

MARLBOROUGH DISTRICT COUNCIL
15 SEYMOUR STREET
PO BOX 443, BLENHEIM 7240
NEW ZEALAND

TELEPHONE (0064) 3 520 7400
FACSIMILE (0064) 3 520 7496
EMAIL mdc@marlborough.govt.nz
WEB www.marlborough.govt.nz



**MARLBOROUGH
DISTRICT COUNCIL**



Only Marlborough

11 November 2021

Record No: 21240131
File Ref: D050-001-02
Ask For: Mike Porter

Notice of an Extraordinary Council Meeting – Monday, 15 November 2021

Pursuant to clause 22, schedule 7 of the Local Government Act 2002, an Extraordinary Meeting of the Marlborough District Council will be held in the Council Chambers, 15 Seymour Street, Blenheim on **Monday, 15 November 2021 commencing at 4.00 pm.**

BUSINESS

As per Order Paper attached.

MARK WHEELER
CHIEF EXECUTIVE



**Order Paper for an
EXTRAORDINARY COUNCIL MEETING
to be held in the Council Chambers, 15 Seymour Street, Blenheim
on MONDAY, 15 NOVEMBER 2021 commencing at 4.00 pm**

Open Meeting

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Marlborough District Council

**Order Paper for an
EXTRAORDINARY COUNCIL MEETING
to be held in the Council Chambers, 15 Seymour Street, Blenheim
on MONDAY, 15 NOVEMBER 2021 commencing at 4.00 pm**

1. Karakia

Tēnā koutou, tēnā koutou, tēnā koutou katoa
E te Atua tō mātou Kai-hanga,
ka tiāho te maramatanga me te ora, i āu kupu kōrero,
ka tīmata āu mahi, ka mau te tika me te aroha;
meatia kia ū tonu ki a mātou
tōu aroha i roto i tēnei huihuinga.
Whakakī a matou whakaaro ā mātou mahi katoa,
e tōu Wairua Tapu.
Āmine.

(God our Creator,
when you speak there is light and life,
when you act there is justice and love;
grant that your love may be present in our meeting.
So that what we say and what we do may be filled with your Holy Spirit.
Amen.)

2. Apologies

3. Declaration of Interests

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as a member and any private or other external interest they might have.

4. Review of Representation for 2022 and 2025 Elections

(Clr Taylor) (Report prepared by M Porter)

D050-004-022-11

Purpose

1. To provide Council with background to assist Council in making its final proposal, following consideration of submissions received on Council's initial proposal for representation arrangements for the 2022 and 2025 elections.

Executive Summary

2. Council is required to adopt its final proposal on its representation arrangements for the 2022 and 2025 elections at this meeting.
3. A report from the Working Group will be circulated prior to the meeting.
4. This report gives some detail on the submissions received, noting that all members received a ShareFile link to the submissions.

RECOMMENDATION

No recommendation pending discussion by Council.

Background

5. Following the report to the Extraordinary Council meeting on 30 August 2021, Council adopted the following initial proposal:

The Mayor/Clr Taylor:

1. *That Council adopts the following initial representation proposal (Option 1):*
 - (a) *That Marlborough District Council consist of a Mayor and 13 councillors; and*
 - (b) *That a Ward structure of voting is the most appropriate for Marlborough;*
 - (c) *That the make-up of that ward structure be:*
 - *Blenheim Ward (7 members);*
 - *Wairau-Awatere Ward (3 members);*
 - *Marlborough Sounds Ward (2 members); and*
 - *Marlborough Māori Ward (1 member) [noting that the Māori Ward decision cannot be appealed to the Local Government Commission];*
 - (d) *That no Community Boards be established.*
2. *That meshblocks 4013645, 4013646, 4013647, 4013650 and 4013651 (Omaka Landing); and 4013655, 4013657, 4013658, 4013659 and 4013660 (Rose Manor) be transferred from the Wairau-Awatere Ward to the Blenheim Ward.*
3. *That Council agrees that public notification of the initial proposal and opportunity to submit on the proposal will be undertaken in line with the statutory requirements of section 19M of the Local Electoral Act 2001.*

Carried

6. This initial proposal was advertised and attracted 29 submissions.

Submissions

7. The majority of submitters (27) argued that Council should have used the provision of section 19V(3)(a) of the Local Electoral Act 2001 (island or isolated communities) in its initial proposal and therefore the make-up of the Marlborough Sounds Ward should be 3 members (with the total number of councillors being 14).
8. One submitter agreed with Council's initial proposal and one submitted that Option3 (mixed system – along with the Māori Ward there is also a General Ward (that is elected at large) and a Ward structure that is similar to the current configuration).
9. To give context to the majority of submissions, section 19V(1) to (3) of the Local Electoral Act 2001 states:

19V Requirement for fair representation and other factors in determination of membership for wards, constituencies, and subdivisions

- (1) *In determining the number of members to be elected by the electors of any ward or constituency or subdivision, the territorial authority or regional council and, where appropriate, the Commission must ensure that the electors of the ward or constituency or subdivision receive fair representation, having regard to the population of every district or region or community and every ward or constituency or subdivision within the district or region or community.*
- (2) *For the purposes of giving effect to subsection (1), the territorial authority or regional council and, where appropriate, the Commission must ensure that the population of each ward or constituency or subdivision, divided by the number of members to be elected by that ward or constituency or subdivision, produces a figure no more than 10% greater or smaller than the population of the district or region or community divided by the total number of elected members (other than **[[members elected by the electors of a territorial authority as a whole, if any, and]]** the mayor, if any).*
- (3) *Despite subsection (2),—*
 - (a) *if the territorial authority or the Commission considers that the effective representation of communities of interest within island communities or isolated communities situated within the district of the territorial authority so requires, wards and subdivisions of a community may be defined and membership distributed between them in a way that does not comply with subsection (2):*
 - (b) *if the regional council or the Commission considers that effective representation of communities of interest so requires, constituencies may be defined and membership distributed between them in a way that does not comply with subsection (2).*

Process

10. Under section 19N(1)(a) of the Local Electoral Act 2001, Council must, within six weeks of the closing date for submissions, consider the submissions and may amend the proposal as they see fit.
11. Specific public notice must then be given detailing any amendment, reasons for any amendment and/or reasons for rejecting any submission, and specifying the right of appeal and/or objection (see also sections 19O and 19P of the Local Electoral Act 2001).
12. The last date for this to happen to meet legislative requirements is 19 November 2021.

Appeals/Objections

13. If there are any appeals/objections to Council's decision (whether or not Council retains or amends its initial decision), then these are forwarded to the Local Government Commission for determination.
14. As advised in the 30 August 2021 paper, if Council asserts that any ward is (or contains) an isolated community pursuant to s19V(2)&(3) of the Act (and representation therefore falls outside the +/- 10% population formula), and even if the review does not secure any appeals/objections, the proposal must be referred to the Local Government Commission for determination.

Author	Mike Porter, Democratic Services Manager
Authoriser	Dean Heiford, Manager Economic, Community & Support Services

5. Responsible Camping Control Bylaw 2022

(also refer to separate attachments)

(Report prepared by Jane Tito/Linda Craighead)

R510-005-17-06

Purpose of Report

1. The purpose of this report is to seek approval of the following documentation required for public notification of the draft Responsible Camping Control Bylaw 2022, being:
 - 1.1. a Statement of Proposal for the Marlborough District Council Responsible Camping Bylaw 2022;
 - 1.2. the draft Marlborough District Council Responsible Camping Bylaw 2022; and
 - 1.3. the Area, Site and Road Assessments.

Executive Summary

2. The Council adopted the Responsible Camping Control Bylaw 2020 (**2020 Bylaw**) in November 2020 providing for freedom camping in Marlborough. The adopted 2020 Bylaw reduced the areas where people could freedom camp to five locations. In response the New Zealand Motor Caravan Association lodged a claim for judicial review in the High Court citing concerns over the way decisions were made on the 2020 Bylaw and that not all areas had been the subject of assessments to enable the extent of prohibitions to be made.
3. In an attempt to resolve the claim, and amongst other reasons including the ongoing pandemic and July 2021 flooding event, the Council decided to review the 2020 Bylaw and undertake further consultation. A revised bylaw, accompanying Statement of Proposal (**SOP**) and area assessments have been prepared. It is proposed these are now the subject of consultation and public submission.

RECOMMENDATIONS

That Council:

1. Approves the documentation set out in 1.1 to 1.3 above for the notification of the draft Marlborough District Council Responsible Camping Control Bylaw 2022.
2. Uses the special consultative procedures of the Local Government Act 2002 for notification of the draft Marlborough District Council Responsible Camping Control Bylaw 2022.
3. Allows a period from 17 November 2021 to 17 January 2022 for submissions to be received on the draft 2022 Bylaw.
4. Acting under delegation from the Minister of Conservation and pursuant to section 44(1) of the Reserves Act, authorises freedom camping on:
 - Part Lot 35 Deeds 5A - Classified and named Renwick Recreation Reserve by Gazette notice 100614 (Gaz 1980 p2847); and
 - Section 44 Block III Taylor Pass SD - Local Purpose (Soil Conservation and River Control) Reserve Gazette notice 115360 (Gaz 1983 p2500).

Background/Context

4. The Council adopted the 2020 Bylaw on the 27th of November 2020, becoming effective on the 1st of December 2020. The 2020 Bylaw was adopted after completion of a review undertaken through 2019 and 2020. The review had been undertaken in response to concerns regarding freedom camping and campers behaviours by submitters to the Council's Annual Plan and Long Term Plan processes over several years.

5. The review was supported by consultation undertaken by Paul McArthur, a recreation consultant, who spoke with various resident and ratepayer groups, iwi, business groups and others with interests in camping. A report 'Responsible Camping Review for Marlborough District Council May 2020' along with a separate site assessment report provided the Council with information to notify a draft bylaw on the 7th of August 2020.
6. At the close of the notification period, 350 submissions had been received. Forty-nine submitters appeared before the Hearing Panel during 14th to 16th September. Subsequently the recommendations of the Hearing Panel were adopted by the Council at an extraordinary meeting on the 27th of November. The bylaw became effective on the 1st of December 2020 and allowed five areas to be used for responsible camping.
7. In response to the Bylaw 2020 the New Zealand Motor Caravan Association [**NZMCA**] lodged a claim for judicial review in the High Court. Two key allegations of the claim were that:
 - submitters were not given the chance to make submissions on the prohibition on freedom camping in all except five sites; and
 - the Council did not undertake an assessment of all areas in the district by applying the criteria set out in s11(2) of the Freedom Camping Act [**FCA**].
8. While the Council did not accept the claims of the NZMCA it decided at its meeting on the 5th of August 2021 to undertake further consultation on the 2020 Bylaw to address these key points. The opportunity for further consultation also enables the Council to consider the effect of the 2020 Bylaw, including through the last camping season, as well as consider central Government reforms for freedom camping, the effects of Covid-19 on camping and the impacts of the July 2021 storm event.
9. The High Court proceedings in relation to the judicial review took place on the 2nd and 3rd of November in Wellington. The Council is currently awaiting the decision from the Court.

Review of the 2020 Bylaw

10. As part of preparing a new draft bylaw for consultation, area assessments have been undertaken to identify and assess land that is either Council controlled or managed throughout Marlborough, and which has the potential to be used for freedom camping as provided for under the FCA.
11. A slightly different methodology has been used for the area assessments to inform the draft 2022 Bylaw compared with the initial area assessments prepared by Mr McArthur. This is based on an approach adopted by other councils (Queenstown Lakes District Council and Nelson City Council) in reviewing their respective freedom camping bylaws. A scoring system has been used for each of the three FCA criteria in section 11(2)(a) ¹ to determine an overall significance score for each area assessed.
12. The assessments have been grouped into five geographical sub areas of Marlborough. The areas are 1. Marlborough Sounds, 2. North Marlborough, 3. Wairau Plains, 4. Southern, Waihopai and Wairau Valleys and 5. South Marlborough. Within each of these there are areas, sites (which may include reserves) and roads that have been assessed. In all 43 area assessments have been undertaken and these are accompanied by an overview report. All of these documents can be found on the Council's website.
13. The area assessments include consideration of the five areas where freedom camping can currently occur under the bylaw and all of these satisfy the FCA criteria to be included as appropriate for freedom camping. There are three additional 'sites' that may considered appropriate for freedom camping as a consequence of the area assessments. These are Blairich Reserve (which had

¹ 11(2) A local authority may make a bylaw under subsection (1) only if it is satisfied that—
(a) the bylaw is necessary for 1 or more of the following purposes:
(i) to protect the area:
(ii) to protect the health and safety of people who may visit the area:
(iii) to protect access to the area; and

previously been used for freedom camping), an area on Opouri Road adjacent to Carluke Domain and the Wash Bridge Recreation Reserve.

14. The assessments also identified there were potentially opportunities for camping on roadside in some parts of the lower Awatere Valley, the Wairau Plains area west of Blenheim, Southern Valleys, Waihopai Valleys and some parts of the Wairau Valley. However, further investigation into and identification of exact locations is necessary given there will be subsequent resource consenting requirements. These areas are not included in the draft 2022 Bylaw and therefore remain prohibited in the meantime but have been described in the SOP as being the subject of a change to the 2022 Bylaw.
15. Other changes proposed for the draft 2022 Bylaw will see the introduction of a Chief Executive Officer's discretion to allow freedom camping in prohibited areas. The consent of the Chief Executive Officer has to be sought 20 working days in advance and may be granted with or without conditions.
16. The current 2020 Bylaw has a requirement for all freedom camping to take place within a certified self-contained vehicle. The draft 2022 Bylaw does not propose to change this other than in one specific location and this is Blairich Reserve. The area assessment identifies that given the Reserve is on a popular cycle tourism route, tenting could be considered appropriate at this location. This is discussed more fully in the SOP and area assessment.

Reserves Act requirements

17. Unlike the FCA where freedom camping is permitted everywhere unless otherwise restricted or prohibited, under the provisions of the Reserves Act 1977 the reverse applies. Of particular relevance is section 44 of the Reserves Act, which does not allow camping in reserves unless this is consented by the Minister of Conservation or is provided for in a reserve management plan prepared under the Reserves Act. (A delegation has previously been made from the Minister of Conservation to local authorities to administer section 44 of the Reserves Act and consent to camping in reserves.)
18. For two of the sites where freedom camping currently occurs under the provisions of the 2020 Bylaw, there is a need for a specific resolution of the Council under section 44 of the Reserves Act to authorise camping on reserves – this was omitted in the final adoption of the 2020 Bylaw. If additional reserve areas are made available for freedom camping through the draft 2022 Bylaw a further resolution will be necessary.

Review of 2020-2021 camping season

19. Over the summer camping season patrols of both the former freedom camping sites and those retained in the 2020 Bylaw were undertaken. In terms of the numbers of campers recorded through the patrols, overall there was a significant decrease, which reflected the decrease in the number of overseas tourists travelling through New Zealand due to Covid-19.
20. The change in the bylaw that reduced the number of available responsible camping sites in Marlborough also saw a corresponding decrease in the number of campers staying. Over the initial 6 weeks of the new bylaw the patrols continued to visit the former freedom camping sites to provide advice to those camping of the changes to the bylaw and other opportunities for camping in Marlborough. A low key approach to infringing campers during this period was followed.
21. Feedback from a number of people has been provided to Council staff and its contractors since the bylaw came into effect. There was considerable surprise expressed by some campers at the extent of closures, particularly so for those who had planned to use the camping sites over the holidays. The closure of Blairich Reserve for cyclists touring through the Molesworth was of concern as this site was one of a few that previously enabled tenting.

Central Government reforms for freedom camping

22. Central Government has been considering some aspects of the freedom camping legislation in response to concerns raised from some communities around freedom campers' cumulative impact on the environment, and the cost to host them. This concern has focused on campers who stay in cars, or vans with sleeping platforms, that are not self-contained.

23. A discussion document highlighting these issues was available for public submission earlier this year. The document prepared by the Ministry for Business, Innovation and Employment (**MBIE**) set out four proposals to address the issues including an option for requiring freedom campers to stay in a vehicle that is certified self-contained. The review did not explore wider reforms to the FCA.
24. The Council submitted providing support for certified self-containment. Subsequently a targeted consultation occurred on whether amendments to the bylaw provisions of the FCA should be made. This was in response to submissions MBIE received during the public consultation on strengthening self-contained vehicle requirements and regulations. MBIE then advised that as they investigated the bylaw issue further it became clear that the combination of local government reform and some of the challenges with the wider bylaw regime make advancing any amendments more complex than had been anticipated. Therefore a decision was made to suspend any further consideration of amendments to freedom camping bylaw provisions of the FCA.
25. No further update on the review has been received and MBIE's website records that submissions are currently being analysed. Therefore in terms of how any reforms may have affected this Council's current review of the 2020 Bylaw, there is no change to report.

Covid-19

26. The impact of Covid-19 on Marlborough with fewer travellers has continued and will be ongoing for some time particularly without international travellers in New Zealand. A number of submitters to the draft 2020 Bylaw commented that this period should be used as a test for this Council's approach to freedom camping.
27. Despite the lack of international travellers there is still use being made of the Council's current freedom camping sites with domestic visitors using the sites. This is likely to occur over the upcoming summer season.

Summary

28. The Council has already agreed under an earlier Council resolution (5 August 2021) to review the Marlborough District Council Freedom Camping Control Bylaw 2020 in response to concerns raised by the NZMCA on the adopted 2020 Bylaw. This is notwithstanding the High Court proceedings taken by the NZMCA.
29. A SOP has been prepared and this provides for the continuation of the current five freedom camping sites and sets out changes proposed including the addition of several areas to be considered for freedom camping, one of which will allow for tenting and the introduction of a Chief Executive's discretion to allow freedom camping in prohibited areas. Both the SOP and draft 2022 Bylaw are attached to this report.
30. Area assessments have been prepared to identify and assess land under the Council's control that has the potential to be used for freedom camping. In total 43 assessments have been undertaken and these are accompanied by an overview report. This documentation is available on the Council's website.
31. The submission period is proposed for eight weeks commencing on 17 November 2021 and closing on 17 January 2022. Hearings are proposed during the first quarter of next year.

Attachments

Attachment 5.1 – Statement of Proposal for the Marlborough District Council Responsible Camping Bylaw 2022

Attachment 5.2 - Draft Marlborough District Council Responsible Camping Bylaw 2022

Authors	Jane Tito, Manager, Parks and Open Spaces Linda Craighead, Planner, Parks and Open Spaces
Authoriser	Jamie Lyall, Manager, Property and Community Facilities Department

Summary of decision-making considerations			
Fit with purpose of local government			
The proposal enables democratic local decision-making and action by, and on behalf of communities and relates to providing a public service and it is considered good-quality and cost effective.			
Fit with Council policies and strategies			
	<i>Contributes</i>	<i>Detracts</i>	<i>Not applicable</i>
LTP / Annual Plan	<input type="checkbox"/>	<input type="checkbox"/>	✓
Financial Strategy	<input type="checkbox"/>	<input type="checkbox"/>	✓
Infrastructure Strategy	<input type="checkbox"/>	<input type="checkbox"/>	✓
Social well-being	✓	<input type="checkbox"/>	<input type="checkbox"/>
Economic development	✓	<input type="checkbox"/>	<input type="checkbox"/>
Environment & RMA Plans	✓	<input type="checkbox"/>	<input type="checkbox"/>
Arts & Culture	<input type="checkbox"/>	<input type="checkbox"/>	✓
3 Waters	<input type="checkbox"/>	<input type="checkbox"/>	✓
Land transport	✓	<input type="checkbox"/>	<input type="checkbox"/>
Parks and reserves	✓	<input type="checkbox"/>	<input type="checkbox"/>
This proposal contributes to the Parks and Open Spaces section management of freedom camping across Marlborough.			
Nature of the decision to be made			
The recommendations do not involve a significant decision in relation to land or a body of water.			
Financial considerations			
There may be financial implications dependent of decisions made by the Council when adopting the 2020 Bylaw. The extent of funding required to create new sites for freedom camping is as yet unknown. There may also be resource consent requirements for allowing freedom camping at some locations which will require funding.			
Significance			
The decision is considered of low significance under Council's Significance and Engagement Policy.			
Engagement			
Those who submitted on the draft 2020 Bylaw will be advised of this new review. A communications plan will also be developed.			
Risks: Legal / Health & Safety etc			
As was evidenced in the 2020 Bylaw review there is a risk of legal claims from parties who may not agree with the process adopted by the Council in reaching its decisions on the bylaw. This risk will be managed through legal advice on the process followed by the Council.			
Climate Change Implications			
There are no known climate change implications to this decision.			