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Sent: Tuesday, 3 August 2004 10:05 a.m.
To: 'vahry.photo@xtra.co.nz'; 'Andy Cockcroft (andic@ohnz.com)'
Cc: Jacobson, Christine HEAD OFFICE; Lawless, Peter Head Office; Somers, Jonty HEAD OFFICE
Subject: Vehicle use on DOC administered land - proposed Conservation Law Enforcement Bill

Hi Andy, Murray, Peter, Ken and Rob

Thanks for meeting with Christine, Peter and I last Thursday to discuss issues relating to 4x wheel and other vehicle use on land administered by DOC.

I'll set out below a summary of what the current thinking is of the team that is looking at the offence provisions, but please note that this is tentative. We want to better understand the implications of what is being suggested before we take it any further. You are free to discuss this with your members and others who may be interested.

Please let me know your views as soon as you can and no later than 24 August 2004.

Regards:

Bronwyn

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Vehicle use on DOC administered land

Background: As part of the review of DOC's enforcement provisions in all the acts and regulations etc that it administers, the team looking at this thought that vehicle use on land DOC administers could be better managed if an offence provision provide flexibility to do so. We thought this could be achieved repealing the existing provisions and replacing them with another that included a notice provision linked to the General Policy, Conservation Management Strategies and Plans.

Note that it is not possible to create an offence by making a notice so it is not possible for an offence provision to say that anything is not an offence unless allowed by notice. An offence must be in the legislation or in bylaws or regulations. This is why we are suggesting making vehicle use other than on roads an offence. Then we can authorise use as appropriate by notice. Some notices may open places permanently, at other times notices may be issued for very limited times and places and there may well be many other permutations.

Current provisions

National Parks Act 1980 : Most national parks have by-laws that limit vehicle use to roads.

A road is defined as follows:

Road includes all tracks formed for the use of vehicles and all bridges, culverts, and fords forming part of any road.

Conservation Act 1987: S39(1)(b) makes it an offence to enter any conservation area with a

vehicle, ship, or aircraft, in breach of any prohibition or restriction imposed pursuant to [] this Act;

Prohibition or restrictions in this context are bylaws or regulations. There are some regulations in place in relation to former state forest parks and that provision is quite close in part to the current proposal. Note that most conservation areas are unregulated.

State Forest Parks and Recreation Regulations 1979: Regulation 19 Vehicles makes it an offence except pursuant to a permit or other lawful authority, to enter, travel in, or leave any park in or with any vehicle other than by roads or tracks or routes designated as access routes by the Conservator and notified in such manner as he thinks fit, or stand any vehicle in any part of a park other than at parking places designated and notified as such by the Conservator.

Reserves Act 1977:S94(1)(l) provides that it is an offence to trespass with any vehicle or boat or aircraft or hovercraft on any reserve, in breach of any prohibition under this Act;

Again the prohibition would need to be contained in a bylaw or regulation.

I understand that there are not currently regulations in place, but this needs to be checked.

Proposed changes: The suggestion is to change the current position to add greater flexibility to manage vehicle use on all land DOC administers to add an offence provision that would make it an offence to use a vehicle, excluding a mountain bike in conservation areas, off road unless it was authorised. The authorisation would include a permit (for an individual) or a notice for a particular area. Both would have conditions attached but could not be inconsistent with General Policies, Conservation Management strategies and Conservation Management Plans.

Issues: There are a number of issues that need to be addressed including how roads and vehicles are defined. We've come up with some proposals set out following and are happy to consider others. Please note though that any definitions and drafting issues would be subject to Parliamentary Counsel's view.

Suggested definitions

"Vehicle" means any device capable of carrying people that is powered by any propulsion system and moves on wheels, tracks, skids, rollers or other means and includes any vehicle where the wheels, tracks, skids, rollers or other means have been removed but does not include:

- (a) a push-chair or pram;
- (b) a child's toy;
- (c) a Personal Assistive Mobility Device.

"Personal Assistive Mobility Device" means a device designed to transport only one person which is propelled by hand or a propulsion system that limits the maximum speed of the device to 15 km/hour or less.

"road" in a conservation area or national park

- (a) means a road [or way??] that is formed and maintained for vehicle use;
- (b) includes a route that is marked for vehicle use, a car park or car parking place; but
- (c) excludes a road used for maintenance, forestry or other restricted activities in the area.

Suggested notice provision for Conservation Act draft

An authorisation in respect of subsections (1)(??) [insert cl no of vehicle use offence] may state the conservation areas, or parts of such areas, or times where any of the activities in subsection (???) may be carried out includes:

- (a) a written permit granted by the Minister to a person or persons, and
- (b) a notice by the Minister where vehicles, or vehicles of a specified type, may be used.

A permit and notice in subsection (??)

- (i) must not be inconsistent with General Policies, Conservation Management Strategies and Management Plans
- (ii) may make the authorisation subject to any conditions that the Minister considers necessary to achieve the purpose of this Act and the health and safety of the public.
- (iii) may amend, revoke or extend the conditions of any notice by a further notice.
- (iv) must not derogate from any other enactment or regulation including those concerning access to land, safety and vehicle use.

A notice:

- (v) must be published on the Department of Conservation website, and by other broadcast over the Internet where appropriate.
- (vi) may also be published:
 - (aa) in some newspaper circulating in the area in which the subject matter of the notice is situated and at least once in each of the four daily newspapers published in Auckland, Wellington, Christchurch, and Dunedin respectively; or
 - (bb) if satisfied that the notice, amendment to the notice or any other such information is of local or regional interest only, the Minister may limit the publication of the notice etc to a newspaper or newspapers circulating throughout the locality or region in which the subject matter is situated.
 - (cc) by radio or television broadcast if appropriate.

CLE Bill suggested offence provisions relating to vehicles

As currently

Suggested change

Conservation Act 1987
S39(1)(b) Enters any conservation area with a vehicle, ship, or aircraft, or **uses a vehicle, ship, or aircraft in a conservation area** in breach of any prohibition or restriction imposed pursuant to [] this Act;

National Parks Act 1980
Vehicle use in national parks controlled by bylaws.

No use except on formed roads.

Reserves Act 1977
S94(1)(l)Trespasses with any vehicle or boat or aircraft or hovercraft on any reserve, in breach of any prohibition under this Act

NZ Walkways Act 1990
S23(1)(e) Takes, drives, or has charge or control of any motor vehicle on a walkway; or

Regulation making powers in s48.

Amend the existing provision by inserting the words in blue, and

Insert another offence provision to Act

**Uses a vehicle (other than a mountain bike) other than on a road in a conservation area
Provide for allowing vehicle use in specified places use in specified places etc by permitting for individuals and notices for areas, in addition to reg making powers**

Insert another offence provision to Act

Uses a vehicle other than on a road in a national park.

Provide for allowing vehicle use in specified places etc by permitting for individuals and notices for areas, in addition to bylaw making powers

Enters any reserve with a vehicle, ship, or aircraft or uses a vehicle, ship, or aircraft in a reserve, in breach of any prohibition or restriction imposed pursuant to [] this Act;

Continue to rely on bylaw making powers as there are different classifications of reserves that require different management methods and many reserves are administered by local authorities, administering bodies and boards, not DOC.

Provide for allowing vehicle use in specified places etc by permitting for individuals and notices for areas, in addition to bylaw making powers