

STAFF REPORT

TO: Environment & Planning Committee

FROM: Jean Hodson

REFERENCE: B951

SUBJECT: **VEHICLES ON BEACHES- ISSUES AND OPTIONS - REPORT EP10-02-05** - Report prepared for meeting of 25 February 2010

1. PURPOSE

At the Environment and Planning Committee meeting of 11 December 2009 the issue of “vehicles on beaches” was raised and the Committee requested additional information to assist with considering the question of whether or not a bylaw process should be considered. This report provides some additional information.

2. CONCERNS AND ISSUES

The Golden Bay Community Board report receiving complaints and concerns from members of the public in relation to unsafe and undesirable vehicle use on some beaches in Golden Bay. Some drivers of quad bikes, motor bikes and old cars are said to “hoon around” causing concerns about noise, the safety of other beach users and potential damage to sensitive beach environments. There could possibly be an element of dislike for this kind of behaviour in areas considered by local residents to be “special” and it thus offends their sense of pride and enjoyment of that particular beach area.

The beach areas reported to be most affected are Pohara, Rototai, Patons Rock, Parapara, Milnethorpe to Collingwood, Pakawau along the beach on both directions from Totara Avenue.

It is acknowledged that the incidents of unwanted vehicle use of beaches is intermittent and perhaps more prevalent during the summer when the high visitor numbers exist. There is no desire from the Community Board to see “legitimate” use of vehicles curtailed eg launching and retrieving boats and gaining access to properties where no other road link is available.

The Golden Bay Police were consulted regarding the number of complaints lodged with them. They advise that they have not recently received many complaints; to the end of 2009 there was one recorded complaint, but in previous years there had been complaints about youths on quad bikes, but this has apparently died down. Their advice was that this was not really an issue for them and if a serious safety incident occurred involving a vehicle, they had the necessary powers, as there would be an

element of “dangerous driving”. It was noted that as there are no posted speed limits on beaches, the default speed limit is 100 kph.

I have received comment from Council’s Reserves Manager, that at times there is evidence of vehicle tracks and some damage within the beaches and estuaries such as around the Hunter Brown Reserve on Rough Island.

3. STATUTORY CONSIDERATIONS

Beaches and land below mean high water springs (MHWS) are classified as “roads” under the Transport Act 1998 and the default speed limit where no posted speed limitation exists is 100 kph.

In order to limit the speed or access of vehicles in certain areas, it would be possible to do this by way of a local bylaw. This would entail following the process set out in the Local Government Act 2004 which involves the Special Consultative Process. This involves preparing a “statement of proposal” and a summary for public inspection, notification, receiving, acknowledging and hearing of submissions and making a final decision on the form and content of a bylaw. Before commencing the process of making a bylaw, Council must determine whether or not a bylaw is the most appropriate way of addressing the perceived problem.

Under the LGA, Council must consider the significance of an issue in accordance with the Council’s significance policy. The significance of an issue helps determine the extent of compliance with the decision-making requirements.

The decision on whether or not to proceed with drafting a bylaw will be the outcome of this report, if the Committee considers enough information is to hand.

4. ACTIONS TAKEN BY OTHER LOCAL AUTHORITIES

Some councils have created bylaws to deal with problems in their communities associated with vehicles on beaches.

Whakatane District Council have a “Beaches” bylaw, part of which prohibits vehicles on beaches, except in certain circumstances, such as when using an authorised access, launching and retrieving boats, and it imposes a 20 kph maximum speed limit in such cases.

Whangarei District Council has a “Vehicles on Beaches” bylaw which requires persons operating vehicles on beaches to do so in a considerate, safe and appropriate manner and bans all vehicles from dune areas and within a “safe zone” at Ruakaka Beach near the built up area, road, car park and surf club. Speed of vehicles permitted on beaches is regulated by way of the Whangarei District Council Speed Limits Bylaw 2005. The issue came to a head when a young girl was killed in 2008 on the beach which created a ground swell of concern.

I understand from staff at Whangarei District Council that they have undertaken “educational” patrols and there have not been many real issues of non compliance. Apparently there is a sector of the community who would like to see more “safe zones” where all vehicles are prohibited.

Auckland City Council has a "Public Places" Bylaw which includes a provision limiting vehicles on beaches such that only vehicles involved in depositing or retrieving a boat in a direct route at no more than 10 kph are permitted. This applies to all reserves, water channels, beaches, footpaths, grass verges etc.

Kapiti District Council Beach Bylaw 2009 contains a number of restrictions on the use of vehicles on beaches (among other things). A copy of this is attached for the Committee's information. Comments received from Kapiti's Regulatory Manager indicate that there was quite a problem with vehicles on beaches there, which has led to all motorbikes being banned, other vehicles are restricted to 20 kph on hard sand areas (banned from dunes areas) and limitations around the more populated areas that adjoin residential areas. Contractors (plus warranted fishery officers and police) carry out patrols and talk to people when the need arises, equipment such as quad bikes, radios and cameras etc are used. There is always the problem of not being able to be in the right place at the right time and receiving complaints about behaviour which is impossible to attend to. A good amount of signage has been used to alert the public of the bylaw. Although infringement notices are not used, they have noticed a big improvement in the amount of trouble caused by vehicles being used inappropriately; people have become more aware and have adopted a more considerate approach.

Other councils which have adopted bylaws include Waimakariri, Kaipara, Franklin and Opotiki.

Due to the fact that there is no infringement process available to Councils in regards to such bylaws, the only means of enforcement is by way of prosecutions through the District Court if "education and persuasion" fail.

5. TASMAN RESOURCE MANAGEMENT PLAN (TRMP)- RMA LINKAGE

The TRMP currently contains a rule which deems the use of vehicles on beaches to be a permitted activity, provided various conditions are met as follows:

25.2.2 Permitted Activities (Passage on Foreshore)

The passage of crafts or vehicles across or along the foreshore is a permitted activity that may be undertaken without a resource consent, if it complies with the following conditions:

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(a) The activity does not contravene any other applicable rule of Chapter 25 of this Plan.

(b) In relation to the launching and retrieval of any craft, the most direct route is taken between any launching ramp and water.

(c) In relation to any craft or vehicle, including any motorcycle, land yacht, or hovercraft:

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(ii) there is no damage to the foreshore or seabed or to animal or plant habitats;

(iii) there is no mooring, beaching, or other continued occupation of the foreshore or seabed by the craft or vehicle.

D 10/98

- (d) There is no vehicle or craft passage across any foreshore within any estuary at all times that that foreshore is exposed to the air, except where the passage is for or in connection with: **D 10/98**
- (i) any lawful structure; occupation, or disturbance; or
- (ii) any scientific research or coastal management activity.

This rule deals with some of the concerning behaviour eg limiting damage to the foreshore and estuary and animal or plant habitats. It does not seek to limit the “nuisance” factors such as speed and noise.

I understand there has been no legal enforcement action taken in response to complaints made for breaches of this rule, although some concern was raised sometime ago about heavy vehicles tracking across the estuary to Jackett’s Island. (The rule itself has inherent challenges in relation to enforcement eg what is “damage to the foreshore or seabed” in terms of “disturbance”?)

It would be inappropriate to have any inconsistency between a bylaw and a rule in the TRMP.

5. BYLAW IMPLICATIONS

The resourcing implications of a bylaw would be significant for this Council, mainly in terms of staff/contractor time to do monitoring and respond to complaints plus the costs associated with taking any action in Court, signage etc. If a bylaw was created it would undoubtedly raise community expectations regarding our enforcement of it (more complaints would be expected). Thus far, Council has only created bylaws that are called for by statutory obligations (traffic management, dogs, food safety etc). No resource for a project relating to this has been allocated in the Environment & Planning budget.

6. IF NOT A BYLAW, THEN WHAT ARE THE OPTIONS?

- 6.1 Education would be a means of informing/persuading those who sometimes use vehicles inappropriately to modify their behaviour, but again this comes at a cost in relation to staff/contractor time, signage etc.
- 6.2 Use of “volunteer beach wardens” to talk to people is a possibility, but lately Council has recognised the inherent risks with having members of the public doing what is essentially Council work but on a “voluntary” basis. These risks relate to various issues that arise under health and safety and employment related legislation and we have been advised to limit this kind of activity.
- 6.3 If Council accepts that the scale of the issue does not warrant a bylaw, staff can continue to monitor the extent of the problem and review the matter if the need arises in the future.

7. CONCLUSION

The Committee has the opportunity to consider and decide on this matter.

Although there have undoubtedly been instances of inappropriate use of vehicles on beaches and in estuary areas in our District, it is not clear that the extent of the problem is significant enough to warrant further work in relation to the creation of a bylaw.

If it was determined that a bylaw was necessary, there would be budgetary implications associated with signage, patrols and public education.

It is not considered to be “best practice” for local government to create a bylaw without the will and resources to act on it and follow up with enforcement if needs be.

8. RECOMMENDATIONS

- 8.1 That this report be received.
- 8.2 That no further work be undertaken at this stage to progress the development of a bylaw in relation to controlling the use of vehicles on beaches.
- 8.3 That staff continue to monitor complaints in relation to vehicles on beaches.

Jean Hodson
Regulatory Manager