

# Statement of Proposal

## Parks and Reserves Bylaw

### 1 Context and Situation

The Council owns a significant number of parks and reserves that provide cultural, historical, recreation, leisure, environmental, accessibility and amenity need for residents and visitors to the Far North region. Councils have the power to make bylaws for the purpose of regulating, managing, and controlling use and access to parks and reserves.

The previous Reserves Bylaw was made on Thursday 9 December 2010 by council. The bylaw was due for review in December 2017; however, a review did not take place by this date. This means the bylaw automatically revoked, under section 160A of the Local Government Act 2002.

Absence of a Parks and Reserves bylaw limits the council's ability to act as custodians over parks and reserves. Some protections, regulatory abilities and legislative statutes can be applied under the Reserves Act, Resource Management Act, Conservation Act, Summary Offences Act and Crimes Act, and both the Dog Management and Alcohol Control Bylaw, although they do not provide abilities broad enough to protect the public from nuisance, maintain public health and safety or contribute to a reduction in offensive behaviour on parks and reserves.

On 30 June 2022, under section 155 of the Local Government Act 2002, the governing body of the council determined that:

- a bylaw, under both the Reserves Act 1977 and the Local Government Act 2002, is the most appropriate way of addressing the problems of nuisance, health and safety and offensive behaviour on council-controlled parks and reserves.

A bylaw has been drafted under the Local Government Act 2002 and the Reserves Act 1977 which provides the most appropriate range of enforcement tools to ensure continued safe access to parks and reserves. Both acts provide mechanisms for enforcement and regulation over parks and reserves; ensuring the public can be protected from nuisance, public health and safety concerns, and offensive behaviour.

### 2 Proposal

The council proposes to make a new bylaw under section 106 of the Reserves Act 1977 and section 145 of the Local Government Act 2002 to empower the council to take actions that ensure the public can utilise parks and reserves free from nuisance and offensive behaviour.

### 3 Reasons for the proposal

The previous Reserves Bylaw automatically revoked, under section 160A of the Local Government Act 2002, in December 2017. Council is not able to fully regulate behaviour and prevent damage to parks and reserves under current legislation. Therefore, to regulate to use of parks and reserves, preventing nuisance, offensive behaviour and damage a new bylaw must be made.

## 4 Analysis of the reasonably practicable options

On 20 May 2020, the governing body of the council considered four options for addressing problems relating to the use of council owned parks and reserves:

- do nothing / maintaining the status quo
- provide information, education, and advice
- make a bylaw under the Reserves Act 1977
- make a bylaw under the Local Government Act 2002.

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

Option	Advantages	Disadvantages
<b>Do nothing/maintaining the status quo</b>		<ul style="list-style-type: none"> <li>• Does not protect the public from nuisance.</li> <li>• Does not protect, promote, and maintain public health and safety.</li> <li>• Minimise the potential for offensive behaviour</li> <li>• Protect both parks and reserves and their associated assets.</li> </ul>
<b>Non-regulatory options/education/guidelines/signage</b>	<ul style="list-style-type: none"> <li>• An important part of ensuring consistent messaging and clear expectations.</li> </ul>	<ul style="list-style-type: none"> <li>• Will not work on all users</li> <li>• No enforcement abilities when expectations are not met</li> <li>• In isolation, does not provide tangible protection to parks and reserves.</li> </ul>
<b>Make a bylaw under the Reserves Act 1977</b>	<ul style="list-style-type: none"> <li>• Allows council to regulate activities not covered under the Reserve Act.</li> <li>• Allows for penalties to be imposed when breaches of bylaw are made.</li> </ul>	<ul style="list-style-type: none"> <li>• Does not meet all objectives by itself.</li> <li>• Does not expand to all 'open spaces' including parks.</li> <li>• Offences need to be proven in court for be imposed.</li> </ul>
<b>Make a bylaw under the Local Government Act 2002</b>	<ul style="list-style-type: none"> <li>• Address a wider suite of problems.</li> <li>• Provide council staff with enforcement powers and abilities.</li> </ul>	

	<ul style="list-style-type: none"> <li>• Can be applied across a wider definition of spaces including parks.</li> <li>• Can be paired with Reserves Act to provide an effective bylaw.</li> </ul>	
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A further option was presented to council on 30 June 2022.

Option	Advantages	Disadvantages
<p><b>Draft a bylaw under both the Reserves Act 1977 and the Local Government Act 2002</b></p>	<ul style="list-style-type: none"> <li>• Provides council staff with greater enforcement powers and abilities.</li> <li>• Can be applied across a wider definition of spaces including parks</li> <li>• Effective use of legislative tools and powers to regulate behaviour to protect the public against nuisance, health and safety concerns and offensive behaviour.</li> </ul>	

On 30 June 2022, council resolved to draft a bylaw under both the Reserves Act 1977 and the Local Government Act 2002 to provide the most effective bylaw to preserve the rights of the public to enjoy parks and reserves free from nuisances, health and safety concerns and offensive behaviour.

## 5 New Zealand Bill of Rights Act 1990 implications

Section 155(2)(b) of the Local Government Act 2002 requires the council to consider whether the proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990. The New Zealand Bill of Rights Act 1990 affirms, protects, and promotes our human rights and fundamental freedoms in Aotearoa, New Zealand and is designed to protect New Zealanders against actions of the State.

A full assessment of the impact of the bylaw on these rights cannot be done until the content of the bylaw is finalised. Initial assessment of the proposed bylaw has identified that there may be some implications under Section 18(1) which states that everyone lawfully in New Zealand has the right to freedom of movement by preventing people from entering a reserve when it is closed, or an event is being held. As the Council is the owner of park and reserve land, reasonable measures to ensure the protection of the land and other people’s rights and freedoms are maintained.

The proposed bylaw may also have implications on Section 21: Security Against Unreasonable Search or Seizure, whether of the person, property, or correspondence. Enforcement of the bylaw is provided for under section 163 of the Local Government Act 2002. This bylaw does not confer new abilities that are not already provided for under legislation.

Section 5 of the New Zealand Bill of Rights Act 1990 provides a mechanism to outline reasonable limits as prescribed by law. Limitations on rights prescribed are made in accordance with Section 5 of the New Zealand Bill of Rights Act 1990.

## 6 Impact on Māori

This bylaw gives effect to te Tiriti o Waitangi by ensuring the rights of Māori are maintained. Council recognises the importance of the whenua to te ao Māori. Parks and Reserves may have special, significant, and culturally important features considered taonga by Māori. This bylaw protects access to these sites of special significance and allows council to actively respond to concerns and issues of nuisance, health and safety, and accessibility.

## 7 How to give your views on the proposal

The Council encourages any person or organisation affected by, or having an interest in, the Parks and Reserves 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](http://www.fndc.govt.nz/have-your-say)
- email your submission to [submissions@fndc.govt.nz](mailto: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](http://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 new Parks and Reserves 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.

### 7.1 Draft Parks and Reserves Bylaw

The draft Parks and Reserves Bylaw is as follows:

## Part 1: Preliminary provisions

### 1 Title

This bylaw is the Parks and Reserves Bylaw 2022.

### 2 Commencement

This bylaw comes into force on XX Month 2022.

### 3 Application

This bylaw applies to all Parks and Reserves under the control, management or ownership of the Far North District Council.

### 4 Purpose

The purpose of this bylaw is to regulate the use of Parks and Reserves under the control, management or ownership of the Far North District Council, to ensure the public can utilise these spaces free from nuisances and offensive behaviour, while also protecting these parks and reserves from damage.

### 5 Interpretation

(1) In this bylaw, unless the context otherwise requires:

**Aircraft** has the same meaning as in section 2 of the Civil Aviation Act 1990.

**Animal** has the same meaning as in section 2 of the Animal Welfare Act 1999 but excludes dogs.

**Approval** means an Approval granted under this bylaw and includes all conditions to which the Approval is subject.

**Authorised Person** means any person authorised by the Council to carry out functions or exercise any powers under this bylaw.

**Commercial Activities** means any activities involving trade, commerce, or any activities relating to the supply or acquisition of goods or services.

**Council** means means the governing body of the Far North District Council, or any person delegated to act on its behalf.

**Drone** means any unmanned machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against the surface of the earth.

**Enforcement Officer** means an officer appointed by the Council under section 177 of the Local Government Act 2002 or any person appointed or deemed to be a Ranger under the Reserves Act 1977.

**Park** has the same meaning as in section 138(2) of the Local Government Act 2002.

**Reserve** has the same as in section 2(1) of the Reserves Act 1977.

**Vehicle** has the same meaning as in section 2(1) of the Land Transport Act 1998.

- (2) Any undefined words, phrases or expressions used in this bylaw have the same meaning as in the Reserves Act 1977 unless the context plainly requires a different meaning.
- (3) The Interpretation Act 1999 applies to this bylaw.
- (4) Explanatory notes and related information boxes are for information purposes only, do not form part of this bylaw, and may be inserted, amended, or removed by the Far North District Council without any formality at any time.

## Part 2: Substantive provisions

### 6 Entry and Access to Parks and Reserves

- (1) No person shall enter or leave any Reserve except through the gateways, entrances or exits that are provided for that purpose.

- (2) No person may enter or remain in any Park or Reserve or part of a Park or Reserve when that Park or Reserve, or part of that Park or Reserve is closed to the public, unless prior Approval has been provided by Council.
- (3) Where any Park or Reserve, or part of a Park or Reserve, is being used with the permission of Council for a function or event to which an admission fee is being charged, no person shall enter or attempt to enter the Park or Reserve or such part of the Park or Reserve without paying the admission fee being charged for that function or event.
- (4) Where any Park or Reserve, or part of a Park or Reserve, is being used with the permission of Council for a private function or event, no person shall enter or attempt to enter the Park or Reserve or such part of the Park or Reserve being used without the consent of the organiser of that function or event.

## 7 Obstructing Access to Parks and Reserves

- (1) No person shall without the prior Approval of Council:
  - a. Obstruct the entrances or exits to any Park or Reserve.
  - b. Place or leave any object or thing in any Park or Reserve that could obstruct public access to any Park or Reserve.

## 8 Assemblies and Events

- (1) No person shall hold, or conduct, or attempt to hold or conduct, any public meeting, fair, gathering, demonstration, or any similar event, or make any public address, in any Park or Reserve except with the prior Approval of Council, and in accordance with any conditions or restrictions which might be imposed under said Council Approval.
- (2) A copy of the prior Council Approval must be available for viewing upon request by Council or an Enforcement Officer during the period that the Assembly or Event is being undertaken on said Park or Reserve.

## 9 Storing and Parking of Motor Vehicles and Boats

- (1) No person shall store or park any Vehicle, trailer, boat or kayak in any Park or Reserve other than in areas set aside for such parking or storage, without prior Approval from Council.
- (2) Any person storing or parking any Vehicle, trailer, boat or kayak in any Park or Reserve shall obey all signs or notices concerning storage and parking displayed in that Park or Reserve.
- (3) No person shall carry out any repairs or maintenance work on any Vehicle, boat, trailer or kayak in a Park or Reserve unless:
  - a. They have prior Approval from Council; or
  - b. The repairs or maintenance work is permitted by a resource consent issued by Council; or
  - c. The Vehicle, boat or trailer has broken down in the immediate vicinity of a Park or Reserve and repairs are necessary to necessitate the removal of said Vehicle, boat or trailer from the Park or Reserve. The Vehicle, boat or trailer may only remain in the Park or Reserve for a reasonable period of time for the repairs to occur and must be immediately removed from the Park or Reserve if requested by Council.

## 10 Operation of Vehicles

- (1) No person shall drive any Vehicle in a Park or Reserve except on a part of a Park or Reserve that is set aside by Council for vehicle traffic. This restriction does not apply to Council staff, contractors or emergency service vehicles.
- (2) A part of a Park or Reserve shall be deemed to be set aside by Council for vehicle traffic if a vehicle carriageway or track has been formed by Council or if signage at said Park or Reserve authorises vehicle traffic.
- (2) No person shall operate or drive any Vehicle in any Park or Reserve in breach of any restrictions advertised on any signs or notices displayed in that Park or Reserve. This includes any speed limit restrictions as advertised by applicable signage.
- (3) In the absence of speed limit signs, no Vehicle shall be driven at a speed greater than 15 kilometres an hour in any Park or Reserve.
- (4) A person must not drive a Vehicle in a Park or Reserve in a dangerous manner.

## 11 Behaviour in Parks and Reserves

- (1) No person may obstruct, disturb or in any way interfere with any other person in their use or enjoyment of a Park or Reserve.
- (2) No person may intimidate, endanger or cause a nuisance to any other person in their use or enjoyment of a Park or Reserve.
- (3) No person may let off any fireworks in any Park or Reserve without prior Approval from Council.
- (4) No person may light a fire in a Park or Reserve unless they have prior Approval from Council.
- (5) No person may undertake any behaviour or activity in a Park or Reserve that causes damage to that Park or Reserve or any Council property located in that Park or Reserve.

## 12 Dogs

- (1) No person shall bring any dog on to any Park or Reserve, or allow any dog in their custody or under their control to remain on any Park or Reserve, 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 leash, or as a dog exercise area.
- (2) All persons with a dog under their control in any Park or Reserve must comply with any signage concerning the control of dogs erected at said Park or Reserve.

### Related information

See Council Dog Management Bylaw

<https://www.fndc.govt.nz/Your-Council/Plans-Policies-Bylaws->

## 13 Animals

- (1) No person shall bring any Animal on to any Park or Reserve, or allow any Animal in their ownership, in their custody or under their control to remain on any park or reserve unless that species of Animal is authorised by Council to access said Park or Reserve or they have Council Approval to allow a designated Animal to access a designated Park or Reserve.
- (2) Council authorisation shall be recorded by signage erected on said Park or Reserve.
- (3) No person shall bring any Animal on to any Park or Reserve, or allow any Animal in their ownership, in their custody or under their control to remain on any Park or Reserve in breach of any restrictions advertised on any signs or notices displayed in that Park or Reserve.
- (4) A person in control of any Animal on any Park or Reserve must ensure that the Animal is kept under control so as to not create a danger or nuisance for any other person using the Park or Reserve.

## 14 Commercial Activity

No person shall undertake any Commercial Activities in any Park or Reserve without prior written Approval from Council and a copy of that written Approval must be available for viewing upon request by Council or an Enforcement Officer during the period that the Commercial Activity is being undertaken on said Park or Reserve.

## 15 Encroachments

No person may permit or allow any building, object or thing to encroach onto a Park or Reserve without Approval from Council.

## 16 Trees and Vegetation

- (1) No person may remove, damage, prune, poison or cut any tree, plant, vegetation or seed in a Park or Reserve without prior Approval from Council.
- (2) No person may remove, damage or disturb any soil, dirt, gravel, sand or other natural matter from any Park or Reserve without prior Approval from Council.
- (3) No person may plant or introduce any plant, tree, shrub, seed or plant matter of any kind to a Park or Reserve without Council Approval.

## 17 Aircraft

- (1) No person shall take off, land or operate any Aircraft in any Park or Reserve without prior Approval from Council, except in cases of emergency.
- (2) No person shall operate a Drone in any Park or Reserve in breach of the New Zealand Civil Aviation Rules or any other rules or regulations issued by the New Zealand Civil Aviation Authority in respect of drones.

## 18 Camping

- (1) No person shall camp in any Park or Reserve unless the Park or Reserve is listed in the Far North District Council Camping in Public Places Policy.
- (2) All persons camping in any part of a Park or Reserve must comply with the conditions for camping at Council camping sites in the Far North District Council's Camping in Public Places Policy.

### Related information

See Council's Camping in Public Places Policy

<https://www.fndc.govt.nz/files/assets/public/objectivedocuments/policy-and-planning-pol/policies/council-external-policies/camping-in-public-places-2016.pdf>

## 19 Requirement to leave a Park or Reserve

- (1) A person committing a breach of this bylaw shall, upon request by the Council, or an Enforcement Officer, immediately leave the Park or Reserve for such period as the Council or Enforcement Officer deems fit.
- (2) The requirement to depart a Park or Reserve under subclause (1) does not limit any potential liability for any breaches of this bylaw.

## Part 3: Approvals

### 20 Approvals

- (1) Where any Approval from Council is required by this bylaw, a person who seeks that Approval must:
  - a. Apply in writing to Council for the approval which may include using the applicable application form for that Approval;
  - b. Provide the information required or requested by Council; and
  - c. If applicable pay the fee set for that Approval in the Far North District Council fees and Charges Policy.
- (2) Council may grant or refuse to grant the requested Approval.
- (3) The Approval from Council will be in written form and may include a lease, licence, order, letter or other written document.
- (4) The Approval may be granted on such terms and conditions as Council considers appropriate.
- (5) The Approval may be granted for a set term after which the Approval will expire.
- (6) Council may revoke the Approval if any of the terms and conditions of the Approval are not complied with.
- (7) Council may revoke any Approval that has been granted at any time if the circumstances under which the Approval was granted have changed since the Approval was granted.

## Part 4: Enforcement

### 21 Removal or alteration of a work or thing

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.

### Related information

The Far North District Council also has the power to seize and impound property that is not on private land and is materially involved in the commission of a breach of a bylaw.

### 22 Offences

Every person who fails to comply with the requirements of this bylaw or breaches this bylaw commits an offence



under the Local Government Act 2002 and / or the Reserves Act 1977 and is liable to the penalties set out in those Acts.

## Part 5: Savings and transitional provisions

### 23 Bylaw does not limit any other enactment

This bylaw does not limit or affect the application of or the requirements in or under any other enactment.

#### **Related information**

Breaches of this bylaw may also constitute offences under other legislation (among others) such as:

- (a) Land Transport Act 1962;
- (b) Litter Act 1979;
- (d) the Conservation Act 1987; and
- (e) Resource Management Act 1991.

### 24 Applications, Approvals in force as at commencement of this bylaw

Any lease, licence, order, letter or other written Approval provided by Council in respect of a park or reserve that was current as at the commencement of this bylaw shall constitute an Approval under this bylaw.