

WAIPARA RIVER WORKING PARTY

Monday 3 May 2010
Working Paper Number: EIGHT
- Dogs, Fishing, Firearms

Summary

This paper addresses three management issues as follows:

- Dogs
- Fishing
- Firearms

Dogs within the Hurunui District are managed under the Dog Control Act 1996 and the Hurunui District Council Dog Control Policy and Bylaw 2008. The bylaw sets out general provisions and requirements that dog owners must comply with to ensure that they can enjoy their dogs in the district while ensuring the safety and personal well-being of all people. The bylaw sets out those areas where dogs are prohibited or are required to be on a leash at all times. The Working Party needs to consider whether the existing regulations are adequately managing dogs in the Waipara river or if further restrictions should be placed on dogs in the river.

The paper then goes on to look at fishing in the river. The paper identifies the fish species found in the river and the relevant legislation that applies to fishing in New Zealand.

Lastly the paper considers the issue of firearms use in the river and covers the relevant legislation and regulations in place to manage this. The Working Party needs to consider whether the existing mechanisms in place are adequate or whether further mechanisms need to be provided.

1 INTRODUCTION

- 1.1 This report looks at three management issues within the Waipara River. Firstly the paper addresses the issues associated with dogs and the existing legislation which provides for the management of dogs on both public and private land. The paper then goes on to look at fishing in the river and where this is appropriate. Thirdly the paper looks at the issue of shooting in the river and the relevant regulations that control the use of firearms on both public and private land.

2 DOGS

- 2.1 People visiting the river will often bring their dogs with them to enjoy the river environment. Whilst dogs can provide companionship and enjoyment to their owners, they can be a nuisance in terms of the river environment. Faecal matter, the disturbance of nesting birds and uncontrolled animals can be an issue, particularly in areas with high recreational use.
- 2.2 The law dealing with the control of dogs is contained in the Dog Control Act 1996. The Dog Control Act gives local councils extensive powers to deal with owners whose dogs cause a nuisance or endanger people or property.
- 2.3 Under the provisions of section 10 of the Dog Control Act 1996, the Hurunui District Council has adopted a Dog Control Policy for public places. To enforce its Dog Control Policy and to provide for wider public health and safety the Council has also adopted a Dog Control Bylaw.
- 2.4 Under the Hurunui District Council Dog Control Bylaw 2008, dogs must be kept under effective control in public places at all times. For the purpose of the Dog Control Policy, 'effective control' means that the dog is either confined on private land, on a leash or under effective voice command where the dog will come and sit or stop on command and 'public place' means *'a place that, at any material time, is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from that place.'*
- 2.5 Dog owners are also required to remove all dog faeces left by their dog in any public area. Under the Dog Control Bylaw, dogs are prohibited at the Waipara River Mouth.
- 2.6 A dog found wandering in a public place, creating a nuisance (including wandering on private land or barking) may be impounded under section 10 of the Hurunui District Council Dog Control Bylaw.
- 2.7 The Dog Control Bylaw provides for public areas where dogs are prohibited such as at the Waipara River mouth and also provides for public areas where dogs are required to be contained on a leash at all times.
- 2.8 The Working Party needs to consider whether the existing provisions are adequate with respect to the values in the Waipara River or whether further constraints are required, such as requiring dogs to be contained on a leash at all times or prohibited from all areas in the river particularly given the ownership regime in the river where much of the river is subject to AMF rights.
- 2.9 Areas of the river subject to AMF rights come within the definition of 'public place' under the Dog Control Bylaw and therefore allows the Council the ability to regulate dogs in these areas as they are accessible to and used by the public.

RECOMMENDATION ONE

THAT THE WORKING PARTY RECOMMEND TO THE HURUNUI DISTRICT COUNCIL A REVIEW OF THE DOG CONTROL BYLAW TO CREATE DOG LEASH AREAS IN HIGH RECREATIONAL USE AREAS AROUND THE SH1 BRIDGE AND DOWNSTREAM OF WEBBS ROAD.

3 FISHING

- 3.1 Fish species found in the Waipara River include upland bully, bluegill bully, torrentfish, shortfin eel, longfin eel, common bully, block flounder, common river galaxias, and brown trout¹. Black flounder, lamprey and koara have also been observed² and NIWA records indicate that common smelt, Stokell's smelt and inanga are also present in the river. Of the native species, long finned eels are in gradual decline nationally.
- 3.2 The Proposed Waipara Catchment Environmental Flow and Water Allocation Regional Plan which has been publicly notified and is currently open to submissions, notes that the Waipara River system is not a favourable environment for salmonids. However the river does provide a fishery that has some value for locals for recreational fishing and mahinga kai and there is some use of the river mouth / lagoon for whitebaiting when flows are suitable.
- 3.3 Fishing in New Zealand is administered by Fish and Game (NZ) under the Conservation Act 1987. Fish and Game was established in 1990 for the purposes of the management, maintenance and enhancement of sports fish and game. Sports fish consist of trout, salmon, char, tench, rudd and perch. Of these species, only the brown trout is found in the Waipara River.
- 3.4 The regulations for what fish can be taken, where from and at what time are set by Fish and Game before each season. The fishing season begins on October 1st and a licence is required to fish for trout and salmon.
- 3.5 With respect to whitebaiting, the Department of Conservation is responsible for managing New Zealand's whitebait fisheries. The relevant regulations are found in the Whitebait Fishing Regulations 1994 and 1995 amendments. The regulations set out the relevant rules that need to be followed including the following:
- The whitebait season is open between 15 August and 30 November (inclusive). The taking of whitebait at all other times is prohibited.
 - Fishing is only permitted between 5am and 8pm or between 6am and 9pm when New Zealand Daylight Saving is being observed.
 - Permitted fishing gear.
- 3.6 Fishing as a recreational activity does not appear to be a significant issue in the river. It is the use of vehicles to access fishing spots which may be of concern to the Working Party. Access to the river is being considered separately in Working Paper 9.

¹ Richardson, J., and Jowett, I.G., 1994. Fisheries values of the Waipara catchment.

² Mosley, M.P., 2003. Waipara River: instream values and flow regime

RECOMMENDATION TWO

THAT THE WORKING PARTY ACCEPTS THE STATUS QUO WITH RESPECT TO FISHING IN THE RIVER.

4 FIREARMS

- 4.1 Hunters and shooters have been using the Waipara River and mouth area for generations. Today, people are attracted to the Waipara River to enjoy the outdoors, engage with nature and to make use of the recreation and leisure opportunities it provides. The land directly adjoining the river is also becoming more populated as the land is subdivided giving rise to lifestyle blocks and vineyards. Given the growing number of visitors to the river and the increasing development along the river, the potential for conflict between hunters and other users of the river increases.
- 4.2 Hunting and shooting in the Waipara River is generally restricted to the hunting of small mammals such as rabbits and possum and game birds at the Waipara River mouth.
- 4.3 The use of firearms in New Zealand is controlled by the Arms Act 1983 and regulations made under that Act. The New Zealand Police administer the Arms Act and issue licences and permits authorised by the Arms Act. The following sections of the Arms Act are considered relevant to firearms users in the river:

48 *Discharging firearm, airgun, pistol, or restricted weapon in or near dwellinghouse or public place*

Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$3,000 or to both who, without reasonable cause, discharges a firearm, airgun, pistol, or restricted weapon in or near –

(a) a dwellinghouse; or

(b) a public place,

so as to endanger property or to endanger, annoy, or frighten any person.

51 *Unlawful carriage or possession in public place of firearm, airgun, pistol, ammunition, explosive, or restricted weapon.*

(1) Every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 3 years or a fine not exceeding \$4,000 or to both who, except for some lawful purpose, -

(a) carries in a public place; or

(b) has in his possession in any public place-

any firearm, airgun, pistol, ammunition, explosive, or restricted weapon.

- 4.4 A 'public place' is defined in section 2 of the Summary Offences Act 1982 as:

Public place means a place that, at any material time, is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from the place.

- 4.5 With respect to section 48 of the Act, a legal opinion received from the police legal section quotes the following:

Adams on Criminal Law at AA48.01 notes:

"To be caught by this section, the discharge must be a short distance from, or in close proximity to, the dwelling-house or public place. There must be a nexus or link between the discharge and the person affected. In Rse V Police 27/08/91, Savage J, HC Wellington AP112/91, a person riding a horse 80m from a dwelling-house did not come within the category or person to whom the section applied. For the nexus to exist the person must be an occupant, guest, or visitor to the dwelling-house and be in either it or its immediate surrounds."

- 4.6 Section 7.21 of the Land Transport (Road User) Rule 2004 also applies with respect to the carrying or use of firearms in or on vehicles as follows:

7.21 Loaded firearms

- (1) *A driver must not operate a motor vehicle on or in which is carried any firearm, airgun, or restricted weapon (as defined in section 2 of the Arms Act 1983) that is loaded with a bullet, cartridge, missile, or projectile, whether in its breech, barrel, chamber, or magazine.*

- 4.7 The rule applies to road users and to vehicles on roads. A road is interpreted as including:

- (a) *a street; and*
- (b) *a motorway; and*
- (c) *a beach; and*
- (d) *a place to which the public have access, whether as of right or not; and*
- (e) *all bridges, culverts, ferries and fords forming part of a road or street or motorway or a place referred to in paragraph (d); and*
- (f) *all sites at which vehicles may be weighed for the purposes of the Act or any other enactment.*

- 4.8 The Arms Code notes that the permission of the land owner is required before shooting anywhere.

- 4.9 Another act that may be relevant in some instances is the Wild Animal Control Act 1977. This Act applies to all land and is for the purpose of controlling harmful species of introduced wild animals and regulating operations of hunters, so as to achieve effective wild animal control. It is administered by the Department of Conservation, and applies to feral deer, chamois, thar, wallaby, possum, feral goat, feral pig or any mammal declared as a "wild animal" by the Governor-General.

- 4.10 Section 8 of this Act follows:

8 Hunting or killing of wild animals

- (2) *Except as provided in section 16 of this Act, and section 56 of the Agricultural Pest Destruction Act 1967, nothing in subsection (1) of this section shall authorise any person to hunt or kill or have in his possession any wild animal on any land [or discharge a firearm into or over or across any land] without the express authority of the owner or occupier of that land. Every person commits an offence against this Act who hunts or kills or has in his possession any wild animal on any land [or discharges a firearm into or over or across any land] without the express authority of the owner or occupier of that land.*

- 4.11 Given the regulations that apply to the use of firearms on both public and private land and the landownership regime in the river, it would appear that it is an offence to use a firearm anywhere within the bed of the Waipara River unless the user of the firearm has the express permission of the landowner.

- 4.12 These regulations also apply with respect to game bird hunting at the Waipara River mouth. Anyone hunting game bird needs to hold a current Game Bird licence in addition to a Firearms licence. The land at the Waipara River mouth is deemed to be crown land administered by Land Information New Zealand. As such, any person wishing to use that area for hunting should have the permission of that authority to do so. It is unlikely that the people using this area for game bird hunting have the relevant permission to do so. At any rate, the river mouth is a public area that is popular with other users of the river and beach, and as such section 48 of the Arms Act would still apply.
- 4.13 The New Zealand police control the Arms Act, and as such any offence committed under this Act should be directed to them. Realistically, given the current level of police resources available in the Amberley area, it may be that on occasions the police do not have the manpower available to follow up on complaints at the time the offence occurs and without a vehicle registration number it is impossible for the police to follow up on these incidents. Even where the registration number of the vehicle is provided, it can be difficult for the police to prosecute. Where people are caught in the act on private land, the Trespass Act 1989 can also apply.
- 4.14 It is likely that those people shooting and hunting within the river are unaware of the ownership regime in the river and subsequently the constraints around the use of firearms in the river. Regardless of this, as mentioned earlier it is an offence to carry a loaded firearm in a public place. The Waipara River meets the definition of a public place under the Arms Act.
- 4.15 One option available to the Working Party is to rely on the existing regulations and enforcement regime but inform the public using the river that the use of firearms is not permitted. This information would need to be provided through signage made available at all public access points to the river and possibly through some form of education programme.
- 4.16 A second option the Working Party could consider is prohibiting the use of firearms within the riverbed under a Hurunui District Council bylaw. The difficulty associated with this option is that the enforcement officer warranted by the Council would then be tasked with having to deal with people armed with loaded firearms. Furthermore, the majority of offences would appear to occur at night or in the weekends when the enforcement officer may be unavailable or unable to respond in time to deal with the situation. It can also be argued that enforcement of firearms regulations more comfortably sits with the police.

RECOMMENDATION THREE

THAT THE WORKING PARTY SUPPORT CURRENT FIREARMS REGULATIONS WITH THE PROVISION OF APPROPRIATE SIGNAGE MADE AVAILABLE AT ALL PUBLIC ACCESS POINTS TO THE RIVER.