

Statement of Proposal

Pou Herenga Tai – Twin Coast Cycle Trail Bylaw

1 Context and Situation

The New Zealand Cycle Trail project (Ngā 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 Opuā on the east coast and traversing across to the Hokianga Harbour on the west coast.

Council determined on 15 June 2016 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.

The council's Pou Herenga Tai – Twin Coast Cycle Trail Bylaw (Bylaw) was made on 08 September 2016 under section 145 of the Local Government Act 2002. 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
- minimise damage to the Trail
- protect and maintain the natural and wildlife values and habitats in the vicinity of the Trail.

Under section 158 of the Local Government Act 2002, the Bylaw was due for review by 08 September 2021. The Council was required under section 160 of the Local Government Act 2020 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.

On 12 August 2021¹, under section 155(1) of the Local Government Act 2002, the governing body of the council determined that:

- a bylaw is the most appropriate way of addressing problems related to the Pou Herenga Tai – Twin Coast Cycle Trail
- the current Pou Herenga Tai - Twin Coast Cycle Trail Bylaw is not the most appropriate form because:
 - it is not consistent with relevant laws and legislation
 - it is not certain.
- the Pou Herenga Tai - Twin Coast Cycle Trail Bylaw be continued with amendment to:

¹ [FNDC Council Meeting Minutes 12 August 2021](#)

- ensure consistency with relevant laws and legislation
- improve certainty.

2 Proposal

The council proposes to continue with amendment to the Pou Herenga Tai – Twin Coast Cycle Trail Bylaw under section 145 of the Local Government Act 2002 and section 11 of the Freedom Camping Act 2011 to protect, promote and maintain the health and safety of cycle trail users, to protect from nuisance those using the Trail and to minimise damage to the Trail.

3 Reasons for the proposal

The council is required under section 158 of the Local Government Act 2002 to review a bylaw five years after it is made. The bylaw was reviewed on 12 August 2021, and council determined to continue the bylaw with amendment. Council must, under section 156 of the Local Government Act 2002 and section 11 of the Freedom Camping Act 2011 consult on any amendments to the bylaw.

To continue effective regulation of the Pou Herenga Tai – Twin Coast Cycle Trail amendments should be made to the Pou Herenga Tai – Twin Coast Cycle Trail Bylaw.

4 Analysis of the reasonably practicable options

The governing body of the council considered three options for addressing problems relating to the Pou Herenga Tai – Twin Coast Cycle Trail:

- Continue the Bylaw with amendment
- Continue the Bylaw without amendment
- Do nothing: allow the Bylaw to auto revoke

The advantages and disadvantages of the options are summarised in the following table.

Option	Advantages	Disadvantages
The Bylaw continues with amendment	<ul style="list-style-type: none"> • Bylaw will align with relevant laws and legislation • Bylaw will allow for easier enforcement of provisions • Bylaw will have improved clarity and certainty 	Implementation costs (likely to be minor)
The Bylaw continues without amendment	<ul style="list-style-type: none"> • No change management process required • No implementation costs required 	<ul style="list-style-type: none"> • Bylaw is not consistent with relevant laws and legislation • Bylaw does not easily enable Council staff to enforce certain provisions • Potential for reputation risk as Bylaw is not effective nor certain.

<p>Do nothing: allow the Bylaw to auto revoke</p>		<p>Allowing the Bylaw to auto-revoke and not implementing another viable option to protect public health and safety along the Cycle Trail is not a reasonably practicable option.</p>
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5 New Zealand Bill of Rights Act 1990 implications

Part 2 of the New Zealand Bill of Rights Act 1990 sets out twenty rights that are affirmed and protected, that may only be subject to reasonable limits that can be demonstrably justified in a free and democratic society. Section 155(2)(b) of the Local Government Act 2002 requires the council to determine if the proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990. The council will fully assess these implications before it makes the amendments to the Pou Herenga Tai – Twin Coast Cycle Trail Bylaw.

However, a preliminary assessment has identified the Bylaw may potentially have implications on Section 14: Freedom of Expression in that the bylaw prohibits anyone from advertising or applying graffiti to any part of the Trail. These restrictions are in place to prevent damage to the Trail and protect the community’s interest in maintaining an open space. These restrictions are also to protect the health and safety of users from distracting advertising or graffiti. Overall, these restrictions have a minimal impact on the right of freedom of expression and are proportionate to the negative effects the restrictions are attempting to mitigate.

The Bylaw may also potentially have implications on Section 18: Freedom of Movement in that the Bylaw prohibits anyone to drive a motor vehicle on the Trail. These restrictions are in place to protect cyclists and pedestrians from harm as the trail is specifically designed for pedestrians and cyclists rather than vehicles.

The Bylaw’s provisions are justified because they only limit the rights of individuals to the extent it is reasonable to do so to in order to protect the health and safety of other individuals.

The Bylaw may also potentially have implications on Section 21: Security Against Unreasonable Search or Seizure, whether of the person, property, or correspondence. However, the bylaw does not contain any new powers for search or seizure, the applicable powers (that are cross-referenced in the bylaw) are provided by statute. As such the bylaw does not raise any implications under section 21 of the Bill of Rights Act 1990.

Any limitations on the rights mentioned are likely to be reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. This is because the restrictions imposed are minimal, they provide benefits and protect the rights of the wider community and are proportional to the aims they are seeking to achieve. It is therefore assessed that the restrictions are justified in accordance with the New Zealand Bill of Rights Act 1990 and as such the bylaw is not currently considered to raise any Bill of Rights Act implications.

6 How to give your views on the proposal

The council encourages any person or organisation affected by, or having an interest in, the Pou Herenga Tai – Twin Coast Cycle Trail Bylaw to present their views on the proposal to the Council by making a submission.

You can make a submission by using any of the following methods:

- online at the council's website www.fndc.govt.nz/have-your-say
- email your submission to submissions@fndc.govt.nz
- drop-off your submission at any council service centre or library, details of their locations and opening times are listed at www.fndc.govt.nz/contact or you can get that information by phoning the council on 0800 920 029
- post your submission to: Strategy Development Team, Far North District Council, Private Bag 752, Kaikohe 0440
- make an oral presentation of your submission at a meeting of the council's Strategy and Policy Committee

Please include your full name and email address or postal address in your submission if you want:

- the council to acknowledge receipt of your submission
- to make an oral presentation – you will be contacted about when and where the meetings for this are taking place.

Privacy statement – Please be aware, any submissions that are made on the amended Pou Herenga Tai – Twin Coast Cycle Trail Bylaw become part of the public consultation process. As such, all submissions, any summaries of submissions, and any documents provided with your submission, are copied and made available to the Council's governing body as well as the public. Any personal information included with a submission such as your name is treated as part of the submission and will also be released publicly. Your submission and any personal information that you supply such as your name will not be treated as confidential unless you specifically request it in your submission.

6.1 Draft Pou Herenga Tai – Twin Coast Cycle Trail Bylaw

The draft bylaw is as follows:

1 Title

The Bylaw shall be known as the Far North District Council Pou Herenga Tai - Twin Coast Cycle Trail.

2 Meaning of Trail

For the purposes of this Bylaw, the **Trail** means the path formed by or on behalf of the Far North District Council for the intention of providing a largely off-road route from Opuā to Horeke for **cyclists**, **pedestrians**, riders of **mobility devices** or the riders of **wheeled recreational devices** to use. The **Trail** is formed over private land, Crown land, and **council** controlled land and roads.

The **Trail** is identified in Schedule 1 and includes:

- (1) The land within 2.5 metres of either side of the centre line of the formed path;
- (2) Every bridge, culvert, and ford within the trail;
- (3) Each segment of a **road** identified in the trail maps (Schedule 1).

3 Commencement

This bylaw shall come into force on 1 October 2016.

4 Application

This bylaw applies to the **Trail** located within the district of the Far North District Council.

5 Purpose

The purpose of this Bylaw is to protect the **public** and **users** of the **Trail** from nuisance, promote public safety, minimise offensive behaviour and protect public infrastructure from misuse or damage.

6 Interpretation

- (1) Related information below is for information purposes, does not form part of this bylaw, and may be inserted, amended, or removed without any formality.
- (2) The Interpretation Act 1999 applies to this bylaw.
- (3) In this bylaw, unless the context otherwise requires: -
 - approval** means written approval granted by council and includes any conditions which the written approval is subject to.
 - authorised officer** means an officer appointed by council to consider and make decisions on applications made under this Bylaw.
 - council** means the Far North District Council, or any person delegated or authorised to act on its behalf.
 - cycle** has the same meaning as section 2 of the Land Transport (Road User) Rule 2004.
 - cyclist** is a person who rides a cycle.
 - freedom camp** has the same means as section 5 of the Freedom Camping Act.
 - mobility device** has the same meaning as section 2 of the Land Transport (Road User) Rule 2004.
 - moped** has the same meaning as in Section 2(1) of the Land Transport Act 1998.
 - motorcycle** has the same meaning as in Section 2(1) of the Land Transport Act 1998.
 - motor vehicle** has the same meaning as in Section 2(1) of the Land Transport Act 1998 but does not include a Mobility Device or a Wheeled Recreational Device.

Related information

As at 19.11.2021 the definition is:

- (a) means a vehicle drawn or propelled by mechanical power; and
- (b) includes a trailer; but
- (c) does not include -
 - (i) a vehicle running on rails; or
 - (ii) [Repealed]
 - (iii) a trailer (other than a trailer designed solely for the carriage of goods) that is designed and used exclusively as part of the armament of the New Zealand Defence Force; or
 - (iv) a trailer running on 1 wheel and designed exclusively as a speed measuring device or for testing the wear of vehicle tyres; or
 - (v) a vehicle designed for amusement purposes and used exclusively within a place of recreation, amusement, or entertainment to which the public does not have access with motor vehicles; or
 - (vi) a pedestrian-controlled machine; or
 - (vii) a vehicle that the Agency has declared under [section 168A](#) is not a motor vehicle; or
 - (viii) a mobility device

offence means an offence against this Bylaw and includes any failure to comply with any part of this bylaw.

pedestrian has the same meaning as section 2 of the Land Transport (Road User) Rule 2004.

road has the same meaning as in section 315(1) of the Local Government Act 1974.

stock includes any horse, cattle, sheep, goat, pigs, deer, alpaca or llama or other hoofed animals.

user means a person that uses the Trail and includes a **Pedestrian**, a **Cyclist**, the rider of a Mobility Device or the rider of a Wheeled Recreational Device.

vehicle has the same meaning as in section 2 of the Land Transport Act 1988.

Related information

As at 19.11.2021 the definition is:

- (a) means a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved; and
- (b) includes a hovercraft, a skateboard, in-line skates, and roller skates; but does not include -

- (i) a perambulator or pushchair:
- (ii) a shopping or sporting trundler not propelled by mechanical power:
- (iii) a wheelbarrow or hand-trolley:
- (iv) [Repealed]
- (v) a pedestrian-controlled lawnmower:
- (vi) a pedestrian-controlled agricultural machine not propelled by mechanical power:
- (vii) an article of furniture:
- (viii) a wheelchair not propelled by mechanical power:
- (ix) any other contrivance specified by the rules not to be a vehicle for the purposes of this
Definition:
- (x) any rail vehicle.

vehicle crossing means the area of driveway, whether temporary or permanent, between a road and a private property boundary, intended for use by motor vehicles accessing the property.

wheeled recreational device has the same meaning as section 2 of the Land Transport (Road User) Rule 2004.

Related information

As at 19.11.2021 the definition is:

- (a) means a vehicle that is a wheeled conveyance (other than a cycle that has a wheel diameter exceeding 355mm) and that is propelled by human power or gravity; and
- (b) includes a conveyance to which are attached 1 or more auxiliary propulsion motors that have a combined maximum power output not exceeding 300 W.

7 Use of the Trail

User

- (1) The **trail** may be only used by **cyclists, pedestrians**, riders of **mobility devices** and **wheeled recreational devices** (includes scooters, hoverboards, e – scooters).

Vehicle

- (2) No person shall drive a **motor vehicle**, a **motorcycle** or **moped** on the Trail except -
 - (a) to cross over the **Trail** when entering, or exiting a **vehicle crossing**; or
 - (b) when the **Trail** is formed on or over a **road**; or
 - (c) when they have **approval** from the **council**.

Events

- (3) No person may use the **Trail** for an organised event without the written **approval** of the **council**.

Related information

Applications for events can be found at [FNDC Event Applications](#)

- (4) A **User** must at all times keep to the left side of the formed path on the **Trail** so that oncoming or following **Users** can pass on their right.
- (5) No person shall obstruct the entrances or exits to the **Trail** or unduly impede the passage of a **User** along the Trail.
- (6) At any time when there is not sufficient daylight to render clearly visible a cyclist at a distance of 100 metres, a **cyclist** must use a steady or flashing forward-facing white or yellow light and a steady or flashing rear-facing red light which are sufficiently brilliant to be visible in normal atmospheric conditions for a distance of at least 100 metres.

- (7) All **Cyclists** and riders of **Mobility Devices** when within any unlit tunnels on the **Trail** must use the lights described in clause 7 (6) at any time of the day or night.

Horses

- (8) No person shall ride, lead or take any horse or horse and cart on the **Trail** except:
- (a) to cross over the **Trail** when entering, or exiting a **vehicle crossing**; or
 - (b) when the **Trail** is formed on or over a road; or
 - (c) when **approved** by the **council**.

Related information

The Land Transport (Road User) Rule 2004 includes other requirements that apply to leading or riding animals on roads and must be complied with on the roads where animals are permitted under this bylaw. For example, clause 11.14(4) prohibits a person from riding an animal on a footpath.

Stock

- (9) If **Stock** are on the **Trail**, they have right of way. **Stock** are only permitted on the **Trail** under the following conditions:
- (a) to cross over the **Trail** when entering, or exiting a **vehicle crossing**; or
 - (b) when the **Trail** is formed on or over a **road**; or
 - (c) when **approval** has been given by the **council**; or
 - (d) as set out in an access agreement, or agreement of licence, lease or
 - (e) easement between adjacent private landowners and **council**.
- (10) No **User** shall wilfully leave open any gate or make a gap in a fence for the purpose of permitting or causing any **Stock** to stray or wander on to the **Trail** or otherwise wilfully cause any **Stock** to stray or wander onto the **Trail**.

Dogs

- (11) No person shall bring any dog on to the **Trail** or allow any dog in their custody or under their control to remain on the **Trail**, unless the dog is on a leash or is within an area specified by the council's Dog Management Policy as an area where dogs are permitted off the leash, or as a dog exercise area.

Related information

See council Dog Management Bylaw

[Bylaws Far North District Council \(fndc.govt.nz\)](http://fndc.govt.nz)

- (12) No **User** shall place or leave on the **Trail** any object, materials or thing that may obstruct or in any way interfere with the passage of **Users** along the **Trail**, unless **approval** has been given by the **Council** and then only in accordance with such conditions imposed under that **approval**.
- (13) No **User** shall do or cause or permit to be done any act whatsoever by which any damage is caused to the **Trail**. Such damage includes:
- (a) interfering with, harming or killing any wildlife natural features, plants, trees or shrubs or removing any soils, sand or naturally occurring materials on or near the **Trail**; or
 - (b) interfering with any ornament, statue, building, structure, fence, gate or facilities on the **Trail**; or
 - (c) polluting, defacing, disfiguring, or applying graffiti, posters or advertising signs or signs of any description on or to any part of the **Trail**.
- (14) No **User** shall wilfully or negligently cause or allow any oil, or any liquid likely to create a danger to **Users**, to escape onto any part of the **Trail** including any part having a sealed or paved surface.
- (15) No **User** shall **Freedom camp** on the **Trail**. No user may:
- (a) erect a tent, gazebo or similar device on the **Trail**; or

- (b) camp overnight in a **motor vehicle** on the **Trail**.

Related information

Depending on the location, nature or extent, a breach of this clause could result in:

- (a) A parking infringement fine of \$60 for inconsiderate parking under Schedule 2 Part 1 2(e) of the Land Transport Act 1962; or
- (b) An infringement fine under the Reserves Act 1977; or
- (c) An injunction under section 162 of the Local Government Act; or
- (d) An infringement fine under the Conservation Act 1987; or
- (e) A fine not exceeding \$20,000 under section 242 of the Local Government Act 2002; or
- (f) An infringement fine under the Freedom Camping Act 2011.

No fires

- (16) No **User** may light a fire on the **Trail** or on land adjacent to the **Trail**.

Related information

Depending on the location, nature or extent, a breach of this clause could result in:

- (a) An infringement fine under the Reserves Act 1977; or
- (b) An infringement fine under the Conservation Act 1987; or
- (c) A fine not exceeding \$20,000 under section 242 of the Local Government Act 2002.

- (17) The **council** may under section 163 of the Local Government Act 2002, remove or alter a work or thing that is or has been constructed in breach of this bylaw, and may recover the costs of the removal or alteration from the person who committed the breach.

8 Access to and over the Trail

- (1) Except with the **approval** of the **council** no person shall establish a new **Vehicle Crossing** or path that:
- (a) Crosses the **Trail**, or provides access to and from the **Trail**; and
 - (b) Is used or available for use by **Cyclists, Pedestrians**, riders of **Mobility Devices**, riders of **Wheeled Recreational Devices** or drivers of **Motor Vehicles**.
- (2) In granting **approval** under clause 8 (1) of this Bylaw, the **council** may impose such conditions as it thinks fit for the protection and safety of **Users**.

9 Offences

- (1) Every person who fails to comply with the requirements of this Bylaw commits an offence under the Local Government Act 2002 and is liable to the penalties set out in that Act.
- (2) Every person who fails to comply with the Freedom camping restrictions of this Bylaw commits an offence under the Freedom Camping Act 2011 and is liable to the penalties set out in that Act.
- (3) This bylaw does not limit the council's powers under other legislation such as the Land Transport Act 1998, the Local Government Act 2002, the Reserves Act 1977, the Dog Control Act 1996, the Conservation Act 1987 and the Litter Act 1977 to take actions to enforce the provisions of this bylaw.

10 Schedule – Maps