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Freedom Camping Guidance

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Contents

1. Purpose and scope of this document

1.1 This document has been prepared to support councils in the development, review, and administration of bylaws which relate to the Freedom Camping Act 2011 (**FCA**). This reflects recent amendments to legislation and case law, and replaces earlier guidance produced in 2018 which was wider in scope and audience.

2. Overview of the Freedom Camping Act 2011

Introduction

2.1 The Freedom Camping Act 2011 (**FCA**) came into force on 30 August 2011. It was enacted as part of a suite of legislation aimed at controlling the large influx of international visitors expected to attend the Rugby World Cup 2011. The FCA is permissive of freedom camping in a tent or self-contained motor vehicle by default, that is freedom camping in is permitted in any local authority area, unless it is restricted or prohibited by legislation, including regulations and other secondary legislation, or a bylaw.

2.2 While the FCA provided councils with powers to control freedom camping, it also raised new issues. Freedom camping, and freedom campers, contribute to the tourism economy, but for many communities, freedom camping became a polarising issue. Feedback provided to councils about freedom camping commonly includes concerns about hygiene, effects on the environment, impacts on access to popular recreational sites, as well as issues with freedom campers in residential areas.

2.3 The use of, and controls over, self-contained vehicles became an important topic, particularly as councils could not prohibit freedom camping entirely in their districts and regions under the FCA. Many bylaws made under the FCA sought to limit freedom camping to only those campers that use self-contained vehicles. However, the standards for certification of vehicles as self-contained were voluntary, and not, on their own, enforceable unless incorporated into a bylaw.

2.4 In response to this issue, Local Government New Zealand, the Ministry of Business Innovation and Employment (**MBIE**), and other agencies established the Responsible Camping Working Group in 2018 to identify ways to better manage freedom camping. In 2021 a discussion document was released by MBIE that considered various options to address freedom camping issues. This led to the enactment of the Self-contained Motor Vehicles Legislation Act 2023 (**Self-contained Act**), which amends the FCA and the Plumbers, Gasfitters, and Drainlayers Act 2006 (**PGDA**), and introduces a new certification process for self-contained vehicles among other changes.

2.5 The amendments made to the FCA largely came into force on 7 June 2023. However, there is a transitional period before the new PGDA certification for self-contained motor vehicles (and related provisions) come into force. We discuss the transitional period and its effect on existing freedom camping bylaws below.

What the FCA covers

2.6 Part 1 of the FCA contains the usual preliminary provisions, including several specifically defined words. It also provides that the FCA binds the Crown.

2.7 Part 2 has 3 subparts, all dealing with the control of freedom camping on different land types; land controlled by local authorities (local authorities can also exercise powers in relation to New Zealand Transport Agency (NZTA) land, with the consent of NZTA), the Department of Conservation (DOC) and Land Information New Zealand (LINZ). Freedom camping on private land is not affected by the FCA. Local authorities are the only entities that can make bylaws to control freedom camping.

2.8 Part 3 deals with offences, defences and penalties, enforcement officers' powers and miscellaneous matters, including the transitional infringement offence provisions relating to current local authority bylaws.

Key definitions in the FCA

2.9 The Self-contained Act has changed definitions in the FCA, and introduced new definitions. One such change is to section 5 of the FCA, and the meaning of "freedom camp".

2.10 The definition of "freedom camp" still provides that it is camping (other than at a camping ground[1]) in a tent or other temporary structure, or a motor vehicle[2] within 200 m of an area accessible by a motor vehicle, the mean low-water springs line of any sea or harbour, or a formed road or a Great Walks Track. It also continues to define freedom camping as not the temporary and short-term parking of a motor vehicle, not a 'day-trip excursion', and not resting or sleeping at the roadside to avoid driver fatigue.

2.11 However, new subsection (2A) provides that a person is not freedom camping if the person:

(a) is a person other than a person who is in New Zealand on the basis of a visitor visa (within the meaning of the immigration instructions); and
(b) is unable to live in appropriate residential accommodation; and
(c) as a consequence of that inability, is living in either or both of the following:
    (i) a tent or other temporary structure:
    (ii) a motor vehicle.

2.12 This new exemption provided by subsection (2A) is discussed in further detail below under education and enforcement.

2.13 The FCA now also provides a definition of "self-contained", which is:

> **self-contained**, in relation to a motor vehicle, means that the vehicle has a valid certificate of self-containment issued in accordance with section 87U(3)(d) of the Plumbers, Gasfitters, and Drainlayers Act 2006 (but **see** subpart 1 of Part 1 of Schedule 1AA for the meaning of self-contained during the transitional period)

1 Which is defined as a camping ground that has a current certificate of registration under the Camping-Grounds Regulations 1985, or any site at which a fee must be paid to camp at the site.

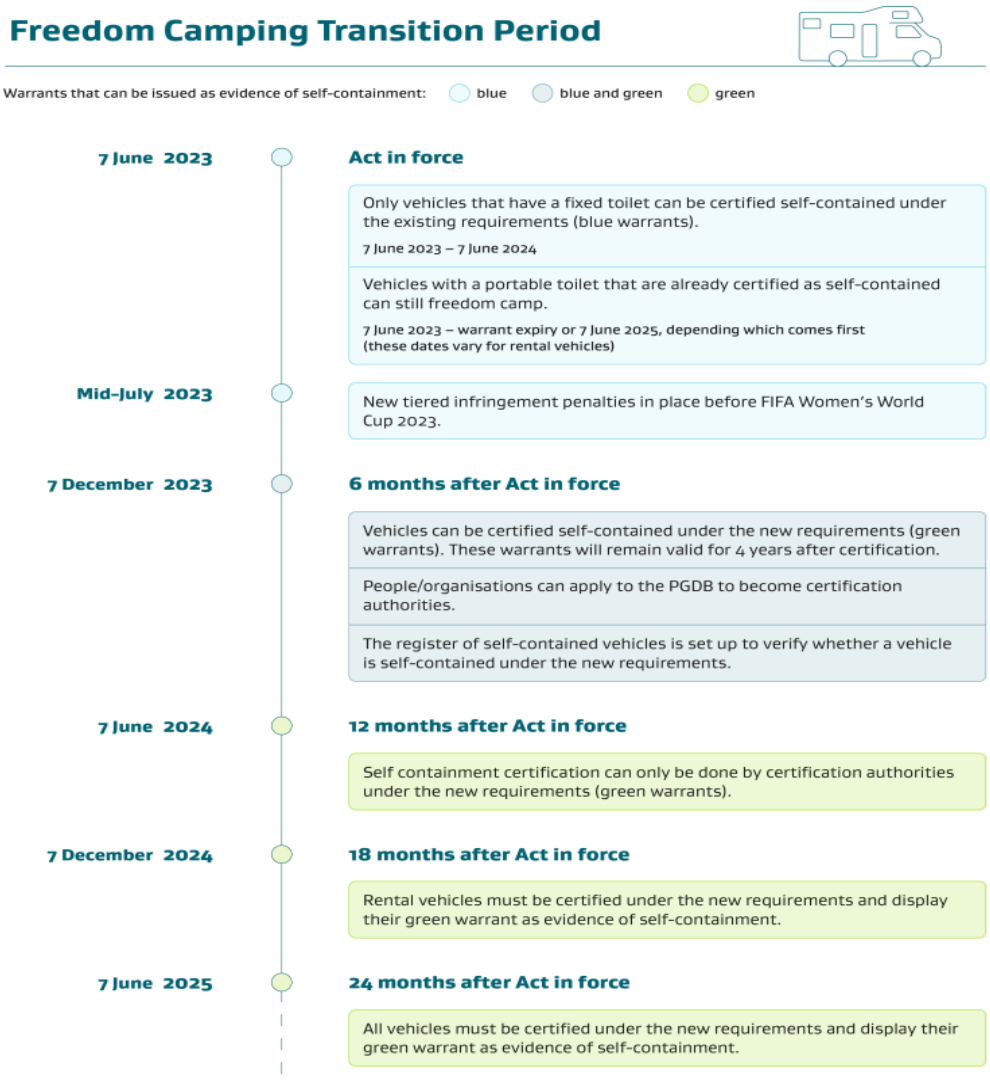
2 Caravan, car, campervan and housetruck are no longer expressly stated but all come within the term motor vehicle anyway.

2.14 The Plumbers, Gasfitters, and Drainlayers Board (**Board**) is the regulator of the self-contained vehicle regulatory system and will be responsible for:

(a) appointing certification authorities (the bodies offering self-containment certification services);
(b) providing guidance and investigating complaints and compliance issues in relation to certification authorities; and
(c) maintaining a national register of self-contained vehicles.

2.15 The new Plumbers, Gasfitters, and Drainlayers (Self-Contained Vehicles) Regulations 2023 set out the requirements that a vehicle must meet to be self-contained. These requirements include a water supply system, a wastewater system and a requirement that it must have a fixed toilet. Vehicles with portable toilets can no longer be certified as self-contained for the purposes of freedom camping.[3]

2.16 Schedule 1AA of the FCA sets out when a motor vehicle is self-contained during the two-year transitional period where different provisions apply. The following graphic produced by MBIE[4] explains the transitional period:



3 More information about the self-certification requirements can be found at: Self-contained Vehicles (pgdb.co.nz)
4 See: Freedom camping changes | Ministry of Business, Innovation & Employment (mbie.govt.nz)

The default position on freedom camping under the FCA

2.17 The FCA contains a presumption that freedom camping on local authority and DOC land is a permitted activity, including in a tent or other temporary structure. It is not a permitted activity on LINZ land, unless specific provision is made (in a notice). While councils can provide that part of their district is not to be used for any, or certain types of, freedom camping, section 12 does not allow a 'blanket ban' on freedom camping across the whole district.

2.18 However, an adjustment to this default position was introduced by the Self-contained Act, with freedom campers staying in a vehicle on local authority land only allowed to use a certified self-contained vehicle, unless they are staying at a site designated by the relevant council as suitable for freedom camping in non-self-contained vehicles.

2.19 Due to this change, councils may need to reconsider how they deal with freedom camping in self-contained vehicles in local authority areas. Previous bylaw restrictions limiting freedom camping to self-contained vehicles only in some or all of a district or region may no longer be needed. On the other hand, if councils decide to limit the use of tents or temporary structures for freedom camping or if they want to permit freedom camping in non-self-contained vehicles, such provisions may still be required.

The transitional period and effect on existing bylaws

2.20 As noted above, the transitional period starts on 7 June 2023 and ends on the later of 7 June 2025, or a date specified in an Order in Council.

2.21 Subpart 3 of Schedule 1AA of the FCA sets out the effect of the Self-contained Act on existing freedom camping bylaws that were in force immediately before 7 June 2023:

(a) If there is any inconsistency between the FCA and an existing bylaw, the bylaw has no effect to the extent of the inconsistency; with the FCA prevailing (clause 10(1)).

(b) Bylaws must be amended or revoked to remove any inconsistencies, but a council can do so by resolution publicly notified (there is no need to use the special consultative procedure or meet the requirements of section 11(2) of the FCA) (clause 10(2)).

(c) If a bylaw allows freedom camping in any local authority area in a vehicle that is <u>not</u> self-contained, that bylaw continues in force during the transitional period but is treated as if it was made under the amended FCA. A new bylaw under section 11A can also be made, with the former revoked and replaced, if it has the same effect, by resolution publicly notified; again, the special consultative procedure need not be used (clause 11).

(d) Any reference in a bylaw to "self-contained", or "self contained" in relation to a motor vehicle is to be read as having the same meaning as self-contained in section 4 of the FCA (clause 12).

2.22 Councils will need to review their current bylaws and consider whether there are any inconsistencies that need to be addressed by resolution of the Council. If a bylaw is due for review, it may be preferable to carry out a full review and consultation, rather than make 'inconsistency' adjustments.[5]

2.23 There is also a need to consider what provisions in a bylaw allow freedom camping anywhere in a district in a vehicle that is not self-contained, and whether the Council should continue that provision beyond the transitional period and make a new bylaw under section 11A (using the transitional power in clause 11). Again, if the bylaw is shortly due for review, then it may be preferable to carry out a full review and consultation.

2.24 Any existing bylaw clauses that provide for a chief executive to give permission for freedom camping as an exception will not necessarily be inconsistent with the FCA, but the power cannot be exercised (by a chief executive) to permit the use of non-self-contained vehicles for freedom camping.

2.25 The reason for this is that new section 11A only allows the council to do this by making a bylaw under that clause. The power could however be exercised to allow freedom camping in tents or other temporary structures in areas where that type of freedom camping is not allowed.

2.26 If a council does want to approve the use of non-self-contained vehicles for any freedom camping it will have to make a bylaw under section 11A of the FCA that defines "the local authority areas…in its district or region where freedom camping in a motor vehicle that is not self-contained is permitted; and the restrictions and conditions, if any, that apply to freedom camping in those areas" (section 11A).

5 Note that changes to a FCA bylaw to meet these requirements does not change the existing due dates for the next bylaw review under section 13 of the FCA.

3. Broader context

Destination management and strategies

3.1 Many councils and their communities benefit from tourism, and councils have a role to play in managing visitors to their districts.

3.2 From a tourism perspective, freedom camping is one of a number of visitor impacts and preparations that come under the heading of 'destination management'. Management issues related to freedom camping involve infrastructure demands and gaps, the place of campgrounds in relation to tourism infrastructure, readiness of the tourism sector, local branding, and more.

3.3 Good management of freedom camping involves more than regulation through bylaws, with a broader planning focus needed, including through the development of plans and strategies. Some councils have developed responsible camping policies or strategic plans alongside bylaws, which aim to educate campers and provide a broader context for their region or district. Other councils have explored strategies to change freedom camping behaviours.

Example

Auckland Council explored a pilot working with Local Boards and ATEED on a tourism dispersal strategy across the city which encouraged freedom campers to explore a larger range of sites for freedom camping to take the pressure off heavily used sites.

To test whether increasing the number of sites suitable for freedom camping would encourage freedom campers to disperse from the central city, Auckland Council ran a Freedom Camping Pilot from February to April 2017. The Pilot temporarily increased the number of available sites. Before the dispersal strategy was put into action, council staff worked with Local Boards to determine which sites were suitable for freedom camping. An additional 14 sites across a range of suburban, urban, coastal and rural locations were made available for freedom campers to legally use, and were advertised to freedom campers on social media. The capacity of the sites ranged from 3 to 20 vehicles. Some sites were made more suitable for freedom camping by the addition of temporary toilets, signage and vehicle park markings. All sites were patrolled by council enforcement officers.

The Pilot provided evidence that both regulatory and non-regulatory actions were needed to effectively disperse freedom campers away from the central city. On the regulatory side, increasing the supply of legal camping spaces was a cost-effective way to manage demand. Each of the pilot sites had high demand from freedom campers by the end of the three-month period, and anecdotal evidence suggested that the pressure on inner city carparks by freedom campers had reduced.

On the non-regulatory side, social media campaigns to market free spaces to the campers most unlikely to use a campground had to be carefully worded. Advertising campaigns targeting freedom campers, which highlighted certain attractions, increased demand for nearby freedom camping sites.

Stakeholder collaboration

3.4 Good practice in the development of bylaws and freedom camping strategic plans involves a genuine consultative approach with stakeholders. A proactive approach ensures that stakeholder perspectives are known and understood, so that views can be properly presented and considered in a council's management and regulatory approach to freedom camping. A stakeholder group could comprise:

- New Zealand Police
- Iwi
- New Zealand Motor Caravan Association
- Regional Tourism Organisations
- Residents Associations
- Campgrounds
- Department of Conservation
- Land Information New Zealand
- New Zealand Transport Agency

3.5 Working with other agencies that have different approaches to freedom camping has proved challenging for many councils, but there are some good practices that can be employed to improve collaboration. The key is to engage early and often with the aim of establishing positive relationships with stakeholders.

DO:	DO NOT:
• Identify key stakeholders at the outset and regularly talk to them • Try for a joined-up approach to freedom camping that traverses council and government reserves • Fully investigate who owns what land before the bylaw is released • Combine with other councils	• Develop a strategy or bylaw without talking to affected stakeholders • Stop engaging with LINZ, DOC or NZTA if you face challenges in talking to them about the way they manage freedom camping on their land

Example

In 2016 **Taupo District Council** established terms of reference for a freedom camping working group to evaluate its proposed permitted sites for freedom camping. The working group was not given decision-making power but acted as a sounding board to test ideas and build understanding. The composition of the working group included NZ Police, NZMCA, the local residents associations, camping ground owners, DOC and elected members. Iwi were invited to take part but declined. The value in establishing the working group was having a diverse, potentially opposed group discuss different viewpoints. Council staff believed the working group had a positive and productive role in the subsequent bylaw-drafting process.

4. Relationship between the FCA and other legislation

The FCA and other bylaw-making powers

4.1 The relationship between the FCA and other legislation is complex and it is important that councils understand and apply the relevant statutes correctly.

4.2 By way of example, section 10 of the FCA provides that freedom camping on a local authority area[6] can be restricted or prohibited by a bylaw made under section 11 of the FCA, by a limit imposed on the number of people in a self-contained vehicle, or under any other legislation. The 'other' legislation includes:

Reserves Act 1977	Freedom camping is effectively prohibited under section 44(1) of the Reserves Act 1977 in reserves unless any of the statutory exceptions apply. Instant fines are now available under this Act, providing a practical enforcement option. Where a council makes a freedom camping bylaw it should be consistent with any relevant reserves management plans to avoid uncertainty.
Local Government Act 2002 (**LGA**)	The bylaw making powers in sections 145 and/or 146 might apply but would need to be exercised carefully. Any bylaw regulating or prohibiting freedom camping must not be repugnant to the general laws of New Zealand, which includes the FCA. However, there is no access to instant fines for bylaw breaches, so a council would need to consider what practical enforcement options apply.
District Plan Rules under the Resource Management Act 1991	Some councils might control freedom camping via district plan rules.

4.3 The acknowledgement in section 10(3) of the FCA that other legislation can provide for restrictions or prohibitions on freedom camping suggests that they would not be limited by anything in the FCA. This also seems likely given section 42 of the FCA also provides that the FCA "does not limit or affect the powers of a local authority under the Local Government Act 2002 or any other enactment that confers powers on a local authority".[7]

4.4 As the bylaw making powers under the LGA 02 are not limited or affected by the FCA, there is the potential that a council could use these other powers to make bylaws that regulate or prohibit freedom camping in some way. Section 145 provides that bylaws can

6 Land in the district or region of a local authority controlled or managed by or on behalf of that local authority under any enactment, and any area of NZTA land declared to be a local authority area under a bylaw made under section 10A.

7 Section 42(3) also provides that the FCA does not limit or affect any rights a person may have under any enactment to occupy a local authority area, conservation land, or LINZ land (for example, rights of occupation under a nohoanga entitlement).

be made to protect the public from nuisance and protect public health and safety, which could provide a relevant enabling provision.

4.5 However, a council would need to carefully consider the reasonableness of making a bylaw under the LGA, versus relying on the FCA powers. Councils should not exercise powers under one statute in order to defeat the purpose of another statute (ie. improper purposes). It is likely that the limited avenues for enforcement of a bylaw under the LGA means the use of that Act, as opposed to the FCA, will be less attractive to control freedom camping.

4.6 Finally, the Land Transport Act 1998 also provides for the making of bylaws to regulate parking. A bylaw that controls parking in any public place may incidentally also control whether or not vehicles can be parked overnight in that place (irrespective of whether the vehicle is being used for freedom camping). Again, the powers to make bylaws under this Act need to be made for the right purpose; that is, for 'parking' related reasons, rather than to control freedom camping.

Reserves Act 1977

4.7 The recent amendments to the FCA and the introduction of infringement offences into the RA has not assisted to clarify the relationship between these two acts in relation to freedom camping. The new homeless exemption applying to freedom camping under the FCA is also another consideration for a council when deciding whether the prohibition on camping in the RA should apply. While there is simplicity in having all camping controls in one place, there is no homeless exemption for anyone 'camping' in a reserve - if the general prohibition on camping in section 44 of the RA applies.

4.8 When making or amending FCA bylaws, councils need to consider the reserves they manage under the RA and decide how they want to control camping on those reserves, if this is not already determined in any reserve management plans.[8]

4.9 Now that the RA also has an infringement regime, councils might decide it is more appropriate to manage camping on some or all reserves under the RA alone. Alternatively, it may still want to have some, or all, reserves regulated under a FCA bylaw, the same as any other local authority area. A breach of s44(1) RA can be prosecuted or infringed under the following - subsection 94(2)(b)/ s105F and subsection 94(2)(c)/s105B(2). This section reads:

> (2) Every person commits an offence against this Act who—
>
> …
>
> (b) being the driver of any vehicle or the pilot of any aircraft or the person in charge of any boat or hovercraft that is illegally on a reserve, fails or refuses to remove it from the reserve when so requested by any officer as defined in section 93(5); or [and an infringement offence under section 105F]
>
> (c) without a concession, lease, licence, permit, or other right or authority, does or causes to be done any act, matter, or thing for which a lease, licence, permit, or other right or authority is required by this Act or by any regulations under this Act; [and an infringement offence under section 105B(2)]…

8 We know some parks and greenspace owned or controlled by councils are not a reserve within the RA, and so care is also needed when describing this land in a bylaw.

4.10 The ability to control camping on a reserve solely under the RA is because the RA prohibits the use of reserves for camping (with some exceptions) under section 44(1) of the RA. This section reads:

> Except with the consent of the Minister, no person shall use a reserve, or any building, vehicle, boat, caravan, tent, or structure situate thereon, for purposes of permanent or temporary personal accommodation:
>
> provided that nothing in this subsection shall be deemed to prohibit the use, for purposes of personal accommodation, of any reserve or any building, vehicle, boat, caravan, tent, or structure situate on any reserve, subject to compliance with every term or condition on which such use is permitted,—
>
> (a) in areas set apart under the appropriate provisions of this Act for residences for officers or servants of the administering body or for rangers appointed under section 8(1); or
>
> (b) in camping grounds set apart under the appropriate provisions of this Act; or
>
> (c) in shelters, huts, cabins, lodges, or similar resting or sleeping accommodation approved by the Minister under section 45; or
>
> (d) in a government purpose reserve or local purpose reserve, where living or sleeping accommodation is necessary because of the purposes specified in the classification of the reserve; or
>
> (e) in areas defined on management plans prepared under section 41 and for the time being in force.

4.11 It is also clear from section 10 that the FCA does not override the RA (or any other legislation under which camping might be controlled). As a result, both Acts must work together to avoid uncertainty.

4.12 The 'default' setting, subject to any of the exceptions in the RA applying, is that freedom camping is not permitted on reserves managed by a council, even while it is permitted on all other local authority areas under the council's jurisdiction. This comes from both s10 FCA and s44 RA.

4.13 As DOC has similar powers under both the FCA and RA, it can be good practice to work with DOC and other authorities that manage reserve areas to develop an integrated, and consistent, approach to regulating freedom camping on reserves. In saying this, councils remain accountable to their communities, and will need to consider their views when making decisions under either the RA or the FCA about the regulation of freedom camping in their district or region.

4.14 If a council has not already made decisions about whether camping on a reserve is permitted (or not) under a reserve management plan (as provided for in section 44(1)(e)), section 44(1) provides that the minister's consent can be given to allow camping (which could include freedom camping) on a reserve.

4.15 In most cases, decisions under section 44 of the RA will be made by councils themselves, as section 44 is included in the 2013 Instrument of Delegation given by the Minister of Conservation to all councils.

4.16 The exercise of this delegated power to allow camping on reserves must be made under, and be consistent with, the relevant purpose provisions in the RA (for instance, sections 3,

17 and 19). There is likely to be greater scope for freedom camping in 'recreation' reserves, and some 'scenic' reserves, compared to other types of reserves.[9]

4.17 Whatever decisions are made about reserves, the position should also be explained in the FCA bylaw (as an explanatory or additional note in the bylaw) and / or on a councils freedom camping webpage, so that it is clear what powers the Council is relying on for relevant land.

Review of reserve management plans

4.18 We note that alignment between reserve management plans and freedom camping strategies and bylaws is a sensible outcome. Councils are legally required to have a reserve management plan that applies to each of their reserves. For any councils that do not have an applicable plan, the freedom camping strategic planning process provides an excellent opportunity to create a plan that contains provisions that align with a council's wider strategy on freedom camping.

4.19 For councils that do have reserve management plans, the RA requires the council to keep the plan under continuous review to ensure that the plan does not fall out-of-date. Provisions relating to freedom camping may therefore be inserted at any time, following the consultation process set out in the RA. Councils are delegated the ministerial power to approve their own plans.

4.20 Councils may manage freedom campers in reserves under a reserve management plan (or as a separate decision under section 44 of the RA) in an identical manner to how they would manage any other areas under an FCA bylaw, with similar restrictions and conditions.

4.21 Practically, it may be sensible that any such conditions are consistent with restrictions in the FCA bylaw. Logistically, and to prevent predetermination problems, a council may need to treat any RA decisions and FCA bylaw decisions as a freedom camping 'package', to be consulted on together.

DO:	DO NOT:
• Assess all reserves for freedom camping and seek to align reserve management plans with freedom camping reviews. • Consult on changes to a reserve management plan addressing freedom camping under the RA.[10] • Consider aligning decisions on freedom camping bylaws and allowing freedom camping on reserves at the same time, for clarity and completeness of advice.	• Assume that because a reserve does not have a reserve management plan that a freedom camping assessment should not be done. • Include new freedom camping sites or prohibitions on reserves in a reserve management plan (or as a decision under section 44) without public consultation.

9 Councils also have powers in sections 53 and 55 of the RA to set apart reserves as "camping grounds". These powers enable councils to also provide services and facilities for these camping grounds and to charge users. A camping ground of this nature of a reserve will not be relevant to freedom camping because the definition in section 5 excludes camping grounds where a fee is paid.

10 When making a decision under section 41(9) about whether to follow the section 41(5) and (6) procedure (which includes consultation), the council should also consider its decision-making requirements in the LGA. In particular, section 78 of the LGA requires the consideration of views and preferences before making a decision on a matter.

Examples

Tauranga City Council's (TCC) Freedom Camping Bylaw 2013 process made it clear how the FCA, the RA, and the Ministerial Delegation worked together (under the legislation as it existed at that time).

Freedom camping was permitted on all reserves administered by TCC, except where restricted or prohibited. This provided certainty for visitors and followed the development of a consistent and cohesive freedom camping strategy. TCC aligned the development of its freedom camping bylaw with a review of its Coastal Reserves Management Plan. The process was aligned to deliberate on both at the same time. The final report to support the freedom camping decisions exercised the Ministerial delegation to approve the council listing those reserve areas that would be permitted for freedom camping. This was in the same report adopted by the TCC.

Whangarei District Council (WDC) adopted its Camping in Public Places Bylaw in 2017. WDC wanted to ensure that the bylaw provided clarity for both freedom campers and enforcement officers by addressing the inherent conflicts of the FCA and the RA. WDC drew on Tauranga's approach but was in the position of having numerous small reserves in a large rural area without applicable reserve management plans. Using the Ministerial delegation, WDC made a resolution at the same time as the FCA Bylaw was adopted to the effect that WDC allowed camping under section 44 of the RA for reserves it administers outside of reserve management plans. The approach was cohesive and clear to everyone, allowing an Enforcement Officer standing in any public place in the district to be clear about the rules for camping on any given site.

5. Powers of different entities under the FCA

5.1 Section 42 of the FCA provides that the FCA does not limit or affect the powers of NZTA under transport legislation, DOC under conservation legislation and LINZ under relevant Crown land legislation. But the FCA does make slightly different provision for each of these entities within the FCA.

NZTA land

5.2 For councils the most important change made by the Self-contained Act is the inclusion of NZTA land as being subject to freedom camping controls. However, this is only when the chief executive of NZTA has given written consent to a council to make a bylaw (under section 10A) that applies to any area of NZTA land in the council's district or region (in which case it is declared to be a local authority area).

5.3 If a council makes such a bylaw and declaration (which can only be made if the same tests set out in section 11(2) are met; refer section 10A(2)), the NZTA land can then be regulated by the Council in relation to freedom camping. The FCA does not deal with how any such arrangements might work, or the terms of any consent. This is for the NZTA and a council to address separately.

5.4 Some areas of NZTA land are immediately adjacent to, and indistinguishable from council land, and it is simply a matter of commonsense and administrative efficiency for the council to be able control that land. In other areas problems might arise for NZTA, where it is keen to have the same unaffected enforcement powers over land as is provided elsewhere in the district.

5.5 Consent being provided to a council might also include assistance with funding the risk analysis required for the purpose of addressing the section 10A(2) tests, or to employ an enforcement officer.

5.6 If a section 10A bylaw is made, the relevant NZTA land can then be included in any bylaws made under section 11 or 11A, again subject to written consent from NZTA.

DOC and LINZ land

5.7 Subpart 2 of Part 2 deals with freedom camping on conservation land while subpart 3 now addresses freedom camping on LINZ land. Sections 19A to 19D regarding LINZ land were inserted by the Self-contained Act.

5.8 The default position for DOC land is that freedom camping is permitted. However, DOC has determined that some of its land should be restricted or prohibited. Their website includes detailed information about freedom camping, including an interactive map of restricted or prohibited conservation areas: Freedom camping: Stay at a DOC campsite.

5.9 DOC does not make bylaws to control freedom camping. Instead, it must publish a notice in accordance with sections 17 and 18 of the FCA.

5.10 LINZ does not have to publish notices to restrict or prohibit camping on any of its land, instead it has to publish a notice when it permits freedom camping on LINZ land (refe4r to section 19B, and the publication requirements under section 19D). The default position in section 19A is that freedom camping on LINZ land is not permitted. Before a notice is given by the commissioner of LINZ under section 19B, there is a requirement to consult with persons the commissioner considers are likely to be significantly affected by the notice.

6. Making a bylaw under the FCA

Alongside this guidance, a model bylaw has been developed. This is designed to support councils to develop and/or review their own bylaws. The model bylaw provides clauses for a bylaw made under both section 10A and section 11A, in addition to section 11. The model bylaw can be accessed here.

Section 11

6.1 The main bylaw-making power is provided by section 11 of the FCA. Section 11 contains 3 'tests' a council needs to be satisfied about, before being able to make a bylaw. The same tests must also be satisfied if a council wants to make a bylaw under section 10A for NZTA land.

6.2 When a council makes a bylaw to permit freedom camping in motor vehicles that are not self-contained (as is enabled by section 11A), there are no 'tests' that need to be satisfied. However, any site analysis and options consideration (discussed below) carried out by a council for the purposes of a section 11 (or section 10A) bylaw may also lead to conclusions that some freedom camping in vehicles that are not self-contained (or in tents or other structures) may be provided for in a FCA bylaw.

6.3 The first test in section 11(2)(a) is that a council must determine whether the bylaw is necessary for one or more of the following purposes:

- to protect the area
- to protect the health and safety of people who may visit the area
- to protect access to the area.

6.4 The second test is very similar to the bylaw-making power in the LGA. However, in addition to determining whether a bylaw is the 'most appropriate way' to address perceived problems, a council must also be satisfied a FCA bylaw is 'proportionate'. The requirement that bylaws must be both appropriate and 'proportionate' is to ensure that any restrictions on freedom camping are justifiable in relation to the nature and scope of the problems being experienced, given the default position is that freedom camping on all local authority areas is permitted. A council needs good evidence on which it can be 'satisfied' for the purposes of both section 11(2)(a) and (b). We discuss how to approach site assessments below.

6.5 Finally, the Council must be satisfied a bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990 (**NZBORA**). There is now case law under the FCA[11] which sets out guidance and principles that councils should consider when making or reviewing FCA bylaws. The appendix to this guide discusses these cases in more detail, and provides links to the cases.

6.6 As noted above, bylaws cannot absolutely prohibit freedom camping in all local authority areas in the Council's district/region (section 12).

6.7 Section 11B now includes a requirement that bylaws must include either a map and/or description of the areas to which the bylaw applies. If both are used and there is any inconsistency, then the description will prevail over the map.

11 Although it predates the latest amendments to the FCA it remains applicable.

6.8 Section 11B also provides that a bylaw is made using the special consultative procedure under the LGA. There is no option to use another form of consultation as there is now for LGA bylaws, but a council may make minor changes and correct errors by resolution publicly notified (but only if the changes do not affect existing rights, status or capacity of any person to whom the bylaw applies).

6.9 Councils will need to have a clear picture of the area concerned, including how it will define the area and whether it has any special characteristics. For example, some useful questions to ask will be:

- Are there public toilets at the area? What are their hours of opening?
- Who, generally, uses the area and is the area used for any specific purpose (for example, is it a sports park)?
- Where is the area situated? Is it urban or rural?
- Is the area ecologically or physically sensitive?
- What is the nature of the vegetation in the area?
- Is there any indigenous fauna that live in the area?
- Does it contain any historic sites?
- What is the nature of the structures situated in the area (if any)? For example, are there any other public facilities in the area, cooking facilities, children's playgrounds etc?
- What is the relationship of Māori with the area?
- What relevant amenity values does the area have?
- What are the community preferences? For example, removing freedom camping from a particular site may enable the community to use the site in a way that might currently be prevented due to its freedom camping use.

6.10 Evidence about the types of problems linked to freedom camping activity that are occurring in the area, and that will be relied on to justify any restrictions or prohibitions in that area and any adjacent areas, will be needed. For example, evidence a local authority may have collected in relation to protecting an area may include the number of complaints that have been made about:

- vandalism to the area
- damage to the area
- injury to indigenous fauna
- littering of the area
- amenity values not being sufficiently protected.

6.11 With respect to protecting the health and safety of people who may visit the area, the local authority may have evidence such as:

- what type of offences have been committed in the area (including offences against the person or property offences) – from its own records or police records
- health issues, such as unsanitary conditions due to waste
- safety issues, such as traffic hazards in the area.

6.12 With respect to protecting access to the area, the local authority may have evidence such as:

- the use of the area by the general public (other than freedom campers);
- complaints about access to the area being compromised because of the presence of freedom campers; and/or
- Council officers observing any issues associated with access.

6.13 To be satisfied that a bylaw is the most appropriate and proportionate way of addressing the perceived problem in any area, an options analysis similar to one that might be

completed under section 77 of the LGA could be carried out. This will involve identifying and assessing the reasonably practicable options available to address the issues being experienced.

6.14 By way of example, relevant options could include the following:

- a bylaw restricting freedom camping in a local authority area (with potential for different restrictions to be applied to different areas to address the specific problems of that area)
- a bylaw prohibiting freedom camping in a local authority area
- a bylaw under the RA
- no freedom camping bylaw for the local authority area, but introduce other non-regulatory measures to mitigate the effects of freedom camping or control freedom camping (for example, more public toilets, more rubbish bins etc)

6.15 The options should be assessed by considering the advantages and disadvantages of each, including the costs and benefits for the council and its community. Section 77 of the LGA also requires that if any of the options identified involve a significant decision in relation to land or a body of water, the council must take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.

Evidence – site assessments and research

Site assessment and analysis

6.16 It is clear from case law that there is a need for good site assessments and analysis, to provide the basis for council decision-making on a FCA bylaw. Expectation now exists that there is comprehensive justification provided for council decisions to restrict or prohibit freedom camping in certain areas. In recent years, freedom camping bylaws have been one of the more complex and litigious council bylaws, and the importance of robust evidence is a key area of challenge.

6.17 Site assessments can cover every local authority area where freedom camping could occur or can concentrate on 'hot spots', if a council is only concerned about freedom camping in certain areas. However, a council can only impose prohibitions or restrictions in areas where it has robust evidence that allows it to be satisfied of the matters discussed above, so if only a limited selection of sites are analysed, the council will generally need to maintain a permissive approach to freedom camping in other areas that have not been assessed (unless it is an adjacent / similar area). In general, the more robust and complete a site assessment, the more confidence the council can take in its recommendations.

6.18 A site assessment should consider each site against the criteria in section 11.[12] Councils may wish to use a scoring system to help differentiate between sites that might need a prohibition compared to a restriction. An assessment should also consider the type of restrictions that might apply to the different sites, to demonstrate that a proportionate and appropriate approach is being taken.

12 See the discussion of the Thames Coromandel District Council assessment spreadsheet in the case law appendix, for an example of a robust approach to a site assessment.

DO:	DO NOT:
• Assess sites for all types of freedom camping (tenting, non-self-contained and self-contained) • Visit sites for information not available on desk-top (such as length of painted carparks) • Use local knowledge of residents around the area to improve accuracy • Use actual information on complaints or public feedback (consider doing an initial pre-consultation ahead of the formal bylaw consultation to obtain this information	• Prepare an assessment without justifiable evidence • Minimise the need for a site assessment if there is a desire for controls in an area • Adjust assessment information / findings due to public pressure • Just do desk-top assessments • Trust that council information on reserve history and ownership is 100% accurate • Prepare a site assessment without all reserve land (including road reserve) included

Research surveys

6.19 To better understand issues arising from the freedom campers visiting an area, as well as community views generally, councils may consider conducting regular research and surveys. Conducting regular surveys can assist to provide information over a longer period, and will be useful for subsequent bylaws / bylaw reviews.

6.20 Collaboration with neighbouring districts to produce area specific research on freedom campers, their preferences and needs, and on how much money they spend during their visits may be useful. The Ministry of Business, Innovation and Employment and the New Zealand Motor Caravan Association also can provide useful information.

Examples

Councils undertaking a survey of freedom campers every three years, or a one-off survey to understand both the domestic and international markets.

CamperMate and other similar sites provide information on visitor preferences that councils can draw on.

Wellington and Nelson City Councils: Both undertook research into the number of overnight parks available at peak times, matching this information to scope the infrastructure gap. This formed the basis of previous freedom camping strategies.

NZBORA

6.21 The final test under section 11(2)(c) of the FCA requires that a council must be satisfied that its bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990 (NZBORA). The first step in making this assessment is determining whether the bylaw limits any of the rights contained in the NZBORA.

6.22 The most likely right that could be impacted by a FCA bylaw is the right in section 18 of the NZBORA to freedom of movement and residence.

6.23 In *New Zealand Motor Caravan Association Inc v Thames-Coromandel District Council* [2014] NZHC 2016 (**TCDC case**) the Court found that the right to freedom of movement and residence in section 18 may not have even been engaged. While discussing other potential rights, the Court noted that no others were engaged:[13]

> It has been pointed out that freedom of movement has a close connection with other rights and freedoms affirmed in the Bill of Rights Act: freedom of movement together with the right of freedom of expression (s 14) and the rights to freedom of peaceful assembly and freedom of association (ss 16 and 17) together authorise the right to protest and that may also involve exercise of the right to freedom of movement (as in street marches) and on occasion to remain in place…. No authority exists however, for the right to be applied in a circumstance such as the present where none of the other rights in the Bill of Rights Act appears to be engaged, and the right asserted is a right to remain in place for the purpose of staying in a location overnight simpliciter. I doubt whether the right asserted by the Association in this case is in fact a right that falls within s 18 of the Act.

6.24 Even if it is not clear whether any NZBORA rights are properly engaged, the next step is to determine whether the limits in the bylaw are demonstrably justified in a free and democratic society. Again, the TCDC case held that even if the section 18 right had been breached, it was not significant and the limitations arising from the bylaw were justified limitations in terms of section 5 of the NZBORA.

6.25 This decision builds on earlier authorities that considered whether a restriction or prohibition in a bylaw is a justified limitation. From those authorities, the following questions should be considered when assessing whether a bylaw amounts to a justified limitation on the rights of freedom of expression, peaceful assembly, and movement:

- Is the objective of the perceived problem that the bylaw seeks to address important and significant?
- Is the bylaw proportionate to that objective? (This is to be gauged by answering the question whether the measure had a rational relationship with the objective).
- To achieve that objective, did the measure interfere as little as possible with the rights and freedoms affected?

6.26 In general terms, it seems unlikely that a FCA bylaw that is supported by robust evidence would not be viewed as a justified limitation on any potential rights protected by the NZBORA.

13 At paragraphs 130 and 131 of the decision

7. Education and enforcement

Offences under the FCA

7.1 Whether or not a bylaw is made, a council has enforcement powers under the FCA. The infringement offences relative to local authority areas are set out in sections 20 and 20C of the FCA. They provide for infringement offences if a person:

(a) freedom camps in a local authority area in breach of any prohibition or restriction specified in a bylaw made under section 11 or 11A that applies to the area.

(b) freedom camps in a local authority area, other than a local authority area defined in a bylaw made under section 11A as permitting motor vehicles that are not self-contained, using a motor vehicle that is not self-contained.

(c) fails to display a warrant card in a motor vehicle that the person is using to freedom camp in a local authority area, other than a local authority area defined in a bylaw made under section 11A.

(d) freedom camps in a local authority area in a self-contained motor vehicle with more people than the vehicle is certified for.

(e) while freedom camping in a local authority area,—
(i) interferes with or damages the area, its flora or fauna, or any structure in the area; or
(ii) deposits waste in or on the area (other than into an appropriate waste receptacle).

(f) makes preparations[14] to freedom camp in a local authority area in breach of any prohibition or restriction specified in a bylaw made under section 11 or 11A that applies to the area.

(g) makes preparations to freedom camp in a local authority area, other than a local authority area defined in a bylaw made under section 11A as permitting motor vehicles that are not self-contained, using a motor vehicle that is not self-contained.

(h) makes preparations to freedom camp in a local authority area in a self-contained motor vehicle with more people than the vehicle is certified for.

(i) fails or refuses to leave a local authority area when required to do so by an enforcement officer acting under section 36.

(j) displays in a motor vehicle an altered or a fraudulent warrant card.

(k) presents an altered or a fraudulent certificate of self-containment to an enforcement officer acting under this Act.

(l) refuses to give information when required to do so by an enforcement officer under section 35, or gives false or misleading information.

14 'Makes preparations' is defined in section 20(2) to mean either or both of erecting a tent to use it for freedom camping or parking a motor vehicle to use it for freedom camping.

7.2 There are two summary offences (instant fines cannot be issued): section 20F, in relation to the discharge of certain substances, and section 20G, offence to interfere with an enforcement officer. The maximum fines are $10,000 and $5,000, respectively.

7.3 In prosecuting any infringement offence there is 'strict liability' – that is, there is no need to prove the defendant intentionally or recklessly committed the offence or knew they were on a local authority area (or conservation or LINZ land).

7.4 A defence is available under section 22 if an act or omission giving rise to an offence was due to something beyond the defendants control, or was necessary to protect life or health, prevent injury or serious damage to property, or avoid damage to the environment and the conduct of the defendant was reasonable in the circumstances and the effects were adequately remedied after the offence occurred.

Homelessness

7.5 The FCA now provides an exemption for someone who is homeless. Such persons cannot have any enforcement action taken against them under the FCA for offences concerning freedom camping.

7.6 A person is considered homeless when they have no other option to acquire safe and secure housing, and this includes people living on the street in their cars.[15] This is distinct from people who choose to live full time on the road in their motorhomes, caravans and converted buses.

7.7 Although the word homeless is not defined in the FCA, the policy behind the inclusion of this provision aligns with this position.[16] Section 45A requires the Minister to "review the effect of the Amendment Act on homelessness", with the review to be commenced no later than 2 years after the commencement date.

7.8 The Self-contained Act also added a definition of residential accommodation:

> **residential accommodation** includes accommodation in a dwelling house, flat, hotel, motel, boarding house, or camping ground.

7.9 As defined, residential accommodation captures living environments that extend beyond a typical dwelling house, including a camping ground that is the subject of a current certificate of registration under the Camping-Grounds Regulations 1985, or any site at which a fee is payable for camping at the site.

7.10 It may be relatively straightforward for an enforcement officer to find out whether someone is on a visitor visa[17], but it may be more difficult to verify when someone is 'unable to live in appropriate residential accommodation'. If it is clear a person has been provided with alternative accommodation options but prefers to live in their motor vehicle then they will not come within the exemption.

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15 https://www.parliament.nz/en/pb/research-papers/document/00PLEcoRP14021/homelessness-in-new-zealand

16 Refer: 351 - Self-contained Motor Vehicles Legislation Bill (bills.parliament.nz) – also see the regulatory impact statement on the Bill, which states "it is important that the regulation of freedom camping activities does not further marginalise or penalise this population group" (page 21 - Reducing negative impacts of freedom campers (mbie.govt.nz)).

17 Under section 35 an enforcement officer that has a reasonable belief a person is committing an offence can direct the person to give their details, including their full address, and it is an infringement offence to refuse to give information or give false information.

7.11 Some evidence will be needed to establish that a person is voluntarily (choosing to) freedom camping, rather than being homeless (and with no other option), and this could include an enforcement officer:

- Seeking evidence about a person's financial position (if possible), and their ability to seek alternative accommodation elsewhere (this could arise from observations of the person or knowledge of accommodation availability in the area including camping grounds);
- Linking a person with social service provides to connect them with alternative, available accommodation options and support, which could support the fact that they are *choosing* that lifestyle;[18]
- Reviewing a person's social media activity[19], which could provide indirect evidence of the fact that a person is making a lifestyle choice as opposed to being truly homeless.

Enforcement and education

7.12 Councils can make good use of education activities and tools to control freedom camping. Clear educational material on websites and at tourist centres, as well as discussions with (or warnings to) campers, can often provide compliance results without resorting to enforcement.

7.13 Education and enforcement involves a balanced approach. A combination of approaches and activities taken from across a number of councils includes:

- Starting with an approach that freedom camping presents an opportunity for economic development outcomes for a council and its community;
- Partnering with rental companies and other tourist bodies to ensure relevant information is available and to reduce infringements;
- Recording both compliance and non-compliance in a district or region so a balanced picture emerges that can guide the type of enforcement approach;
- Clear and concise policy guidelines and delegations to staff, coupled with good training (including on the new requirements around homelessness);
- Using a graduated response model to any enforcement activity and making it clear for staff about when to use an educational approach, or warnings or infringements.
- The timing of monitoring activity (morning and evening patrols are likely to be needed, with evening patrols providing education and morning patrols the time for warnings and / or infringements).
- How officer discretion can be applied to enforcement, and an awareness that infringement notices can still lead to a matter being before a court, so good records should be kept.

18 While councils are not social agencies, evidence that council staff (either themselves or by engaging with another agency) have tried to aid a person claiming they are homeless, and that the person has refused to accept help or move elsewhere may assist in showing that a person may be choosing to live in a motor vehicle as opposed to being 'unable' to live in appropriate residential accommodation.

19 We are aware there are organisations active on social media that appear to be relying on or attempting to use the homelessness exemption as a FCA loophole.

Enforcement officers

7.14 Enforcement officers are appointed by councils under section 32 of the FCA (and by DOC and LINZ under sections 33 and 33A). Councils may appoint officers to issue infringement notices on land administered by DOC and LINZ where those agencies have given their consent. A council can also consent to DOC and LINZ enforcement officers exercising their powers on some local authority areas. Enforcement officers will also enforce NZTA land as a local authority area if consent has been given and a bylaw made under section 10A.

7.15 Section 32 stipulates the matters that must be included in an officer's written warrant, which includes the responsibilities and powers given to them, the offences in relation to which they are appointed, and the local authority areas (and any DOC and LINZ areas) in relation to which they may act.

7.16 Enforcement officers must produce evidence of their appointment (section 34) rather than the 'written warrant' referred to in section 32. That means an enforcement officer is not required to carry their full warrant with them.

7.17 The minimum requirement of this evidence is a document that specifies, by reference to sections of the Act, the responsibilities and powers that the person has under the Act and the infringement and other offences in relation to which the person is appointed.

7.18 Section 35 empowers enforcement officers to require people they suspect on reasonable grounds of committing, or having committed, an offence under the FCA, including a bylaw offence, to supply identifying information, and that of anyone else connected with the offence. The ability to withhold information is only available in circumstances where the information may incriminate other people and raise issues of legal privilege.

7.19 Enforcement officers can also require a person to leave a local authority area, or DOC or LINZ land, where the officer believes, on reasonable grounds, that they have committed or are committing an offence under the FCA (and as noted above it is an infringement offence (under section 20(1)) to refuse to leave an area if required to do so by an enforcement officer.

7.20 A person who meets the definition of homelessness can't be required to leave under section 20(1). However, a homeless person could potentially be asked to leave if the offence concerned was one in section 20F or section 20G. There is no exception for homeless persons camping on a reserve under the RA – and that means that it may be possible for an enforcement officer to move a homeless person from a reserve under the RA.

7.21 Enforcement officers also have power under sections 37 and 38 to seize and impound property that has been or is being used in the commission of an offence under the FCA. Section 37 is based on section 164 of the LGA, but with a higher test needing to be satisfied before an enforcement officer may seize a boat or motor vehicle. The officer must be satisfied on reasonable grounds a seizure of a boat or motor vehicle is necessary to avoid a risk to public health, for public safety, to protect significant flora or fauna, to ensure access, and is in the circumstances the most appropriate action.

7.22 Sections 39 and 40 address the return and possible disposal of property seized and impounded and are also based on similar provisions in the LGA. Section 41 is not found in the LGA and provides protection from liability for an enforcement officer for any damage incurred to property when impounding it under section 37. The protection is not absolute;

any actions that were not in good faith or were a major departure from expected standards of care are not excused by this section.

Fines and recovery of unpaid fines

7.23 The Freedom Camping (Penalties for Infringement Offences) Regulations 2023 came into force on 13 July 2023. They set different penalties for the infringement offences in the FCA. Schedule 2 of the Regulations set infringement fees of $200, $400, $600 and $800 for different offences.

7.24 Freedom camping in breach of a bylaw is subject to an infringement fee of $400 (the same as for freedom camping in a local authority area using a motor vehicle that is not self-contained, other than where permitted). However, interfering with or damaging a local authority area, its flora or fauna, or any structure in the area while freedom camping or depositing waste in or on the area while freedom camping incurs an $800 fine.

7.25 Where a court deals with an infringement offence, higher fines can be imposed, and these are also prescribed in regulations. Although not a fine, a district court can determine an amount an offender is liable for, to cover the cost of any damage to a local authority incurred as a result of an FCA offence (section 24). This section is similar to section 176 of the LGA but does not require a conviction.

7.26 Councils are entitled to retain all infringement fees from notices issued by the Councils enforcement officers, even if they have issued notices on DOC or LINZ land (where consent has been given by those agencies as mentioned above).

7.27 Ideally infringement fines should cover enforcement costs and the following steps can help achieve high levels of fine recovery:

- Lodge unpaid fines with the court for payment promptly.
- Make the payment of fines easy – consider credit card facility and online payments, and the ease of finding how to pay on the council's website.
- Ensure payment options are clear on infringement forms.
- Enforcement Officers and Customer Service Officers need to stay objective (their role is not to be customer advocate and encourage waivers and appeals).

7.28 It is also important to note sections 29 and 30 of the FCA, which provide that a rental service agreement may provide for the payment of an infringement fee by the hirer.

7.29 These sections enable vehicle rental companies to recover infringement fees for freedom camping offences from hirers' credit cards. This aligns freedom camping offences with the status quo for other vehicle-related infringement offences. They provide rental companies with the ability to on-charge infringement fees and associated costs, but do not make on-charging mandatory. No changes were made to these provisions by the Self-contained Act.

Appendix – Relevant case law

1. There have been two decisions under the FCA: *New Zealand Motor Caravan Association Inc v Thames-Coromandel DC* [2014] NZHC 2016 and *New Zealand Motor Caravan Association Inc v Marlborough DC* [2021] NZHC 157.[20]

2. These cases remain applicable following the 2023 amendments to the FCA because the tests in section 11(2) and the general principle in section 12, against a prohibition on freedom camping, remain the same.

***New Zealand Motor Caravan Association Inc v Thames-Coromandel DC* [2014] NZHC 2016[21]**

3. The NZMCA brought a judicial review challenging the validity of the Council's Freedom Camping Bylaw 2011. It also raised issues with the Council's Places Bylaw 2004 and Parking Control Bylaw 2004, arguing that together the bylaws unlawfully restricted the right to freedom of movement and residence in section 18 of the New Zealand Bill of Rights Act 1990 (**NZBORA**).

4. As part of its case about the lawfulness of the Council's decision to adopt the FCA bylaw NZMCA also argued that the cumulative effect of the three bylaws meant the Council's control over freedom camping was too extensive. Ultimately, the Court did not accept that the bylaws breached section 18 of the NZBORA.

5. The Court doubted 'whether the right asserted by the Association in this case is in fact a right that falls within s 18 of the Act. However, it is not necessary to decide the point because even if the right is breached, the breach is not a significant one and, on the view I take, the limitations arising from the Bylaw are justified limitations in terms of s 5 of the Bill of Rights Act.'[22] The Council's bylaw served a sufficiently important purpose to justify some limitation in the right to freedom of movement. However, the Court did find other issues.

6. The Council submitted that there were no cumulative effects across the three bylaws because the FCA overrode and revoked the existing bylaws. The Council only intended to control freedom camping through its new bylaw. However, the Court held that the FCA did not have that effect and the bylaws had not been revoked. Revoking a bylaw required the Council to have made a resolution following consultation using the special. The Council was ordered to not enforce the earlier bylaws until they had formally revoked them.

7. The Council also acted unlawfully when it made changes to the Freedom Camping Bylaw, adding more locations to the schedules without consulting on the changes. The Court did not agree with the Council that the changes were "minor", and therefore did not require consultation. The Court considered the changes were more than minor; neighbours living in an area proposed to be added to a schedule that allowed freedom camping would have a reasonable expectation of being consulted before that area was included.

8. The decision is also of note in relation to its findings on the tests in section 11(2)(a) and (b) (section11(2)(c) being the requirement that a bylaw is not inconsistent with the NZBORA).

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20 There was a third case where the proceedings were withdrawn by the NZMCA. *New Zealand Motor Caravan Association Inc v Queenstown Lakes District Council* [2022] NZHC 425 is the costs decision: workspace SpacesStore c3cf366b a2e8 4697 9f76 22757e36cbd7.pdf (justice.govt.nz)

21 The decision can be viewed at: workspace SpacesStore f3967c6b 750e 439a 9e6c e6a4ac2e474a.pdf (justice.govt.nz)

22 At [131]

9. The Council staff had prepared a spreadsheet with five columns identifying the different reasons in section 11(2)(a) for protecting each area, and a column for 'appropriate' and 'proportionate' in section 11(2)(b).

10. The Court noted there was similar language used in relation to each area discussed but some differences also identified for different areas, and that this and other information showed the Council was clearly advised of the matters it needed to be satisfied about in section 11(2). The Court held that the Council had taken a site-specific approach to considering the problems to be addressed, but it was not surprising that similar problems were recorded for different areas, because of the nature of the activity being controlled.

11. The Court also specifically accepted the Council's approach 'that once there had been an identified problem at a particular location in a reserve or at the beachfront, a prohibition should extend to the adjacent urban area. I do not consider that is a policy approach unavailable under s 11(2)(a) of the Act. Particularly in destinations where freedom camping is likely to be popular, a prohibition only in a reserve or at the beachfront might simply result in the problem migrating elsewhere in the vicinity. That might itself give rise to the same problems, or perhaps additional problems where freedom campers moved into residential streets and closer proximity to those occupying private property.'[23]

12. The Court also held that it was a policy decision for the Council about whether to prohibit freedom camping in areas where officers had only recommended restrictions. It was clear the Council had engaged with the officers' advice, but it was not obliged to accept it.

***New Zealand Motor Caravan Association Inc v Marlborough DC* [2021] NZHC 3157**[24]

13. The Council's 2020 Bylaw, when finally adopted, included a prohibition on freedom camping, which applied across the district, save for five restricted sites.

14. In this case, the NZMCA claimed that there had been a failure by the Council to follow the LGA consultation process before it introduced this blanket prohibition. The Court found that the Council had failed to exercise its discretion as to the manner of consultation required under section 82.

15. The Court found that the bylaw was invalid because:

    (a) The Council did not consult with the public on enacting a prohibition, which was a significant departure from the changes to the previous FCA bylaw it had proposed; and
    (b) It did not undertake the necessary analysis under section 11(2) of the FCA for all sites and areas affected by the prohibition.

16. The judgment confirmed when making bylaws, councils must:

    (a) adhere to the principles of consultation in section 82 of the LGA, and not make decisions which go beyond what has been consulted on; and
    (b) only restrict or prohibit freedom camping where a "risk analysis" has been undertaken for each affected area, which has satisfied the local authority that the requirements of section 11(2) of the FCA have been met.

Judge's comments on the breach of section 11 of the FCA

23 At [108]

24 The decision can be viewed at: workspace SpacesStore 0918b1d7 6d77 47ae 90d6 78640d5ced92.pdf (justice.govt.nz)

17. A bylaw made under the FCA must comply with section 11 and not have the effect of prohibiting freedom camping in all the local authority areas in the district.

18. The Judge described section 11(2) of the FCA as requiring a "risk analysis". The NZMCA argued that there was "no contemporaneous evidence" that this had been carried out for all parts of the district to which the Bylaw applied. The NZMCA also referred to comments made by the Minister of Conservation and the Minister for the Environment when the FCA was made, which demonstrated an intent by Parliament to proportionately regulate freedom camping in problem areas, and not impose "blanket bans".[25]

19. The Judge reviewed relevant other cases, including the only previous FCA decision – New Zealand Motor Caravan Association Inc v Thames-Coromandel District Council (**TCDC)** and then set out the approach to be taken to making FCA bylaws, which included the following:[26]

> *A local authority may use such method as it determines appropriate to delineate relevant areas within its district for the purposes of the s11(2) analysis. The decision-maker must then satisfy itself that the bylaw was necessary for the relevant purposes and was the most appropriate and proportionate way of addressing the perceived problem of freedom camping in a relevant area*.

20. The Court found that:[27]
    (a) descriptions of local authority areas "may be general", such as an urban area described with reference to signs for an urban speed limit;
    (b) restrictions or prohibitions could extend to adjacent areas which pose common risks; and
    (c) a default prohibition or restriction on freedom camping is possible, "as long as there are sites or areas in which freedom camping is permitted"; but did not accept the Council's approach of prohibiting freedom camping across the district without analysing each affected area under section 11(2) of the FCA.

21. Having reviewed the Council's material, and the reasons it gave, when it made the 2020 Bylaw, the Judge found that "*it is not apparent that the issues in all areas of the district were considered as required*" by section 11(2) of the FCA. This was distinguished from the TCDC case, where the local authority had undertaken "*specific site and area analysis*" and had not used "*a default district prohibition*".[28]

22. Unlike the TCDC case, the Court could not discern a "genuine attempt" to define areas in the district or to apply the section 11(2) criteria to those areas.[29] It found that this was likely because the Council's subcommittee which heard submissions on the draft bylaw (which did not include a blanket prohibition) decided to adopt a different approach to that taken in the draft, i.e. by adopting the more restrictive prohibition save for five sites, at the end of the decision-making process.

23. The Court considered the Council had a wide margin of discretion given that it was regulating a social policy issue at a local level but was not satisfied that the Council had met its statutory obligations.[30]

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25 At [77], [78], and [132] to [134]
26 At [156].
27 At [157] to [160].
28 At [161] and [163]
29 At [162]
30 At [165] to [168].

Key principles from these cases

24. Local authorities must consult in accordance with section 82 of the LGA when making freedom camping bylaws and can only make decisions within the scope of what has been consulted on. Further consultation may be required if changes are proposed that are outside the original scope.

25. Local authorities must be satisfied about the requirements of section 11(2) of the FCA. This will include a "risk analysis" in relation to each affected area but:
    (a) descriptions of local authority areas "may be general", such as an urban area described with reference to signs for an urban speed limit;
    (b) restrictions or prohibitions could extend to adjacent areas which pose common risks; and
    (c) a default prohibition or restriction on freedom camping is possible, as long as there are still sites or areas in which freedom camping is permitted.

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