

Report No:	REP12-05-04
File No:	E402
Date:	7 May 2012
Decision Required	

REPORT SUMMARY

Report to: Environment & Planning Committee
Meeting Date: 17 May 2012
Report Author: Graham Caradus, Co-ordinator Environmental Health
Subject: **REVIEW OF FREEDOM CAMPING BYLAW 2011**

EXECUTIVE SUMMARY

When Council passed the Tasman District Council Freedom Camping Bylaw 2011 (the Bylaw), it came into effect on 31 May 2011. At the time, Council asked that a review of the Bylaw be undertaken in a year's time. The first part of this report provides comment on the effectiveness of the Bylaw, and a précis of comments received and problems encountered. It concludes that the Bylaw provided a useful tool for Council contractors to control situations that have been difficult to resolve in previous years, but that the Bylaw has not been user friendly.

The second part of the report looks at options for the way ahead. This has been complicated by the introduction of the Freedom Camping Act 2011, which sets objectives that are contrary to the intent of the Bylaw. Options are examined, and the Environment & Planning Committee is requested to give guidance on the direction that should be taken, with 1 of the three options discussed being recommended.

RECOMMENDATIONS

It is recommended that a new Bylaw made under the provisions of the Local Government Act 2002 and the Freedom Camping Act 2011 be promulgated by Council. Such Bylaw to define specific locations at which freedom camping may occur and impose limitations such as the necessity to be self contained in specified locations.

It is further recommended that Council Environmental Health staff and Reserves staff be instructed to undertake investigations and produce a further report for consideration by Council on the availability of locations for allowing freedom camping to be undertaken by persons that are not self contained, and also report on the locations at which self contained vehicles may be used for freedom camping.

DRAFT RESOLUTION

THAT the Environment & Planning Committee receives the Review of Freedom Camping Bylaw 2011 Report REP12-05-04, and;

Instructs staff to report on Council controlled locations at which self contained and non self contained freedom camping may be undertaken under prescribed conditions, and;

That the report required above includes cost implications for Council, and;

That such report presented to the Environment & Planning Committee includes a statement of proposal to commence the special consultative process to begin the promulgation of a new Freedom Camping Bylaw under the provisions of the Local Government Act 2002 and the Freedom Camping Act 2011.



Graham Caradus
Co-ordinator Environmental Health

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1. Purpose

- 1.1 A review of the Tasman District Council Freedom Camping Bylaw 2011 (the Bylaw) is proposed. The guidance of the Environment & Planning Committee is sought on the philosophical direction that should be taken in achieving this review. Three potential options are discussed, and a recommendation is made that one of these options is pursued.

2. Background

- 2.1 Complaints about freedom campers causing nuisance and concern about fouling of public places resulted in Council developing a bylaw to give Council staff and contractors coercive powers to deal with those general issues. There was both support and opposition to the controls that were proposed. As a consequence of the sensitivity of issues raised during consultation, staff were instructed that the Bylaw be reviewed after one year.
- 2.2 The Freedom Camping Bill (the Bill) was at the white paper stage when Council was considering passing the draft bylaw, and both the Bill and draft bylaw contained similar provisions. The Bylaw was passed by Council at the meeting of 19 May 2011 and came into effect on 31 May 2012. Subsequently the Freedom Camping Act 2011 (the Act) was given Royal assent on 29 August 2011, and it had been significantly changed from what was contained in the Bill during the select committee stage.
- 2.3 The Act defines freedom camping, and it is obvious that it is not the “self contained” activity that is envisaged by the Bylaw definition of the term “freedom camping”. For clarity on this matter, freedom camping as defined in the Act includes staying in a tent or other temporary structure, whereas the same term used in the Bylaw refers only to staying in fully self contained vehicles.
- 2.4 The Act takes the right to freedom camp a significant step further and states in section 3(3) that: “...the powers of regulation under the Act do not allow for freedom camping to be prohibited on all land controlled or managed by a particular local authority...” Additionally, for avoidance of doubt, section 12 of the Act states: “A local authority may not make bylaws under section 11 that have the effect of prohibiting freedom camping in all the local authority areas in its district.”

- 2.5 The Bylaw has been promulgated pursuant to the bylaw making provisions of section 145 and 146 of the Local Government Act 2002 (LGA). Now that the Act prescribes provisions for making bylaws controlling freedom camping, the legitimacy of the current Bylaw made only under the LGA could be debated.
- 2.6 Transitional provisions are provided in the Act. These transitional provisions support the Bylaw by providing infringement offence fines specifically customised to the Bylaw, and the bylaws of other councils. These transitional provisions expire on 29 August 2012. If a new bylaw made under the provisions of the Act is not produced by that stage, the ability to write infringement notices (instant fines) will be lost and the only enforcement option available will be through a prosecution in the District Court.

3. Present Situation/Matters to be Considered

The matters believed to be relevant for consideration are;

- 3.1 The effects that the Bylaw has had in controlling nuisance conditions; and the opposition to some of the restrictions imposed by the Bylaw that have been conveyed to Council staff in a variety of ways, including phone calls, letters and face to face conversations.
- 3.2 A report from Tasman District Council's contractors, Control Services Ltd (CSL) provides the following information:
- Patrols of known freedom camping trouble spots were routinely and regularly undertaken, and specific complaints referred to CSL as service requests were investigated.
 - Over the last summer period 145 service requests which complained about various aspects of freedom camping were received by CSL. These complaints were distributed throughout the district as follows:
 - 60 in the Richmond/ Waimea area;
 - 52 in the wider Motueka area;
 - 29 in Golden Bay;
 - one in Moutere;
 - three in Murchison
 - In addition to investigating complaints, non-compliant campers that were discovered during patrols were dealt with. During the height of the summer holiday period over 30 non-compliant vehicles per day were asked to move on, with the highest recorded number being 48 on one day in Golden Bay.
 - For January and February, the average number of non-compliant campers spoken to and moved on was 18 per day.

- All persons spoken to complied with the request to move on and it was not necessary for any infringement fines to be issued.
 - The threat of being issued with an infringement fine was considered to be a very effective tool in enforcing the provisions of the Bylaw, and considered the likely reason for the perfect record in compliance with requests to move on.
 - CSL have now been undertaking freedom camping enforcement work for Council for 11 years. They report that last summer was the busiest so far, but it has been the easiest to enforce because of the provisions of the Bylaw.
- 3.3 Feed back has been received from a number of aggrieved owners of self contained motor-homes, who believe that the requirement for them to move on after two days is unnecessarily restrictive. The greatest concern appears to be the effect of the two day restriction on white baiters. As the white bait season does not coincide with the busy summer period for freedom camping, the suggestion is that Council should make an allowance for longer stays at that off peak time of the year.
- 3.4 The control that we thought we had over State Highway road reserves, does not exist. Advice received at the time the Bylaw was being considered, lead us to believe that Council was able to control camping on the road reserves adjacent to state highways. It is such areas that were thought to be most likely locations for freedom camping to occur, and because of the concern about contamination of such areas with human waste, justification for controlling freedom camping exists. It has become evident that the road reserve adjacent to state highways does not meet the definition of land under Council control, and therefore the Bylaw cannot be applied to such areas. This seriously dilutes the effect of the Bylaw and is a significant disappointment, as some of the road reserves adjacent to State Highways were of particular concern in relation to contamination from human waste. The agency responsible for these areas is the New Zealand Transport Agency (NZTA), and whilst they express concern about freedom camping activity that occurs on land under their control, they indicate that they have no intention of providing the sort of policing of freedom camping that this Council does on land it controls.
- 3.5 Determining land ownership in other locations also causes difficulty in that the land that Council controls and therefore on which the Bylaw can be applied, may have little or no distinguishing features or landmarks to identify it from neighbouring land on which the Bylaw cannot be applied. The small reserve next to the Uruwhenua Bridge is a good example of this. In that location, Department of Conservation, a private land owner, Council and NZTA are all land owners, but the boundaries are not obvious.

- 3.6 Providing information to members of the public about where they may actually freedom camp should be a prime function of the Bylaw. Whilst our bylaw is generally very permissive, it contains a comprehensive list of prohibited areas that effectively takes away all the obvious places to freedom camp such as Council reserves: see **Appendix 1**. People wishing to freedom camp in this District are not likely to have a particularly good knowledge of what land is under Council control, and what is not. Even with accumulated wisdom and local knowledge, it is not easy for Council staff to translate GIS information from plans and maps to the field to allow them to make that distinction in some locations. The current Bylaw, and associated brochures and website information is of little help to people in determining where freedom camping may specifically be undertaken.

4. Financial/Budgetary Considerations

- 4.1 Ignoring the overhead costs to Council of researching and promulgating new Bylaws, the active administration of the Bylaw by enforcement officers is the prime cost. Over the busy summer period, the activity is undertaken by Council's contractors, Control Services Ltd. Over the last summer, this contract ran from the beginning of September until the end of April at a cost of \$10,000. Outside of this period, enforcement is the responsibility of Compliance and Environmental Health sections, as staff from both groups are appointed as enforcement officers for the purposes of the Bylaw. Whilst some complaints are actioned by those enforcement officers, few "off-season" freedom camping complaints reach a priority that justify a specific journey. Such lower priority complaints are therefore dealt with only if an enforcement officer is in the general area whilst on other work of higher priority. The cost of such work is absorbed into the normal operating budgets for both Compliance and Environmental Health sections.
- 4.2 However, should Council decide to provide more areas where freedom camping (as defined in the Act) is permitted, there would be costs associated with establishing both toilets and signage, and the ongoing servicing costs of toilets and rubbish collection at those locations.

5. Options

- 5.1 **Option 1:** A new Bylaw made under the Freedom Camping Act 2011 which defines specific locations at which freedom camping may occur.
- 5.1.1 Defining at least one suitable location where freedom camping, as defined in the Act (that is, potentially in a tent and not necessarily self contained) could occur, will ensure that the intent of the Act is met. It transpires that Council already has one such location at the Edward Baigent memorial reserve just south of Wakefield. Other areas could be investigated by Council, and specifically, Environmental Health and Reserves staff could work together to define areas where freedom camping could be undertaken because basic infrastructure is provided.

It is likely that the management plans for any reserves that were to subsequently allow freedom camping would need to be altered to permit the activity.

- 5.1.2 Additionally, freedom Camping in self contained vehicles could continue to be permitted on land under Council control. However, as the number of locations where this can occur is significantly less than was initially envisaged, and to assist those that are looking for a suitable location to freedom camp in a self contained vehicle, the Bylaw could list suitable sites. An example of a location already established is the parking area, intentionally set up with such activity in mind at Fittal Street. Similarly, other reserve areas that are under Council control could be assessed for suitability of use by self contained caravans/motor-caravans under certain conditions.
 - 5.1.3 In summary, this option would provide a Freedom Camping Bylaw that allows freedom camping in tents in a limited number of defined locations, freedom camping in self contained vehicles in a larger number of defined locations, and would prohibit freedom camping on other Council controlled land.
- 5.2 **Option 2:** A new Bylaw made under the Freedom Camping Act 2011 which continues the current general but poorly defined sanction to freedom camp on Council controlled land in self contained vehicles, and includes the one existing location where non self contained freedom camping is sanctioned.
- 5.2.1. Defining the existing one suitable location where freedom camping, as defined in the Act (that is, potentially in a tent and not necessarily self contained) could occur, will ensure that the intent of the Act is met.
 - 5.2.2 Continue the existing rather nebulous sanction for freedom camping to occur on any Council controlled land, and the current extensive list of prohibited areas could be rolled over with minor amendment, substantially copying the existing Bylaw provisions.
- 5.3 **Option 3:** Do nothing.
- 5.3.1 The existing Bylaw can remain in force until it is due to be renewed in May 2016. In the meantime, we would have to accept that the Bylaw could be the subject of legal challenge, as well as the general concerns about not being helpful as detailed in 3.6 above.
 - 5.3.2 The ability to issue infringement fines will expire shortly, and unless there was a will to take prosecutions through the District Court (bearing in mind the consequences of a legal challenge detailed above), we could expect enforcement to become as difficult as it was prior to the promulgation of the existing Bylaw.

6. Pros and Cons of Options

6.1 **Option 1:** A new Bylaw made under the Freedom Camping Act 2011 which defines specific locations at which freedom camping may occur.

6.1.1 **Pros:** A new bylaw could provide an increased number of locations where freedom camping, both self contained and otherwise, could be undertaken. By having a specific list in the bylaw where people could freedom camp, it would provide “user friendly” information to those wishing to freedom camp. We will also be able to retain the ability to issue infringement fines, which appears to be a very useful enforcement tool, despite the fact that no infringement fines have been issued for freedom camping breaches in this District. Enforcement should be much easier as there will be clearly defined locations where freedom camping is sanctioned, and on all other Council controlled land the activity will be prohibited.

6.1.2 **Cons:** There will be (internally carried) costs involved in completing investigations of locations where freedom camping (self contained and otherwise) may be undertaken, and alteration of specific reserve management plans, to allow the activity. Costs of additional signage, provision of any additional toilets and/or rubbish collection will be ongoing, and related to the number of sites at which non self contained freedom camping may eventually be allowed, in addition to the current one. The costs involved in defining areas in which self contained campers may stay is expected to be relatively small and limited to signage and internal administration costs to Council.

6.1.3 Whilst the ease to enforce should allow more effective enforcement, costs of enforcement and the expense involved in producing brochures is expected to remain neutral.

6.2 **Option 2:** A new Bylaw made under the Freedom Camping Act 2011 which continues the current general but poorly defined approval to freedom camp on Council controlled land.

6.2.1 **Pros:** We will be generally in compliance with the Act, and retain the ability to issue infringement fines. Development and ongoing maintenance costs will not be as high as option 1.

6.2.2 **Cons:** We will retain a bylaw structure that is not helpful or user friendly to those wishing to freedom camp.

6.2.3 Costs of enforcement and the expense involved in producing brochures are expected to remain neutral.

6.3 Option 3: Do nothing.

6.3.1 Pros: Costs to Council are minimised.

6.3.2 Cons: We lose the ability to issue infringement fines in future and the Bylaw could be subject to legal challenge. We also retain a bylaw structure that is not helpful or user friendly to those wishing to freedom camp.

6.3.3 The expense involved in producing brochures is expected to remain neutral.

7. Evaluation of Options

7.1 The “do nothing” option (option 3) is attractive in terms of cost, but is otherwise a very low quality alternative. We would retain a bylaw of dubious legality, poor user friendliness and lose the key enforcement provision of the threat of an instant fine.

7.2 The option of a new Bylaw made under the Freedom Camping Act 2011 which continues the current general but poorly defined approval to freedom camp on Council controlled land (option 2) is a better alternative. Council would retain legislative compliance with its bylaws and enforcement will remain relatively effective, with the option of issuing infringement fines retained. The bylaw would not be user friendly, but if cost is of greater importance to Council than the quality of our bylaws and the services we offer to residents and visitors to the District, this is the obvious choice.

7.3 A new Bylaw made under the Freedom Camping Act 2011 which defines specific locations at which freedom camping may occur results in the best quality of service that we could expect to provide (option 1). However, this option also has the greatest cost implications. It is the best option if Council considers the quality of service it provides to be of greater importance than the potential to incur greater costs as loosely defined in 6.1.2.

8. Significance

8.1 This is a significant decision according to the Council’s Significance Policy because any decision is likely to be controversial in the context of numbers of people affected, the area affected and the duration of the effect. However, it should be noted that as any change to the Bylaw will result in a special consultative process being undertaken to comply with the provisions of section 83 of the Local Government Act 2002 (LGA). The objectives of the Council’s Significance Policy would therefore be adequately met.

9. Recommendations

- 9.1 It is recommended that a new Bylaw made under the provisions of the Local Government Act 2002 and the Freedom Camping Act 2011 be promulgated by Council. Such Bylaw to define specific locations at which freedom camping may occur and impose limitations such as the necessity to be self contained in specified locations.
- 9.2 It is further recommended that Council Environmental Health staff and Reserves staff be instructed to undertake investigations and produce a further report for consideration by Council on the availability of locations for allowing freedom camping to be undertaken by persons that are not self contained, and also report on the locations at which self contained vehicles may be used for freedom camping.

10. Timeline/Next Steps

- 10.1 The reports detailed in 9.2 above would be available for consideration by the Environment & Planning Committee on Thursday, 9 August 2012. Future timelines should provide for the special consultative process, subsequent hearing and final report to the Environment & Planning Committee on 1 November 2012 and recommendation to Council for 29 November 2012.

11. Draft Resolution

THAT the Environment & Planning Committee receives the Review of Freedom Camping Bylaw 2011 Report REP12-05-04, and;

Instructs staff to report on Council controlled locations at which self contained and non self contained freedom camping may be undertaken under prescribed conditions, and;

That the report required above includes cost implications for Council, and;

That such report presented to the Environment & Planning Committee includes a statement of proposal to commence the special consultative procedure to begin the promulgation of a new Freedom Camping Bylaw under the provisions of the Local Government Act 2002 and the Freedom Camping Act 2011.



Graham Caradus
Co-ordinator Environmental Health

Appendices:

Appendix 1: Copy of Schedule 1 of Tasman District Council Freedom Camping Bylaw

Schedule 1: Tasman District Council-Controlled Land on which Freedom Camping is Prohibited

Freedom camping is prohibited on the following public places:

1. Within 500 metres of any “no camping” signs on Council-controlled land.
2. Kaiteriteri Beach area from Tapu Bay to Breaker Bay.
3. Any Tasman District Council reserve (apart from road reserve) in any area, except for:
 - (a) Edward Baigent Memorial Reserve, 8 Wakefield-Kohatu Highway;
 - (b) Motueka Beach Reserve, 10 Everett Street, Motueka.
4. Marahau from the start of the residential area to the end of the Marahau-Sandy Bay Road.
5. The river side of any stopbank except that area in the vicinity of the State Highway Bridge at Waitapu, Golden Bay.
6. Any formed roadway.
7. Any location where the activity of freedom camping may cause an obstruction or hazard to traffic.