed in the time period required by that Act.

In the absence of a bylaw, the use of reserves and parks are currently regulated under several different pieces of legislation summarised as follows:

- The Reserves Act 1977 – controls a variety of activities on reserves (but not parks) including:
 - the preservation of trees and bush
 - fencing as it relates to the Fencing Act 1978 and neighbours' contributions
 - restrictions on using reserves for permanent or temporary private accommodation
 - leasing in accordance to any applied reserve classification.

The Reserves Act 1977 under section 94 sets out some general offences on classified reserves. In addition, on 3 February 2020 amendments to section 105 (that relate to section 94) came into force, creating the ability for monitoring and enforcement of selected offences using infringements penalties and the ability to prosecute for other offences. However, currently no Council officers are warranted under the Reserves Act and training has not yet occurred to allow for enforcement activities.

- The Resource Management Act 1991 – sets out several responsibilities relating to reserves and parks including: recognising and protecting indigenous vegetation, access to water bodies and environmental effects such as noise, light, loss of amenity and provision for social cohesiveness through the provision of community infrastructure and activities. Approvals given under the Resource Management Act may result in the creation of new open space.
- The Conservation Act 1987 – authorised the creation of the Department of Conservation to regulate activities on lands designated under the Act as reserves, special protection areas, marginal strips, or stewardship areas as it relates to, natural and historic features. The Conservation Act also allows for some non-conflicting recreation and tourism activity such as track and hut formation.
- The Summary Offences 1981, Crimes Act 1961 and Land Transport Act – provide enforcement powers to the Police for illegal activity such as wilful damage to both private and public property, or dangerous driving in publicly accessible areas such as parts and reserves.
- The Dog Management Bylaw 2018 and Dog Management Policy 2018 made under the Dog Control Act 1996 – specifies dog access areas and control over public parks and reserves and associated enforcement for non-compliance.
- The Alcohol Control Bylaw 2018 made under the Sale and Supply of Alcohol Act 2012 – specifies public areas, including parks and reserves, where alcohol is prohibited to be consumed also along with associated penalties.
- The Reserves Policy 2017 – was an amalgamation of nine existing policies that relate to parks and reserves. The policy document states how Council manages reserves, sets out governance structures and delegated powers, the management of encroachments, voluntary rubbish collections, tree management, and smoke-free parks, reserves and playgrounds. It does not explicitly create enforcement powers.

Problem Definition

Provisions under the Reserves Act exclude restrictions on other open space lands (parks) that are not classified as reserves. Council is therefore unable to enforce offences regulated under the Reserve Act on park lands. The public may not be able to distinguish between (classified) reserve and (non-classified) parks lands, and as a result perceive an inconsistency due to the mixed enforcement approach to open space.

Furthermore, the various existing pieces of legislation and regulation described above do not detail parks and reserves uses that should be managed or require enforcement abilities, including some circumstances that require closure of reserves e.g. safety hazard, biosecurity (such as Kauri die-back) or other civic or natural disaster.

Current regulation does not detail current issues around driving, riding and parking (of vehicles, motorbikes and horses) on parks and reserves, drone operation, pyrotechnics and a number of other activities that may cause nuisance, or be offensive, negatively impact on health and safety, or cause damage to Council open space lands and assets.

Objective

In accordance with section 145 of the Local Government Act 2002 Council can make bylaws for land under its ownership and/or administration to:

- Protect the public from nuisance
- Protect, promote and maintain public health and safety
- Minimise the potential for offensive behaviour in public places.

Furthermore; Council is able under section 146 (b) (vi) to make bylaws

- To manage, regulate against, or protect from damage, misuse, or loss of the land, structures, or infrastructure associated with reserves, recreation grounds, or other land under the control of the territorial authority.

Options

Option One: Do nothing/maintaining the status quo

Under this option the use of parks and reserves would continue be managed under the various pieces of legislation and regulation described above. Council could administer enforcement of regulations for offences (on classified reserves only) under the Reserves Act.

Section 105B-105L of the Reserves Act allows for the issuing of instant infringement fines for certain offences on reserves. Section 105 B (1) and (2) relates to undertaking unauthorised actions – such as lighting of fires, liberating animals, planting vegetation, damaging assets, erecting structures and carrying out trade etc.

Sections 105 C – L include other offences including:

- Littering
- Using, receiving or disposing of items removed unlawfully
- Altering boundary markers
- Failing to remove an animal, vehicle, aircraft or boat
- Unauthorised entry
- Anchoring or mooring a boat in breach of notice of permit
- Damaging by fire.

Infringement fees range from \$300-\$800. Enforcement abilities under the Reserves Act would only apply to unauthorised activities on legally classified reserves and would not apply to non-classified park lands.

Initial analysis from a commissioned audit of open space land around the Far North District in late 2019 found that approximately 25% of Council owned open space to be classified as reserves under the

Reserves Act with the remaining 75% open space (park) lands held under other legislation or yet to be designated.

Therefore, it would be difficult for the public to determine which activities were permitted due to the lands status as a park and which are restricted due to the reserve classification. Council could, for example provide an infringement notice for someone lighting a fire on a classified reserve but could not do the same for the same behaviours on a non-classified open space.

Council would have the ability, however, to enforce other regulations such as bylaws for Dog Control, and Alcohol as they relate to both park and reserve lands and other public places owned or managed by Council.

The Police would also have powers for offences that fall under the Summary Offences, Crimes and Transport Acts including assaults, dangerous driving and others, but would be unlikely to act for more minor offences such as general nuisance, some offensive behaviours, or health and safety issues.

Several other identified problems that impact on health and safety of users, create nuisance or are offensive in their nature are not captured via current regulatory provisions.

- An example is the unauthorised disposal of household waste (fly-tipping) is currently not provided for in existing regulation, and therefore enforcement cannot occur.
- Another example is while the general operation of drones or unmanned aerial vehicles (UAV's) is currently restricted by the Civil Aviation Authority and the Privacy Act, territorial authorities can create further rules for UAV operation over public places. Council however currently has no regulation with associated enforcement powers for operations on or from open space lands - parks and reserves.

To conclude, these combined regulatory powers would partially address the management of nuisance, health and safety, offensive behaviours and protection of public parks and reserve lands and their assets but would not be able to fully address issues that may arise on open space lands defined as parks nor provide Council with the breath of options to provide powers for enforcement of current problems.

Therefore, the option to do nothing will not meet the objectives as it does not:

- Protect the public from nuisance
- Protect, promote and maintain public health and safety
- Minimise the potential for offensive behaviour
- Protect both parks and reserves and their associated assets.

Therefore, Administration does not recommend Option One.

Option Two: Non-regulatory options/education/guidelines/signage

Under this option guidelines, education and signage in the form of print or online publications would be produced to inform people of appropriate behaviours on parks and reserves. Guidelines have been produced previously for example to explain where services (such as toilets, dump-stations and potable water) are located on parks and reserves, and further onsite signage explains expected behaviours when using these facilities. However, when users are not aware of these publications, they may unaware of Councils expectations.

Intervention logic relates that a large percentage of the population will comply if they have good and correct information about what they can and can't do: for example – a sign at the entrance to a reserve can be 75% effective in controlling that behaviour on the reserve. However, guidelines are generally only effective if they relate directly to regulation. Without regulation, signage represents a request rather than a requirement.

The development of supporting guidelines is an important element of regulation, but not sufficient on its own as some people will intentionally ignore the request and continue to do so until reprimanded. It may not effectively reduce nuisance and offensive behaviour, reduce health and safety risks or protect these public lands and assets.

Administration is of the view that Option Two in isolation will not meet the objectives as it will not work on all users. Supporting guideline development however is considered an important to supplement the recommended option.

Option Three: Make a bylaw under the Reserves Act

Under this option the Council would make a bylaw under section 107 of the Reserves Act. Council as administering body can make bylaws for classified reserves in its control in the same manner as that in which it is authorised by law to make bylaws.

Any bylaw created under the Reserves Act by Council would be required to be approved the Minister of Conservation as per section 108 of the Act before it shall have any force or effect. Penalties for breach of any bylaw under the Act are covered off in section 104. On conviction a person who commits a breach is liable to a fine not exceeding \$5000 and where an offence continues a further fine of \$500 for every day on which the offence continues.

A bylaw made under this act would allow Council some ability to regulate for activities not covered off in the Reserve Act infringement offences, however the bylaw would only be enforceable on classified reserves and not on other open space (park) lands. Furthermore, offences would need to be proven in Court for a fine to be applied.

Therefore, this option will not meet all the objectives in terms of addressing issues as they relate to nuisance, health and safety, and minimising the potential for offensive behaviour as it will not provide protection to Councils full suite of open space assets – which include non-classified lands such as parks. Administration does not recommend Option Three.

Option Four: Make a bylaw under the Local Government Act.

Under this option the Council would make a bylaw under Section 145 (a)- (c) and 146 of the Local Government Act 2002 to regulate what activities people do on both reserves and parks and provide enforcement mechanisms.

A bylaw made under provisions in the Local Government Act would apply to both reserve and park land under the administration of Council. While the Local Government Act does not enable the creation of infringement offences (instant fines) a bylaw under the Local Government Act allows for the possibility of alignment with provisions made under section 105 of the Reserves Act (infringement offences). A bylaw under the Local Government Act could therefore manage both classified reserves and non-classified parks in a consistent and transparent manner.

Furthermore, it would allow the Council to control activities in order to prevent conflicting uses such as (exclusive) trade, business or occupation of a reserve or park, and by penalising activities that cause damage such as for example the digging, cutting or excavation of sod.

A new bylaw can also address current problems such as;

- the cutting, poisoning and removal of trees
- drone (UAV) operation
- dumping of household waste or fly-tipping etc.

It would allow staff to carry out enforcement activities when compliance is not achieved.

A bylaw would allow for development and publications and site-specific signage to educate park and reserve users of regulations and penalties to deter offences and encourage reporting of these.

This Option will meet all the objectives in terms of nuisance, health and safety, and minimising the potential for offensive behaviour, and protecting parks, reserves and the assets on them.

Administration recommends Option Four.

Conclusion and Recommendation

Option Four: Administration supports that a bylaw made under the Local Government Act is the most appropriate method to manage activities within both classified reserves and parks. In accordance with sections 145 and 146 of the Local Government Act 2002, a bylaw would meet Councils' objectives to:

- Protect the public from nuisance in parks and reserves
- Protect, promote and maintain public health and safety in parks and reserves
- Minimise the potential for offensive behaviour in parks and reserves
- And protect these public parks and reserves and associated assets.

A bylaw under the Local Government Act would also bring the regulation of parks that are not classified under the Reserves Act in alignment with provisions in section 94, and 105 of the Reserves Act and allow consistency across the full parks and reserve suite.
