

| | |
|--------------------------|---------------|
| Report No: | RESC12-08-02 |
| File No: | R878-1 |
| Date: | 2 August 2012 |
| Decision Required | |

Report to: Engineering Services Committee
Meeting Date: 30 August 2012
Report Author: Dugald Ley, Development Engineer
Subject: **Tasman's Great Taste Trail Bylaw**

EXECUTIVE SUMMARY

This report provides a summary of a proposed bylaw which will support the successful operation of Tasman's Great Taste Trail. The intended bylaw will allow activities on the loop trail to be controlled so as to prevent nuisance to other users.

RECOMMENDATION/S

That the report be received.

DRAFT RESOLUTION

1. **THAT the Engineering Services Committee receives the Tasman's Great Taste Trail Bylaw report, RESC12-08-02; and**
2. **Agrees that the proposed Tasman's Great Taste Trail Bylaw is appropriate under Section 155 of the Local Government Act 2002 as outlined in the report RESC12-08-02; and**
3. **Approves that under Section 156 of the Local Government Act 2002 the proposed Tasman's Great Taste Trail Bylaw 2012 Statement of Proposal, attached as Appendix 1 to this report, be circulated for public consultation under the special consultative procedure as set out in Sections 83 and 86 of the Local Government Act 2002 and noted in the report RESC12-08-02; and**
4. **Approves the summary of information for distribution through Newsline, Council's website and Council offices and libraries.**

| | |
|--------------------------|---------------|
| Report No: | RESC12-08-02 |
| File No: | R878-1 |
| Date: | 2 August 2012 |
| Decision Required | |

Report to: Engineering Services Committee
Meeting Date: 30 August 2012
Report Author: Dugald Ley, Development Engineer
Subject: **Tasman's Great Taste Trail Bylaw**

1. Introduction

- 1.1 Councillors are aware of the importance of Tasman's Great Taste Trail and the economic benefits that it will bring to the region. The trail needs to be maintained as a "high quality asset that offers a world-class cycling experience and enhances New Zealand's competitiveness as a visitor destination" (extract from the funding agreement between the Council and the Ministry of Economic Development).
- 1.2 Providing a safe environment along the trail and controlling any nuisance activities and/or offensive behaviour is paramount so that users/visitors can enjoy a memorable journey.
- 1.3 The restriction of any nuisance activities/offensive behaviour requires more than just signage along the route. It is the view of staff and the Trust that such actions need to be managed through a bylaw. A bylaw pursuant to Section 145 of the Local Government Act 2002 is deemed appropriate for Tasman's Great Taste Trail, viz:

Powers of territorial authorities to make bylaws

- 145 General bylaw-making power for territorial authorities
A territorial authority may make bylaws for its district for 1 or more of the following purposes:
- (a) protecting the public from nuisance:
 - (b) protecting, promoting and maintaining public health and safety:
 - (c) minimising the potential for offensive behaviour in public places.

- 1.4 Councillors will be aware of previous reports on this bylaw, ie RESC11-08-11 and RESC12-04-02 but it is felt that this full report should be re-presented to the Council as a fresh start prior to it being recommended for public consultation via a special consultative procedure.

2. Background

- 2.1 Under Section 155 of the Local Government Act 2002 Council must determine whether a bylaw is the most appropriate way of addressing a perceived problem.
- 2.2 Tasman's Great Taste Trail has been selected by the Ministry of Economic Development (MoED) as one of a few "Great Rides around New Zealand". It will be

promoted under the banner of “Great Rides” similar to New Zealand’s “Great Walks”, eg the Abel Tasman Coast Track and the Heaphy Track.

- 2.3 The Ministry subsequently provided \$2.14 million funding for stage one of the trail and Tasman District Council provided \$941,000. A further \$4 million was included in Council’s Long Term Plan to complete the entire 175 km loop trail by 2018/2019.
- 2.4 The MoED agreement with Council requires that if the trail is not managed and maintained correctly then Council must remove the “Great Ride” branding and we will lose any marketing opportunities under that brand.
- 2.5 To meet the above requirement and allow the safe use of the trail by reducing any nuisance/offensive behaviour incidents a bylaw is an appropriate vehicle to protect the trail.
- 2.6 In 2007 Selwyn District Council created a similar bylaw for the “Christchurch to Little River Trail” and this bylaw is based on that document.

3. Bylaw Detail

- 3.1 Staff consider that the three main areas that need to be covered in the bylaw are:
 - Nuisance of horses and other cloven-hoofed animals on the trail causing damage and leaving deposits and the safety of the rider and passing cyclists and pedestrians in close proximity to each other.
 - Nuisance of dogs being uncontrolled on the trail, dog leads getting tangled with cyclists, uncontrolled dogs disrupting bird habitat and dogs roaming on private property adjacent to the trail.
 - Access through the 1.35 km Spooners Tunnel where there is no lighting, ie the two outlets are not visible at one time because of the rise and fall of the tunnel which will make it pitch dark. The tunnel also has steep side shoulders (berms). For safety reasons this will require the cyclist/pedestrian to carry torches and cyclists to dismount and walk through and pass with care in the centre alignment of the tunnel.
- 3.2 The bylaw and the six route maps are attached to this report as Appendix 1.

4. Matters to be Considered

- 4.1 Staff consider that without the bylaw it is unlikely the Council can comply with the requirements of the MoED and that funding would be at risk along with a possible loss of the “Great Ride” brand.
- 4.2 The Council needs the power to enforce a bylaw to curtail any nuisance/offensive behaviour and ensure the safety of users on the trail. This cannot be done by the installation of signs alone.

5. Appropriateness of the Bylaw

- 5.1 As mentioned above, it is believed that without an enforceable bylaw many users will ignore signs along the trail and will not respect private property rights where the trail accesses these areas. They may also allow dogs to disturb nesting bird areas where many hours have been spent by individuals and volunteer groups to enhance these habitats with a view to bring the bird life back into the estuary by replanting native flora.
- 5.2 Section 155 of the Local Government Act requires Council to assess that the bylaw is appropriate it is confirmed that the bylaw is an appropriate way of addressing the potential problems.

155 Determination whether bylaw is appropriate

- (1) A local authority must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem.
- (2) If a local authority has determined that a bylaw is the most appropriate way of addressing the perceived problem, it must, before making the bylaw, determine whether the proposed bylaw -
 - (a) is the most appropriate form of bylaw; and
 - (b) gives rise to any implications under the New Zealand Bill of Rights Act 1990.
- (3) No bylaw may be made which is inconsistent with the New Zealand Bill of Rights Act 1990, notwithstanding section 4 of that Act.

6. Alternatives to a Bylaw

- 6.1 The Council could consider the following alternatives to a bylaw.
- 6.2 Education – The Council could have a continuous programme of media education highlighting the adverse effects resulting from horses and dogs on the trail. This would also rely on signage and the goodwill that users will respect private property rights. It would be difficult to take effective enforcement action against users who choose to disobey these restrictions.
- 6.3 District Plan/Policies – Usually these relate to resource management issues. However the Council has approved the Dog Control Bylaw 2009 which allows for dog exercise areas and areas where dogs are prohibited. The Dog Control Bylaw could be modified to restrict dogs from certain areas of the trail however this would not deal with other potential nuisance animals.
- 6.4 The Waimea Inlet Management Strategy adopted in August 2010 also stipulates where horse recreation is permitted. Note – in a number of locations a separate horse path has been provided adjacent to the trail. Areas therefore have been previously set aside for horse and dog recreation instead of the use of the new trail.

7. Financial/Budgetary Considerations

- 7.1 It is proposed that the special consultative procedure be funded through existing budgets. Staff have already met with a dog advocacy group in March this year and noted their comments. The draft bylaw has also been sent to the Secretary of the Rough Island Equestrian Park Management Board Inc for comment. No response has been received as yet.
- 7.2 There will be a slight increase in enforcement costs. However with appropriate signage at selected points along the route it is envisaged that this will largely be self-policing due to the number of cyclists/walkers using the trail.

8. Options

- 8.1 Continue with the public consultation process pursuant to Section 83 of the Local Government Act 2002 to protect the trail route so that the “Great Ride” status is maintained.
- 8.2 Discontinue with pursuing the bylaw. This will mean that the Council will need to rely on education, signage and the goodwill of users. This may cause the trail to be damaged by cloven hoofed animals and the Council would have limited power to control dogs and noise from motorcycles and vehicles that may threaten endangered birds in the area.

9. Pros and Cons of Options

- 9.1 Continuing with the process will allow a suitable bylaw to be consulted upon and put in place.
- 9.2 Not continuing will put at risk funding and safe use of Tasman’s Great Taste Trail for all users and a potential slow degradation of the trail and loss of the Nga Haerenga (New Zealand Cycle Trail) brand.

10. Evaluation of Options

- 10.1 The Council cannot rely on the goodwill of users especially when there are specific conditions in existing resource consents requiring signage to control dogs. Also some private property owners do not want to see dogs or horses on their property.
- 10.1 Continuing with the special consultative process allows public input and is the only viable option to provide adequate protection of the public from nuisance and to protect the Council’s ability to maintain the “Great Ride” brand of the New Zealand Cycle Trail.

11. Significance

- 11.1 This is not a significant decision according to the Council’s Significance Policy because it does not contravene the funding threshold and there are no major social, economic, environmental or cultural impacts. However a special consultative

procedure is required anyway under the Local Government Act for the creation of bylaws.

12. Other Issues

12.1 Signage

- 12.2 As the trail gains momentum there will be adjoining landowners who may wish to provide goods and services to trail users.
- 12.3 A number of commercial activities were started as a result of the Central Otago Rail Trail. All had their own forms of advertising/signage etc with some advertising on “other” landowner’s properties directing users to their service which could be a number of kilometres away.
- 12.4 The email attached as Appendix 2 is a summary of the issues that the Central Otago Rail Trail has had to manage. (Note – Daphne Hall is a founding member of the Central Otago Rail Trail Trust).
- 12.5 She notes that a coordinated effort is required from an operations group where all the stakeholders can come on board with the aim of not degrading the trail but enhancing it for all users.
- 12.6 It is therefore important that one entity (perhaps the Nelson Tasman Cycle Trails Trust) be tasked with coordinating this effort as many of the goods and services providers may wish to avail themselves of the Trust’s website which has the domain name for the “Great Taste Trail”.
- 12.7 The Council has a policy and rules pertaining to signage but permitted activities are a maximum of 0.5 m² signage area in residential zones and 1.0 m² maximum signage area in rural zones. However, the Council has no control over signage colour and form.
- 12.8 Therefore the Council has an interest to keep signage along the trail to a level that does not detract from the riding experience. It cannot promulgate a bylaw that would restrict signage as Section 145 of the Local Government Act 2002 does not allow this.
- 12.9 Council staff will work with the entity that markets and carries out maintenance on the trail and logically this will be via the Nelson Tasman Cycle Trails Trust when agreement is reached with them.

12.10 Financial Support from Beneficiaries of the Trail

- 12.11 Use of the trail will be free, however users may wish to purchase trail memorabilia such as a passport. A passport system can encourage users via a “stamping” system to use local goods and services that are approved on the trail website. A proportion of the cost of the passport will go towards maintenance of the trail and additional marketing where required.

- 12.12 Many community groups are encouraged to “adopt” a section of trail and already some adjoining landowners regularly mow the adjacent parts of the trail by their property frontage.
- 12.13 The email from Daphne Hall mentions aspects of income from users who provide goods and services to trail users and she suggests we endeavour to have commercial entities pay their way.
- 12.14 Staff have investigated this and can see no clear path that will not receive an adverse reaction from commercial entrepreneurs.
- 12.15 Clause 8 of the bylaw “access to and over the trail” does give the Council a one-off opportunity to request a “new access to the trail” to apply for permission from the Council. The Council could, via the Long Term Plan, set a charge/fee for this application via the Engineering Fees and Charges. Further discussion is warranted on this option.
- 12.16 It is clear that many businesses will wish to be on the preferred website and the Council needs to work with all stakeholders and have a consensus view on what signage can complement the trail and where all who benefit from the trail can contribute to its growth through marketing and contribute to the pleasure of the trail users through maintenance along it.

13. Timeline/Next Steps

- 13.1 Should the Council decide that the Tasman’s Great Taste Trail Bylaw 2012 proceed to the consultation stage then the following needs to be confirmed:
- A statement of proposal pursuant to Section 83 of the Local Government Act 2002 is required and this is attached as Appendix 3.
 - A summary of the information contained in the statement of proposal pursuant to Section 89 of the Local Government Act 2002 is also required and is attached as Appendix 4.
- 13.2 The summary must:
- a) be a fair representation of the matters in the bylaw;
 - b) be in a standard form determined by the Council;
 - c) be distributed as widely as reasonably practical as determined by the Council. (Staff recommend the summary is distributed via Newsline, Libraries and the Council offices and the website as per the Council’s normal media release mechanisms);
 - d) indicate where the document can be inspected and how copies can be obtained;
 - e) state the period that submissions can be made on the proposal.
- 13.3 In regard to e) above and pursuant to Section 83 of the Local Government Act 2002 should the Council agree at its meeting on 30 August 2012 that this bylaw be released for public consultation then the likely timeframes are:

- Advertise in Newsline on 23 September 2012 for a minimum one month period with submissions closing on 23 October 2012. It is envisaged that submissions could be heard by the Council within one to two weeks of the closing date being approx 1 November 2012 (after the Environmental and Planning meeting) and a decision made soon after and being finally approved by the full Council at its meeting on 29 November 2012.

14. Recommendation

- 14.1 It is recommended that the process for enacting Tasman's Great Taste Trail Bylaw be allowed to continue via a special consultative procedure so that the public can have input into the process.

15. Draft Resolution

- 15.1 THAT the Engineering Services Committee receives the Tasman's Great Taste Trail Bylaw report, RESC12-08-02; and**
- 15.2 Agrees that the proposed Tasman's Great Taste Trail Bylaw is appropriate under Section 155 of the Local Government Act 2002 as outlined in the report RESC12-08-02; and**
- 15.3 Approves that under Section 156 of the Local Government Act 2002 the proposed Tasman's Great Taste Trail Bylaw 2012 Statement of Proposal, attached as Appendix 1 to this report, be circulated for public consultation under the special consultative procedure as set out in Sections 83 and 86 of the Local Government Act 2002 and noted in the report RESC12-08-02; and**
- 15.4 Approves the summary of information for distribution through Newsline, Council's website and Council offices and libraries.**

Appendices

- Appendix 1 – Draft Tasman's Great Taste Trail Bylaw (including maps)
- Appendix 2 – Email from the Otago Central Rail Trail
- Appendix 3 – Statement of Proposal
- Appendix 4 – Summary of information in the Statement of Proposal