

# Extraordinary Council Meeting

8 July 2021

## Separately Circulated Attachment

(as indicated this is circulated separately to the Agenda)

This attachment relates to Item 4  
in your Agenda

*Attachment 4.1 -  
Statement of Proposal July 2021 (Draft Bylaw)*



PROPOSED

# East Coast Beach Vehicle Bylaw

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Statement of Proposal  
July 2021

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# 1. Introduction

Council is proposing to regulate the use of motor vehicles on the beach and unformed legal road to and along part of Marlborough's east coast, between the Awatere River and southern district boundary. This Statement of Proposal has been prepared as part of consultation regarding the making of a Bylaw under the Land Transport Act 1998 (LTA) and the Local Government Act 2002 (LGA).

The magnitude 7.8 earthquake that struck the north-east coast of the South Island of New Zealand in November 2016 caused extensive upheaval, between 1-6 metres, over 110 km of coastline. In Marlborough, areas around Cape Campbell experienced 1-2m of uplift. Degradation of an environment is usually considered to occur incrementally over time as stressors accumulate. In this instance, however, major disruption occurred within a period of a few minutes. It is known from other large earthquakes that the effects of uplift can be devastating and take years to recover.

In addition to the devastation of parts of the coastal environment, there were large social, economic and cultural impacts. The new land uplifted in the earthquake has new values and with these come new uses, stressors and threats. People continue to have multiple interactions with the new configuration of the coastline, which will ultimately influence the rate and degree of recovery of key habitats and the assemblages that formerly occupied them.

Prior to the 2016 Kaikōura earthquake, high tide prevented people from walking or driving along the foot of the bluffs from Mussel Point to Cape Campbell. Rocky headlands and high tides prevented all motor vehicles (vehicle) other than ATV's from using the beach between Mussel Point and Long Point (about 11km south of Cape Campbell). Access was not possible for any vehicle between Long Point and Chancet Rock. At Cape Campbell vehicle access is on formed private roads through farmland with the owner's permission. Following the earthquake, the high tide mark has shifted down the beach. Where people were only able to travel through in a vehicle up to two hours either side of high tide, they can now travel through at any time.

Two issues have been identified by Council regarding the continued, uncontrolled vehicle use on the east coast: Firstly, the effect on public safety and enjoyment of the area and secondly the adverse effects to the values on the east coast environment. This is the perceived problem. For the purposes of this Statement of Proposal the terms "motor vehicle" and "vehicle" both mean a motor vehicle as defined in s2(1) LTA.

University of Canterbury undertook an online survey of public perceptions for the earthquake affected beaches in December 2020. The survey findings identified a wide divergence of views on positive and negative aspects some of which were contradictory.

The 2016 Kaikōura earthquake has provided an opportunity for the community to assess the impact of continued vehicle use on Marlborough's east coast beaches. We all share a common responsibility to balance human activities in the natural environment to ensure future generations can still enjoy the coast long into the future.

In order to maintain public access for multiple users without impacting on public safety or ecosystems is the challenge facing Council and the community to find a workable solution that addresses the diverse values and preferences of users in a compatible way.

This Statement of Proposal includes:

- The reasons for the proposal;
- The options and alternatives considered by Council;
- The analysis used in preparing the draft Bylaw;
- A draft Bylaw; and
- How people can present their views to Council on the proposal.

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The characteristic values of the east coast are documented in a Technical Report produced by Council.

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## 2 Reasons for the proposal

### Background

Following the magnitude 7.8 Kaikōura earthquake in November 2016, Marlborough's east coast became much more accessible, as the seabed lifted and wide new expanses of beach and exposed reefs were created.

Soon after the earthquake, members of the community expressed a range of concerns to Council mainly centred on the potential impacts of public vehicle access to the habitats of the coastal environment and the risks that poses to flora and fauna and those coastal ecosystems. Concerns focused on vehicle use compromising the structure and composition of dune systems and disruption to flora and fauna. Another concern raised by the community related to public safety to beach users sharing the beach with quad bikes, motorcycles and 4WD vehicles. The East Coast Protection Group was formed with multi stakeholder representation to try and bring together the collective interests of the community, iwi, recreational and commercial sector groups.

The Royal Forest and Bird Society NZ Inc. presented an item to the Environment Committee of Council on 15 March 2018 expressing its concerns about environmental impacts of human activities in the coastal environment and sought policy solutions to address the environmental effects from the earthquake.

Council agreed to investigate the impacts of the earthquake and to undertake a policy assessment in respect of the jurisdiction and responsibilities with iwi, and other agencies that have responsibility for the east coast environment. There is Department of Conservation (DOC) administered land along the coastline. The Clifford and Cloudy Bay Marine Mammal Sanctuary is also administered by DOC under the Marine Mammals Protection Act 1978.

It was acknowledged the issues raised were complex and that any options for policy intervention would require consideration of the views of iwi, stakeholders and the community.

An initial assessment of the recreational values along the coast by Council confirmed the following:

- People access the environment for a range of reasons including social, cultural, and recreational and food gathering purposes. Commercial and recreational fishing, camping, walking, horse riding are some activities that occur. Vehicles are used both recreationally and for access to fishing and diving spots.
- The importance that the community places on specific values is wide-ranging and variable.
- The main community tension that exists is a consequence of human behaviour and the means by which people travel along the coastal environment to their place of interest.

Councillors requested staff prepare a report identifying the key threats and a range of potential solutions that would help to provide protection along the coast in balance with potentially retaining existing recreational and commercial uses.

### Investigation

Council staff commenced investigating legal mechanisms to protect the east coast ecosystems and providing for public safety. An initial assessment considered stopping the road, using the mechanisms under the RMA to add zone rules to the Proposed Marlborough Environment Plan (PMEP) or the use of a Bylaw. Staff also reviewed which mechanisms other Councils were using to restrict vehicle use on beaches. Depending on the type of Council, regional or territorial, and their location to the coast, both of the former mechanisms are being used throughout New Zealand. At the time this assessment was being done, Council had notified the PMEP in June 2016 (prior to the earthquake) and a review of speed limits in Marlborough was about to commence by Marlborough Roads, Marlborough's Rooding Authority. Council staff prepared an issues and options paper that included the legal and statutory requirements required to be taken into account and the corresponding mechanism that could be used. These are the same options included in Section 3 of this proposal.

### Technical Advice Workshop

At the same time Council was investigating the legal mechanisms, Council and DOC convened a Technical Advice Workshop on 23 July 2018 to establish the values of the east coast area to:

- Identify the values of the east coast environment.
- Determine the threats from human activities.
- Identify potential measures to reduce environmental impacts where identified.

The focus area was defined as the coastline margin from the Awatere River to the Waima (Ure) River.

A range of technical experts presented at the workshop to provide advice on the biodiversity and ecological values as well as the historical and recreational context. A list of presenters is provided in Appendix 12 of the Technical Report ([v5.4 July 2021](#)).

It was reported at the workshop that the intertidal habitats were greatly affected with extensive die off of algae communities, high mortalities of benthic invertebrates and greatly reduced ecosystem functioning. The combination of habitat disruption, loss of species and their functioning requires multiple perspectives on recovery dynamics.

The dunes were uplifted and moved further from the influence of the sea. New dunes are gradually forming as vegetation re-establishes on the uplifted beaches. Log debris is gradually accumulating in a

new zone seaward of the pre-earthquake log debris zone along the interface between grass and gravel. These zones provide an important home for lizards and there is a need to monitor the transition between old and new areas. New logs have to accumulate in order to provide this habitat in the future, and plant re-establishment plays a role in covering and stabilising them.

There were also impacts to the habitats of the vegetation and fauna species along the coast. The ongoing management of indigenous beach vegetation requires attention to beach disturbance and control of invasive marram to allow native sand species to establish and recover. This will allow natural beach communities to prevail, providing habitat for banded dotterels, skinks and other beach fauna.

There has been an observed increase in the number of visitors to the area after the earthquake. As well as increased numbers of vehicles it was noted that other interactions of humans on the coast are also causing an impact.

At the workshop it was confirmed that vehicles are:

- Driving at speed.
- Driving further along the coastal margin compared to before the earthquake in 2016.
- Driving over multiple ecological environments with tracks all over the beach and above it.
- Driving on what was the old storm beach, now high and dry, preventing colonisation by plants and the creation of new habitats.
- Crushing raoulia (vegetable sheep), pimelea mats and other special plants which grow on a gravel pavement at Needles Point.
- Disturbing banded dotterel and variable oyster catcher nesting habitat.
- Disturbing lizard and invertebrate habitat.
- Likely to injure or kill birds, lizards and invertebrates.
- Providing tracks for predators, especially those left after driving through vegetation.

Following the workshop, Council compiled the information into a Technical Report. The first version of this report was released on 23 March 2019. A subsequent version was released in December 2019, incorporating additional information to fill gaps that were highlighted in the previous versions. Map 1 below shows the characteristic values of the East Coast identified in the Technical Report (v54, July 2021), compared to where vehicles travelled before and after the earthquake.

#### Impacts of vehicles on the environment

After the Technical Advice Workshop, Council staff undertook a literature review of research of vehicle impacts on beaches. The citations for the documents referred to in this section are in the bibliography of the Technical Report (v54, July 2021).

Vehicle impacts on Marlborough's east coast can be broken down into five broad topics:

1. Soft sediment community damage.
2. Reef community damage.
3. Dune vegetation damage.
4. Bird and pinniped disturbance.
5. Natural character.

#### 1. Soft sediment community damage – Shellfish

Vehicle disturbance is occurring in the new accumulation zones. Juvenile shellfish are being damaged by vehicles crossing the intertidal zone (below the high tide mark) which is also threatening recruitment.

Damage is occurring on the fine sandy beaches at Marfell's Beach and between Mussel Point and Cape Campbell.

An assessment of vehicle impact on the biota of sandy beaches and coastal dune is provided in the following report by DOC from 1999:

<https://www.doc.govt.nz/Documents/science-and-technical/sfc121.pdf>

In terms of shellfish this has been built on by later studies, mainly on Toheroa in northland by Phil Ross and research group in Auckland:

[https://www.researchgate.net/publication/320303922\\_The\\_biology\\_ecology\\_and\\_history\\_of\\_toheroa\\_Paphies\\_ventricosa\\_a\\_review\\_of\\_scientific\\_local\\_and\\_customary\\_knowledge](https://www.researchgate.net/publication/320303922_The_biology_ecology_and_history_of_toheroa_Paphies_ventricosa_a_review_of_scientific_local_and_customary_knowledge)

This MPI report gives a good summary of Toheroa knowledge at that time about vehicle impacts which has some relevance to the email below:

[https://www.researchgate.net/publication/269394999\\_Review\\_of\\_factors\\_affecting\\_the\\_abundance\\_of\\_toheroa\\_Paphies\\_ventricosa#pf16](https://www.researchgate.net/publication/269394999_Review_of_factors_affecting_the_abundance_of_toheroa_Paphies_ventricosa#pf16)

"Moller et al. (2009) conducted an experimental study to investigate the impact of vehicle traffic on toheroa. Preliminary tests on ten buried adult toheroa found that none were damaged by vehicle passes, and therefore, the study focused on juvenile toheroa (5–30 mm). Three hundred and three juvenile toheroa found drifting in the surf zone were allowed to bury themselves either just below the high tide mark or in the mid/lower beach. The toheroa were then driven over one or five times with a motorbike (Honda CRD 250R), car (Toyota Fielder), or utility vehicle (Mazda BT50 Freestyle cab and Isuzu Bighorn). Toheroa mortality was found to vary with location on the beach and type of vehicle. For all vehicles excluding motorbikes, the average mortality incurred was higher on the upper beach (14%) compared to the mid/lower beach (3%); for motorbikes, the average mortality incurred was high (18%) compared with that from the other vehicles (3%, average mortality across all other vehicles). Driving the test vehicle five times over the toheroa appeared to cause higher mortality than a single pass, but the difference was not statistically significant."

Ecosystems Consultants prepared a report for Te Ao Mārama, Environment Southland, Invercargill City Council and Department of Conservation on the Impact of vehicles on recruitment of toheroa on Oreti Beach, Southland, New Zealand:

<http://www.ecosystemsconsultants.co.nz/files/ecosyst-ems-consultants-report-2014-02.pdf>

The referenced thesis by Taylor explored the impacts of vehicles on tuatua – mortality was found to be about 5%:

[https://ir.canterbury.ac.nz/bitstream/handle/10092/8207/thesis\\_fulltext.pdf?sequence=1&isAllowed=y](https://ir.canterbury.ac.nz/bitstream/handle/10092/8207/thesis_fulltext.pdf?sequence=1&isAllowed=y)

Nelson City Council commissioned Cawthron Institute to assess the ecological impact of vehicle traffic vehicles driving across the tidal flats at low and mid tide levels at Delaware Inlet an estuary of the Wakapuaka River north of Nelson:

<http://www.nelson.govt.nz/assets/Environment/Downloads/Nelson-Plan/Nelson-Plan-Coastal-Final-CawRpt-3015-Impacts-of-vehicle-traffic-Delaware-Inlet-Cawthron-Institute-June2017.pdf>

#### 2. Reef community damage - Shellfish and algae

There is evidence of vehicles driving on reef systems damaging the reef structure and limiting the recolonisation of marine plants and algae.

*“The reefs of this area were uplifted during the quake (as were the beaches). As species attempt to recolonise these reefs in the intertidal zone any vehicle impacts will be disastrous to recently settled and newly colonising species,”* University of Canterbury.

Councils around New Zealand have banned driving on intertidal reefs because of the negative impacts. Given the recovering nature of the ecosystems in this area the impacts are only going to be exacerbated.

#### 3. Dune and vegetation

Vehicles are driving on the original dune systems at Mussel Point, Waima (Ure) River mouth, south of Needles Point, Lake Grassmere/Kapara Te Hau dunes damaging threatened vegetation and fauna communities and archaeological sites.

Vehicles are now driving on the newly established dune systems from the Awatere River mouth to Waima (Ure) mouth and further to Wharanui, preventing the establishment of indigenous communities.

The impacts of vehicles on dunes are documented in these publications:

[https://www.coastalrestorationtrust.org.nz/site/assets/files/1185/10.2\\_effects\\_of\\_vehicles.pdf](https://www.coastalrestorationtrust.org.nz/site/assets/files/1185/10.2_effects_of_vehicles.pdf)

<https://www.doc.govt.nz/Documents/science-and-technical/sfc121.pdf>

#### 4. Birds and pinniped disturbance.

There is evidence of damage of habitat by vehicle traffic, particularly the breeding sites of ground nesting birds such as banded dotterels and oystercatchers which nest on the open beaches. Bird

feeding sites exist below the Mean High Water Springs (MHWS). Birds feed on sand hoppers or shellfish in beach cast seaweed or in the recently wet sand and reef.

Driving on the beach can cause disturbance of wildlife. Examples include driving through bird roosting and nesting areas or disturbing breeding seals.

Bird Disturbance from human activity – Potential effects from recreational activities on sea and shore birds – Avon-Heathcote Estuary Ihulai Trust. Bonnie Kaldor. September 2029

Florida game and wildlife website bird disturbance education:

<https://myfwc.com/viewing/how/bird-disturbance/>

#### 5. Natural character.

Vehicle noise and tracks are impacting on the naturalness, ambience and aesthetics of the area.

The area is identified as an Outstanding Natural Landscape (ONL). An assessment of the impact of vehicles tracks to the ONL is provided in section 3.3.1 in the Technical Report (v54, July~~ae~~ 2021).

### Confirmation of the perceived problem

At a meeting of the Planning, Finance & Community Committee (PFCC) on 28 November 2019 Council reviewed the Technical Report material (v3 December 2019) and issue and options report presented to them.

Council confirmed the concerns raised by the community about the increased use and types of recreational vehicles using the east coast after the 2016 Kaikōura earthquake. There are two issues:

1. Uncontrolled vehicle access to Marlborough's east coast is causing a danger to public safety and public enjoyment of the coast.
2. Uncontrolled vehicle access along Marlborough's east coast is damaging the environment, ecosystems and impacting the natural processes of recovery following the 2016 Kaikōura earthquake.

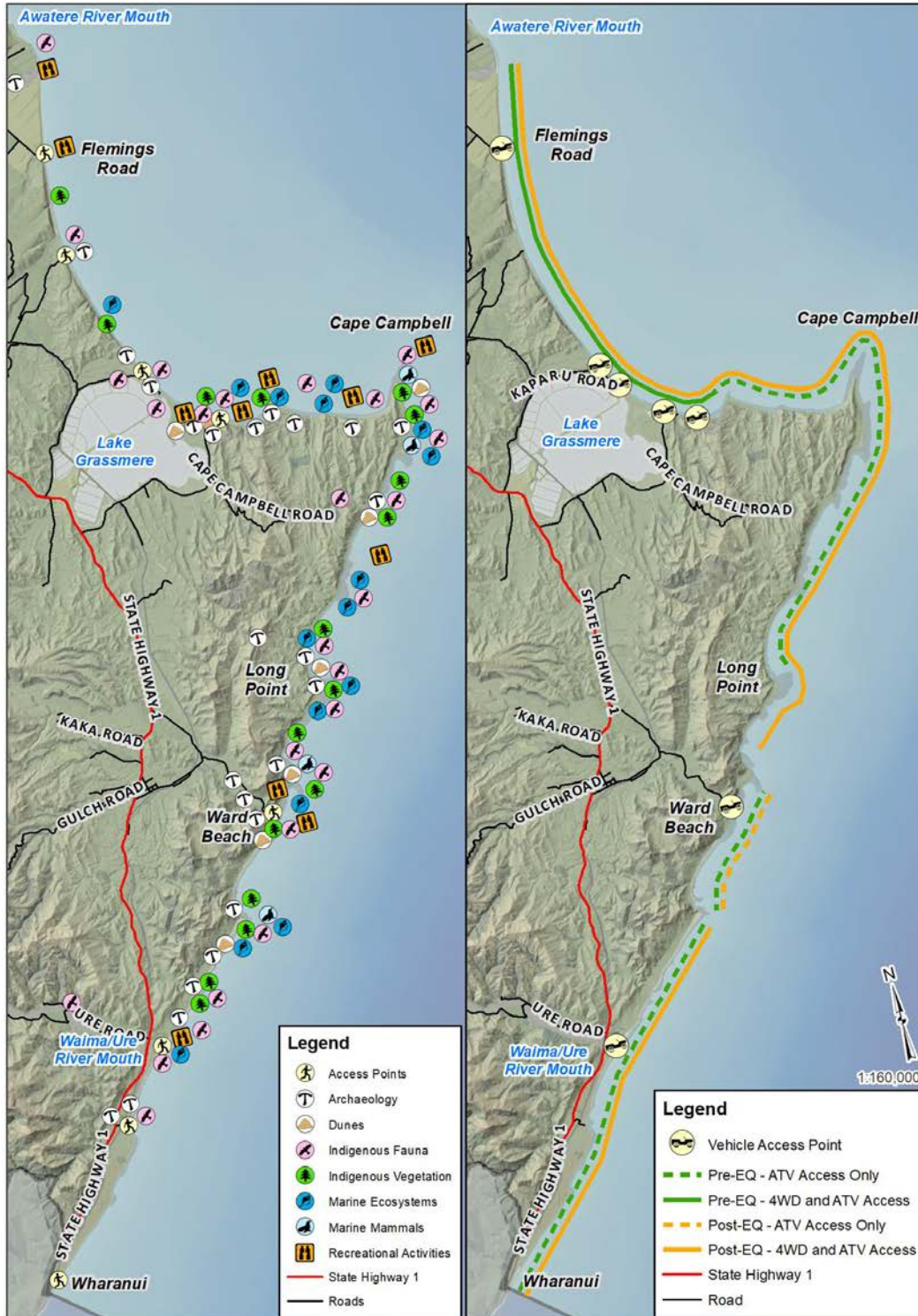
This is the perceived problem. Council felt compelled by the evidence presented that the earthquake has given the community an opportunity to assess the continued use and access to the east coast that preserves its uniqueness for future generations.

Council instructed staff to prepare a draft Bylaw as the preferred method to address the problem, to engage with iwi and undertake consultation with stakeholders including NZ Police, NZTA, DOC, Ministry for Primary Industries, adjoining landowners and commercial paua and ~~crayfish~~ ~~lobster~~ industries representatives.



# Map 1: Location of values compared with vehicle use on the east coast

Note: These are the indicative locations from the maps in the Appendices of the Technical Report (v54, July 2021).



## Consultation and feedback

Following the November 2019 PFCC meeting, discussions commenced with affected stakeholders during the preparation of a draft Bylaw to manage vehicles on Marlborough's east coast. The Technical Report (v3 December 2019), Issues and Options Paper and the agenda item from the PFCC on 28 November 2019 were used as a basis for discussion.

Letters were emailed to statutory bodies and representatives of the commercial paua and ~~lobster/crayfish~~ industries. Letters were also sent to landowners adjoining the focus area with an offer to meet as required in the 2020 New Year.

~~Ngāti Kuri are the tangata whenua who have manawhenua and manamoana in the area covered by the draft East Coast Beach Vehicle Bylaw. Manawhenua and manamoana are determined by whakapapa, and confer customary authority. The manawhenua and manamoana status of Ngāti Kuri comes from continuous land use and occupation. Te Rūnanga o Kaikōura is the modern assemblage and representative of the hapū, Ngāti Kuri, one of the 18 Papatipu Rūnanga of Ngāitahu who are statutorily acknowledged under the Te Rūnanga o Ngāi Tahu act 1996.~~

~~Te Rūnanga a Rangitāne o Wairau, Te Rūnanga o Toa Rangatira and Te Rūnanga o Ngāti Rārua have interests in the area.~~

~~The Mayor invited iwi to discuss whether they had any concerns or issues about the east coast environment.~~

~~Council has been engaging with iwi to understand their concerns or issues about the east coast environment.~~

Te Rūnanga o Kaikōura are supportive of an approach to prepare a draft Bylaw to prevent vehicle access to allow the coast to rest and recover following the earthquake. They are also keen to see protection and enhancement of the indigenous vegetation and fauna along the coast including their sites of significance identified in Appendix 1 of the Technical Report (v5.4 July~~ae~~ 2021).

Te Rūnanga a Rangitāne o Wairau advised Council that they disagreed with the approach of a full ban of vehicles to the east coast. The reasons given were:

- Limiting access to all vehicles except for those with low ground pressure (quad bikes).
- To protect archaeology, dune flora and birdlife, access should be limited below the high tide line (MWS) along the foreshore.
- There are issues with access to a customary fishery at Te Karaka.

No formal invited participation was made with the public or interested parties. Councillors felt they understood the concerns of the community enough to be able to notify a proposal using the special consultative process in the LGA.

The media coverage following the November 2019 meeting generated public interest in the preparation of a draft Bylaw. As a result Councillors agreed at a PFCC meeting on 19 March 2020 to accept feedback from interested parties.

The comments received from interested parties both supported and opposed Councils proposal to restrict vehicles through a Bylaw. The comments that disagreed with Councils approach had a common theme:

- Educate by erecting signs instead of banning vehicles.
- Vehicles with soft tyres (ATV, quad bikes) have minimal impact and driving below the MWS has no environmental impact.

The proposals received from members of the public asked for an alternative approach to be considered before a draft Bylaw was notified. This alternative is included in Section 4 of this Statement of Proposal.

Further engagement was required with iwi before a draft Bylaw could be presented to Council.

By the end of 2020 (the fourth anniversary of the earthquake) while progress was being made, Council was still not in a position to achieve notification of a proposal before December 2020. With another summer season looming and with that a likely increase in vehicle use along the east coast, at a Council meeting on 10 December 2020 Council established a sub-committee to advance commencement of the special consultative process of the LGA before Council reconvened in 2021. This was not achieved. Instead work continued on preparing the notification material and engaging with iwi.

A proposal, including a draft Bylaw is now ready for public consultation using the Special Consultative Procedure of the LGA. An updated version (v5.4, July~~ae~~ 2021) of the Technical Report is also being released with notification of this Statement of Proposal.

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**Council confirmed that there are two issues to be addressed. Firstly, the effect on public safety and enjoyment of the area and secondly the adverse effects to the values present on the east coast identified in the Technical Report.**

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### 3. Options/Alternatives

Having confirmed the perceived problem in November 2019, Council also considered the options and alternative methods that could be used to achieve the following outcomes:

- Continued use of this significant natural landscape today, in a way that restores and protects it for future generations.
- Access is retained for the public in some form.
- Access is retained for authorised agencies such as emergency and enforcement agencies and for Dominion Salt Ltd to be able to lawfully carry out its activity.
- Provision for continued boat launching at Marfells Beach and Ward Beach.
- Provide protection of sites of significance, threatened indigenous vegetation and fauna species along the coast in balance with recreational and commercial uses.
- The natural processes of recovery from the effects of the Kaikōura earthquake can occur unobstructed by human activities.
- Public safety is ensured.
- Noise nuisance is managed.
- Ensure enforcement is practical and achievable.

Under the LGA, Council is required to consider whether a Bylaw is the most appropriate way of addressing the perceived problem. Council has considered the following options/alternatives. These were presented to the PFCC meeting in an issues and options report in November 2019:

1. Do nothing; leaving unrestricted vehicle access.
2. Use voluntary methods and actions to influence and change behaviour.
3. Use physical methods to stop access to all or parts of the east coast some or all of the time.
4. Stopping the unformed legal road under section 342 and Schedule 10 of the Local Government Act 1974.
5. Add zone rules to the Proposed Marlborough Environment Plan to give effect to existing policies under the Resource Management Act 1991 and the New Zealand Coastal Policy Statement 2010.
6. Make a Bylaw under the Land Transport Act 1998 (LTA) and the Local Government Act 2002 (LGA).

An analysis of these options including the advantages and disadvantages for each option follows.

#### Option 1: Do nothing, leaving unrestricted vehicle access.

Doing nothing would let the status quo prevail. Vehicle users would have no restrictions on access to and along the coast. There are currently no speed restrictions in place for vehicles or restrictions on where they can travel. Vehicle tracks are evidence that users are travelling on different routes including habitats of indigenous vegetation and fauna as well as on dunes. Instead of implementing new regulatory method(s), agencies could place more emphasis on enforcement of existing legislation to act on offences under the Wildlife Act 1953.

##### Advantages

The interest of vehicle users, including long standing users is preserved.

More of the east coast is accessible by users.

Public access is enhanced/promoted.

Public can continue to enjoy the entire coast.

Users can access new fishing and shellfish gathering opportunities that were previously restricted by tides.

There is more beach to drive on.

Commercial activities are not impacted.

Access remains the same for emergency and enforcement agencies.

Successful prosecution of an offence under existing legislation might change the behaviour of coast users.

##### Disadvantages

Does not recognise and provide for preservation of the natural character of the coastal environment or the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna under section 6 of the Resource Management Act 1991 (RMA).

This option is inconsistent with the NZCPS and PMEP as it allows vehicle access in areas that have the values that Policy 20 (see below) provides should be protected.

Continued use of vehicles may damage sites of significance to tangata whenua [sections 6e and 8 RMA].

Dunes or other ecological systems or processes on the coast are still at risk from damage.

Vehicles can access parts of the coast that were previously inaccessible (e.g. south of Long Point).

More vehicles, more of the time, mean more stressors to the values identified in the Technical Report (v54, July 2021).

Vehicles are likely to harm indigenous vegetation and fauna, particularly in the new accessible parts of the coast between Mussel Point and Chancet Rock.

Vehicles disturb the peaceful enjoyment of the coast by other users.

Public safety will be compromised by sharing the coast with more and larger vehicles.

Recovery of the environment post-earthquake will be hampered or altered.

Prosecution under existing legislation is not common. This process takes a lot of time and resources.

Council does not consider that Option 1 will address the perceived problem.

## Option 2: Use voluntary methods and actions to influence and change behaviour.

Over the last four years, efforts of volunteers to educate beach users, while helpful, puts them at risk because there is no formal regulation in place. These efforts do not appear to be influencing the behaviour of some users.

Used alone, signs and education are voluntary methods. There are some existing signs in place to provide information and encourage behaviours that are intended to increase the awareness and presence of the indigenous vegetation, fauna and mammals in the area and of expected behaviours.

There is an existing sign on the beach north of the carpark at Ward Beach, erected by The Flaxbourne Settlers Association encouraging walkers only. This voluntary protection measure has been largely respected; however the sign did disappear during the 2017/18 summer.

Recreational Access with Education (RAwE), a group of beach users who use ATV (quad bikes) on the coast, have asked users to sign up to a code of practice along with the placement of signs and logs and/or driftwood to direct vehicles to travel on certain parts of the beach.

### Advantages

The interest of vehicle users, including long standing users is preserved.

More of the east coast is accessible by all users.

Public access is enhanced/promoted.

Public can continue to enjoy the coast.

Users can access new fishing opportunities that were previously restricted by tides.

There is more beach to drive on.

Commercial activities are not impacted.

Access remains the same for emergency and enforcement agencies.

Signs can reinforce regulatory methods such as a Bylaw.

### Disadvantages

Status quo prevails unless new signs and educational material are prepared that encourages behaviour that protects archaeological sites, indigenous vegetation and fauna. The messaging on the signs would be based on voluntary actions. The success of this method is based on users following the suggested behaviours.

Does not recognise and provide for preservation of the natural character of the coastal environment or the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna under section 6 of the Resource Management Act 1991 (RMA).

This option is inconsistent with the NZCPS and PMP as it allows vehicle access in areas that have the values that Policy 20 (see below) provides should be protected.

Continued use of vehicles may damage sites of significance to tangata whenua [sections 6e and 8 RMA].

Signs can be vandalised or removed.

Signing up to a code of practice may not include all users. Other Council's use a permit system which can be costly to implement and administer. User pays would be a way to recover costs. Compliance and enforcement processes required.

Does not prevent damage to dune or other ecological systems or processes on the coast if messaging ignored.

Vehicles can access parts of the coast that were previously inaccessible.

More vehicles, more of the time mean more stressors to the values identified in the Technical Report (v54, July~~ae~~ 2021).

Vehicles are likely to harm indigenous flora and fauna, particularly in the new accessible parts of the coast.

Vehicles disturb the peaceful enjoyment of the coast by other users.

Public safety will be compromised by sharing the coast with more and larger vehicles.

Recovery of the environment post-earthquake will be hampered or altered.

Council is not convinced that education by using signs or other methods will be sufficient on their own to change the behaviour of all vehicle users since the earthquake to reduce or eliminate the damage being caused. Signs and education are complementary methods that could be used alongside Option 6, make a Bylaw.

Asking users to sign up to a voluntary code of practice is seen as problematic by Council as there is no guarantee that all users would abide by the code. It is also not clear at present who would administer a code of practice. An agency such as Council could establish a formal process such as a permit system to register users. There would be a cost to users/ratepayers to implement and maintain such a service, along with enforcement costs. Compliance would most likely be self-regulating. There is uncertainty that the perceived problem would be fully addressed using this method.

### Option 3: Use physical methods to stop access to all or parts of the east coast some or all of the time.

Physical methods could include fencing, gates or bollards (rocks/boulders would be preferable to concrete blocks). The legal basis to install barriers to stop access is unclear at present. It may not be practical to prevent access at some of the access points.

#### Advantages

Active monitoring may not be required.

Can work in tandem with other methods.

#### Disadvantages

Maybe limited ability to constrain access at some of the access points due to coastal processes and tides e.g. at Waima (Ure) River Mouth, or preventing access north and south of access points where access is allowed for boat launching (Marfells Beach and Ward Beach).

The material or method chosen may impact negatively on the naturalness of the environment.

Option 3 is a complementary method that could be used alongside Option 6, make a Bylaw.

### Option 4: Stopping the Unformed Legal Road under the Local Government Act 1974.

A further option could be to stop the unformed legal road along the coast under the Local Government Act 1974. The paper road remains where mapped even after the uplift.

Much of the legal road is unformed, is inaccessible and not in the area of most concern (where the greatest values are). Driving and even walking along the unformed legal road may not always be physically possible. For example, vehicles cannot drive around Chancet Rock or south of Cape Campbell/Te Karaka despite there being legal road.

There are gaps in the road, between the Awatere River Mouth and about 2 km south of Flemings Road; and the northern end of Marfells Beach to about 1.5 km beyond Mussel Point.

Roads are regulated under the Local Government Act 1974 and the Land Transport Act 1998. Simply

regulating the use of the road or stopping the road may not be completely effective to control vehicle access.

#### Advantages

Bespoke regulatory process for stopping the road.

#### Disadvantages

The unformed legal road is not contiguous along the coast.

Objections to the road stopping are heard by the Environment Court.

Can be a lengthy and complicated process. More efficient to regulate using a Bylaw.

The process to stop a road is an involved process and may be heard by the Environment Court. Relevant factors include the public interest in the road weighed against the merits of stopping the road. This can be an inefficient process.

### Option 5: Add zone rules to the Proposed Marlborough Environment Plan (PMEP) to control behaviour on the beach.

Matters of national importance in section 6(a) and 6(c) of the Resource Management Act 1991 (RMA) require the Council to recognise and provide for the preservation of the natural character of the coastal environment, wetlands, lakes, rivers and their margins, and the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. These matters help to protect biodiversity as important components of Marlborough's natural heritage. Council is also required under section 6(d) of the RMA to recognise and provide for the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers.

Further, section 6(e) requires Council to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga. In addition in achieving the purpose of the RMA, all persons exercising functions and powers under it in relation to protection of natural and physical resources shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) [section 8 of Part 2].

Sections 6(a) and 6(c) RMA appear at odds with section 6(d) RMA. The New Zealand Coastal Policy Statement (NZCPS) and our own Proposed Marlborough Environment Plan (PMEP) objectives and policies help to resolve that conflict.

The NZCPS is a national direction made by central government under the RMA. Council has to take it into account in developing its resource management plans. The purpose of the NZCPS is to state the objectives and policies to achieve the sustainable management of the natural and physical resources of the coastal environment.

### Policy 20 NZCPS Vehicle access

1. Control use of vehicles, apart from emergency vehicles, on beaches, foreshore, seabed and adjacent public land where:
  - (a) damage to dune or other geological systems and processes; or
  - (b) harm to ecological systems or to indigenous flora and fauna, for example marine mammal and bird habitats or breeding areas and shellfish beds; or
  - (c) danger to other beach users; or
  - (d) disturbance of the peaceful enjoyment of the beach environment;
  - (e) damage to historic heritage; or
  - (f) damage to sites of significance to tangata whenua; might result.
2. Identify the locations where vehicular access is required for boat launching, or as the only practicable means of access to private property or public facilities, or for the operation of existing commercial activities, and make appropriate provision for such access.
3. Identify any areas where and times when recreational vehicular use on beaches, foreshore and seabed may be permitted, with or without restriction as to the type of vehicle, without a likelihood of any of (1)(a) to (g) occurring.

A further NZCPS policy may assist in areas where there is insufficient data or information to quantify the risks posed.

### Policy 3 NZCPS Precautionary approach

1. Adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.

The PMEP was notified in June 2016 prior to the earthquake. The following objectives and policies included in the notified plan are relevant in addressing the perceived problem:

#### **Objective 9.2 – Identification of circumstances when public access to and along the coast and the margins of lakes and rivers can be restricted.**

*Policy 9.2.1 – Public access to and along the coastal marine area and the margins of lakes and rivers may be restricted to:*

- a) *Ensure a level of security consistent with the purpose of a resource consent or designation;*
- b) *Protect areas of significant indigenous vegetation and/or significant habitats of indigenous fauna;*

*c) Protect cultural values of Marlborough's tangata whenua iwi;*

*d) Allow for foot access only;*

*e) Protect public health and safety and animal welfare and to manage fire risk;*

*f) Protect heritage, natural or cultural values; and*

*g) In other exceptional circumstances sufficient to justify the restriction, notwithstanding the national importance of maintaining that access.*

*Policy 9.4.3 – Ensure the recreational activities that use river and coastal margins do not create significant adverse effects such as diminished natural value or increased bank instability.*

A method in the Plan to implement these policies says that Council will liaise with the Department of Conservation to identify areas along Marlborough's coastline where the use of vehicles on the foreshore and seabed is not appropriate. Council has through this process to make a Bylaw engaged with DOC over the provisions of the draft Bylaw to give effect to this policy.

#### **Objective 8.1 – Marlborough's remaining indigenous biodiversity in terrestrial, freshwater and coast environments is protected. [Provision appealed].**

This objective helps to protect indigenous biodiversity as an important component of Marlborough's natural heritage and gives recognition to central government's 'statement of national priorities' for protecting rare and threatened indigenous biodiversity on private land (June 2007). One of the four national priorities, signals the importance of sand dunes.

#### **National Priority 2:**

*To protect indigenous vegetation associated with sand dunes and wetlands; ecosystem types that have become uncommon due to human activity.*

Dunes are recognised in New Zealand as Naturally Uncommon Ecosystems as many have been lost or modified due to development and cultivation. The Cape Campbell dunes have escaped development other than for farming, by reason of their remoteness, and as a result, they still hold important populations of indigenous species.

#### **Objective 13.3 – Recreation continues to make a significant contribution to people's health and wellbeing and to Marlborough's tourism industry, whilst avoiding adverse effects on the environment.**

*Policy 13.3.3 – Ensure that the use of recreational vessels and vehicles does not create a public nuisance, compromise the health and safety of other users or result in adverse effects on the coastal environment.*

While recreational activity is generally to be encouraged, the use of recreational vessels and vehicles can, by virtue of their speed, noise or associated discharges, become a public nuisance and inappropriate use may pose a risk to both public health and safety and the environment. For recreational vehicles onshore, it may be necessary to prevent their use in some locations, particularly to minimise risks to public health and safety, physical damage to the foreshore area, damage to intertidal areas, direct damage to indigenous flora and/or harm or disturbance of wildlife.

#### Advantages

Consistency with local planning.

Other regional councils use this option.

The advantages under Option 6 would also be advantages under this option.

#### Disadvantages

The plan change/variation process under the RMA is more complicated and generally takes longer compared to the special consultative process under the LGA.

Timing. Appeals to the PMEP are currently being mediated. Council's focus is on resolving the appeals to the PMEP. A variation or plan change is not Council's priority until this process is complete.

The PMEP contains policies and objectives that reflect the outcomes desired from regulating vehicles on Marlborough's east coast. Some regional councils have included zone rules within their environment plans to control vehicles on beaches. There are examples of territorial authorities using a Bylaw to achieve the same outcome. As a unitary authority, Council considers that making a Bylaw is preferable to adding zone rules to the PMEP via a plan variation or plan change.

### Option 6: Make a Bylaw.

Council has the power to make Bylaws regulating the use of vehicles on beaches and unformed legal roads under the LTA. The LTA covers the majority of the land that is defined as "beach" except on private or DOC controlled land [s22AB(1)(f) LTA]. The unformed legal road can be controlled using a different provision of the LTA [s22AB(1)(g) LTA] for the purpose of protecting the environment, the road and adjoining land, and the safety of the road users.

A Bylaw promulgated under the LTA can also prohibit or restrict, absolutely or conditionally, any specified class of traffic (whether heavy traffic or not), or any specified vehicles or class of vehicle that, by reason of its size or nature or the nature of the goods carried, is unsuitable for use on any road or roads [section 22AB(1)(c)]

#### Advantages

A Bylaw promulgated under the LTA can prohibit or restrict the use of vehicles on beaches [section 22AB(1)(f)] and restrict the use of vehicles on unformed legal roads for the purposes of protecting the environment, the road and adjoining land, and the safety of users [section 22AB(1)(g)].

The making of a Bylaw recognises and provides for the preservation of the natural character of the coastal environment or the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna under section 6 RMA. It is easier to maintain values than try to reintroduce them at a later time.

A Bylaw, if made, would be consistent with the NZCPS and PMEP as it prevents vehicle access in areas that have value that Policy 20 NZCPS provides should be protected.

Sites of significance to tangata whenua would be protected [sections 6(e) and 8 RMA].

Shorter timeframe to process compared to a plan change or variation.

Using a separate process from the PMEP or reviewing Council's existing Speed Limit Bylaw allows the community to focus on the perceived problem in a specific location.

#### Disadvantages

There is no definition of beach in the LTA or relevant legislation or case law which makes it important to carefully define the area the Bylaw will apply to.

There is private land and DOC administered conservation areas and reserves along the coast that Council does not control.

Commercial activities may be affected.

Long standing users that were using vehicles to access fishing and diving spots will be impacted by a change in management of vehicles.

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**For the reasons stated,  
making a Bylaw, Option  
6 is more appropriate  
than Options 1-5.  
Options 2 and 3 could be  
complementary options  
used with Option 6.**

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## 4. Preparation of a draft Bylaw

Under the LGA, once 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 the most appropriate form of Bylaw. This section sets out the options to determine the extent of the restrictions necessary to address the perceived problem. The analysis to determine the most appropriate Bylaw includes an assessment of the following:

1. Scope of Bylaw – where it will apply.
2. Vehicle types.
3. Speed limits.
4. Nominating a route.
5. Restrictions on when vehicles can travel.
6. Exemptions.
7. Offences.
8. Enforcement.
9. New Zealand Bill of Rights Act 1990 (NZBORA).

### 1. Scope of Bylaw

A Bylaw can only apply to land controlled by Council. Council has the power to make Bylaws regulating the use of vehicles on beaches and unformed legal roads. The LTA covers the majority of the land that is defined as “beach” except where it is private or DOC controlled land (s22AB(1)(f)). The unformed legal road is authorised using a different provision of the LTA (s22AB(1)(g)).

A beach is normally defined as the area between mean low water springs (MLWS) and mean high water springs (MHWS). It has a moveable boundary, meaning if the high tide mark moves (as has happened as a result of the Kaikoura earthquake), the beach moves. There is no definition of beach in the LTA. Council has relied on the dictionary definition of beach and definitions used in other Bylaws throughout New Zealand. The definition of beach in the draft Bylaw includes land below MHWS and that land above MHWS that would ordinarily be considered beach including dunes. The Land Transport Act 1998 includes beaches in its definition of a road so all the normal road rules apply to beaches.

There is a legal road along much of the coast which has not been formed. A legal road is a surveyed area whose boundaries do not move if the land shifts (as happened as a result of the Kaikoura earthquake) or more commonly due to erosion and accretion. Legal Road adjoining the coast includes; Flemings Road,

Salt Works Road, Marfells Beach, Ward Beach Road, Wharanui Road. Council manages both the formed and unformed legal road.

The balance of the land is the area between the pre-earthquake high tide and the post-earthquake high tide. It is Crown Land administered by LINZ. The Kaikōura earthquake occurred after the notification of the PMEPP in June 2016. The zoning of land in the PMEPP and the extent of the coastal marine zone therefore reflected the geography of the land pre earthquake. As a result of the consequent uplift, land that was previously below MHWS is now above MHWS. The coastal marine zone in the PMEPP reflects the coastal marine area as defined under the RMA. The coastal marine area starts at MHWS. Public access to the coast is provided for by the [Marine and Coastal Area \(-Takutai Moana\) Act 2011](#). Council needs to establish the extent of land above MHWS by comparing aerial photography and the PMEPP zoning maps from Council's Smart Maps. Aerial photography and resurvey is required to redefine the boundary between the coastal marine zone and adjoining land. No formal decision has been made on the nature of the zoning of the ex-coastal marine zone that is now land. However, the majority of Crown or Council land immediately adjoining the coastal marine zone is zoned Open Space 3, so there is some merit to extending the Open Space 3 Zone. The change in zoning is scheduled to occur by way of notified variation. The variation must first be approved by the Planning, Finance and Community Committee of Council.

At the Technical Advice Workshop the focus was on the area from the Awatere River to the Waima (Ure) River on the basis that this area is known by Council, DOC, Forest and Bird, scientists, landowners and others to have the highest values on the east coast. These values are described in detail in the Technical Report (v54, July 2021) and shown on Map 1 in this proposal.

[Part of the Clifford and Cloudy Bay Marine Mammal Sanctuary is located between the Awatere River mouth and Cape Campbell. The Marine Mammal Sanctuary is administered by DOC under the Marine Mammals Protection Act 1978 and its landward boundary is MHWS along the coast. However, the foreshore of the Marine Mammal Sanctuary remains part of the common marine and coastal area \(under the Marine and Coastal Area \(Takutai Moana\) Act 2011 and so is able to be controlled by Council under the Land Transport Act 1998.](#)

There are eight access points at road ends adjoining the east coast (two are pedestrian only at Cable Station Road and Tirohanga Stream). These are shown on Map 1 and in more detail in Appendix 6 in the Technical Report (v54, July 2021). Entering at any one of the six vehicle access points provides access to the focus area. An assessment of the access points is provided in the Issues and Options paper presented to the PFCC in November 2019.



The land along the east coast not controlled by Council is either private land or DOC administered land. Lighthouse Road is on private land adjoining the coast. Permission from the landowner is required to use this road.

DOC administered land includes:

- Lake Grassmere/Kapara Te Hau Wildlife Refuge;
- Blind River Recreation Reserve;
- Marfells Beach Recreation Reserve;
- Muritai Scientific Reserve;
- Chancet Rock Scientific Reserve; and
- Conservation areas (Grassmere Beach, Flemings Road Seddon, Waima River and Waima Hills) and marginal strip at Waima River.

DOC administered land is shown on the maps in Schedule 1. The Bylaw does not apply to this land.

~~DOC has confirmed it supports the draft Bylaw applying to that part of land within the Clifford and Cloudy Bay Marine Mammal Sanctuary between MHWS and MLWS between the Awatere River and Cape Campbell.~~

Options:

- Manage vehicles on the beach and unformed legal road between the Awatere River and Waima (Ure) River on the East Coast i.e. the same scope as the Technical Advice Workshop.
- Manage vehicles on the beach and unformed legal road between the Awatere River (Flemings Road) to the District Boundary to include all access points along the coast.
- Manage vehicles in a reduced area such as Cape Campbell to the Waima (Ure) River.

The area to be covered by the draft Bylaw takes into account the beach and unformed legal road controlled by Council between all eight access points from the Awatere River mouth in the north and the District Boundary to the south, noting that vehicle access is not possible at Cable Station Road (pedestrian access is over private land) or Tirohanga Stream (fenced and gated from SH1). Vehicle movement can be difficult across the Waima (Ure) River and Flaxbourne River and is difficult if not impossible at Needles Point and Chancet Rock.

## 2. Vehicle types

The use of the east coast by ATV's has slowly increased since the 1980's in conjunction with more people owning this type of vehicle. Prior to November 2016, this activity was restricted to up to two hours either side of low tide. More recently, following the uplift caused by the 2016 Kaikōura earthquake, ATV's are now joined by larger 4WD vehicles in increasing numbers and at virtually all tide levels.

Quad bikes (ATV's) are the most common type of vehicle used on the coast for recreation and access to fishing and diving spots. The most popular access points are Marfells Beach, Ward Beach, Waima (Ure) River and Wharanui. There is also evidence from drone footage of the coast that vehicles travel in the dunes all along the coast.

Based on the types of vehicles known to be using the coast, Council determined that the definition of motor vehicle in the LTA would be suitable to use as a definition of motor vehicle in a draft Bylaw.

There is no recorded baseline information on the numbers and types of vehicles using the coast before the earthquake. Anecdotal information from DOC and users of the coast indicates that the number of vehicles is increasing. ECPG have gathered some information about users and vehicle numbers. These are reported in the Technical Report at section 4.7.2.1.

It is unknown whether there is a cumulative impact from more of one type of vehicle using the coastal environment more of the time.

Council's power includes the ability to distinguish between different classes of traffic ~~[(s22AB(2))]~~ so that a Bylaw could prohibit heavier vehicles and allow access to other vehicle types. This could mean restricting or prohibiting 4WD/SUV vehicles and motorbikes from using the area and allowing users of ATV's continued access.

Options:

- Prohibit all types of vehicles.
- Exempt vehicles with soft tyres eg ATV/quad bikes (a definition would be required).

~~Based on the literature review undertaken about the impacts of vehicles on beaches, the draft Bylaw proposes to prohibit all vehicle types.~~

## 3. Speed limits

Vehicles are often driving relatively fast and they do not follow the same routes. This makes it dangerous for other beach users.

Beach users are at risk from vehicles using the beach as a road, particularly at Marfells Beach to Cape Campbell including Mussel Point, Clifford Bay Beach and between Wharanui and Ward Beach.

The most contentious areas are at Marfells Beach, a setting off point to Cape Campbell, Ward Beach, a setting off point to Chancet Rock to the north and Needles Point to the south and between Wharanui and the Waima (Ure) River. Launching and retrieving of vessels takes place at all three sites.

Under section 22AB(d) of the Land Transport Act 1998, a road controlling authority, can set speed limits on any road for the safety of the public. The setting of speed limits is managed for Council by NZTA, through Marlborough Roads. Council sets speed limits through a Speed Limit Bylaw 2014 (recently amended

in February 2021). A speed limit for beaches could be set in that Bylaw, however for completeness it would be sensible if a speed limit was introduced for the east coast beaches to include it in the draft Bylaw. Promotion of reduced speed would assist in providing a safer environment for other users of the coast (walkers, beach users, horse riders). A common speed limit in other Bylaws is 30 km/hr.

Options:

- Status quo – no speed limit.
- Set a speed limit of 30km/hr

The draft Bylaw proposes to allow vehicles continued access between the Waima (Ure) River and the District Boundary (excluding dunes) with the introduction of a speed limit to make the beach a safer environment where it is shared with other beach users.

#### 4. Nominate a route

The area where vehicles are currently driving along the coast is much wider than the unformed legal road (visually there are tracks all over the beach). When vehicles travel above the MHWS they pose a threat to indigenous vegetation and fauna. The impact of vehicles using the coast is threatening the vestiges of native plants that remain, by crushing and killing plants. Continual disturbance of the new raised areas will impede or halt natural colonisation processes. There is obvious sign of vehicles damaging spinifex runners and New Zealand daphne on Marlborough's east coast.

Volunteers have been moving driftwood to encourage vehicle users to keep to a track away from these areas. Relocation of driftwood, while well-meaning disrupts habitat for indigenous fauna and is proving unsuccessful in keeping users to a designated route.

A traffic Bylaw can prescribe a route for all or specified classes of traffic. This could be below the MHWS or some other nominated route along the coast, e.g. a well-used existing track or unformed legal road. There is uncertainty that if the Bylaw nominates a route for vehicles to travel, that users would comply with this requirement. Compared to previously, the shoulder from the high to low tide mark is now soft pea shingle meaning vehicles are travelling higher up the beach. In addition, if the route is below MHWS, during swell events or getting caught out by tides, if vehicles are allowed continued use of the coast in a vehicle, they will inevitably end up driving above MHWS.

Options:

- Prohibit access to all land controlled by Council between the Awatere River and Waima (Ure) River.
- Nominate a route for vehicles to travel where there is no impact to marine ecosystems, mammals or threatened or at risk vegetation and fauna. A nominated route should take into account the following (but not be limited to):

Provide protection for threatened and at risk vegetation identified in Appendix 2 of the Technical Report (v54, July 2021), particularly at Mussel Point, Canterbury Gully and Needles Point (Sections 2.6.1 and 3.4.1.2 of the Technical Report (v54, July 2021)).

Provide protection for the fauna species identified in Appendix 3 of the Technical Report (v54, July 2021) including their nesting, roosting and feeding sites (Sections 2.6.1.3 and 2.6.2.1 and 3.4.1.3 and 3.4.2.3 of the Technical Report v54, July 2021).

The whole coast is one ecosystem for birds. Colonies are mobile. Cape Campbell, Long Point and north of the Waima (Ure) are important summer sites. Lake Grassmere/Kapara Te Hau, Cape Campbell, Awatere River and Waima(Ure) river mouths are important sites during winter.

Caspian terns, black fronted terns and South Island pied oystercatchers roost and congregate on the coastal platforms and exposed reefs outside the breeding season.

A nominated route should not include dunes (Sections 2.6.1.1 and 3.4.1.1 Technical Report v54, July 2021), reef ecosystems (Section 2.6.2 and 3.4.2 Technical Report v54, July 2021) or old or establishing driftwood zones (Section 3.4.1.3 – reptiles and invertebrates, Technical Report v54, July 2021).

Based on the identification and location of the values identified in the Technical Report, it has proven a difficult task to identify where a suitable route would be on the coast.

#### 5. Restrictions on when vehicles can travel

Prior to the 2016 Kaikōura earthquake, high tide prevented people from walking or driving along the foot of the bluffs from Mussel Point to Cape Campbell. Rocky headlands and high tides prevented all vehicles other than ATVs from using the beach between Mussel Point and Long Point (about 11km south of Cape Campbell). Access was not possible for any vehicle between Long Point and Chancet Rock. At Cape Campbell vehicle access is on formed private roads through farmland with the owner's permission. Following the earthquake, the high tide mark has shifted down the beach. Where people were only able to travel through in a vehicle up to two hours either side of high tide they can now travel through at any time.

An option could be to restrict the area vehicles can access to the area that was available before the earthquake. The difficulty is how that could be achieved. Without the natural barriers of tides and rocky outcrops, can these realistically be replaced with physical barriers or compliance with signs? Without these measures in place enforcement will be a challenge, particularly in the remote parts of the Coast.

Options:

- Restrict vehicles all of the time.
- Restrict access while the natural processes of recovery take place, including new driftwood zones establishing, marine ecosystems recovering and dunes and vegetation re-establishing.
- Apply restrictions at sensitive times such as nesting/breeding seasons for fauna and mammals and or when birds are migrating. The key times would be:

In spring, wrybills travelling south from Thames to South Island riverbeds stop to rest and feed, then return late summer and winter.

In spring to autumn, godwits and turnstones (international migrators) rest and feed along the coast.

During winter at Lake Grassmere/Kapara Te Hau, Awatere River and Waima (Ure) River mouths for gulls and terns breeding and roosting.

August to January, south of Cape Campbell, Long Point, Ward Beach to Waima (Ure) River banded dotterels and variable oystercatchers are nesting and breeding.

At the end of December through summer is when you are most likely to find breeding rookeries of seals at Cape Campbell, Chancet Rock and Needles Point.

Pregnant female elephant seals arrive in September and October giving birth to pups shortly after coming ashore at Cape Campbell. The females depart 23 days or so later returning after 70 days. The pups go to sea to feed after 50 days.

The key times to restrict vehicle access coincide with the most likely periods that vehicle users access the coast for recreation purposes and to visit fishing and diving spots using their vehicles.

## 6. Exemptions

Boat launching currently occurs at Marfells Beach and Ward Beach for commercial and recreational activities. This activity is provided for in the draft Bylaw to offset the new restrictions.

Authorised agencies including Marlborough District Council, New Zealand Police, Fire and Emergency New Zealand, any Emergency Ambulance Service, Department of Conservation, any Central Government Department or Ministry, the National Institute of Water and Atmospheric Research require continued access to be able to carry out their duties.

Dominion Salt Ltd has an intake structure (jetty) adjacent to their business at Lake Grassmere/Te Hau. This activity is authorised through resource consent. For avoidance of doubt their access can be provided for in the draft Bylaw.

## 7. Offences

Under Schedule 1 of the Land Transport (Offences and Penalties) Regulations 1999, contravention of a Bylaw made under s 22AB LTA (without reasonable excuse) is an offence with an infringement fee of \$150 for an individual, and a maximum penalty of \$1000 on conviction for an individual.

Options:

- Infringement fee of \$150.
- Conviction – Maximum \$1000.

## 8. Enforcement

Under s113 LTA an enforcement officer may enforce any Bylaws made under the LTA. An “enforcement officer” can be a constable, other Police officer authorised by the Commissioner of Police, or a person in that office. Council enforcement officers who have been by appointed by warrant or hold that office can also enforce Bylaws made under the LTA.

Signs and /or installation of physical methods could be installed to give effect to a Bylaw if made and to assist with enforcement of the requirements.

Options:

- Enforcement by the NZ Police.
- Enforcement by Council enforcement officer(s) warranted under s208 LTA.
- Self-regulating – complaint based.
- Installation of physical barriers and signs.

All of the above options can be used to enforce the draft Bylaw.

## 9. New Zealand Bill of Rights Act 1990 (NZBORA)

Council is required to determine whether the Bylaw gives rise to any implications under the NZBORA. Everyone lawfully in New Zealand has the right to freedom of movement in New Zealand under section 18 of the NZBORA 1990.

The draft Bylaw will restrict vehicle movements between the Awatere River and the Waima (Ure) River. Access and movement is retained for all other users along the same part of the coast. Vehicle use needs to be controlled to stop the damage to threatened and at risk vegetation and fauna species, habitats and ecosystems present along the coast, to protect sites of significance to iwi and allow the natural processes of recovery to occur to preserve the coastal environment.

Access to customary fishing at Cape Campbell/Te Karaka by Te Rūnanga a Rangitane o Wairau remains but access using ATV vehicles is not an option under the draft Bylaw.

The NZBORA 1990 is satisfied as any limitation on the section 18 right is justified due to the damage from vehicles demonstrated in this Statement of Proposal and Technical Report (v54, July~~ae~~ 2021).

## 10. Conclusion

Section 155 LGA requires Council to determine whether a bylaw is appropriate. Council has determined that a bylaw is the most appropriate way of addressing the perceived problem. It also must determine that the draft bylaw in Section 5 below is the most appropriate form of bylaw in these circumstances and that it does not give rise to any implications under the NZBORA. It is the most appropriate form of bylaw as it:

1. Gives priority to the most vulnerable beach users, such as children and other people using the coast on foot.
2. Protects sites of significance to tangata whenua.
3. Prevents vehicle access over dune systems and driftwood zones.
4. Protects indigenous vegetation from damage and disturbance to indigenous fauna. Particularly at Mussel Point and Canterbury Gully (the vegetation is struggling to re-establish) that are significant natural areas with heightened ecological importance and Needles Point.
5. Allows the natural processes of recovery following the earthquake to occur, including colonisation of plants and the creation of new habitats.

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The draft Bylaw attempts to resolve identified public safety concerns and protection of the east coast environment and ecosystems.

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## 5. Draft Bylaw

### Marlborough District Council East Coast Beach Vehicle Bylaw [Insert Year]

This Bylaw is made under sections 22AB(1)(d), 22AB(1)(f) and 22AB(1)(g) of the Land Transport Act 1998. The Local Government Act 2002 applies to this Bylaw.

#### 1. Title

This Bylaw is the Marlborough District Council East Coast Beach Vehicle Bylaw [year].

#### 2. Commencement

This Bylaw comes into force on [date].

#### 3. Application

This Bylaw applies within the Marlborough District.

#### 4. Purpose

The purpose of this Bylaw is to—

- (a) protect the environment;
- (b) allow the environment to recover from the effects of the Kaikōura earthquake in 2016;
- (c) protect and preserve sites of significance to tangata whenua;
- (d) protect and preserve historic heritage;
- (e) protect, promote and maintain public health and safety; and
- (f) protect the public from nuisance.

By regulating the use of motor vehicles on Beaches in the Marlborough District.

### Part 1 Interpretation

#### 5. Definitions

In this Bylaw, unless the context requires otherwise,—

**Authorised agency** means Marlborough District Council, New Zealand Police, Fire and Emergency New Zealand, any Emergency Ambulance Service, Department of Conservation, any Central Government Department or Ministry, the National Institute of Water and Atmospheric Research and any surf lifesaving club registered with Surf Life Saving NZ:

**Beach** means the foreshore being any area covered and uncovered by the ebb and flow of the tide, and any adjacent area which can reasonably be considered part of the beach environment including areas of sand, pebbles, shingle, dunes or coastal vegetation or the confluence of any river, but does not include any private property or land administered by the Department of Conservation. The definition of “beach” is not relevant where a Bylaw made under any provision aside from sections 22AB(1)(d) and s22AB(1)(f) Land Transport Act 1998.

**Council** means the Marlborough District Council or any officer authorised to exercise the authority of Council:

**Dune** means any natural hill, mound or ridge of sediment, or any series of such, landward of a coastal beach or on the border of a large lake or river valley that is deposited by wind action or storm over wash, and sediment deposited by artificial means and serving the purpose of storm damage prevention or flood control and includes three metres of the beach immediately adjacent to the toe of the dune, but does not include any private property or any land administered by the Department of Conservation:

**Motor Vehicle** has the same meaning as in section 2(1) of the Land Transport Act 1998.

At the time of commencement of this Bylaw, motor vehicle —

- (a) means a vehicle drawn or propelled by mechanical power; and
- (b) includes a trailer; but
- (c) does not include—

- (i) a vehicle running on rails; or
- (ii) repealed; or
- (iii) a trailer (other than a trailer designed solely for the carriage of goods) that is designed and used exclusively as part of the armament of the New Zealand Defence Force; or
- (iv) a trailer running on 1 wheel and designed exclusively as a speed measuring device or for testing the wear of vehicle tyres; or
- (v) A vehicle designed for amusement purposes and used exclusively within a place of recreation, amusement, or entertainment to which the public does not have access with motor vehicles; or
- (vi) A pedestrian-controlled machine; or
- (vii) A vehicle that the Agency has declared under section 168A is not a motor vehicle; or
- (viii) A mobility device.

## Part 2 Access to the east coast

### 6. Access to the east coast by motor vehicle

1. No person may cause any motor vehicle to enter any beach as defined at Part 1 of this Bylaw at any time. The extent of the beach area is identified with red hatching in Schedule 1 for the purposes of guidance only. This part of the Bylaw is authorised by s22AB(1)(f) LTA.
2. No person may cause any motor vehicle to enter any dune on Council controlled land at any time. This part of the Bylaw is authorised by s22AB(1)(f) LTA.
3. No person may cause any motor vehicle to enter the unformed legal road identified in Schedule 1 at any time. This part of the Bylaw is authorised under s22AB(1)(g) LTA.
4. No person may drive a motor vehicle at a speed of more than 30 kilometres an hour on the Beach as defined in Part 1 of this Bylaw, between the southern edge of the Waima (Ure) River and the southern edge of the Marlborough District Boundary, ~~except for on the dunes~~. The extent of the beach area is identified with yellow hatching in Schedule 1 for the purposes of guidance only. This part of the Bylaw is authorised by s22AB(1)(d) LTA.

### 7. Exemptions

1. Notwithstanding Bylaw 6, any person may cause a motor vehicle to enter an area where motor vehicle access is otherwise prohibited:
  - (a) To launch or retrieve a vessel provided that the person causes the motor vehicle to only:
    - (i) Enter a boat launching area at Marfells Beach or Ward Beach. The extent of the launching area is identified as solid blue areas on Map 6 and 12 in Schedule 1 for the purposes of guidance only; and
    - (ii) take the most direct route between the entry point and the sea; and
  - (b) To access any part of the beach set aside for motor vehicles, such as a driveway, a carpark, or a shared path.
2. Nothing in this Bylaw applies to an employee, contractor or nominee of an authorised agency or Dominion Salt Ltd who is carrying out the lawful functions or activities of that agency.

### 8. Further conditions of access

1. Any person operating any vehicle, on any part of the beach must show due consideration for other users of the beach.
2. Any person operating any vehicle on the beach, shall operate that vehicle in a courteous, appropriate, safe and responsible manner, giving due consideration to other vehicle operators and to other users of the beach at all times.
3. Any person operating any vehicle on the beach shall not operate that vehicle in such a manner as to present a real or implied danger or threat to the wellbeing and safety of any other user of the beach at all times.

## 9. Application

1. For the avoidance of doubt, nothing in this Bylaw affects—
  - (a) any persons access to the dunes and to the [rest of the beach as defined in Part 1 areas identified in the Schedules to this Bylaw](#) other than by motor vehicle; and
  - (b) any persons access to the east coast for commercial fishing to the extent that that right to access was permitted before the commencement of this Bylaw.

[Note: Walking, cycling, horse riding, and access by vehicles that are not motor vehicles as defined in the LTA, continue to be unrestricted on the whole of the east coast].

## Part 3 Enforcement and penalties

### 10. Breaches of Bylaw

1. Any person who fails to comply with this Bylaw commits an offence under the Land Transport Act 1998, as set out in Schedule 2. The following penalties apply;
  - (a) Breach of Bylaw made under LTA (infringement offence): \$150.
  - (b) Breach of Bylaw made under LTA (ordinary offence): fine not exceeding \$1000.

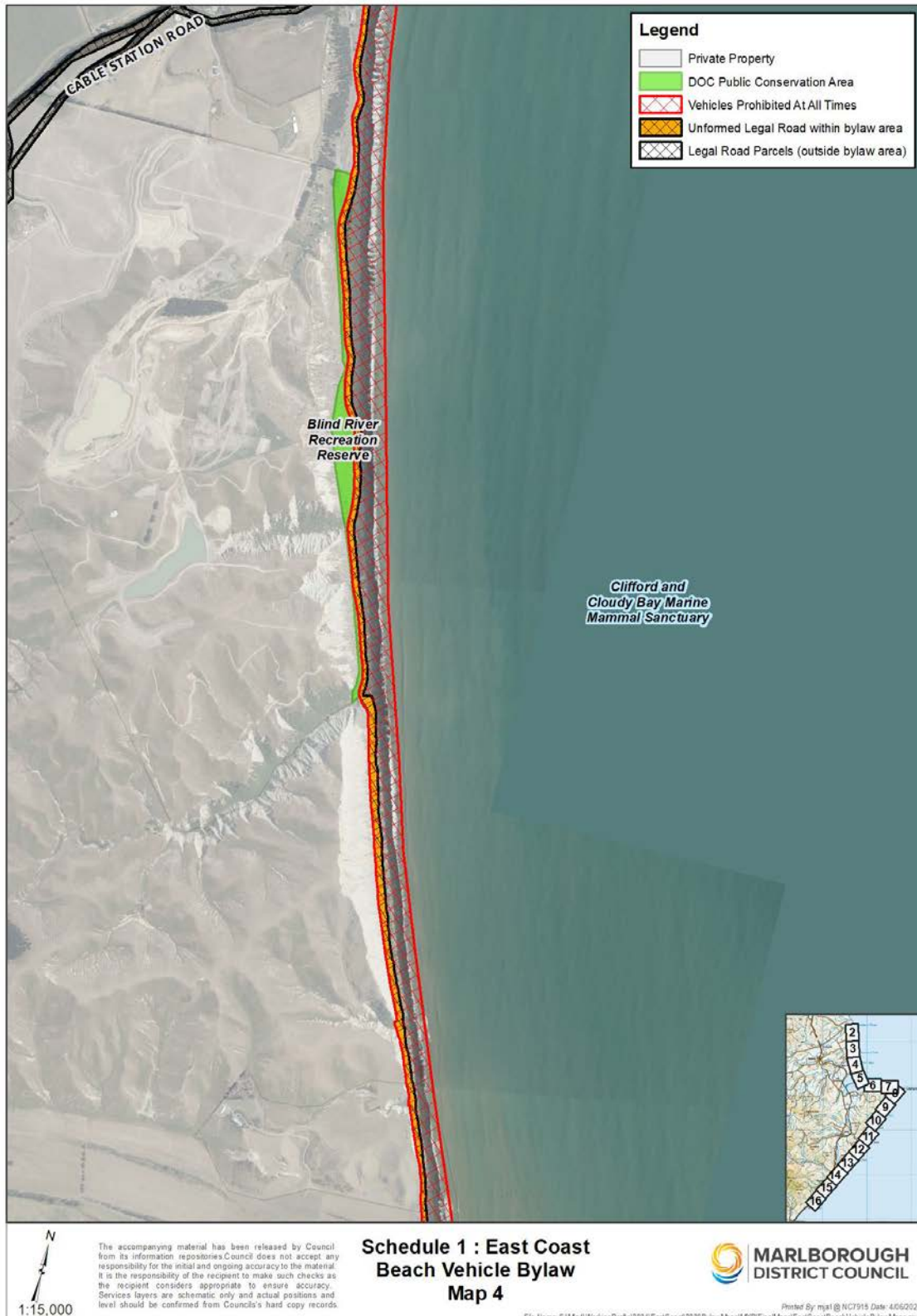
# Schedule 1: Draft Bylaw Maps













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The accompanying material has been released by Council from its information repositories. Council does not accept any responsibility for the initial and ongoing accuracy to the material. It is the responsibility of the recipient to make such checks as the recipient considers appropriate to ensure accuracy. Services layers are schematic only and actual positions and level should be confirmed from Council's hard copy records.

**Schedule 1 : East Coast Beach Vehicle Bylaw Map 5**



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**Schedule 1 : East Coast Beach Vehicle Bylaw Map 6**



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**Legend**

-  Private Property
-  Vehicles Prohibited At All Times
-  Unformed Legal Road within bylaw area

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**Schedule 1 : East Coast Beach Vehicle Bylaw Map 7**

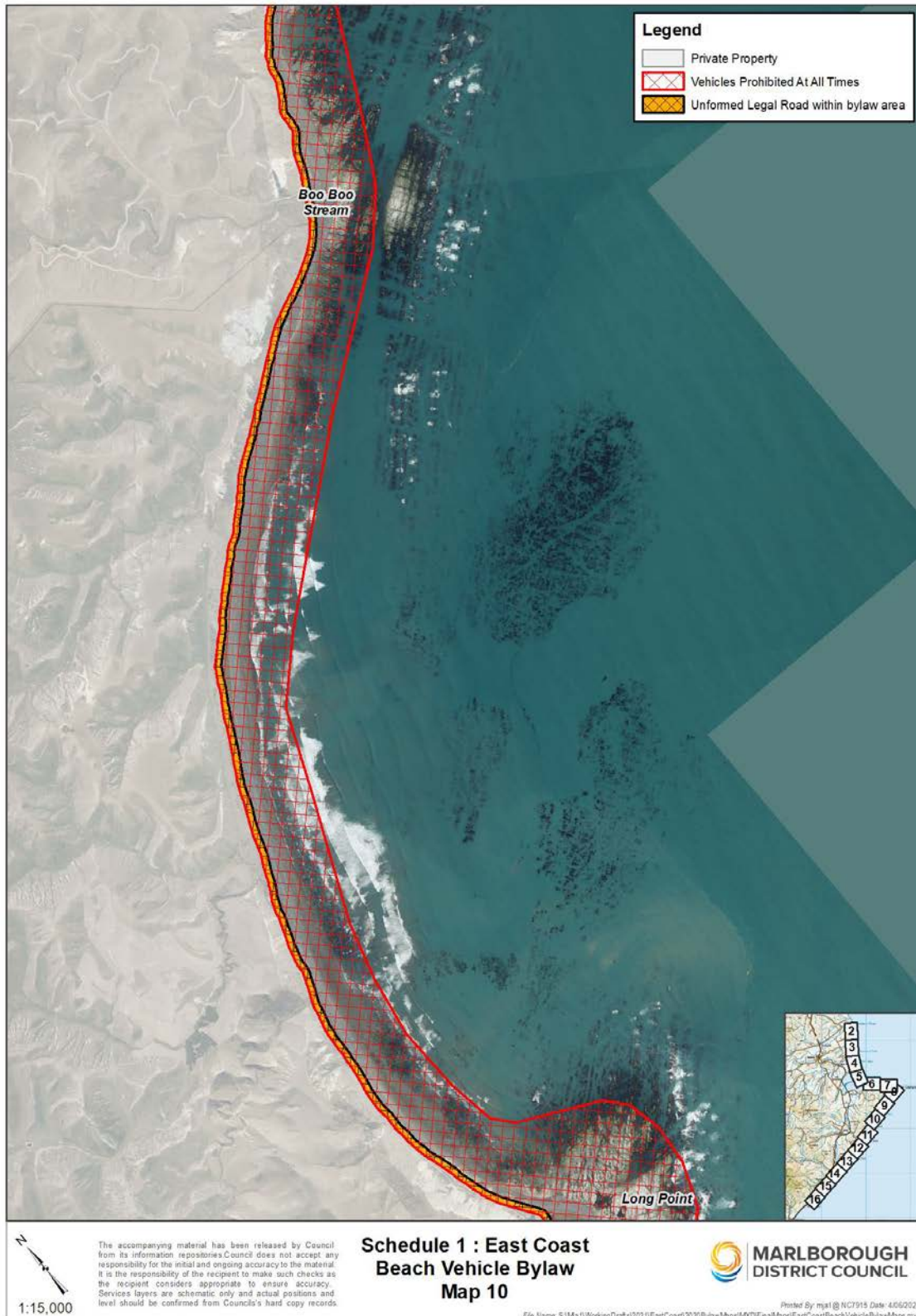


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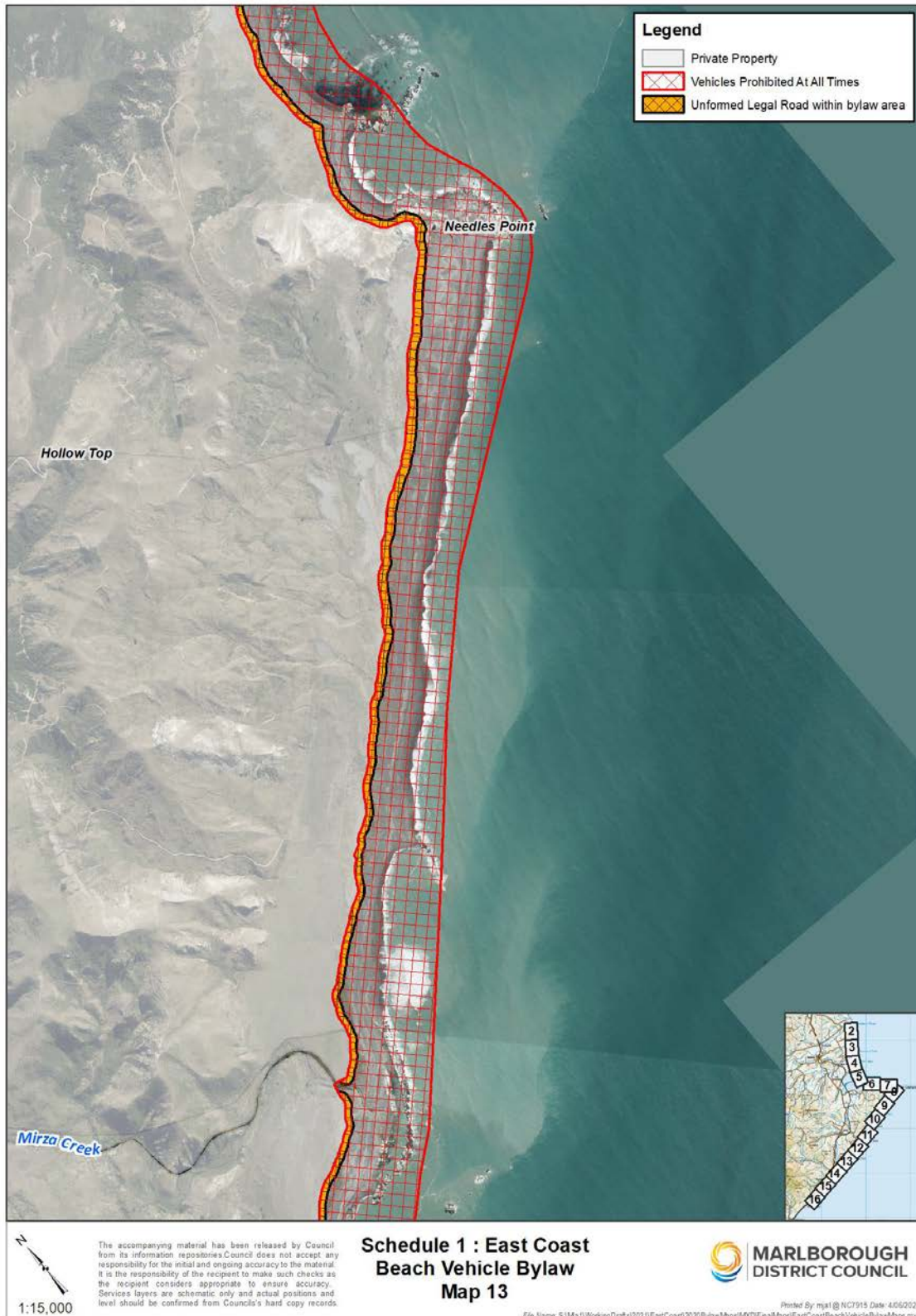


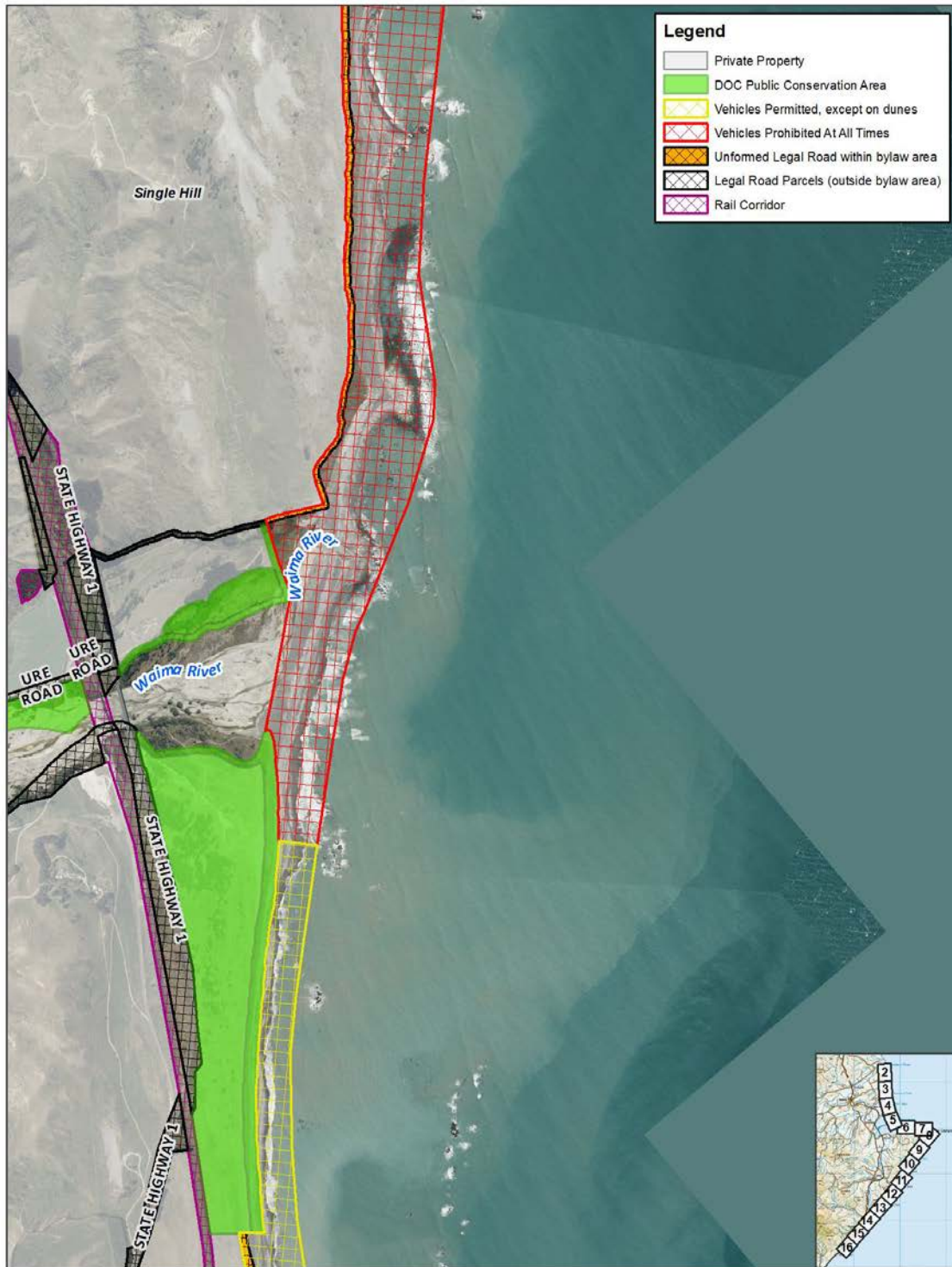












- Legend**
- Private Property
  - DOC Public Conservation Area
  - Vehicles Permitted, except on dunes
  - Vehicles Prohibited At All Times
  - Unformed Legal Road within bylaw area
  - Legal Road Parcels (outside bylaw area)
  - Rail Corridor

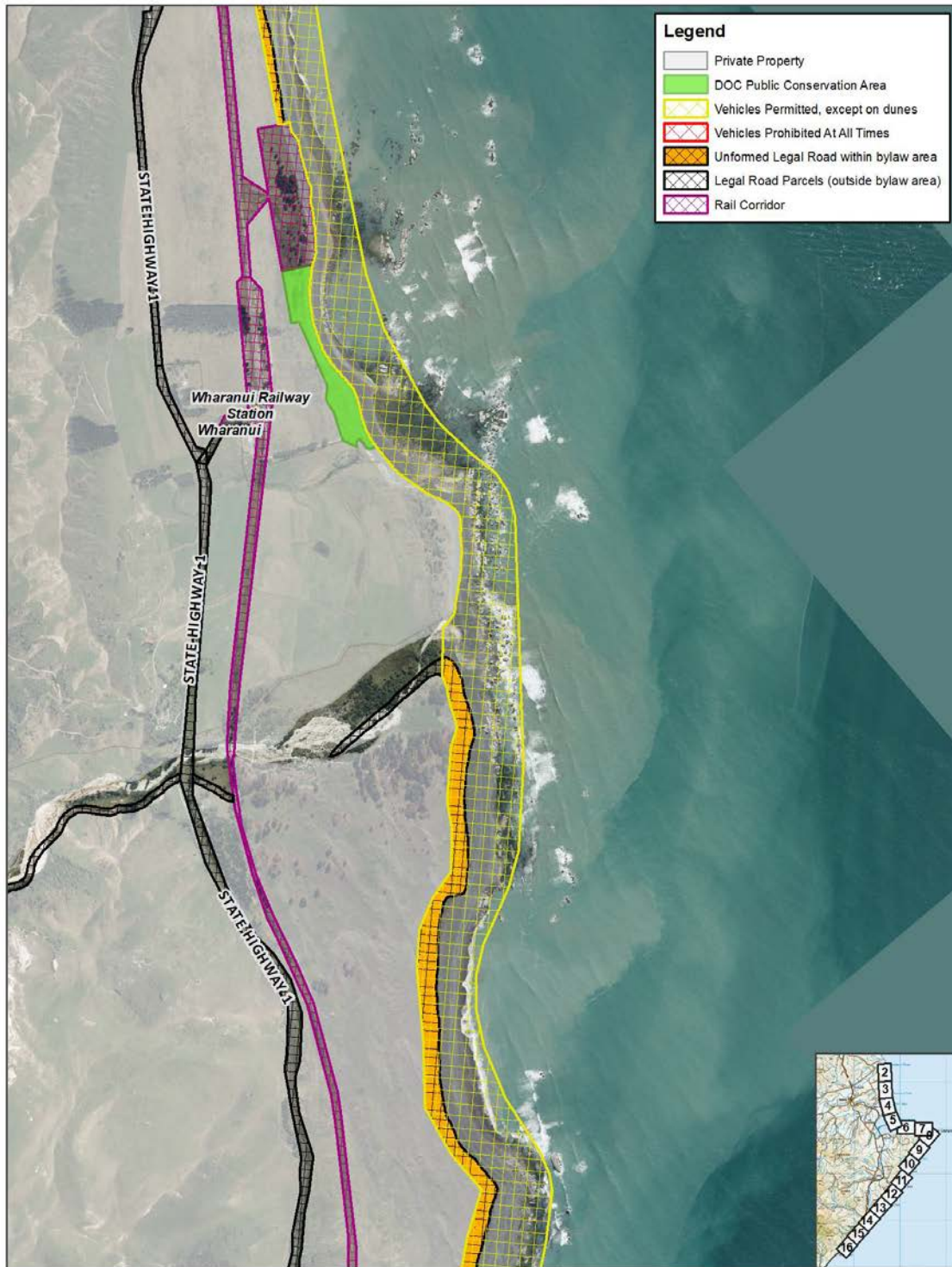
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**Schedule 1 : East Coast Beach Vehicle Bylaw Map 14**



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**Legend**

- Private Property
- DOC Public Conservation Area
- Vehicles Permitted, except on dunes
- Vehicles Prohibited At All Times
- Unformed Legal Road within bylaw area
- Legal Road Parcels (outside bylaw area)
- Rail Corridor

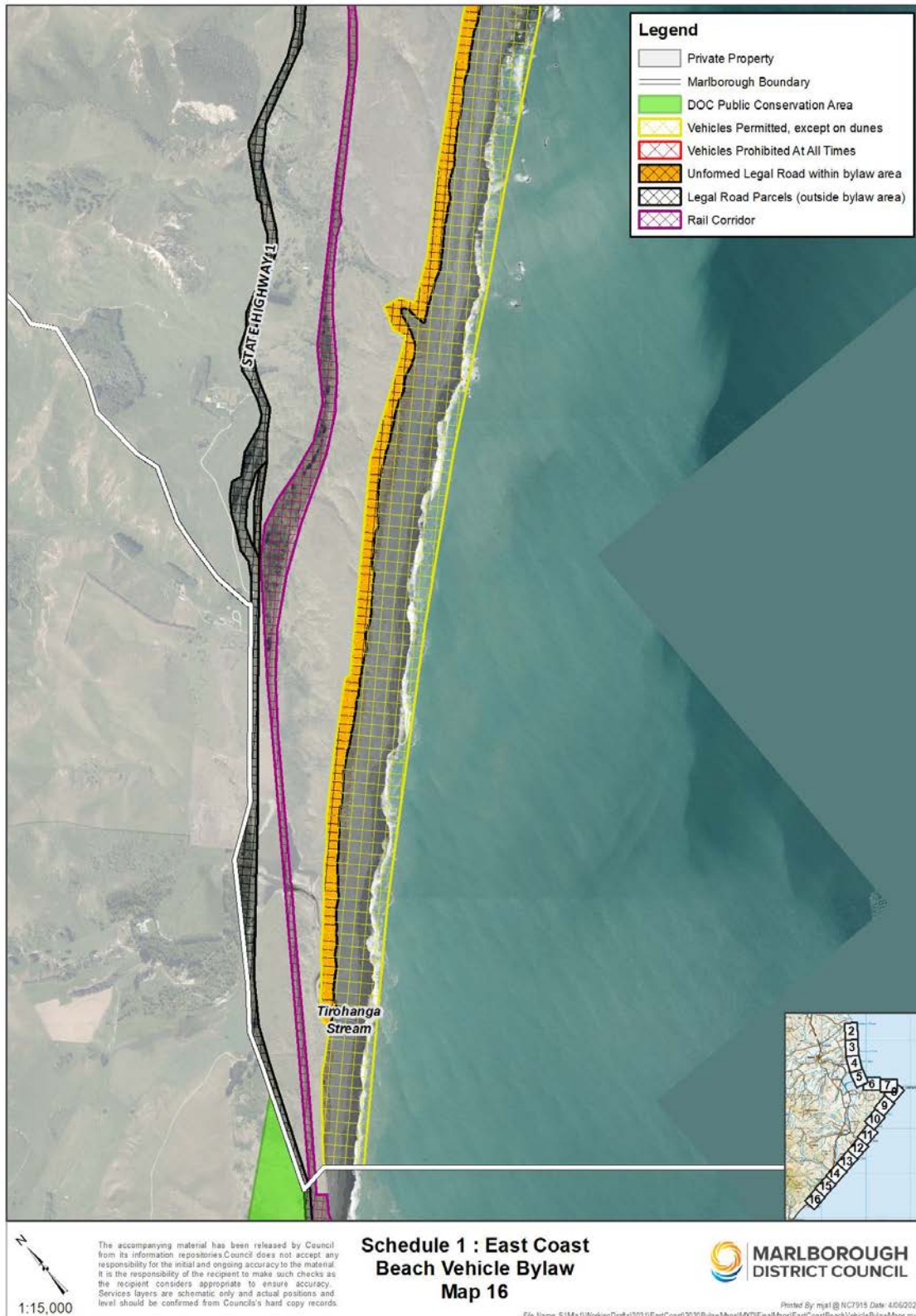
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**Schedule 1 : East Coast Beach Vehicle Bylaw Map 15**



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File Name: S:\Mja1\Working\Drafts\2021\EastCoast\2020\Bylaw\Maps\MCD\Final\Maps\EastCoastBeachVehicleBylaw\Maps.mxd



## Schedule 2: The legislative framework for Bylaw making

The statutory power authorising the Council to make Bylaws differs for various types of land. The table below sets out which power authorises the Council to make these Bylaws for each land type.

Type of land	Description of area	Relevant empowering provision	Act containing offence provision and enforcement agency
Beach as defined in this Bylaw (except for private and DOC administered land.	From the Awatere River to the Waima (Ure) River.	LTA 1998 s22AB(1)(f)	LTA 1998 NZ Police and Council enforcement officer warranted under s208 LTA.
<a href="#">Beach as defined in this Bylaw located in the Clifford and Cloudy Bay Marine Mammal Sanctuary.</a>	<a href="#">Land below mean high water springs between the Awatere River to Cape Campbell.</a>	<a href="#">LTA 1998 s22AB(1)(f) (although the Marine Mammal Sanctuary is administered by DOC, the foreshore is controlled by Council for the purposes of the LTA).</a>	<a href="#">LTA 1998 NZ Police and Council enforcement officer warranted under s208 LTA.</a>
Legal unformed road.	As mapped by LINZ.	LTA 1998 s22AB(1)(g)	LTA 1998 NZ Police and Council enforcement officer warranted under s208 LTA.



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## 6. Where to get more information

Not sure how the draft Bylaw will affect you or have questions about the process?

This Statement of Proposal, Summary and Technical Report (v54, July~~ae~~ 2021) are available:

- on Council's website at: [www.marlborough.govt.nz](http://www.marlborough.govt.nz);
- at Council offices at 15 Seymour Street, Blenheim or 67 High Street, Picton;
- at Council's libraries at 33 Alfred Street, Blenheim or 67 High Street, Picton.

If you have any questions about the draft Bylaw or need further information you can email: [EastCoast@marlborough.govt.nz](mailto:EastCoast@marlborough.govt.nz) or phone Council on **03 520 7400** and ask for **Sarah Edmonds**.

## 7. Have your say – Council wants your feedback

Let us know what you think about the draft Bylaw. Submissions close 5.00 pm, 08 September 2021.

The views of people who live, work and recreate in Marlborough are important. Anyone can make a submission. Your submission can support or oppose the proposal, but you must give your reasons and what changes you want Council to make to the notified proposal.

We encourage you to make a submission online at: <http://www.marlborough.govt.nz/> or

You can collect a paper submission form from Council offices at the Blenheim or Picton Service Centres.

## 8. What happens next?

If you make a submission you will receive confirmation of your submission and be able to view your submission online.

If you indicate in your submission that you would like to speak to the hearings panel about your submission we will contact you to arrange a time for you to speak. The hearings are likely to occur at the end of September to early October 2021.

Following the hearing, the hearings panel will make their recommendation to Council.

## 9. Timeline

DATE	ACTION
15 July 2021	Consultation period begins.
08 September 2021	Submissions close.
September 2021	Submission summary will be released.
September-October 2021	Hearing panel holds a hearing for submitters that wish to heard.
October 2021	Hearing panel deliberates and make recommendations to Council.
To be determined	Council makes a decision on whether to make a Bylaw.
To be determined	If a Bylaw is made, released by public notice.
5 years after commencement	Review.

Record number: 21113258