

# Extra-ordinary Whangarei District Council

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## Notice of Meeting

A extra-ordinary meeting of the Whangarei District Council will be held in the Council Chamber, Forum North, Whangarei on:

**Wednesday  
7 September 2016  
9.00am**

## Committee

Her Worship the Mayor (Chairperson)  
Cr S J Bell  
Cr S J Bretherton  
Cr C B Christie  
Cr P A Cutforth  
Cr S J Deeming  
Cr S M Glen  
Cr P R Halse  
Cr C M Hermon  
Cr G C Innes  
Cr G M Martin  
Cr B L McLachlan  
Cr S L Morgan  
Cr J D T Williamson

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# 1 Deliberations - proposed amendments to the Vehicles on Beaches Bylaw 2009

**Reporting officer:** Shireen Munday (Policy & Bylaws Analyst)

**Date of meeting:** 7 September 2016

## 1 Purpose

To deliberate on matters raised in submissions to the proposed amendments to the Vehicles on Beaches Bylaw 2009 to determine the final format of the Bylaw.

## 2 Recommendations

That Whangarei District Council

- a) Approves the staff recommendations as contained in this report for changes to be incorporated into the proposed amendments to the Vehicles on Beaches Bylaw as follows:

### Topic 1

- 1.1. That the existing vehicle prohibited area at Ruakaka Beach South is retained.
- 1.2. That Map 1 of Schedule 1 is amended to clarify that the southern end of the prohibited area is pedestrian access only.

### Topic 2

- 2.1 That the proposed vehicle prohibited area at Ruakaka Beach North, as provided for in Schedule 1 - Map 2, is included in the final amended Bylaw.

### Topic 3

- 3.1 That the current definition of 'Beach' in the Bylaw is retained and the definition of 'Road' removed.
- 3.2 That the title of the Bylaw is changed to 'Control of Vehicles on Beaches Bylaw'.
- 3.3 That the wording of clause 4 of the Bylaw is amended to remove the reference to environmental protection.
- 3.4 That the meaning of Authorised Agency in clause 5 of the Bylaw is expanded to include central government agencies and NIWA.

### Topic 4

- 4.1 That the current definition of 'Dune' in the Bylaw is amended to include the first three metres of beach adjacent to the toe of the dune.

4.2 That Council notes the submission issues raised and asks the CE to direct staff to continue to work with the identified parties to seek alternative mechanisms to address these issues.

### **Topic 5**

5.1 That Council notes the submissions received.

## **3 Background**

Whangarei District Council at its meeting on 22 June 2016 completed a statutory review of the Vehicles on Beaches Bylaw 2009 in accordance with section 158 of the Local Government Act 2002. At the same meeting Council adopted a Statement of Proposal (SOP) on proposed amendments to the Bylaw for public consultation as a result of the review.

The submission period opened on 27 June and closed on 22 July 2016. A total of 33 submissions were received during the submissions period and ten submitters attending the hearing on 16 August to speak to their submissions.

Council was presented with an overview of the submissions received, together with staff commentary at a Council Briefing on 23 August 2016.

Council is now being asked to deliberate on the issues raised in submissions.

The final amended Bylaw will incorporate the decisions of Council made at this meeting and is scheduled to be presented to Council on 22 September 2016.

## **4 Discussion**

The 33 submitters made 55 submission points. These have been analysed and organised into deliberations topics, in relation to the three areas of the Bylaw consulted on in the SOP. Staff comments where appropriate and recommendations for each topic are also provided.

In accordance with section 83(3) of the Local Government Act, Council can also consider further advice in respect of the proposal. Since the proposed Bylaw amendments were published for public consultation, further internal analysis on the proposal has been undertaken with a few minor further changes recommended by staff as a result. These items are included in each Topic area where relevant.

All recommendations that relate to changes to the wording of the Bylaw are shown in a track changes version in Attachment 1.

#### 4.1 Topic 1 - existing vehicle prohibition at Ruakaka Beach South

##### Submission issues

On the submission form, submitters were asked to select responses for the question shown below. Not all submitters responded to the questions asked.

##### Question 2

<b>The current prohibition at Ruakaka Beach South</b>	<b># of responses</b>
Yes - I / We support the current vehicle prohibited area at Ruakaka Beach South	26
No - I / We do not support the current vehicle prohibited area at Ruakaka Beach South	2*

\* The 23 August briefing report stated '3', this was a typing error.

Submitters also made a number of general comments in support of, or in opposition to vehicle prohibitions, in the main these were generic and did not relate to either the existing prohibition or the proposed one.

##### General support for vehicle prohibitions

<b>Summary of submission issue raised</b>	<b>#</b>
Extend vehicle prohibition further north to support dog walkers.	1
Fishers can walk to fishing spots, no vehicle access required.	1
Submitter requests vehicle prohibition on all Bream Bay beaches.	6
Support for the proposal due to archaeological sites in vicinity.	1
Support for the proposal due to safety concerns for beach users.	2
Support for the proposal to protect people and the environment.	3

##### General opposition for vehicle prohibitions

<b>Summary of submission issue raised</b>	<b>#</b>
People need to launch boats and go fishing, restricting access will cause bottle necks, the area south of Marsden Village is popular for recreational fishers	3

##### Staff comment

The submissions received are reflective of the historic and current anecdotal support for the existing ban and the outcome of the stakeholder consultation undertaken prior to the development of the SOP for public consultation.

##### Other issues

The Schedule 1 Map 1 - Ruakaka Beach South - identifies the southern point of the prohibited area as the 'Bream Bay Drive Accessway'. This potentially implies that there is a vehicular access point at this location.

### Staff comment

To support clarity the map should be updated appropriately to indicate pedestrian access only.

### Staff recommendations

- a) That the existing vehicle prohibited area at Ruakaka Beach South is retained.
- b) That Map 1 of Schedule 1 is amended to clarify that the southern end of the prohibited area is pedestrian access only.

## 4.2 Topic 2 - proposed vehicle prohibition at Ruakaka Beach North

On the submission form, submitters were asked to select responses for the question shown below. Not all submitters responded to the questions asked.

### Question 1

The proposed prohibition at Ruakaka Beach North	Total responses
Yes - I / We support the new proposed vehicle prohibited area at Ruakaka North	27
No - I / We support the new proposed vehicle prohibited area at Ruakaka North	3*

\* The 23 August briefing report stated '2', this was a typing error.

The general comments provided in Topic 1 are also of relevance to this Topic.

### Staff comment

The responses to the public consultation process confirm the analysis undertaken for the development of the SOP which highlighted a strong historical support for a vehicle prohibition in front of Marsden Village.

### Staff recommendation

That the proposed vehicle prohibited area at Ruakaka Beach North, as provided for in Schedule 1 - Map 2, is included in the final amended Bylaw.

## 4.3 Topic 3 – Bylaw format, structure and content

### Submission issues

The proposed changes also includes some changes to the content and format of the Bylaw. Two submitters commented on the proposed changes in their written submission, with one further submitter speaking on the issue at the hearings.

Summary of submission issue raised	#
Wishes to see inclusion of 'off road motor bikes' in prohibition.	1
Submitter considers the inclusion of the meaning of 'road' in the definition of beach is not necessary and will create confusion and uncertainty.	1

## Staff comments

Off road motorbikes are already included in the Bylaw as they are included in the definition of 'vehicle'.

The submitters' concerns regarding the proposed definition of beach are noted. Technically there is no problem with the inclusion of 'road' within the definition of a beach in the Bylaw. However the concerns regarding mis-interpretation are potentially warranted. Additions to the explanatory note under clause 6.2 of the Bylaw can indicate to readers that beaches are considered roads for the purposes of speed limit enforcement and warranted/registered vehicles.

## Other issues

### Bylaw Title

At the briefing meeting on 23 August Councillors questioned whether the title of the Bylaw could be amended to more accurately reflect its purpose, which is to provide controls on vehicles on the beaches in the District to support public safety and health.

## Staff comments

Legal advice received confirms that a change to the title of the Bylaw does not have any legal implications.

Two alternative titles are suggested:

- Control of Vehicles on Beaches Bylaw
- Vehicles on Beaches Management Bylaw

### Further wording changes

Since the proposed Bylaw amendments were published for public consultation, staff have undertaken a further review of the content and wording to support clarity and consistency. The following changes to the wording of the Bylaw are proposed together with staff comments.

Current proposal wording	Suggested change wording	Staff comments
<p>4. Purpose 4.1 The purpose of this bylaw is to protect, promote and maintain public health and safety, protect the public from nuisance and provide protection for the environment by regulating the use of vehicles on beaches in the Whangarei District.</p>	<p>4. Purpose 4.1 The purpose of this bylaw is to protect, promote and maintain public health and safety <del>and</del>; protect the public from nuisance <del>and provide protection for the environment</del> by regulating the use of vehicles on beaches in the Whangarei District.</p>	<p>The previous version of the Bylaw did not have a 'purpose' but provided a 'scope'. Advice received from staff involved in the development of the Bylaw at that time indicated that there was an aspect of environmental protection to the Bylaw. This was therefore included in the proposed 'purpose'. Further analysis has confirmed that the scope of the Bylaw is currently limited to public safety and health issues and</p>

		this should be reflected in the purpose.
5 Interpretation 5.1 <b>Authorised agency</b> means Whangarei District Council, New Zealand Police, New Zealand Fire Service, any Emergency Ambulance Service, Northland Regional Council, Department of Conservation and any surf life saving club registered with Surf Life Saving Northern Region.	<b>Authorised agency</b> means Whangarei District Council, New Zealand Police, New Zealand Fire Service, any Emergency Ambulance Service, Northland Regional Council, Department of Conservation, <u>any Central Government Department or Ministry, the National Institute of Water and Atmospheric Research</u> and any surf life saving club registered with Surf Life Saving Northern Region.	To ensure ministry representatives such as the Ministry of Primary Industries and NIWA have appropriate vehicular access if and when required.

### Staff recommendations

- a) That the current definition of 'Beach' in the Bylaw is retained and the definition of 'Road' removed.
- b) That the title of the Bylaw is changed to 'Control of Vehicles on Beaches Bylaw'.
- c) That the wording of clause 4 of the Bylaw is amended to remove the reference to environmental protection.
- d) That the meaning of Authorised Agency in clause 5 of the Bylaw is expanded to include central government agencies and NIWA.

#### 4.4 Topic 5 – issues outside the scope of the proposed amendment

The purpose of the Bylaw is to protect public health and safety and the scope of the review was constrained to the existing prohibited area, the proposed prohibited area and the structure, format and wording of the Bylaw.

Some submitters raised issues that were outside the scope of the review and therefore cannot be considered as part of the deliberations process. This section identifies these issues and provides further staff commentary and recommendations.

Summary of submission issue raised	#
Prohibition at Waipu Wildlife Refuge to support the protection of wildlife requested.	1
A vehicle ban northwards of Mair Road would support environmental concerns regarding shellfish gathering at Mair and Marsden Banks.	3
Request for prohibition from Mair Road access point northwards.	2
Request for vehicle access between Rama Road and Mair Road only	1
Request for prohibition 1.1 kms northwards of Mair Road.	1
Support for the submission from Patuharakeke Te Iwi Trust Board.	1
Vehicle prohibition in front of Uretiti campground area requested to protect people	3



## Staff comments

The majority of submissions issues raised in this Topic relate to environmental concerns. As the purpose of the Bylaw and the associated review relates to public safety and health concerns only, these issues cannot be addressed through the current process and Bylaw.

Staff are researching other mechanisms to support the submitters' concerns. The New Zealand Coastal Policy Statement (NZCPS) includes a policy on vehicles on beaches (Policy 20). Regional plans are required to give effect to the NZCPS. NRC is currently reviewing its regional plans and this review may be able to support additional controls for vehicles on beaches due to environmental concerns. Staff will continue to collaborate with the Department of Conservation and Northland Regional Council on the issues raised.

Some of the submission issues relate to public health and safety concerns. Staff will be developing an enforcement and education programme to support the implementation of the amended Bylaw over the 2016/2017 summer. This will build on previous summer enforcement programmes and will include monitoring and reporting activities on those beach areas identified as particular concerns by submitters.

The outcome of this monitoring will be reported back to Council after the summer period to determine whether Council may want to consider any further actions.

Staff are liaising with Refining NZ to determine whether other mechanisms are also available to support their particular concerns, such as potential changes to the conditions of consent for the resource consent issued to Refining NZ for the jetty.

One particular aspect of Refining NZ's submission relates to vehicles driving along the toe of the dunes. While this concern was raised in relation to the damage this causes, there is an associated issue of public safety if vehicles are travelling along the beach at high tide with very little, if any, space between the high-tide mark and the dunes.

As stated, imposing a vehicle ban in this vicinity is outside of the scope of the review. Staff however consider that the definition of 'dune' can be amended to include the first three metres of the beach adjacent to the toe of the dune. The Bylaw prohibits vehicles on dunes. This would support achieving a reduction in vehicles driving along the beach at high tide and the associated risks to public safety. This amendment would then allow appropriate signage to be put in place to advise the public that it is only safe to drive in that vicinity of the beach (being north of Mair Road) between half and low tides.

## Staff recommendations

- a) That the current definition of 'Dune' in the Bylaw is amended to include the first three metres of beach adjacent to the toe of the dune.
- b) That Council notes the submission issues raised and asks the CE to direct staff to continue to work with the identified parties to seek alternative mechanisms to address these issues.

## 4.5 Topic 5 – other matters

Submitters also raised a number of operational issues or issues that do not relate to the current or proposed amended Bylaw. Council does not need to deliberate on these issues.

Summary of submission issue raised	#
Locked gate (adjacent to Ruakaka Surf Lifesaving Club Inc) access concerns. Poor visibility and speed required raises serious safety concerns. Keys are not being issued in accordance with agreed approach.	6
All illegal access points to beach need to be blocked.	1
Better/more enforcement actions required.	5
Concerns regarding vehicles driving in current prohibited area.	1
Confusion between vehicle, dog and horse rules on Bream Bay beaches.	1
Vehicle prohibition signage improvements required to support the bylaw, particularly at the southern boundary of the current prohibited area.	6
More carparks and walkways to the beach needed.	1
Racecourse access - dune reconstruction required.	1
Racecourse access - needs to be appropriately blocked.	1
Bylaw amendment process issues raised.	1

### Staff comments

Research into the concerns raised regarding the gate access indicates that keys have not been issued in accordance with the operational policy established for this in 2009, resulting in a relatively large number of keys being issued that did not meet the policy criteria.

Staff are reviewing the policy and the associated procedures for issuing keys. The existing lock will be changed and all current key holders will be advised and asked to re-apply for a key, which will be re-issued if the applicant meets the required criteria.

This work is expected to significantly reduce the number individuals with keys and therefore vehicles accessing the beach at this location which is expected to largely remedy the concerns raised.

Signage and enforcement activities are operational matters. Staff are working with Department of Conservation (DOC) staff in particular as well as other key identified stakeholders to support signage and information that provides clarity on the relevant rules present at Bream Bay beaches.

Staff are working with DOC to develop collaborative solutions to the illegal access of vehicles to DOC reserves adjacent to Ruakaka beaches.

### Staff recommendation

That Council notes the submissions received.

## 5 Significance and engagement

### 5.1 Significance

The decisions and matters of this agenda do not trigger the significance criteria of Council's Significance and Engagement Policy.

## **5.2 Engagement**

Council has consulted with the community on the issues of this agenda in accordance with the statutory requirements of the Local Government Act 2002. The public will be informed via agenda publication on Council's website.

## **6 Attachments**

Attachment 1 – Proposed amended Vehicles on Beaches Management Bylaw showing track changes as per staff recommendations contained in this report.





## Whangarei District Council

# Control of Vehicles on Beaches Bylaw 2009

**Made by Whangarei District Council by Resolution  
in Council**

**25 November 2009**

(amended on xx/xx/2016 by Whangarei District Council with effect from xx/xx/2016)

This Bylaw is made and amended pursuant to the Local Government Act 2002 and the Land Transport Act 1998.

## 1 Title

- 1.1 This Bylaw is the Control of Vehicles on Beaches Bylaw 2009.

## 2 Commencement

- 2.1 This Bylaw comes into force on 7/12/2009.

*Explanatory note: The bylaw was first made in November 2009. It was reviewed and subsequently amended by Council in XX 2016. The amendments to the Bylaw came into force on xx/xx/2016. Refer to Section 1 of Additional Information to the Control of Vehicles on Beaches Bylaw 2009.*

## 3 Application

- 3.1 This Bylaw applies to the Whangarei District.

# Part 1 Preliminary provisions

## 4 Purpose

- 4.1 The purpose of this Bylaw is to protect, promote and maintain public health and safety, and protect the public from nuisance ~~and provide protection for the environment~~ by regulating the use of vehicles on beaches in the Whangarei District.

## 5 Interpretation

- 5.1 In this bylaw, unless the context otherwise requires:

**Authorised agency** means Whangarei District Council, New Zealand Police, New Zealand Fire Service, any Emergency Ambulance Service, Northland Regional Council, Department of Conservation, any Central Government Department or Ministry, the National Institute of Water and Atmospheric Research and any surf life saving club registered with Surf Life Saving Northern Region.

**Beach** means ~~a road and includes~~ 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, but does not include any private property or land administered by the Department of Conservation.

**Council** means the Whangarei District 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 3 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.

**Enforcement officer** means:

- a) any person appointed by Council under section 177 of the Local Government Act 2002 as an enforcement officer
- b) any Parking Warden appointed by Council under section 128D of the Land Transport Act 1998

- c) any person defined as an enforcement officer under section 2(1) of the Land Transport Act 1998.

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

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

- 5.2 Any explanatory notes and attachments are for information purposes, do not form part of this Bylaw, and may be made, amended and revoked without formality.
- 5.3 The Interpretations Act 1999 applies to this Bylaw.

## Part 2 Vehicles on Beaches

### 6 Prohibitions

- 6.1 All vehicles are prohibited on dunes at all times.
- 6.2 Subject to exemptions provide for elsewhere in this Bylaw, all vehicles are prohibited in the areas identified in Schedule 1 at all times.

*Explanatory note: The provisions of Council's District Plan and other bylaws, including but not limited to, the Speed Limits Bylaw 2005, the Parking and Traffic Bylaw 2009 and the Public Places Bylaw 2014, ~~and~~ the Land Transport Act 1998 defines a beach as a road and therefore all ~~other~~ relevant traffic rules and regulations apply to any vehicles on beaches.*

### 7 Exemptions

- 7.1 Any employee, contractor or nominee of an authorised agency who is carrying out the lawful functions or activities of that authorised agency may use a vehicle in any area identified as prohibited in Schedule 1 of this Bylaw.
- 7.2 Council may issue exemption permits for the areas identified in Clause 6.2.
- 7.3 Council may impose such conditions as are deemed necessary on any exemption permits issued.
- 7.4 Council may revoke an exemption permit at any time.

## Part 3 Enforcement, offences and penalties

### 8 Offences

- 8.1 Every person commits an offence against the bylaw who:
- a) Commits a breach of this bylaw
  - b) omits, fails or refuses to do anything required by this bylaw.

- 8.2 Nothing in this clause limits the liability of any person to be proceeded against for an infringement offence under section 138 of the Land Transport Act 1998 or sections 245 and 259 of the Local Government Act 2002.

## **9 Persons to provide details**

- 9.1 Where an enforcement officer has reasonable grounds to believe a person has failed to comply with any provision of this bylaw the person shall, on demand by an enforcement officer, give his or her full name and full address.

## **10 Offenders to leave beach**

- 10.1 Where an enforcement officer has reasonable grounds to believe a person has failed to comply with any provision of this bylaw, the enforcement officer may direct the person to immediately leave the beach, and the person may be further prohibited by that officer from re-entering the beach for a period of 24 hours.

## **11 Penalties**

- 11.1 Without limiting the liability of any person under any enactment, for a breach of this bylaw, any person who commits an offence against this bylaw is liable to:
- a) In the case of an offence against clause 6 or 7 of this Bylaw, a fine not exceeding \$500, and if the offence is an infringement offence under the Land Transport Act 1998, the infringement fee fixed by that Act or regulations made under the Land Transport Act 1998 or any subsequent amendments to that Act or regulations.
  - b) In the case of an offence against clause 9 or 10 of this Bylaw a fine not exceeding \$20,000.

## **Part 4 Savings, transitional provisions**

## **12 Existing exemptions to continue in force**

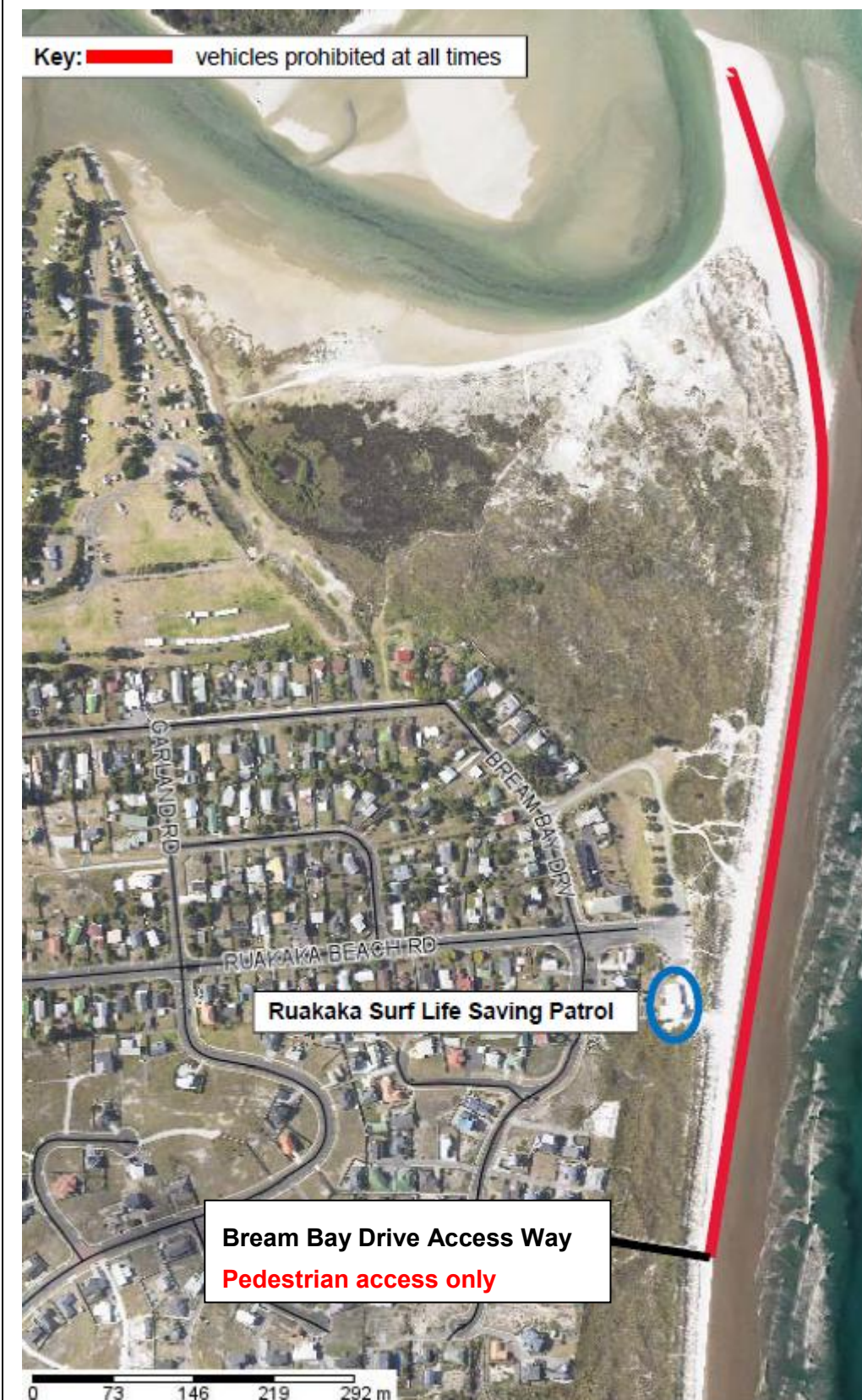
- 12.1 Every exemption issued under the Bylaw is subject to clauses 8.3 and 8.4 of the Bylaw.



## Schedule 1

### 1.1. Map 1 – Ruakaka Beach South

Vehicles are prohibited at all times between the entry point to the beach at Bream Bay Drive Accessway (as indicated on the map) and northwards to the Ruakaka River mouth.



### 1.2. Map 2 – Ruakaka Beach North

Vehicles are prohibited at all times between the point where the seawater supply line for NIWAs Northland Marine Research Centre intersects the beach (as indicated on the map) and southwards to the Ruakaka River mouth.

*Explanatory note: The start of the prohibited area is approximately 500 metres north of the pedestrian access point off Te Karawai Street.*



## RESOLUTION TO EXCLUDE THE PUBLIC

That the public be excluded from the following parts of proceedings of this meeting.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

1.	The making available of information would be likely to unreasonably prejudice the commercial position of persons who are the subject of the information. {Section 7(2)(c)}
2.	To enable the council (the committee) to carry on without prejudice or disadvantage commercial negotiations. {(Section 7(2)(i)}.
3.	To protect the privacy of natural persons. {Section 7(2)(a)}.
4.	Publicity prior to successful prosecution of the individuals named would be contrary to the laws of natural justice and may constitute contempt of court. {Section 48(1)(b)}.
5.	To protect information which is the subject to an obligation of confidence, the publication of such information would be likely to prejudice the supply of information from the same source and it is in the public interest that such information should continue to be supplied. {Section7(2)(c)(i)}.
6.	In order to maintain legal professional privilege. {Section 2(g)}.
7.	To enable the council to carry on without prejudice or disadvantage, negotiations {Section 7(2)(i)}.

## Resolution to allow members of the public to remain

If the council/committee wishes members of the public to remain during discussion of confidential items the following additional recommendation will need to be passed:

### Move/Second

“That \_\_\_\_\_ be permitted to remain at this meeting, after the public has been excluded, because of his/her/their knowledge of Item \_\_\_\_\_.

This knowledge, which will be of assistance in relation to the matter to be discussed, is relevant to that matter because \_\_\_\_\_.

Note:

*Every resolution to exclude the public shall be put at a time when the meeting is open to the public.*