Motueka Sandspit Scenic Reserve: Issues and Options

The Motueka Sandspit

The Motueka sandspit is part of the Motueka River delta, which consists of the sandspit, the river mouth, and the 'Kumaras' estuary. The sandspit is easily accessible and is popular for a range of recreational activities, including walking and dog-walking. Users of the sandspit can enjoy views across Tasman Bay / Te Tai-o-Aorere and to more distant landmarks including Rangitoto ki te Tonga/D'Urville Island, the Richmond and Arthur ranges and Abel Tasman National Park.

The Motueka River delta is a significant area for tangata whenua, with a rich cultural history. Some of the land adjacent to the sandspit is owned by Wakatā Incorporation and the Ngāti Rārua Ātiawa Iwi Trust for the benefit of current and future generations.

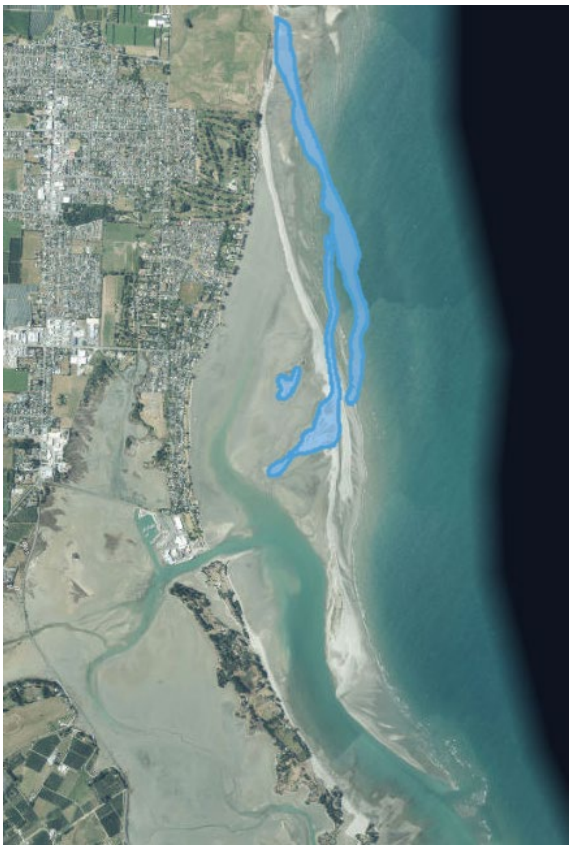
The sandspit is also an important high tide roost for shorebirds such as bar-tailed godwit, variable oystercatcher, South Island pied oystercatcher and ruddy turnstone; and is a nesting site for species such as variable oystercatcher, banded dotterel and terns. The site meets criteria for international significance (under the Ramsar Convention). The sandspit's importance as a high tide roost is particularly evident on the highest tides, when other roosting sites in Tasman Bay are inundated. The sandspit then becomes one of the few refuges for birds waiting for the tide to ebb.

Motueka Sandspit Scenic Reserve

The Motueka Sandspit was Gazetted as scenic reserve June 1992 (NZ Gazette 95, 2186). The notice in the Gazette describes the land in question as:

43.3000 hectares, more or less, being Sections 1, 2 and 3, S.O. Plan 14586, situated in Block IV, Motueka Survey District (scenic reserve subject to section 19(1)(b) of the Reserves Act 1977).

The area originally Gazetted as reserve is shown on the picture to the right. The survey plan notes that the boundaries of the parcels that make up the reserve are the 'Mean High Water Mark' (MHWM), except at the northern end of the sandspit where it borders unformed legal road and has a fixed boundary.



Motueka Sandspit: scenic reserve as Gazetted in 1992 (in blue) overlain on recent aerial photograph of the sandspit

Department of Conservation
Te Papa Atawhai

New Zealand Government

Issue 1: The position, shape and size of the sandspit have changed

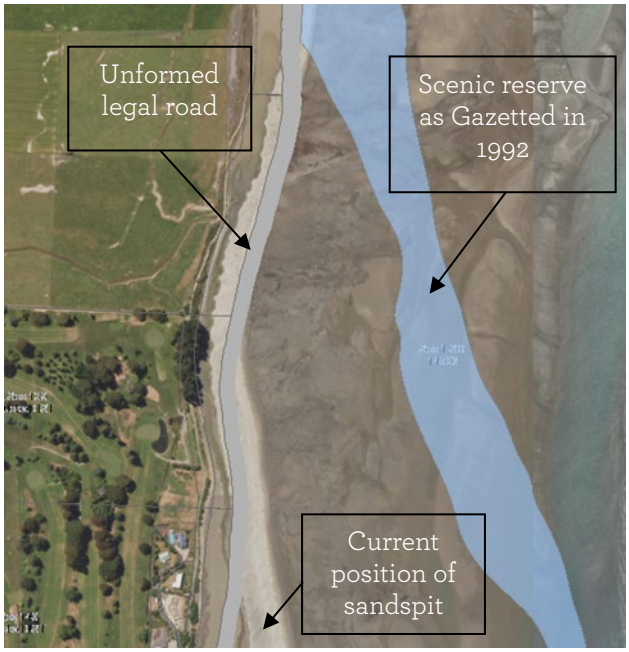
Aerial photos from the 1940's, 1980's and today (appended at the end of this document) show that the position, shape and size of the sandspit have changed over time. Since it was Gazetted as scenic reserve in 1992, the northern end of the spit has migrated landward, and the spit has extended southward by more than 1 km in front of Jackett Island. The majority of the sandspit is now outside the surveyed boundaries originally used to define the scenic reserve (see photo on previous page).

The morphology of the spit will continue to change, particularly in response to storm events and sea level rise.

Where the boundaries of a reserve are defined as MHWM they are deemed to move as the MHWM changes. Similarly, 'common law' doctrine on accretion and erosion provides that accretion to a land parcel becomes part of that parcel; and any protective status attached to the land parcel will also apply to the accreted land (with the opposite happening when land is eroded). Land which is currently above MHWM therefore remains (or is) classified as scenic reserve.

An exception to this is where the northern end of the sandspit has migrated landward and now occupies unformed legal road (photo on right). Where this has happened, the accretion becomes part of the unformed legal road and the reserve status does not apply.

The fact that the boundary of the reserve can change is not reflected in the signage and information relating to the site. This has led to uncertainty over the current status of the sandspit, and whether restrictions under the Reserves Act apply or can be enforced.



Issue 2: Conflict between different uses and values

Some uses of the sandspit are not necessarily compatible with the reserve status, or with the wildlife values that are present. For example, dogs, horses and vehicles can all cause disturbance to shorebirds that are nesting or roosting on the sandspit; and repeated disturbance can have significant adverse effects on their breeding success and survival.

Under the Reserves Act, anyone taking dogs, horses or vehicles onto the reserve requires authorisation from DOC (acting for the Minister of Conservation). In this respect, signage at the northern end of the spit indicates where dogs are allowed, if under control; and shows the area where dogs are prohibited under Tasman District Council's dog control bylaw. This signage effectively authorises people to take dogs onto part of the reserve. There are no general authorisations for horses or vehicles.

Similarly, unless otherwise authorised it is an offence to disturb or interfere with any animal or bird, or the nest or egg of any bird, on any reserve. However, enforcement of these provisions of the Reserves Act can be challenging, and it is often helpful to make specific bylaws under the Act before pursuing penalties under these provisions. No such bylaws currently exist for the Motueka Sandspit.

Issue 3: Inappropriate reserve classification

There's a technical anomaly with the current reserve classification, which can be fixed relatively easily.

The sandspit was Gazetted as scenic reserve under section 19(1)(b) of the Reserves Act. Reserves classified under that subsection are for the purpose of:

> *providing, in appropriate circumstances, suitable areas which by development and the introduction of flora, whether indigenous or exotic, will become of such scenic interest or beauty that their development, protection, and preservation are desirable in the public interest* [emphasis added].

This contrasts with scenic reserves classified under section 19(1)(a), which are for the purpose of:

> *protecting and preserving in perpetuity for their intrinsic worth and for the benefit, enjoyment, and use of the public, suitable areas possessing such qualities of scenic interest, beauty, or natural features or landscape that their protection and preservation are desirable in the public interest* [emphasis added].

The current classification (under s19(b)) does not appear to recognise, or give adequate protection to, the full range of values that are already present on the sandspit. Classification as a scenic reserve under s19(a) may therefore be more appropriate. However, there are other classifications under the Reserves Act, and under other legislation, which give greater or lesser protection for certain values. Should any of these be considered?

Options

There are a number of ways in which these issues can be addressed, including:

i. Non-regulatory approaches;

ii. Enforcement based on current status of the reserve;

iii. Re-survey and re-Gazettal of scenic reserve, with/without change of classification from s19(1)(b) to s19(1)(a);

iv. Re-survey and Gazettal as different type of reserve under Reserves Act;

v. Adopting bylaws for the reserve (with/without change of classification);

vi. Re-survey and Proclamation as wildlife sanctuary, wildlife refuge or wildlife management area under the Wildlife Act 1953;

vii. Adopting different classifications for different parts of the sandspit.

These are not necessarily mutually exclusive, e.g. non-regulatory measures can be applied in conjunction with any of the other (regulatory) options.

Further information on these options, including some of their pros and cons, is set out below.

Non-regulatory approaches

Non-regulatory methods include provision of information, educational material and events focussed on:

(a) raising awareness by informing users of the boundaries and values of the reserve, and the restrictions that apply; and

(b) modifying (or reinforcing) users' behaviours so that the values are respected and protected.

There have been some efforts in this regard, e.g. through permanent and temporary signage, the annual godwit festival, and events/messaging such as "I'm a wet-sand walker" and the "dog's breakfast".

The wider reach and effectiveness of these non-regulatory methods has not been properly assessed, but experience suggests that static signage is often ignored; that those attending events are often already aware/engaged (i.e. 'preaching to the converted'); and that there are some individuals who will ignore voluntary information/advice and continue to use the area in ways that are detrimental to its values.

Non-regulatory approaches are useful for raising awareness, and more could be done to engage target audiences. Changes to signage/maps could also be considered. However, on their own, non-regulatory methods are unlikely to address the issues discussed above, and additional (regulatory) approaches are likely to be required.

Enforcement based on current status of reserve

DOC could take a more active role in monitoring and enforcing compliance with the provisions of the Reserves Act (and Wildlife Act) that apply to the reserve with its current classification.

There is a risk that that this approach would be challenged, particularly given the discrepancy between the 'common law' boundary of the reserve (which changes) and what is currently shown on signs/maps at the site and on DOC's website (which show the boundary as at 1992).

DOC would also have no authority over that part of the sandspit that is now on unformed legal road; this would not have reserve status and would be administered by either Tasman District Council or LINZ.

This would also not address the question about the reserve's classification and purpose.

Re-survey and re-Gazettal of scenic reserve, with/without change of classification from s19(1)(b) to s19(1)(a)

Questions about the legal extent of the reserve could be settled (at least temporarily) by formally re-surveying the sandspit and re-Gazetting the reserve based on the new survey plan. This would formalise the common law right to land that has accreted to the sandspit since the reserve was originally Gazetted. It would also enable the classification to be amended to scenic reserve under s19(1)(a) of the Reserves Act, rather than s19(1)(b), to more accurately reflect the values that are present.

This may be the least contentious option, even if there is a technical change to the classification of the reserve, as in effect it maintains the status quo.

One disadvantage of this approach is that the newly surveyed boundaries would soon become outdated as the sandspit continues to change. However, changes to the reserve through accretion/erosion would still be captured by common law doctrine (discussed above).

Concerns about boundary definition can also be alleviated, to some extent, by clearly indicating on the survey plan (and on any maps of the reserve) that the boundary is the MHWM and subject to change with accretion/erosion.

Discussions would also need to be held with Tasman District Council and/or LINZ regarding the status of the unformed legal road at the northern end of the sandspit. Potentially the part of the road which is within the coastal marine area could be stopped; and the section of the sandspit that is on unformed legal road could then be added to the reserve when it is re-surveyed.

Re-survey and Gazettal as different type of reserve under Reserves Act

There are several classifications that can be applied under the Reserves Act, which place different emphasis on the purposes and values that an area is to be managed for.

A summary of reserve and other protected land classifications can be found at Categories of conservation land: Managing conservation and two examples are discussed below.

Any re-classification under the Reserves Act would require that the land be re-surveyed and re-Gazetted, with similar issues to those discussed above.

Nature Reserve

A higher level of protection could be achieved by re-classification as nature reserve under s.20 of the Reserves Act. Nature reserves are, as far as possible, to be preserved in their natural state; and public access is prohibited except by permit.

Access restrictions associated with this classification are likely to be unpopular with the local community; would be difficult to administer and enforce; and are unlikely to engender public support for the values that we are seeking to protect.

Government Purpose Reserve – Wildlife Refuge

Government Purpose Reserves are classified under s.22 of the Reserves Act. This states that the appropriate provisions of the Act shall have effect "*for the purpose of providing and retaining areas for such government purpose or purposes as are specified in any classification of the reserve*"; and s.22(2) states that "*without limiting the purposes for which a government purpose reserve may be classified … a reserve may be classified as a government purpose reserve for wildlife management or for other specified wildlife purposes*".

In addition, any scenic, historic, archaeological, biological, cultural, scientific, or natural features or wildlife that are present on the reserve must be managed and protected to the extent compatible with the primary purpose of the reserve.

Adopting bylaws for the reserve, with or without a change in reserve classification

The Minister of Conservation may make bylaws with respect to any reserve administered by DOC to support the proper administration and control of the reserve. Bylaws may be made for any or all of the purposes specified in s. 106(1) of the Reserves Act, and supplement provisions in the Act that specify actions and activities which, if carried out without authority, are offences. They are a useful tool for clarifying what is and is not permitted within a reserve and supporting enforcement.

Model bylaws are included in A Guide for Reserve Administering Bodies (available on DOC's website).

Re-survey and Proclamation as wildlife sanctuary, wildlife refuge or wildlife management area under the Wildlife Act

The Wildlife Act 1953 provides for three different types of protected area to be declared by the Governor-General, either by Order in Council or by Proclamation: wildlife sanctuaries (s.9), wildlife refuges (s.14) and wildlife management reserves (s.14A). A summary of the key features of these is set out in Categories of conservation land: Managing conservation.

A wildlife refuge or reserve under the Wildlife Act is an "overlay" and as such could be put in place on top of the existing scenic reserve.

Wildlife sanctuaries and wildlife management reserves can be subject to specific conditions which can prohibit or restrict public access and a range of activities within the sanctuary/wildlife management reserve, or any part thereof. Wildlife refuges are also subject to specific prohibitions or restrictions, but the range of activities over which conditions can be imposed are not as clearly defined.

Adopting different classifications for different parts of the sandspit

It would be possible to apply different classifications to different parts of the sandspit – e.g. the northern end of the spit could be classified as scenic reserve (as currently), whilst the southern part of the sandspit (of greatest significance for nesting/roosting birds) could be given one of the other classifications discussed above.

This would allow for continued public access/use, whilst providing stronger and more enforceable options for protecting the areas where birds are more vulnerable to disturbance.

It would however make the sandspit more complex to administer, and clear signage would be required to identify where the status changes. This may be difficult to define and maintain as the morphology of the sandspit continues to change.

Motueka Sandspit: 1940's, 1980's and 2020's

(Aerial photos from Top of the South Maps, accessed 10/01/2024)