

18 August 2025

South Wairarapa District Council

Submitted via email to: haveyoursay@swdc.govt.nz



Federated Mountain Clubs of New Zealand Inc.
Submission on South Wairarapa District Council Paper Road
Access Bylaw 2025

Dear South Wairarapa District Council,

Summary of our submission

- a) FMC strongly opposes the proposed Paper Road Access Bylaw 2025. The Council has not provided sufficient information or evidence to justify this Bylaw.
- b) The Council does not have the legal power to restrict non-motorised access along an unformed legal road. The Local Government Act 1974 sets out the formal process for stopping a road.
- c) Many of the long standing problems with illegal activities or poor public behaviour on private land lie outside the scope of the proposed Bylaw. There are other civil and criminal legal options to address these problems.
- d) We recognise that local authorities have a general duty to provide for public access along the coastal marine area, while providing for the relationship of Māori and their traditions and culture with their ancestral lands, water, sites wāhi tapu and other taonga. The Wairarapa Coastal Strategy promotes walking access to, and along, the Wairarapa Coast, and to manage vehicle access, and encourage responsible use of vehicles so that impacts on native ecosystems and other beach users are avoided or minimised.
- e) Many of the problems could be resolved by applying practical 'on the ground' measures. For example:
 - i) Regional park plans are an example of local authorities working with iwi and local communities to provide the public with amenities for outdoor recreation while protecting natural, cultural and heritage values.
 - ii) Greater Wellington Council's Native Ecosystem Plan for Cape Palliser-Te Mātakitaki a Kupe could be extended to Waitetuna Stream, and be used to guide the restoration of damaged native ecosystems.

- iii) Easements or legal access ways from the unformed legal road to the foreshore could be negotiated with landowners. Signs and markers could be used to show the position of the unformed legal road and public access easements.

We wish to be heard in support of this submission at the hearings scheduled to take place on 3rd and 4th September 2025, or any other date that is scheduled.

Introduction

1. Thank you for the opportunity to submit on the Council's proposed Paper Road Access Bylaw 2025 ('Bylaw').
2. Federated Mountain Clubs of New Zealand Inc. (FMC) was founded in 1931 to, amongst other things, promote public access to our outdoors, to preserve our public lands and to promote non-commercial outdoor recreation. We advocate on behalf of over 22,000 New Zealanders, comprising almost 100 member clubs and 1,000 individual supporters, who enjoy outdoor recreation in New Zealand's front and backcountry. We also speak for the large number of other New Zealanders who enjoy our public lands for outdoor recreation.
3. Our submission on the proposed Bylaw considers it from the perspective of the outdoor recreation community, and in particular, the implications for public access to public land and along the coast. The provision of safe, practical, legal access to public land is often overlooked by decision makers.

Background

4. The Cape Palliser / Te Mātakitaki a Kupe coast lies at the southern end of the Aorangi Range. The landscape is similar to other south facing coastal areas of the Wellington region, with steep coastal escarpments, coastal beach ridges, gravel beaches and subtidal rocky coastal reefs.
5. The Aorangi Forest Park, managed by the Department of Conservation (DOC), occupies a large part of the Aorangi Range, and extends to the coast between Waitetuna Stream and Te Rakauwhakamataku Point. The Ngāpotiki Scenic Reserve (Stonewall Scenic Reserve), a Nature Heritage Fund purchase, lies between the Forest Park and the foreshore. The Reserve is a 'Whenua Tūturu' site, and is managed under a relationship agreement between DOC and the Rangitāne Tū Mai R ā Trust¹, as part of a Treaty of Waitangi Settlement with the Crown. The coastal strip from Little Mangatoetoe Stream and Waitetuna Stream and the blocks of land on the Mangatoetoe ridge is a mix of Māori and private land.
6. The south-eastern part of the North Island is especially important to Māori with its connections to Kupe – the legendary Polynesian explorer. There are many seasonal and

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<https://www.govt.nz/assets/Documents/OTS/Rangitane-o-Wairarapa-and-Rangitane-Tamaki-nui-a-Rua/Rangitane-o-Wairarapa-and-Rangitane-Tamaki-Nui-a-Rua-initialled-documents-schedule.pdf>

permanent occupation sites. Humans have occupied the area since the 12th Century² and numerous archaeological sites - kūmara gardens, stone walls, pā and urupā sites - can be found throughout the area. The Cape Palliser / Matakītaki coast and Ngā ra a Kupe coast are classified as sites with significant mana whenua values³.

7. The Cape Palliser / Te Mātakitaki a Kupe coast contains a diverse range of coastal vegetation communities – regenerating native forest on the coastal hill sides, gravel herbfields, shrublands, wetlands, and turf communities, and are classified as regionally important ecosystems or significant natural areas⁴. The area also has an important breeding colony of New Zealand fur seals. The Greater Wellington Regional Council is funding an ecological restoration programme along the south west facing coastal block of land between Kupe's Sail and the Cape Palliser Lighthouse⁵.
8. The wild exposed coastline has high landscape and amenity values⁶. Three significant geological features have been identified in the coastal area – a pillow lava association at Cape Palliser/Matakītaki, the fossiliferous sandstone outcrop - Kupe's sail / Ngā Rā a Kupe; and the reef at Te Rakauwhakamataku Point⁷.
9. The coastal area and forest park are popular areas for recreational activities. Legal public access to the western and southern sides of Aorangi Forest Park is via a circuit track between Te Kopi and Mangatoetoe Stream. Other routes into the forest park cross private land and require the permission of the landowners. A day walk or mountain biking trip can be undertaken along the coast between the Cape Palliser car park and the road end at Ngapotiki⁸. Surfcasting from shore and diving are also popular activities,

² https://www.researchgate.net/publication/363534686_Leach_BF_Leach_HM_and_RG_Law_2022_The_Chronology_of_Pre-European_Settlement_in_Palliser_Bay_A_Re-Evaluation_of_Radiocarbon_Dating_Fifty_Years On Downloaded 9 August 2025

³ Greater Wellington Regional Council 2023 *Natural Resources Plan Schedule C Sites with significant mana whenua values*. Downloaded 9 August 2025
<https://www.gw.govt.nz/assets/Documents/2023/07/CORRECT-Natural-Resource-Plan-Operative-Version-2023-incl-maps-compressed.pdf> See also Proposed Wairarapa Combined District Plan Schedule 4
https://cdn.prod.websitefiles.com/615b81c9bbf626f0003ff5c3/651e294d65f560e0c5abf49e_10%20Proposed%20Schedule%204%20ASAM%2020230927.pdf Downloaded 10 August 2025

⁴ Greater Wellington Regional Council 2021 *Key Native Ecosystem Operational Plan for Cape Palliser - Te Mātakitaki a Kupe* 2020-26
<https://www.gw.govt.nz/assets/Documents/2021/11/Key-Native-Ecosystem-Plan-Cape-Palliser-2021-26.pdf>

⁵ <https://www.gw.govt.nz/assets/Documents/2021/11/Key-Native-Ecosystem-Plan-Cape-Palliser-2021-26.pdf> Downloaded 17 August 2025

⁶ Proposed Wairarapa Combined District Plan Schedule 8 & 10
https://cdn.prod.website-files.com/615b81c9bbf626f0003ff5c3/651e294f561c984cafc8cde6_16%20Proposed%20Schedule%2010%20HVNHC%2020230927.pdf Downloaded 10 August 2025

⁷ Greater Wellington Regional Council 2023 *Natural Resources Plan Schedule J Significant geological features in the coastal marine area* Downloaded 9 August 2025
<https://www.gw.govt.nz/assets/Documents/2023/07/CORRECT-Natural-Resource-Plan-Operative-Version-2023-incl-maps-compressed.pdf>

⁸ <https://www.stuff.co.nz/travel/back-your-backyard/120429501/get-on-your-bike-to-a-dramatic-part-of-new-zealand-cape-palliser>. See also <https://cycletour.org.nz/rides/north/cape-palliser/> Downloaded 9 August 2025

attracted by the abundant coastal fishery⁹. Three significant surf breaks - 'Schnappes', 'The Desert' and 'Seconds' lie between Waitetuna Stream and Te Rakauwhakamataku Point¹⁰.

10. The Cape Palliser Road runs along the south coast, and finishes at the carpark by the Cape Palliser lighthouse. On the eastern side of the Aorangi Range, the formed road from White Rock finishes at Ngapotiki. The two formed roads are connected by an unformed legal road, which runs along the coastal terrace, crossing over the coastal portion of the Ngāpotiki Scenic Reserve (Stonewall Scenic Reserve). A rough four wheel drive (4WD) track runs along the coast, generally following the line of the unformed legal road. Near Te Rakauwhakamataku Point, part of the unformed road crossing the forest park now lies offshore in the Coastal Marine Area, where local erosion has moved the shoreline landward. Here the 4WD route deviates from the unformed legal road and climbs above eroding gullies and cliffs. Beyond the Cape Palliser Road carpark there are numerous 4WD drive tracks on private land, either side of the unformed legal road¹¹.
11. In response to years of poor public behaviour – trespassing on private land, illegal camping, illegally lit fires and 4WD vehicles damaging the soil and vegetation cover¹², the South Wairarapa District Council ("Council") is proposing a new Bylaw to restrict all pedestrian, cycle and vehicular traffic along the legal road, except for landowners or officially authorised vehicles. The restricted zone would start at the Cape Palliser car park and would extend approximately 380m along the unformed legal road (Bylaw Appendix 1)¹³. The effectiveness of the Bylaw will be reviewed within three years after it has commenced.

Note: it is not clear from the draft Bylaw (Appendix 1) whether this is the entire length of road covered by the Bylaw, or if the restricted zone would extend further along the coast to the Ngapotiki Scenic Reserve (Stonewall Scenic Reserve).

Specific comments on the proposed Bylaw

12. A road includes any land vested in a council for a road as shown on a deposited survey plan¹⁴. A legal road may be formed i.e. sealed or gravelled, or unformed (a 'paper road'). Unformed legal roads have the same legal status as a formed road. Under common law, the public are entitled to use them, provided they do not cause damage to the surface or trespass onto adjoining private property¹⁵. A council may make a bylaw to restrict only the use of motor vehicles on an unformed legal road to protect the environment, the road and adjoining land and the safety of road users¹⁶. The Council does not have the

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<https://www.fishing.net.nz/fishing-destinations/new-zealand/gisborne-hawkes-bay/destination-fishing-at-cape-palliser/> Downloaded 9 August 2025.

¹⁰ Greater Wellington Regional Council 2023 Natural Resources Plan Schedule K Significant surf breaks

¹¹ These are very obvious from the aerial photos of the area

¹² South Wairarapa Paper Access Road Bylaw 2025 Consultation Document

¹³ Ibid

¹⁴ s. 315(1) Local Government Act 1974 & s. 43(1) Government Roading Powers Act 1989

¹⁵ Herenga ā Nuku Aotearoa (2022) *Guidelines for the Management of Unformed Legal Roads* 2nd edition.

¹⁶ s. 22AB(1)(g) Land Transport Act 1998

power to restrict non-motorised access along an unformed legal road. There is in principle a legal right to pass and repass over any part of any road land. (See *R v United Kingdom Electric Telegraph Co* (1862) 31 LJ (MC) 166 at 167.)

13. If the Council wishes to restrict the free pedestrian movement on the legal road, as it is proposing in Clause 5 of the Bylaw, then it must first 'stop' the road i.e. alter its legal status. Without a road stoppage, a bylaw that purported to prevent non motorised access to road land could easily be overturned.
14. The Local Government Act 1974 sets out a formal rigorous process for stopping a road¹⁷, including public notification, and if there are objections to the proposed stoppage, the final decision would be made by the Environment Court. The Council has chosen not to use this process, citing the length of time and costs¹⁸.
15. The Council may close a public road temporarily for repairs to the road or associated infrastructure, problems with traffic, public disorder, sporting events or public functions¹⁹. None of the reasons cited by the Council in the Consultation Document meet these criteria.
16. The Bylaw is secondary legislation for the purposes of the Legislation Act, (FN: s 161A, Local Government Act 2002) and the Bylaw would be subject to the scrutiny of Parliament's Regulations Review Committee. FMC would consider making a complaint to the Committee if the Council approved the Bylaw.

FMC's position

17. FMC opposes the Bylaw because the reasons cited by the Council for the closing of the legal road (and therefore the Bylaw) are, in our view, illegal. Many of the problems are created by poor public behaviour, which could be dealt with by managing vehicle access.
18. One justification for the Bylaw is to prevent adverse effects of public activities on properties adjoining the unformed legal road, such as soil disturbance, damage to vegetation and habitats, biosecurity risks and trespassing. This will continue without fences, other physical barriers or route markers.
19. We disagree with the statement that "*..the bylaw recognises that paper roads can adversely impact nearby property owners - through issues like trespassing, biosecurity risks or disrupted land use*"²⁰ Unformed legal roads ('paper roads') are legally no different from formed legal roads, and it is questionable whether the Council would apply the same Bylaw to deal with similar problems in an urban area. There are other civil and criminal legal options for dealing with illegal access, intentional damage, illegal fires, and other nuisance effects on private property, e.g. the Trespass Act 1980.
20. Other reasons cited for the proposed Bylaw are also unsound. They include coastal erosion and unstable terrain and hazardous natural features. By overlaying the

¹⁷ s. 342, Schedule 10 Local Government Act 1974

¹⁸ South Wairarapa Paper Access Road Bylaw 2025 Consultation Document pg 5

¹⁹ s. 342 & Schedule 10 Local Government Act 1974

²⁰ South Wairarapa Paper Access Road Bylaw 2025 Consultation Document pg 3.

unformed legal road line over aerial imagery for the area, it is clear most of the road is largely unaffected by coastal erosion (see Para 10). The Council's discussion document does not offer any evidence or examples of "unstable terrain and hazardous natural features" that would affect public access. The road line largely follows the flat terrace at the base of the coastal escarpment, and like many other unformed legal roads in New Zealand, users would need to use their judgement where the road crosses unbridged streams or alluvial fans. Closure of the road, whether legitimate or not, will simply displace traffic to other areas of the coastal strip.

21. Public access along the foreshore is not a practicable alternative. Sea conditions would, at times, make the foreshore too hazardous. The only direct legal access to the foreshore is from the road in the vicinity of Rocky Point and the Cape Palliser Lighthouse. Further along the coast before Waitetuna Stream, several blocks of private land lie between the unformed legal road and the foreshore. There is no direct legal access to the foreshore without permission from the land owners.
22. Local authorities have a general duty (among other matters) to recognise and provide for public access along the coastal marine area, lakes and rivers, and the relationship of Māori and traditions and their culture with their ancestral lands, water, sites wāhi tapu and other taonga²¹ This statutory duty is reflected in the planning documents for the area.²² To summarise, the planning provisions require local authorities to manage activities to safeguard and maintain sites of significance to Māori and Outstanding Natural Features and Landscapes, maintain and enhance indigenous biodiversity, and to maintain and enhance public access to the coast, except where restrictions are required to protect natural habitats, mana whenua sites and activities, heritage features and public health and safety²³.
23. The Wairarapa Coastal Strategy²⁴ – a planning document prepared by the local territorial authorities and Greater Wellington Regional Council - contains a suite of non-statutory policies and methods to manage the increasing pressures on the zone between the top of the escarpment and Mean High Water Springs. The Strategy seeks to encourage walking access to, and along, the Wairarapa Coast, and to manage vehicle access and encourage responsible use of vehicles so that impacts on native ecosystems and other beach users are avoided or minimised²⁵.

²¹ s. 6(d) & (e) Resource Management Act 1991

²² Wairarapa Proposed District Plan <https://www.wairarapaplan.co.nz/wairarapa-proposed-district-plan>
Greater Wellington Natural Resource Regional Plan
<https://www.gw.govt.nz/assets/Documents/2023/07/CORRECT-Natural-Resource-Plan-Operative-Version-2023-incl-maps-compressed.pdf> Downloaded 10 August 2025.

²³ Section PA Public Access, Wairarapa Proposed District Plan See also Policy P8, Policy P21 & Policy P48 Policy P52 Greater Wellington Natural Resource Regional Plan

²⁴ <https://www.gw.govt.nz/assets/Documents/2022/05/711FinalStrategywis1347-1.pdf> Downloaded 11 August 2025

²⁵ Ibid Access and Recreation policies 3 & 6 pg 16

Managing public access

24. Local authorities must determine whether a bylaw is the most appropriate way of addressing the perceived problem²⁶. In our view, many of the problems could be resolved by implementing practical 'on the ground' measures to manage public access. For example, the Council could restrict motorised vehicle access beyond the Cape Palliser carpark, but continue to allow low impact activities, such as people walking or cycling access along the coast. This would fulfil the Council's statutory obligations to provide for public access while protecting the cultural values of the area. We acknowledge that fencing off the unformed legal road is not a practical option as it would require significant additional costs and time to complete archaeological surveys before disturbing the ground.
25. Other approaches are being successfully applied elsewhere. For example, the Greater Wellington Regional Council's regional parks offer a useful model and ideas for the future management of the Cape Palliser / Te Mātakitaki a Kupe area. The regional parks have to manage a wide range of activities with multiple land owners while protecting core natural and cultural values²⁷. The Parangarahu Lakes are jointly managed by the Greater Wellington Regional Council and the Port Nicholson Block Settlement Trust as part of the East Harbour Regional Park. This area has high natural, cultural and heritage values, and is the focus of extensive restoration work by iwi and conservation groups. Cycle and walking tracks provide access around the lakes, and motorised vehicle access is restricted by the use of specially designed barriers that stop vehicles but allow pedestrians and cyclists, including those with heavy e-bikes.²⁸ Eventually, the park may be linked to the Ngā Haerenga / Remutaka Cycle Trail via a cycle trail along the coast to Baring Head / Ōrua-pouanui²⁹.
26. The Greater Wellington Council's Native Ecosystem Plan for Cape Palliser-Te Mātakitaki a Kupe³⁰ could be another option for restoring the damaged indigenous plant communities. The plan boundary could be extended to Waitetuna Stream, and involve the local land owners. These efforts could be assisted by the creation of a Community Coast Care Group³¹ to enable other members of the local community to contribute to the restoration and management of the area.
27. The public are required to stay on the unformed legal road unless they have the permission of landowners to be on their land. However, the legal road line is often not always obvious. Similarly, the Council could negotiate public access easements or access

²⁶ s. 155(1) Local Government Act 2002.

²⁷ Greater Wellington Regional Council (2020) *Toitu Te Whenua Parks Network Plan 2020- 30* <https://www.gw.govt.nz/assets/Documents/2022/05/Parks-Network-Plan-2020-30-3.0.pdf> Downloaded 10 August 2025

²⁸ Ibid pg 15

²⁹ Ibid pg 130

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<https://www.gw.govt.nz/assets/Documents/2021/11/Key-Native-Ecosystem-Plan-Cape-Palliser-2021-26.pdf> Downloaded 17 August 2025.

³¹ <https://www.coastalrestorationtrust.org.nz/coast-care-groups/groups/> Downloaded 17 August 2025.

routes with landowners to provide access from the road to the foreshore. Simple practical measures, such as poles or markers, could be used to show the line of the unformed legal road and/or easements or rights of way. These are widely used elsewhere to guide people over public access easements on private land. Other measures, such as story boards, can educate and enrich people's understanding of an area, and give them a greater appreciation of an area's cultural and natural history.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'MDi'.

Megan Dimozantos

President

Federated Mountain Clubs of NZ