

# Analysis of submissions

## Pou Herenga Tai – Twin Coast Cycle Trail Bylaw

### 1 Background

On the 08 September 2016, the Pou Herenga Tai – Twin Coast Cycle Trail Bylaw (Bylaw) was made under section 145 of the Local Government Act 2002. On 12 August 2021, the Bylaw was reviewed under section 158 of the Local Government Act 2002 and Council determined that the Bylaw should continue with amendment. On 14 June 2022, the Strategy and Policy Committee approved a proposal for an amended Bylaw to be released for public consultation. The period during which people could make submissions on the proposal was 20 June to 20 July 2022. Twenty-one submissions were received.

This report analyses the submissions and makes recommendations for amendments to the draft proposed amended Bylaw. A numbered list of people who made submissions is in the Appendix and these numbers are used to refer to the individual submissions in the body of this report.

Council staff from the following teams contributed to the analysis of the submissions:

- Strategy Development
- District Services
- Legal Services

### 2 Summary of submissions

Twenty-one submissions were received in total, with 17 of these received using the online submissions form. Of the online submissions, 11 supported the amendments in full, one supported the amendments in part, and five submitters did not support the amended bylaw.

The remaining four submissions were made offline. Two supported the bylaw amendment in full, and two suggested amendments. One person who made a written submission asked to submit verbally to the Strategy and Policy Committee and was heard by the Committee on 26 July 2022.

Where the submissions supported in part and made suggestions for changes, those suggestions are included in the analysis in section 4 of this report.

### 3 General feedback

The following feedback was received that is not related to a specific clause in the draft bylaw.

#### 3.1 Support for Council amending the Bylaw in general

Ten of the submissions (01- 04, 07, 11, and 14 -17) that support the bylaw in full, made general comments that they support the proposed amendments to the Bylaw as it is reasonable, and consistent with the current bylaw. For example:

Submission 01 stated	<i>"Seems to cover all aspects and is readable".</i>
Submission 03 stated	<i>"The changes are sensible".</i>
Submission 17 and 18 stated	<i>"reasonable way to protect the trail".</i>
Submission 19 stated	<i>"Not much is changing".</i>

Two submissions (19 and 20) support the bylaw in full but did not make further comment regarding their support of the bylaw.

Two submissions (11 and 20) provided suggestions for how the cycle trail could better align with community facilities to encourage further opportunities across the District.

Submission 18 and 21 outlined several concerns regarding activities that are prohibited under the bylaw but are conditions of easement agreements between Council and the landowners.

Submitter 18 stated that appropriate weed control does not seem to be occurring along the section of the Trail that crosses private property.

### *Staff analysis*

General feedback in support of the proposed amended bylaw reinforces that the proposed amendments are not intended to change the intent of the current bylaw.

The design of the Pou Herenga Tai - Twin Coast Cycle Trail is out of scope of this bylaw consultation. However, feedback provided will be considered in upcoming strategic projects involving the use of open space, placemaking and social infrastructure.

The conditions of the easement agreements are not negated by this bylaw and all conditions in the easement agreements still stand. Under this bylaw, an easement agreement is also considered as approval from Council. Everything that was agreed to in the easement agreement would not be negated by this bylaw.

Weed control is out of scope of this bylaw. However, this information will be shared with the Pou Herenga Tai - Twin Coast Cycle Trail Trust who manage the day-to-day maintenance of the trail.

### *Staff recommendation*

Council staff recommend no changes in response to these submissions.

## **3.2 Do not support Council regulating the Pou Herenga Tai – Twin Coast Cycle Trail in general**

Five submissions (06, 08, 10,12 and 13) do not agree that Council should regulate the use of the Pou Herenga Tai – Twin Coast Cycle Trail.

- |                      |   |
|----------------------|---|
| Submission 06 stated | <i>"I don't support the cycleway in anyway shape or form due to their history and their trampling on mana whenua and ignoring their obligations under te Tiriti. The cycleway and their trust and everyone involved has absolutely no respect or show any responsibility to hapu collectively gathered on their marae." "They have no right to implement any law or bylaw over our area."</i> |
| Submission 08 stated | <i>"I don't agree to any of the walking trails as this effects our wahi tapu areas, litter, urinating, faeces."</i>   |
| Submission 07 said   | <i>"Funding should be spent on fixing up country roads." "Think about the needs of those living in those out of the way places that these tourists bike through"</i>  |
| Submission 12 said   | <i>"Because this is a blatant attempt to silence anyone who opposes Far North Holdings Limited This kind of anti-community modus operandi in forging ahead with projects without adequate and honest community consultation is a disgrace."</i>   |
| Submission 13 said   | <i>"All I can say is "no wonder our rates are so high"! What a lot of wordy"gobbledegook"! Pages of stuff that hardly anyone knows or cares about. I would like to know exactly how much this whole Pou Herenga Tai(!!!!) proposed by-law consultation cost the rate payer. Surely a few simple instructions posted up on the start of these expensive cycle ways"</i>                        |

*should be sufficient for users to know how to behave on them. If not, let them build and pay for their own cycle ways. What costs you money you look after. As a rate payer I do not think that I should have to support in any way something I will never use."*

### **Staff analysis**

Submitters 06, 09, 12, 14 and 15 seem to have misunderstood the scope of the consultation. Whether or not the Council should invest in a cycle trail asset is out of scope of the intent of the proposed bylaw. Feedback provided will be considered in upcoming strategic projects involving the use of open space, placemaking and social infrastructure. However, since Council has already invested in building a cycle trail, the bylaw is one way for Council to protect the Pou Herenga Tai – Twin Coast Cycle Trail asset, therefore protecting rate payers investment.

The issues of littering, urinating and defecating in public is already an offence under legislation and enforcement can occur under various pieces legislation.

Under section 155(3) of the Local Government Act 2002, the content of the new bylaw must be consistent with the New Zealand Bill of Rights Act 1990. A full assessment of the impact of the bylaw on these rights cannot be done until the content of the bylaw is finalised.

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, to protect the community's interest in maintaining an open space, and 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 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.

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

Roads and the maintenance of roads in the District are out of scope of this Bylaw.

### **Staff recommendation**

Council staff recommend no changes in response to these submissions.

## 4 Analysis and recommendations regarding the bylaw wording

The following section analyses the submissions made about clauses in the draft bylaw and recommends how to address these submissions in the bylaw.

### 4.1 Clauses not referred to in submissions

No submissions were made about the following clauses in the draft bylaw:

- Clause 1 Title
- Clause 3 Commencement
- Clause 4 Application
- Clause 5 Purpose
- Clause 8 Access to and over the Trail
- Clause 9 Offences
- Clause 10 Schedule - Maps

### 4.2 Clause 2 Meaning of Trail

Clause 2 outlines a description of the Trail.

#### *Submission received*

Submission 18 stated that the definition of the Trail includes the land within 2.5 metres of either side of the centre line of the formed path which defines the Trail as being 5 meters wide. However, the submitters easement agreement is for three meters not five.

Submission 21 made comment that some sections of the Trail are currently closed and that alternative routes are in place and therefore the schedules need amending.

#### *Staff analysis*

Staff acknowledge that the Trail can vary in width and is not always 5 meters wide.

Staff acknowledge that the Trail can from time to time be closed for several reasons and that the Trail route may change in the future. Closure of the Trail is discussed at 4.6.

#### *Staff recommendation*

To improve certainty and clarity Council staff recommend to include the words “the land” before the words “identified in Schedule 1” and to remove the words “ (a) The land within 2.5 metres of either side of the centre line of the formed path;”

To ensure the bylaw remains consistent with the formed path staff recommend adding the following sub clause “2.2 The council may, by resolution, add or remove or amend the land identified in the Schedule”.

#### *Tracked changes to the clause as recommended*

(1) 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 the land identified in Schedule 1 and includes:

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

(2) The council may, by resolution, add or remove or amend the land identified in the Schedule.

#### 4.3 Clause 6 Interpretation

Clause 6 outlines the interpretation and definition of the terms used within the bylaw.

##### *Submission received*

Submitter 21 made comment that the Pou Herenga Tai Twin Coast Cycle Trail Trust does not need a permit to hold events on the Cycle Trail as it is responsible for the maintenance and operations associated with the Cycle Trail.

##### *Staff analysis*

The Pou Herenga Tai Twin Coast Cycle Trail Trust is correct in that the Trust has delegated authority for many of the operations associated with the Trail.

##### *Staff recommendation*

To improve clarity Council staff recommend in the interpretation of the word Council to include the words “or organisation” after the words “person”.

##### *Tracked changes to the clause as recommended*

**Council** means the Far North District Council, or any person or organisation delegated or authorised to act on its behalf.

#### 4.4 Clause 7 Use of the Trail subclause 8 Horses

Clause 7(8) restricts access to horses on the Trail to formed roads or when approved by Council.

##### *Submission received*

Submission 19 supported the Bylaw in full however requested access for horse riders as it is not safe to ride on the roads.

##### *Staff analysis*

Staff acknowledge that the horse-riding community would like more options to ride horses in the Far North District as the road is not safe. However, 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.

The feedback provided will be considered in upcoming strategic projects involving the use of open space, placemaking and social infrastructure.

##### *Staff recommendation*

Council staff recommend no changes in response to this submission.

#### 4.5 Clause 7 Use of the Trail subclause 11 Dogs

Clause 7 (11) states 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.

*amending Clause 7 (11) to prohibit dogs along the whole length of the cycle trail because, “Loose dogs and dogs on a long leash are dangerous for cyclists - they can chase, they can snap at legs or wheels of cyclists and cause cyclists to fall off the track”...’Loose dogs, and dogs on long leashes, also pose a treat to vulnerable wetland birds on the trail. The Council has a responsibility to protect indigenous species that are classed as at risk by the NZ Threat Classification System. A number of wetland bird species are in that category.*

Submission 05 has suggested that Council invest in more off-leash exercise parks for dogs.

Submission 18 asks Council to amend the Bylaw to prohibit Dogs from along the length of the Cycle Trail which crosses private land as dogs can cause issues for farmers and their stock.

#### *Staff analysis*

Staff acknowledge that off-leash dogs can cause issues for farmers and their stock and can be hazardous to cyclists. It is for those reasons the Bylaw and associated dog management policy dogs already state that dogs on the trail must be always on a leash and that dogs are prohibited from sections of the Trail which cross private land.

There is no specific legal obligation on Council to undertake specific actions to protect indigenous species. This issue is relevant to certain areas within Council's role such as dog control and resource management.

Dog owners have a legal responsibility under the Dog Control Act 1996 to keep their dogs under control at all times. If their dog attacks an indigenous species that is a criminal offence under the Dog Control Act 1996 and Council would be responsible for investigating and potentially prosecuting the dog owner if warranted.

#### *Staff recommendation*

In order to improve clarity in clause 7(11), staff recommend inserting the words 'parts of' after the word 'on', replacing the words "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" with "that are specified in the Council's Dog Management Policy as areas where dogs are not permitted. In all other areas of the Trail dogs are permitted provided they are on a leash and under control at all times".

#### *Tracked changes to the clause as recommended*

##### **Dogs**

(11) No person shall bring any dog on parts of ~~to~~ the Trail or allow any dog in their custody or under their control to remain on parts of the Trail, that are specified in the Council's Dog Management Policy as areas where dogs are not permitted. In all other areas of the Trail dogs are permitted provided they are on a leash and under control at all times. 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.

#### *4.6 Clause 7 Use of the Trail further suggested subclauses*

##### *Submission received*

Submission 18 requested that use of the Trail is restricted to daylight hours as the Trail may be more hazardous at night and more difficult for emergency services to attend a potential emergency situation. Landowners along the Trail may perceive that their property is more vulnerable to vandalism and theft at night by Users of the Trail.

#### *Staff analysis*

Staff acknowledge the concerns raised by the submitter regarding safety to both users of the Trail and landowners neighbouring the Trail at night. Council is committed to the Crime Prevention Through safer Environmental Design principles (CPTED). The issue of making the Trail safer at night needs to be investigated further, ensuring a holistic approach is taken to potential solutions. For example, improvements to the design of the Trail itself.

As previously discussed at 4.2, the Trail may need to be closed for several reasons including work regarding the development of alternative routes. Provisions can be provided for in the Bylaw to close the Trail or sections of the Trail. However, further investigation is required regarding the closure of the Trail at night.

#### *Staff recommendation*

Council staff recommend including the following subclause which states "Closure of the Trail

- (18) No person shall enter or access the Trail when the Trail has been closed by Council.
- (19) No person shall enter or access a part of the Trail when that part of the Trail has been closed by Council.”

*Tracked changes to the clause as recommended*

**Closure of the Trail**

(18) No person shall enter or access the Trail when the Trail has been closed by Council.

(19) No person shall enter or access a part of the Trail when that part of the Trail has been closed by Council. although further investigation is required.

**APPENDIX 1 – LIST OF SUBMISSIONS RECEIVED**

Number	Organisation
1	Northland Experiences Ltd and Top Trail Cycle Hire Ltd
2	Individual submission
3	Individual submission
4	Individual submission
5	Individual submission
6	Individual submission
7	Individual submission
8	Individual submission
9	Individual submission
10	Individual submission
11	Individual submission
12	Individual submission
13	Individual submission
14	Individual submission
15	Vision Kerikeri
16	Carbon Neutral NZ Trust
17	Individual submission
18	Individual submission
19	Walking Access Commission
20	Creative Northland
21	Pou Herenga Tai Twin Coast Cycle Trail Trust