

Report No:	REP11-10-04
File No:	L232
Date:	28 September 2011
Decision Required	

REPORT SUMMARY

Report to: Environment & Planning Committee
Meeting Date: 6 October 2011
Report Author: Rose Biss, Policy Planner
Subject: **Ombudsman's Report on Motocross Activities**

EXECUTIVE SUMMARY

The report informs the Council of the findings of the Ombudsman's report on noise complaints from neighbours of a motocross track that has been developed at Packards Road, Motupipi. It also considers some options for future management of recreational motorcycling noise for Council direction.

RECOMMENDATION/S

It is recommended that the Council seek legal advice as to the status of "recreational motorcycling" in the rural and rural residential zones of the district and whether the activity is or is not exempt from rural zone noise rules.

The Council may also wish to direct staff to pursue other options raised in this report. In particular staff consider section 4.6 of this report requires a technical fix to the TRMP.

DRAFT RESOLUTION

THAT the Environment & Planning Committee receives the Ombudsman's Report on Motocross Activities REP11-10-04 and notes that legal advice will be sought on the status of "recreational motorcycling" and the applicability of rural noise rules.

THAT the Environment & Planning Committee direct staff to alter the definition of "commercial" to include "commercial recreation" in the Tasman Resource Management Plan.

Rose Biss
Policy Planner

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1. Purpose

1.1 The purpose of the report is to inform the Council of the findings of the Ombudsman's report on noise complaints from neighbours of a motocross track that has been developed at Packards Road, Motupipi. It also considers some options for future management of recreational motorcycling noise for Council direction. The Ombudsman's report is attached as Appendix 1.

2. Background

- 2.1 Four residents from Motupipi in Golden Bay complained to the Ombudsman in October 2010 about noise from a motocross track developed next to their properties at Motupipi. There were three supporting complainants. It was alleged that the Council:
- Breached its duty to manage unreasonable noise under Section 16 of the *Resource Management Act*
 - Allowed motocross activities and an annual motocross event when these are not "intermittent or temporary rural activities" within the district plan.
 - Breached its duty to protect public health within its district under Section 23 of the Health Act 1956.
- 2.2 The residents had previously asked the Ombudsman to investigate the situation in 2006 but at that stage the Council was considering a draft variation to the TRMP to address the issue. The Ombudsman's investigation was discontinued on this basis.
- 2.3 The Council proceeded to consider a draft plan change in 2007 to make alterations to the current plan rules on motocross noise. There were many submissions received on the draft plan change. The plan change did not proceed and the Council decided to adopt a Code of Practice for Recreational Motorcycling.

- 2.4 In August 2010 the Golden Bay Community Board made a request to the Council for the removal of the exemption to the Rural 2 noise rule at the Packards Road, Motupipi track and for Council to ensure there is monitoring and enforcement of the rural noise limit. This request was put on hold while the Ombudsman was making his investigation.

3. Present Situation/Matters to be Considered

3.1 Ombudsman's Report

The Ombudsman made his final report on 26 August 2011. While he does not sustain the specific complaints against the Council he suggests that the next steps for the Council to take action on are to:

- Clarify the legal basis for motocross activities
- Improve its enforcement capabilities so it can take effective enforcement action against any excessive noise that it identifies.

3.2 Consistency in Management of Noise Issues in the Rural Zones

The Council now has some noise controls for some types of temporary rural noise. In 2009 the Council notified Plan Change 14 which introduced a specific noise limit for frost protection devices. The latter are now subject to a 55 dBA Leq limit which applies day and night. The change was made after neighbours complained of sleep deprivation. The change includes a provision that new dwellings within 300 metres of frost protection devices have to have noise protection.

3.3 Recent Noise Study of Motupipi Site

The Environmental Health Coordinator has made recent noise measurements on 21 September 2011 at the properties of two of the complainants while three motocross bikes were operating on the Packards Road motocross track. The measurements did not breach the daytime noise limit for the Rural 2 zone of 55 dBA Leq.

4. Options

4.1 Status Quo

The Council could continue with the Recreational Use of Motorcycles Code of Practice which has been in use since 2007. Councillors, staff and the Nelson Motorcycle Club will need to continue to be involved in trying to resolve disputes between motorcyclists and neighbours, especially at the Packards Road, Motupipi site.

4.2 Updated Code of Practice

The Council could alter the Code of Practice as some residents living close to motocross tracks consider it is too liberal. It currently allows up to four motorcycles to be ridden for up to four hours in a day, for three days in a week (these must not be consecutive days). For example the number of riders and / or the number of riding days could be reduced to a lesser number.

4.3 Exclude Motocross from Noise Exemption Rule

Golden Bay Community Board favours an option that excludes recreational motocross from the rural noise exemption rule on the grounds that it is a recreational activity rather than an agricultural activity. Farm bike use for farming activities would continue to be considered as agricultural machinery operation so would remain exempt from the noise rules.

The Ombudsman's report supports a review of the interpretation of the term "rural activities" by either a declaration from the Environment Court or a further legal opinion.

4.4 Convert Code of Practice into a Temporary Activity Rule and Policy

This option would convert the current code of practice into a rule. It assumes the current code of practice is setting an appropriate upper noise limit / noise environment.

4.5 Enforcement Action on Problematic Sites

In the last year one motocross site (Packards Road, Motupipi) has caused over 75% of the 58 complaints the Council has received about rural motocross activities. If an enforcement officer considers a particular noise event to be unreasonable a direction, which only lasts for a maximum of 72 hours may be issued. Alternatively other enforcement remedies could be pursued if a case for further restraint can be established.

The Ombudsman's report suggests Council should direct more enforcement resource into the Golden Bay area. While this is a wider issue than just response to noise complaints Council has in the past decided not to increase the compliance budget. The next additional resource is planned for 2015-2016. At present however we can not justify a full time presence in Golden Bay. We have recently upgraded our after-hours contract but that really only deals with noisy parties. Motor bike noise does need to use a precision sound level meter (SLM) and we only have one at present. Replacement or duplication of our current precision SLM and associated calibration equipment is upwards of \$10,000 with ongoing calibration costs of about \$700 a year. Use of an SLM, in particular for evidential purposes, requires technical competency from the likes of our trained EHO staff.

We have to accept that travelling times to Golden Bay for staff based on the Richmond side of the Takaka Hill mean complaints do not have an instant response. However our current system is such that any response is proportionate to the risks and danger involved. Unless the Council is prepared to increase the general rate component to place a resource in Golden Bay, the current monitoring and enforcement arrangements are the best we can deliver.

4.6 Introduce a Minimum Setback Rule

A minimum setback rule could be introduced to ensure new tracks are setback a specified minimum distance from dwellings on adjoining properties and from Residential and Rural Residential Zones. It is commonly accepted that noisy motorised recreational activity, for example go karts, stock cars and motocross tracks should be setback from neighbouring dwellings. Generally noise effects will be attenuated by increasing the separation between the noise source and the receiver. At least 600 metres would probably be required.

4.6 Clarify the Definition of “Commercial Activity”

There is an emerging trend for some motocross activities to be run as a recreation business. It would be helpful to clarify that a commercial business that provides for recreational activities in the rural area requires consent. A paintball company in the rural zone was required to obtain consent but a motocross events operator was not. At present the definition of commercial activity specifically excludes recreational activities. This has led to some uncertainty whether certain activities need resource consent and is accepted that there has been some past inconsistency in interpretation.

5. Pros and Cons of Options

- 5.1 Regulatory options take time and resources to establish. Clarification of existing rules is important as they need to be unambiguous. There may be some interpretation issues around existing use rights where rules are changed.
- 5.2 Monitoring of noise at widely spaced sites across the district at short notice is not an easy task for the Council’s monitoring team.
- 5.3 Non-regulatory options are less expensive and time consuming to establish but are ultimately not easily enforceable.

6. Recommendation/s

- 6.1 That the Council seeks legal advice as to the status of “recreational motorcycling” in the rural and rural residential zones of the district and whether the activity is or is not exempt from rural zone noise rules.
- 6.2 The Council may also wish to direct staff to pursue other options raised in this report. In particular staff consider item 4.6 above requires a technical fix to the TRMP.

7. Draft Resolutions

THAT the Environment & Planning Committee receives the Ombudsman's Report on Motocross Activities REP11-10-04 and notes that legal advice will be sought on the status of "recreational motorcycling".

THAT the Environment & Planning Committee direct staff to alter the definition of "commercial" to include "commercial recreation" in the Tasman Resource Management Plan.

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Policy Planner

Appendix

Ombudsman's finding on the complaints by residents of Motupipi against the Tasman District Council concerning noise from motocross activities. Office of the Ombudsmen 26 August 2011.