

Research Report

Review of Pou Herenga Tai – Twin Coast Cycle Trail Bylaw (2016)

1 Purpose

To describe and discuss the review of the Pou Herenga Tai – Twin Coast Cycle Trail Bylaw (2016).

2 Context

The New Zealand Cycle Trail project (Nga Haerenga) is a New Zealand Government initiative, co-funded with local councils to build and operate a network of cycle trails or 'Great Rides' throughout the country. Pou Herenga Tai – Twin Coast Cycle Trail (Cycle Trail) is an 87 km cycle trail starting at Opuia on the east coast and traversing across to the Hokianga Harbour on the west coast.

The Council's Pou Herenga Tai – Twin Coast Cycle Trail Bylaw (Bylaw) was made on 08 September 2016. Under section 158 of the Local Government Act 2002, the Bylaw is due for review by 08 September 2021. The Council is required under section 160 of the Local Government Act 2002 to consider whether the Bylaw:

- is still the most appropriate way of addressing the perceived problem with respect to the cycle Trail
- is still the most appropriate form of bylaw
- gives rise to any implications under the New Zealand Bill of Rights Act 1990.

3 Problem definition

3.1 Original problem statement

The original determination report to Council (15 June 2016)¹ stated that "A bylaw is the most appropriate way of managing the Trail because there is no single regulatory instrument for the management of the use of the Trail which is on private land, Crown land, road reserve, and land vested under the control of the Council".

However, in the same determination report the following problems were also mentioned:

- Protecting public health and safety including:
 - restricting access to cyclists and pedestrians
 - prohibiting motorised vehicles
 - control of dogs
 - control of horses
- Protecting the public and adjoining landowners from nuisance
- Minimising damage including:
 - restricting horses.

These problems are reflected in the Bylaw *clause 4* which states the purpose of the Bylaw is to:

- protect, promote and maintain the safety of people using the Trail or working and living in proximity to the Trail
- protect from nuisance those using the Trail or working and living in proximity to the Trail

¹ [Pou Herenga Tai – Twin Coast Cycle Trail Bylaw Determination Report June 2016](#)

- minimise damage to the Trail
- protect and maintain the natural and wildlife values and habitats in the vicinity of the Trail.

3.2 Other problems relating to the Cycle Trail not currently controlled or addressed by the Bylaw

A review of RFS data and internal consultation with Council and Pou Herenga Tai – Twin Coast Cycle Trail Trust staff has not identified any additional problems relating to the Cycle Trail.

3.3 Scope

In scope

Problems relating to the Pou Herenga Tai – Twin Coast Cycle Trail which are a function of Council to control or address.

Out of scope

- All other recreation grounds, reserves, shared paths or roads in the Far North District as these are (or are planned to be) regulated by other policy instruments.
- Parts of the Cycle Trail which cross a road, as roads are regulated by the Land Transport Act 1998.

4 Council's role relating to the Cycle Trail

Nga Hereanga was initially a central government initiative to create one consistent and continuous cycle path the length of New Zealand. However, central government consultation identified that utilising, upgrading and extending existing paths was more financially viable. Therefore, central government provided funding to local authorities to develop suitable cycle trails in their districts.

Under section 10 of the Local Government Act 2002, the purpose of local government is to "... promote the social, economic, environmental, and cultural wellbeing of communities, in the present and for the future". The use of the Cycle Trail can have a positive effect on a community's wellbeing through direct impacts, such as affecting the physical health of people by encouraging active movement and affecting economic wellbeing by encouraging tourism.

The Council is responsible for the ongoing maintenance of the Cycle Trail as an asset. The Council has a service level agreement with the Pou Herenga Tai Twin Coast Cycle Trail Trust who undertake operational management of the Cycle Trail.

4.1 Local Government Act 2002

Council can make a bylaw under section 145 of the Act for the following purposes:

- protecting the public from nuisance
- protecting, promoting, and maintaining public health and safety
- minimising the potential for offensive behaviour in public places.

Under section 146 (b) (vi) Council can also make a bylaw for the purpose of:

"managing, regulating against, or protecting from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure associated with reserves, recreation grounds, or other land under the control of the territorial authority".

Whilst the Cycle Trail crosses land that is not owned by Council, easement agreements have been put in place which state that property owners need to adhere to any policy instrument relating to the Cycle Trail. It is therefore reasonable to categorise the Cycle Trail as infrastructure associated with land under the control of Council.

4.2 Land Transport Act 1998

The Cycle Trail crosses and utilises land that is road and therefore Council can make a bylaw under section 22AB for multiple reasons including but not limited to:

- restricting the use of motor vehicles on unformed legal roads for the purposes of protecting the environment, the road and adjoining land, and the safety of road users

- prescribing the use of roads and cycle tracks, and the construction of anything on, over, or under a road or cycle track
- prohibiting or restricting parking on specified roads or parts of a road.

5 Review of Bylaw

5.1 Protecting public health and safety

Restricting access to cyclists and pedestrians

The aim of the Cycle Trail is to provide a safe space for cyclists and pedestrians. Due to the Cycle Trail being quite narrow in places and made from loose material, motorised vehicles were perceived to be a risk to the safety of cyclists and pedestrians. Therefore, the Bylaw prohibits motorised vehicles from entering the Cycle Trail.

RFS data shows that there have been a few incidences where people in motorised vehicles have been using the Cycle Trail, resulting in a 'near miss' with a cyclist. The RFS data supports the perceived problem that motor vehicles on the Cycle Trail may be unsafe for pedestrians and cyclists.

However, more research is required to identify why vehicles have been using the Cycle Trail. For example, does signage need to be improved or are people wilfully ignoring the Bylaw and why?

Given that the Cycle Trail crosses different types of land ownership, and that motorised vehicles may cause harm to cyclists and pedestrians, a bylaw remains an appropriate regulatory tool for restricting access to motorised vehicles on the trail.

Control of dogs

To protect the safety of both cyclists and dogs, the Bylaw stipulates that dogs are allowed on the Cycle Trail only when on a leash. RFS data and internal consultation identified incidences of dogs attacking users of the Cycle Trail. All dog attacks were from dogs not on a leash. The data supports the perceived problem that uncontrolled dogs can cause harm to the public.

Since implementing the Bylaw, the Council made the Dog Management Bylaw and Dog Management Policy in 2018. The Cycle Trail Bylaw is not consistent with the dog management policy instruments which do not allow dogs on the trail where the Cycle Trail passes through private land.

Duplicating regulation across multiple policy instruments does not follow best practice guidelines. Therefore, the clauses in the Bylaw relating to dogs should be revoked, and dog regulation should remain in the Dog Management Bylaw.

Control of horses

Cyclists may scare horses, especially where the Cycle Trail is quite narrow, leading to potential harm to all users of the Cycle Trail. Horse hooves may cause damage to the Cycle Trail as the surface of the Cycle Trail is not suitable for horse use. Therefore, the Bylaw restricts access to the Cycle Trail for horses. As an outcome of consultation, the Bylaw allows horse trekking events to be held four times per year with the consent of Council.

There is still hesitancy to give consent for horse events due to managing the health and safety of other users of the Cycle Trail, managing potential nuisance such as ensuring the opening and closing of gates, managing horse excrement on the Cycle Trail, and managing any potential damage to the Cycle Trail caused by horse hooves.

Further research is required to ensure that the Bylaw is in the appropriate form to manage the potential impact of horses to the Cycle Trail and its users.

5.2 Protecting from nuisances

Control of stock

Stock wandering on the path can be a safety issue for cyclists but also a nuisance for users of the path and neighbouring landowners. Controlling stock is a responsibility of landowners to maintain their property and

fences, but also for users of the Cycle Trail to keep gates closed. The Bylaw includes multiple provisions to prevent wandering stock.

RFS data and internal consultation supports the perceived problem of wandering stock. However, more research is required to identify the causes of wandering stock for example, are communication tools regarding the closing of gates sufficient to enable public compliance.

The issue of wandering stock can be enforced under the Impounding Act 1955. However, Council does not have the resources (e.g., cattle truck, sufficient access to the Cycle Trail) to be able to enforce under the Impounding Act 1955.

The Bylaw regulates the use of the Cycle Trail and requires property owners to gain consent from Council, before using the Cycle Trail as a stock race. There have been incidences of neighbouring property owners using the Cycle Trail as a path for moving stock, leading to damaged plants etc. More research is required to ensure that appropriate mechanisms are put in place to enable ongoing communication with property owners regarding the provisions in the Bylaw.

More research is required to identify the most appropriate way to manage and regulate the issue of stock of the Cycle Trail.

Control of Camping

To prevent nuisance to both users of the Cycle Trail and neighbouring residents, camping is prohibited along the Cycle Trail.

The Reserves Act 1977 prohibits camping in any reserve, therefore any components of the Cycle Trail which are on land designated as reserve can be regulated by the Reserves Act 1977.

The Freedom Camping Act 2011 defines freedom camping as camping within 200m of a motor vehicle accessible area, or the mean low-water springs line of any sea or harbour, or on or within 200m of a formed road. Much of the Cycle Trail is on or within 200m of a motor vehicle accessible area or a formed road. Council can restrict or prohibit freedom camping on council-controlled land under the Freedom Camping Act 2011.

Therefore, a bylaw (made under the Freedom Camping Act 2011) is an appropriate regulatory tool to prohibit camping along the Cycle Trail.

5.3 Minimising damage to the Trail

The Bylaw prohibits damage to the Trail. The Bylaw minimises unintentional damage from neighbouring property owners by requiring consent for activities such as establishing a new driveway or path that crosses the Cycle Trail.

The Cycle Trail is considered infrastructure associated with land under the control of Council. Council has the power to recover for damage by wilful or negligent behaviour under section 175 of the Local Government Act 2002. However, bylaws can act as a deterrent and therefore just having a bylaw in place can prevent damage and be used as another tool to protect Council's asset.

Therefore, a bylaw remains an appropriate regulatory tool for preventing and enforcing incidences of damage.

5.4 Protecting the environment

Council does not have the power to make a bylaw protecting the environment under the Local Government Act 2002. Therefore, a bylaw is not the most appropriate regulatory tool for protecting the environment.

The Bylaw should be amended to remove the purpose of the Bylaw (4.1 (d)) which states "Protect and maintain the natural and wildlife values and habitats in the vicinity of the Trail".

5.5 Is the bylaw certain?

In determining if a bylaw is the appropriate form of bylaw, the bylaw needs to be certain e.g., it uses clear wording so people will understand what they are required to do.

Some of the language used in the bylaw is outdated and inconsistent with modern legislative drafting styles. There are several provisions in the bylaw that are unclear, for example, the meaning of the Cycle Trail as outlined in the Bylaw. The Bylaw refers to the map provided in Schedule 1 which does not give any definitive land markings. The maps should be updated to provide a clearer definition as to the area in which the Bylaw applies. The Bylaw states that the Cycle Trail is subject to existing laws where the path is within a Roadway. This component of the Bylaw is unclear. Roadway is not a definition commonly used in other legislation, although is defined in the Land Transport Rules. The Cycle Trail crosses land that is defined as road and therefore subject to regulation under the Land Transport Management Act 2003 and the Land Transport Act 1998. It could therefore be that these are the existing laws the Bylaw was referring to.

So that the public can easily interpret the Bylaw, the Bylaw needs to be amended to ensure ease of understanding and clarity, particularly where the Bylaw risks contradicting existing legislation.

5.6 Alignment with other relevant laws and legislation

The Bylaw refers to Council's *Control of the Use of Public Places Bylaw* which has been revoked. The Bylaw will need to be amended to ensure that the Bylaw aligns with Council's current policy instruments.

The Bylaw allows for the use of *wheeled recreation devices* and *mobility devices* on the Cycle Trail. Definitions for these devices and motorised vehicles are copies from Land Transport Rules that are in the process of being amended. To ensure consistency across policy instruments and to avoid any confusion, the Bylaw definitions should align with Land Transport Rule definitions by cross-referring to them, not copying them. This will ensure that when the Rules are amended the content of the bylaw will continue to be correct. (To illustrate, Waka Kotahi are currently consulting on new definitions for some types of vehicles (e.g., e-skateboards, powered unicycles, hoverboards and a range of mobility devices— see the *Accessible Streets* rules package².)

To protect public health and safety and to minimise nuisance, consent from Council is required for any event held on the Cycle Trail. The components regarding events need to align with Council's other Bylaws. For example, the Solid Waste Bylaw requires events to have a Waste Management and Minimisation Plan.

The Bylaw prohibits littering on the Cycle Trail. Litter and littering in general are regulated by the Litter Act 1979. Litter Control Officers have the power to issue an infringement notice under the Litter Act 1979, whereas a bylaw made under the Local Government Act 2002 requires prosecution to enforce. Therefore, Council staff enforce littering under the Litter Act 1979. Duplicating regulation across multiple policy instruments does not follow best practice guidelines. Therefore, a bylaw is not the most appropriate regulatory tool for preventing and enforcing incidences of littering and clauses referring to littering should be revoked.

The Land Transport Act 1998 gives Council the power to make a bylaw for several reasons which may apply to the Cycle Trail. The Land Transport Act 1998 includes powers to issue infringement notices for certain offences which may allow for easier enforcement of the Bylaw. More research is required to identify if the Bylaw should also be made under the Land Transport Act 1998.

6 Discussion

6.1 Is a bylaw still the most appropriate way to address the regulation of the Cycle Trail in the Far North District?

The review has identified that a bylaw is still the most appropriate way to address the following problems relating to the Cycle Trail:

² [Accessible Streets Rule Package - Waka Kotahi](#)

- Protecting public health and safety including:
 - restricting access to cyclists and pedestrians
 - control of dogs
- Protecting from nuisance including:
 - control of stock
 - control of camping.
- Minimising damage including:
 - restricting construction or earthworks.

A bylaw is not the most appropriate way to address problems relating to

- the control of litter
- protecting the environment on or near the Cycle Trail.

6.2 Is the bylaw the most appropriate form of bylaw?

The form of a bylaw is about its content and how it is drafted. A bylaw will be appropriate if it:

- deals with the identified problems
- meets the objectives it is intended to achieve
- is certain, e.g. it uses clear wording so people will understand what they are required to do
- is enforceable and able to be implemented and administered effectively and efficiently
- considers the relationship of Māori to land, water, sites, wāhi tapu, valued flora and fauna and other taonga
- complies with all relevant laws and legislation.

The costs and benefits of a bylaw also need to be considered and the form of a bylaw will be appropriate if the benefits outweigh the costs.

The Bylaw has provisions which deal with the identified problems. However more research is required to identify:

- why motorised vehicles are accessing the Cycle Trail
- whether the Bylaw appropriately manages the potential impact of horses to the trail and its users
- the causes of wandering stock

Some provisions in the Bylaw are not certain. Therefore, amendments are required to improve clarity particularly regarding

- the definition of the Cycle Trail
- the areas of the Cycle Trail which are already covered by existing legislation or bylaws.

The Bylaw is not consistent with relevant laws and legislation including but not limited to:

- Dog Management Bylaw
- Solid Waste Bylaw
- Land Transport Rules
- Freedom Camping Act 2011
- Local Government Act 2002
- removing reference to revoked bylaws.

Therefore, the Bylaw is not the most appropriate form of bylaw and should be amended.

6.3 Does the Bylaw give rise to any implications under the New Zealand Bill of Rights Act 1990?

As the Bylaw is not the most appropriate form of bylaw a full assessment under the New Zealand Bill of Rights Act 1990 is not currently possible.

However, the only rights or freedoms under the Bill of Rights Act potentially engaged by the Bylaw are likely to be the rights to freedom of movement in relation to the restriction of access to the Cycle Trail for motorised vehicles

and dogs. Limitations on these rights must be no more than is reasonably necessary to achieve the purpose of the Bylaw. The Bylaw limits these rights only to the extent that they create a danger to health and safety or a nuisance to others or the public generally.

Therefore, the Bylaw does not raise any implications under and is not inconsistent with the Bill of Rights because any limitations of rights are justified.

7 Conclusion

A bylaw is the most appropriate way to regulate the use of the Cycle Trail to protect public health and safety, and minimise nuisance and damage. The Bylaw needs to be amended to ensure that the Bylaw is easily understood and aligns with relevant laws and legislation.