

I hereby give notice that an ordinary meeting of the Regulatory and Bylaws Committee will be held on:

**Date:** Wednesday, 8 July 2015  
**Time:** 9.30am  
**Meeting Room:** Rooms 1 and 2, Level 26  
**Venue:** 135 Albert Street  
Auckland

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## Regulatory and Bylaws Committee

### OPEN AGENDA

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#### MEMBERSHIP

<b>Chairperson</b>	Cr Calum Penrose
<b>Deputy Chairperson</b>	Cr Denise Krum
<b>Members</b>	Cr Bill Cashmore
	Cr Linda Cooper, JP
	Cr Alf Filipaina
	Cr Sharon Stewart, QSM
	Cr John Watson
	Member Glenn Wilcox
	Member Karen Wilson
	Cr George Wood, CNZM
<b>Ex-officio</b>	Mayor Len Brown, JP
	Deputy Mayor Penny Hulse

(Quorum 5 members)

**Jaimee Maha**  
Democracy Advisor

**2 July 2015**

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*Please note: Any attachments listed within this agenda can be found at the Auckland Council website <http://infocouncil.auckland.govt.nz/> or can be provided on request.*

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**Note:** The reports contained within this agenda are for consideration and should not be construed as Council policy unless and until adopted. Should Members require further information relating to any reports, please contact the relevant manager, Chairperson or Deputy Chairperson.



## TERMS OF REFERENCE

The Regulatory and Bylaws Committee will be responsible for:

- Considering and making recommendations to the Governing Body regarding the regulatory and bylaw delegations (including to Local Boards);
- Regulatory fees and charges in accordance with the funding policy;
- Recommend bylaws to Governing Body for special consultative procedure;
- Appointing hearings panels for bylaw matters;
- Review Local Board and Auckland water organisation proposed bylaws and recommend to Governing Body;
- Set regulatory policy and controls, and maintain an oversight of regulatory performance;
- Engaging with local boards on bylaw development and review; and
- Exercising the Council's powers, duties and discretions under the Sale of Liquor Act 1989 and the Sale and Supply of Alcohol Act 2012

### **Relevant legislation includes but is not limited to:**

Local Government Act 2002;  
Resource Management Act 1991;  
Local Government (Auckland Council) Act 2009;  
Health Act 1956;  
Dog Control Act 1996;  
Waste Minimisation Act 2008;  
Land Transport Act 1994;  
Maritime Transport Act 1994;  
Sale of Liquor Act 1989;  
Sale and Supply of Alcohol Act 2012; and  
All Bylaws.

## **EXCLUSION OF THE PUBLIC – WHO NEEDS TO LEAVE THE MEETING**

### **Members of the public**

All members of the public must leave the meeting when the public are excluded unless a resolution is passed permitting a person to remain because their knowledge will assist the meeting.

### **Those who are not members of the public**

#### General principles

- Access to confidential information is managed on a “need to know” basis where access to the information is required in order for a person to perform their role.
- Those who are not members of the meeting (see list below) must leave unless it is necessary for them to remain and hear the debate in order to perform their role.
- Those who need to be present for one confidential item can remain only for that item and must leave the room for any other confidential items.
- In any case of doubt, the ruling of the chairperson is final.

#### Members of the meeting

- The members of the meeting remain (all Governing Body members if the meeting is a Governing Body meeting; all members of the committee if the meeting is a committee meeting).
- However, standing orders require that a councillor who has a pecuniary conflict of interest leave the room.
- All councillors have the right to attend any meeting of a committee and councillors who are not members of a committee may remain, subject to any limitations in standing orders.

#### Staff

- All staff supporting the meeting (administrative, senior management) remain.
- Only staff who need to because of their role may remain.

#### Local Board members

- Local Board members who need to hear the matter being discussed in order to perform their role may remain. This will usually be if the matter affects, or is relevant to, a particular Local Board area.

#### IMSB

- Members of the IMSB who are appointed members of the meeting remain.
- Other IMSB members and IMSB staff remain if this is necessary in order for them to perform their role.

#### CCOs

- Representatives of a CCO can remain only if required to for discussion of a matter relevant to the CCO.

ITEM	TABLE OF CONTENTS	PAGE
1	Apologies	7
2	Declaration of Interest	7
3	Confirmation of Minutes	7
4	Petitions	7
5	Public Input	7
6	Local Board Input	7
7	Extraordinary Business	8
8	Notices of Motion	8
9	Approval of Trading and Events in Public Places Guidelines 2015	9
10	Decisions on Remaining Legacy Bylaws	15
11	Update report on set net controls	29
12	Evidence gathering for Boarding House project in South Auckland	35
13	Review of Boarding Houses Bylaws	39
14	Consideration of Extraordinary Items	

*Please note: Any attachments listed within this agenda can be found at the Auckland Council website <http://infocouncil.auckland.govt.nz/> or can be provided on request.*



**1 Apologies**

An apology from Deputy Mayor PA Hulse has been received.

**2 Declaration of Interest**

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as a member and any private or other external interest they might have.

**3 Confirmation of Minutes**

That the Regulatory and Bylaws Committee:

- a) confirm the ordinary minutes of its meeting, held on Wednesday, 3 June 2015, as a true and correct record.

**4 Petitions**

At the close of the agenda no requests to present petitions had been received.

**5 Public Input**

Standing Order 3.21 provides for Public Input. Applications to speak must be made to the Committee Secretary, in writing, no later than **two (2)** working days prior to the meeting and must include the subject matter. The meeting Chairperson has the discretion to decline any application that does not meet the requirements of Standing Orders. A maximum of **thirty (30) minutes** is allocated to the period for public input with **five (5)** minutes speaking time for each speaker.

At the close of the agenda no requests for public input had been received.

**6 Local Board Input**

Standing Order 3.22 provides for Local Board Input. The Chairperson (or nominee of that Chairperson) is entitled to speak for up to **five (5)** minutes during this time. The Chairperson of the Local Board (or nominee of that Chairperson) shall wherever practical, give **two (2)** days notice of their wish to speak. The meeting Chairperson has the discretion to decline any application that does not meet the requirements of Standing Orders.

This right is in addition to the right under Standing Order 3.9.14 to speak to matters on the agenda.

At the close of the agenda no requests for local board input had been received.

## 7 Extraordinary Business

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

“An item that is not on the agenda for a meeting may be dealt with at that meeting if-

- (a) The local authority by resolution so decides; and
- (b) The presiding member explains at the meeting, at a time when it is open to the public,-
  - (i) The reason why the item is not on the agenda; and
  - (ii) The reason why the discussion of the item cannot be delayed until a subsequent meeting.”

Section 46A(7A) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

“Where an item is not on the agenda for a meeting,-

- (a) That item may be discussed at that meeting if-
  - (i) That item is a minor matter relating to the general business of the local authority; and
  - (ii) the presiding member explains at the beginning of the meeting, at a time when it is open to the public, that the item will be discussed at the meeting; but
- (b) no resolution, decision or recommendation may be made in respect of that item except to refer that item to a subsequent meeting of the local authority for further discussion.”

## 8 Notices of Motion

At the close of the agenda no requests for notices of motion had been received.

## Approval of Trading and Events in Public Places Guidelines 2015

File No.: CP2015/06954

### Purpose

1. To approve the Trading and Events in Public Places Guidelines.

### Executive Summary

2. On 26 February 2015, the governing body adopted the Auckland Council Trading and Events in Public Places Bylaw (resolution number GB 2015/4). In addition to adopting the bylaw the governing body resolved that it:
  - h) direct staff to report back to the Regulatory and Bylaws Committee on any guidelines or policies developed in consultation with key stakeholders to guide staff involved in the implementation of this bylaw.*
3. The proposed Trading and Events in Public Places Guidelines ('the proposed guidelines') have been developed to provide guidance to staff involved in the implementation of the Trading and Events in Public Places Bylaw 2015. They evolve out of the review of the legacy bylaws and subsequent development of the Trading and Events in Public Places Bylaw ('the bylaw'). During the bylaw review process, compliance staff highlighted the need for Auckland-wide operational guidelines to support the enforcement of the new bylaw.
4. The proposed guidelines sets out:
  - key principles for trading activities in public places
  - information on application procedures
  - general and specific operating conditions related to trading activities and events in public places.
5. The proposed guidelines aim to ensure that there is a consistent approach across the region for implementing the Trading and Events in Public Places Bylaw. It incorporates the various operational policies and procedures of the legacy councils. Many of these policies and practices had never been formally adopted by the respective councils and often were internally-agreed, informal arrangements. As a result, there was often a lack of clarity for staff and applicants as to the mandate for making operational decisions regarding approvals and the associated conditions.
6. The intent of reporting back to the Regulatory and Bylaws Committee on the proposed guidelines is to ensure that the processes for implementing the bylaw have been formalised, providing greater clarity and assurance for operational staff regarding the management of trading activities.

### Recommendation

That the Regulatory and Bylaws Committee:

- a) approve the Trading and Events In Public Places Guidelines 2015.

## Comments

7. The Auckland Council Trading and Events in Public Places Bylaw came into effect on 1 July 2015. The bylaw replaced eight legacy bylaws relating to trading in public places and regulates the following activities:
  - markets and stalls
  - mobile shops
  - outdoor dining
  - fundraising
  - offering commercial services
  - distribution of promotional material and/or goods
  - street performances and pavement artists
  - events and filming
  - outdoor display of goods.
8. Clause 6 of the bylaw requires a person undertaking a trading activity, event or filming in a public place to obtain council approval. The only exception to this requirement is the display of outdoor goods. However, clause 7(1) of the bylaw does require compliance with any guidelines or policies approved by resolution of the council to manage this activity. Clause 10(2) of the bylaw states that the decision making process for approvals must be made in accordance with any guidelines approved by resolution of the council.
9. On 26 February 2015, when the governing body adopted the Trading and Events in Public Places Bylaw 2015, they also resolved that staff report back to the Regulatory and Bylaws Committee on any guidelines or policies developed in consultation with key stakeholders to guide staff involved in the implementation of the bylaw.
10. The review of the legacy trading in public places bylaws provided an opportunity for a comprehensive review of all council operational policies, guidelines and practices relating to the implementation of these bylaws. Following amalgamation these existing policies and practices were carried over and in many instances has led to confusion for customers as a result of the different approaches to implementation.
11. In addition, many of these operational policies and practices have never been formally adopted by resolution of the respective councils. Consequently, staff have often been challenged by applicants and trading operators on the authority and rationale for decisions regarding a trading approval or implementation process.
12. Implementation staff have acknowledged the need for region-wide operational guidelines that are fit for purpose, provide a clear, practical and consistent approach to implementing the bylaw and have been approved by the council.

### Proposed Trading and Events in Public Places Guidelines

13. The proposed guidelines have been developed incorporating existing operational policies, guidelines and practices for managing trading activities such as markets and stalls, fundraising, outdoor dining, outdoor displays of goods, mobile shops, street performances and events approvals. In addition, they include operational guidance on new activities contained in the bylaw - the offering of commercial services and the distribution of promotional goods and / or material.
14. The proposed guidelines provide information on:
  - purpose statement and scope
  - relationship to other bylaws, plans and policies

- key principles
  - application approval process
    - assessment criteria
    - application details
    - approval details and requirements
    - which activities pay and a fee
    - making a complaint
  - general conditions
    - location
    - amenity of public place
    - management of trading activities
    - health and safety
    - approvals
  - specific conditions for each activity
15. While the bylaw contains a reference to filming and the requirement to obtain approval, the proposed guidelines do not provide any operational guidance on this activity as Screen Auckland, the film office of Auckland Tourism, Events and Economic Development (ATEED) has its own process for managing this, that was approved by the governing body on 28 May 2015 (Resolution number GB/2015/36).

### Key principles

16. The purpose of the bylaw is manage trading activities in a way that ensures appropriate standards of health and safety, pedestrian and vehicle access and visual amenity are maintained. This purpose is underpinned by a set of key principles that inform how decisions relating to approvals are made and implementation is undertaken. These principles were discussed and agreed to by key stakeholders during the review and development of the bylaw and have been included in detail in the proposed guidelines.
17. Feedback from surveys via the People's Panel and business associations and in submissions to the Trading and Events in Public Places Bylaw, also acknowledged that the management of trading activities in public places needs to take into account the following principles:
- quality and amenity
  - accessible and safe environments
  - appropriate locations
  - diversity and suitability of activities
  - non-privatisation of public place
  - minimising impacts of activities
  - transparency and efficiency.

### Other matters

18. During the development of the proposed guidelines, operational staff identified two key areas which are discussed in further detail below for the Regulatory and Bylaws Committee to consider :
- privatisation of public places
  - location of mobile traders.

### Privatisation of public places

19. Operational staff have highlighted that the privatisation of public places is increasingly becoming an issue. Staff cite examples of operators enclosing their outdoor dining areas to the extent that it effectively becomes an extension of the building turning it into a "private space".
20. The current practice in most legacy areas aims to minimise the privatisation of public place by requiring operators not fully enclose their trading area. However, given the different approaches by legacy councils to manage this and the fact that that this requirement has generally never been formalised by legacy councils means that requiring operators to comply has often proven difficult. Compliance staff see the proposed guidelines as an opportunity to clarify to operators the requirements for maintaining the trading area for the purposes of shared public and commercial use.

### Location of mobile traders

21. Operational staff raised the possibility of including a 'proximity rule' for mobile traders – either in the bylaw or the proposed policy. That is, a mobile trader cannot locate in close proximity to premises selling or offering a similar product or service or near a town centre. This matter was also raised by business associations, trading operators and in submissions to the Trading and Events in Public Places Bylaw concerned at the impact mobile traders can have on established businesses and therefore should be restricted.
22. Similarly, in recent months, subsequent to the bylaw being adopted, staff have had queries about the ability to control mobile traders who are selling goods to customers on long term credit agreements. Many of these mobile traders are operating in low socio-economic areas.
23. As stated in point 16 of the report, the purpose of the bylaw is to manage trading activities in a way that ensures appropriate standards of health and safety, pedestrian and vehicle access and visual amenity are maintained. As a result, operational decisions on where mobile traders can be located and any approval conditions must be in accordance with achieving the purpose of the bylaw.
24. While the council can control, via approval conditions, where a mobile trader locates if the activity is likely to cause a traffic hazard, impact on public safety or cause a nuisance, restrictions cannot be made for anti-competitive reasons or in a way that is contrary to the intent of the Commerce Act 1986.
25. Staff sought advice from other councils across the country on their approach to managing mobile traders and whether they applied a distance rule. Of the feedback received, councils who did restrict the location of traders (such as near a town centre) did so for reasons of traffic safety, not to minimise the impacts on other businesses. Several councils were forced to review their bylaw or policy on mobile shops when it became apparent that there was no legal justification for implementing these rules or conditions.
26. On the matter of mobile traders operating in low socio-economic areas, the council's ability to control this activity is limited to the scope of the bylaw. Notwithstanding this, recent changes to the Credit Contracts and Consumer Finance Act 2003 which came into effect on 6 June 2015, requires **all** creditors under a credit contract to be a registered financial service provider and be a member of a financial dispute resolution scheme. The proposed guidelines include a provision that any mobile trader offering goods and services on credit must meet this requirement.

## Consideration

### Local Board views and implications

27. Local boards provided feedback during the trading in public places bylaw review and development of the new bylaw. This included at three workshops held with each local board, through the Local Board Chairs Forum and requests for information throughout the review process.
28. One of the key points raised by the local boards throughout the bylaw review process was the need for clear and consistent approach implementation including ensuring that sufficient resources are in place to enforce the bylaw. Some local boards also stated that they would like to be involved in the approval process. Local boards are currently involved in approving trading activities undertaken on a local park or reserve.

### Māori impact statement

29. There is no greater impact on Māori than on the general population as a result of the development of the proposed guidelines to implement the bylaw.
30. The views of Māori representatives were sought during the bylaw development phase in 2013 at a Kaitiaki Forum (25 June), a northern hui (22 October) and a southern hui (23 October). No issues were identified as having a significant impact on Māori and most of the feedback focused on ensuring that the any bylaw and associated operational policies or guidelines would not restrict participation in trading activities and events and would continue to support individuals and communities to develop and sustain both managerial and entrepreneurial capabilities.

## Implementation

31. The purpose of the proposed guidelines is to provide guidance for compliance staff involved in the implementation of the Trading and Events in Public Places Bylaw. Staff from Licensing and Compliance Services, Events and Parks, Sport and Recreation have been involved throughout the bylaw review and guidelines development process to ensure that the new region-wide bylaw and any supporting policies or guidelines provides clear direction for all involved in managing trading activities.
32. The proposed guidelines aim to maximise operational efficiency and effectiveness by bringing together current implementation policies and practices into a single document. This ensures there is a consistent approach to implementing the bylaw which came into effect on 1 July 2015.
33. Many of the legacy policies and procedures were never adopted by the legacy councils and often were internally-agreed, informal arrangements. As a result, operational staff have often found it difficult to justify the authority and rationale for their decisions on operational matters. Adopting the proposed guidelines formalises these operational practices and decision making processes.
34. In addition to the proposed guidelines, staff have undertaken a number of actions in preparation for when the bylaw became operative. This has included:
  - development of an operating procedures manual which provides step-by-step administrative guidance on the application and approval process for each trading activity
  - training sessions with operational staff on implementing the bylaw
  - updating the Auckland Council website and the development of on-line and print brochures that provides information for customers and members of the public
  - letters sent to current approval holders and stakeholders involved in the bylaw review process informing of when the bylaw came into effect and how to obtain information.

## Attachments

No.	Title	Page
A	Draft Trading and Events in Public Places Guidelines 2015	

## Signatories

Authors	Rebekah Stuart-Wilson - Principal Policy Analyst Helgard Wagener - Team Leader Policies and Bylaws Max Wilde - Manager Bylaws and Compliance
Authorisers	Kataraina Maki - GM - Community & Social Policy

## Decisions on Remaining Legacy Bylaws

File No.: CP2015/13217

### Purpose

1. To consider the following decisions regarding Auckland Council's remaining legacy council bylaws ("legacy bylaws"):
  - allow 11 whole legacy bylaws and residual parts of seven other legacy bylaws, which are no longer required by Auckland Council, to be automatically revoked by section 63 of the Local Government (Auckland Transitional Provisions) Act 2010 on 31 October 2015
  - recommend to the Governing Body the adoption the Statement of Proposal: Confirmation of Legacy Bylaws 2015, contained in Attachment A, for the purposes of consulting the public on the proposal to confirm seven complete legacy bylaws and residual clauses of 12 other legacy bylaws to avoid them being automatically revoked on 31 October 2015.

### Executive Summary

2. This report provides details about the specific bylaws proposed for either automatic revocation, or confirmation after public consultation.
3. When Auckland Council (the council) was established on 1 November 2010, it inherited 140 "legacy bylaws" from the former Auckland-based local authorities.
4. Under section 63 of the Local Government (Auckland Transitional Provisions) Act 2010, these legacy bylaws will be automatically revoked on 31 October 2015, unless confirmed, amended or revoked by the council prior to this date.
5. The council has now reviewed most of the legacy bylaws and, in each case, has determined whether the bylaw should be amended, revoked in full or revoked in part. As part of this, the council has adopted 16 new, Auckland-wide bylaws to replace or consolidate legacy bylaws. Two additional Auckland-wide bylaws are also pending approval, as follows:
  - Stormwater Bylaw 2015 – for adoption in August 2015
  - Property Maintenance and Nuisance Bylaw 2015 – for adoption in October 2015.
6. Assuming these two Auckland-wide bylaws are adopted as anticipated, this leaves the council with 30 legacy bylaws, or residual parts thereof, that will be automatically revoked by section 63 of the Local Government (Auckland Transitional Provisions) Act 2010 unless confirmed, amended or revoked by the council prior to this date.
7. This report therefore requests that the Regulatory and Bylaws Committee makes decisions on the future of these remaining legacy bylaws (or residual parts).
8. The report categorises the legacy bylaws under 12 topics. For each topic, staff recommend the council should take one of the following courses of action:
  - allow the legacy bylaws (or residual parts) to be automatically revoked on 31 October 2015 (recommendations (a) and (b))
  - confirm the legacy bylaws (or residual parts) to prevent them from being automatically revoked on 31 October 2015. The council will need to use the special consultative procedure to consult with the public on the proposal before confirming these bylaws (recommendation (c)).
9. The report provides details about the specific bylaws proposed for either automatic revocation, or confirmation after public consultation.

## Recommendations

That the Regulatory and Bylaws Committee:

- a) allow the legacy council bylaws on recreational and cultural facilities, and libraries, damage to council property (in the former Rodney District area), set netting restrictions at Arkles Bay, water-related recreation at Orakei Basin and marinas, specified in Table 1 and Attachment B of this report, to be automatically revoked by section 63 of the Local Government (Auckland Transitional Provisions) Act 2010 on 31 October 2015.
- b) allow several residual clauses in seven of the legacy bylaws for public places, specified in Table 2 and Attachment B of this report, to be automatically revoked by section 63 of the Local Government (Auckland Transitional Provisions) Act 2010 on 31 October 2015.
- c) recommend the adoption of the Statement of Proposal: Confirmation of Legacy Bylaws 2015, contained in Attachment A, to the Governing Body for the purposes of consulting with the public on the following proposals:
  - i) the proposal to confirm the legacy bylaws (or parts thereof) on freedom camping, electric and barbed wire fences on property next to public land, wharves, construction activities in the road corridor and public places and on-site wastewater until 31 October 2020, at which time these bylaws (or residual parts thereof) will be automatically revoked.
  - ii) the proposal to confirm Auckland City Council Bylaws: Bylaw No. 27B Billboards 2007 until the relevant signage provisions of the Auckland Unitary Plan become operative, at which time this bylaw will be automatically revoked.
- d) appoint a hearing panel comprised of three members of the Regulatory and Bylaws Committee, of which one is appointed as chairperson of the panel, to hear submissions on the confirmation of the legacy bylaws (or parts thereof), deliberate and make recommendations to the Governing Body, subject to the Governing Body adopting the Statement of Proposal as per recommendation (c).
- e) delegate to the chairperson of the Regulatory and Bylaws Committee the power to make a replacement appointment to the hearings panel in the event that any member appointed by the committee under clause (d) is unavailable.
- f) delegate to the Manager, Social Policy and Bylaws the ability to make any minor edits or amendments to the Statement of Proposal: Confirmation of Legacy Bylaws 2015, to correct any identified errors or typographical edits or to reflect decisions made by the Regulatory and Bylaws Committee or the Governing Body.

## Comments

### Background: Auckland Council Bylaws Review Programme

10. When Auckland Council (the council) was established on 1 November 2010, it inherited 140 legacy bylaws from the former Auckland-based local authorities. Under section 63 of the Local Government (Auckland Transitional Provisions) Act 2010, these legacy bylaws will be automatically revoked on 31 October 2015, unless confirmed, amended or revoked by the council prior to this date.

11. The council has now reviewed most of the legacy bylaws through its Bylaws Review Programme and, in each case, has determined whether the bylaw should be amended, revoked in full or revoked in part. To date the council has adopted 16 new, Auckland-wide bylaws to replace or consolidate legacy bylaws, where bylaw regulation was considered an appropriate response to a particular issue.
12. The council is currently developing the following additional Auckland-wide bylaws for adoption by the governing body prior to 31 October 2015:
  - Stormwater Bylaw 2015 – for adoption in August 2015; and
  - Property Maintenance and Nuisance Bylaw 2015 – for adoption in October 2015.
13. Assuming these two Auckland-wide bylaws are adopted as anticipated, this leaves the council with 30 legacy bylaws, or residual parts thereof.

### Overview of approach for addressing remaining legacy bylaws

14. This report provides staff recommendations for addressing the remaining legacy bylaws before the 31 October 2015 statutory deadline, except as follows (and as summarised in Table 4 below):
  - staff recommend that the two remaining legacy bylaws on boarding houses be allowed to lapse in full. Given the complexity of the issues under this topic, staff have made this recommendation in a separate report for the Regulatory and Bylaws Committee's consideration on 8 July 2015
  - the following additional legacy bylaws (or residual parts) are deemed to be Auckland Transport bylaws, under section 61 of the Local Government (Auckland Transitional Provisions) Act 2010, and therefore, fall outside the scope of this report:
    - the legacy bylaws (or residual parts) on the management of stock on roads
    - the residual parts of the legacy the North Shore City Council Bylaw 2000: Part 6 (Traffic Control) that apply only to the Northern Busway.
15. The Auckland Transport bylaws will need to be reviewed by Auckland Transport independently of Auckland Council.
16. In all other cases, staff recommend the council should follow one of the following courses of action:
  - allow the legacy bylaws (or residual parts) to be automatically revoked on 31 October 2015 (see Table 1 and Table 2 below)
  - confirm the legacy bylaws (or residual parts) to ensure that the bylaws are not automatically revoked on 31 October 2015 (see Table 3 below). The council will need to use the special consultative procedure to consult with the public on the proposal before confirming these bylaws.

### Legacy bylaws to be automatically revoked on 31 October 2015

17. Staff recommend that 11 of the remaining legacy bylaws and the residual clauses of one further legacy bylaw be allowed to be automatically revoked on 31 October 2015. This includes six bylaws on recreational and cultural facilities and libraries, one bylaw on damage to council property, one bylaw on set netting restrictions at Arkles Bay, one bylaw on water-related recreation at Orakei Basin and two bylaws on marinas.

18. Staff consider these bylaws are no longer required as they are not enforced and/or the issues they purport to regulate are adequately addressed using other existing controls or non-regulatory measures. The report therefore, requests that the Regulatory and Bylaws Committee allow these bylaws to be revoked (recommendation (a)). If the Committee makes this decision, no further action would be required and the bylaws would be automatically revoked on 31 October 2015 under section 63 of the Local Government (Auckland Transitional Provisions) Act 2010.
19. Further detail on the specific bylaws proposed for lapsing is provided in Table 1 below.

**Table 1: Specific detail on legacy bylaws to be revoked on 31 October 2015**

Topic	Legacy bylaw	Staff recommendation	Rationale
Recreational and cultural facilities, and libraries  [Ref: Attachment B]	Auckland City Council Bylaws: Bylaw No. 10 Cultural and Recreational Facilities 2008	Allow whole bylaw to be automatically revoked on 31 October 2015	<ul style="list-style-type: none"> <li>• These bylaws are no longer required as they are not currently being enforced. To enforce these bylaws would involve the council initiating court proceedings, which can be onerous, expensive and disproportionate to the minor nature of the offences.</li> <li>• The issues these bylaws are intended to regulate can be addressed through other means, including the following:                             <ul style="list-style-type: none"> <li>○ as property owner, Auckland Council (or where relevant, its council-controlled organisations) can set conditions of entry and/or membership to a facility, without the need for a specific bylaw</li> <li>○ the facilities are captured as 'public places' under the council's Public Safety and Nuisance Bylaw 2013, meaning the provisions that regulate anti-social behaviour and damage already apply</li> <li>○ Remedies under the Trespass Act 1980 and the Summary Offences Act 1981 are also available for more serious offences.</li> </ul> </li> </ul>
	Manukau City Consolidated Bylaw 2008 Chapter 10 Libraries	Allow whole bylaw to be automatically revoked on 31 October 2015	
	Manukau City Consolidated Bylaw 2008 Chapter 14 Recreational and Cultural Facilities	Allow whole bylaw to be automatically revoked on 31 October 2015	
	North Shore City Bylaw 2000 Part 19 Public Libraries	Allow whole bylaw to be automatically revoked on 31 October 2015	
	North Shore City Bylaw 2000 Part 8 Public Swimming Pools, Halls and Golf Courses	Allow whole bylaw to be automatically revoked on 31 October 2015	
	North Shore City Bylaw 2000 Part 15 Entertainment Complexes and Amusement Devices	Allow whole bylaw to be automatically revoked on 31 October 2015	

Table 1 (Continued)Topic	Legacy bylaw	Staff recommendation	Rationale
Damage to council property  [Ref: Attachment B]	Rodney District Council General Bylaw 1998 Chapter 13 - Building Deposits for Damage to Council Property	Allow whole bylaw to be automatically revoked on 31 October 2015	<ul style="list-style-type: none"> <li>• Protection of the council's assets from damage and the ability of the council to recover repair costs are provided for in legislation or other bylaws specific to the issue, or through building or resource consent conditions, or bylaw approval conditions</li> <li>• The bylaw is superfluous and has not been used since the establishment of Auckland Council, as other measures, including legislation, bylaws and consent/approval conditions suffice.</li> </ul>
Set netting restrictions at Arkles Bay  [Ref: Attachment B]	Rodney District Council General Bylaw 1998 Chapter 23 Prohibition of Set Netting – Arkles Bay	Allow whole bylaw to be automatically revoked on 31 October 2015	<ul style="list-style-type: none"> <li>• Set netting can be sufficiently regulated through the Public Safety and Nuisance Bylaw 2013. A locally specific bylaw is no longer required.</li> <li>• Once this bylaw has been lapsed, staff recommend that a set net control be created for Arkles Bay using the Public Safety and Nuisance Bylaw 2013. Further detail on this is provided in a separate report to the Regulatory and Bylaws Committee for consideration on 8 July 2015.</li> </ul>
Water-related recreation at Orakei Basin  [Ref: Attachment B]	Auckland City Council Bylaws: Bylaw No. 19 Orakei Basin 2006	Allow whole bylaw to be automatically revoked on 31 October 2015	<ul style="list-style-type: none"> <li>• Water-related recreation activities in this area can be appropriately managed using the Navigation Safety Bylaw 2014 and Public Safety and Nuisance Bylaw 2013. A locally specific bylaw is no longer required.</li> </ul>
Marinas  [Ref: Attachment B]	Rodney District Council General Bylaw 1998 Chapter 4 Gulf Harbour Marina	Allow whole bylaw to be automatically revoked on 31 October 2015	<ul style="list-style-type: none"> <li>• The two marinas are under private control and adequately managed through berth holder permits or land owner rights</li> </ul>

Item 10

Item 10

	Waitakere City Council Bylaw No. 13 1990 West Harbour Marina	Allow whole bylaw to be automatically revoked on 31 October 2015	<ul style="list-style-type: none"> <li>• Marinas are controlled by other mechanisms, including Auckland Council's Navigation Safety Bylaw 2014 and controls, Resource Management (Marine Pollution) Regulations 1998, Auckland Council Regional Plan: Coastal and coastal permits.</li> <li>• Moorings within Mooring Management Areas (established under the Auckland Council Regional Plan: Coastal) are managed by the Harbourmaster under the Auckland Council Navigation and Safety Bylaw 2014 and Controls.</li> <li>• These bylaws are not required nor enforced by the council.</li> </ul>
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20. Staff also recommend that several residual parts from seven legacy public places bylaws be left for automatic revocation on 31 October 2015 (recommendation (b)). The specific clauses are identified in Table 2 below (and excludes certain clauses related to freedom camping, which staff recommend should be confirmed, see Table 3).
21. These clauses are no longer necessary as they have been replaced by equivalent provisions in Auckland Council's new bylaws, including the Public Safety and Nuisance Bylaw 2013, Animal Management Bylaw 2014, Trading and Events in Public Places Bylaw 2015, and Cemeteries and Crematoria Bylaw 2014.

**Table 2: Residual clauses of legacy bylaws for public places to be automatically revoked on 31 October 2015**

Legacy bylaw	Staff recommendation	Rationale
Auckland City Council Bylaws 2007: 20: Public Places [Ref: Attachment B]	Allow the following residual clauses to be automatically revoked on 31 October 2015: 20.3.1 (u) – on distribution of advertising material	<ul style="list-style-type: none"> <li>• These residual clauses are no longer required.</li> <li>• They have been replaced by equivalent provisions in the following bylaws: Public Safety and Nuisance Bylaw 2013; Animal Management Bylaw 2014; Trading and Events in Public Places Bylaw 2015, and in the case of the Waitakere City Council Public Places Bylaw 2010, by the Cemeteries and Crematoria Bylaw 2014.</li> </ul>
Franklin District Council Public Places Bylaw 2007 [Ref: Attachment B]	Allow the following residual clauses to be automatically revoked on 31 October 2015: 9 (outdoor display of goods); 10 (control of skateboards and recreational devices);16.3;16.4 (building identification and altering number of buildings);17.1 (dogs in public places);17.4 (horse dropping disposal); Second schedule (relates to skateboarding)	
Manukau City Consolidated Bylaw 2008 Chapter 9 General Nuisance, Safety and Behaviour in Parks and Public Places [Ref: Attachment B]	Clause 4.1( c ) (concerns tents and gazebos being erected for shade purposes, e.g. on beaches)	

North Shore City Council Bylaw Part 2 Public Places  [Ref: Attachment B]	Allow the following residual clauses to be automatically revoked on 31 October 2015:  2.2.2 (Obstructions), 2.5.1 (h) (erecting structures)	
Papakura District Council Public Places Bylaw 2008  [Ref: Attachment B]	Allow the following residual clauses to be automatically revoked on 31 October 2015:  6,6.1(a)-(b),6.2 (placing of articles on and damage to public places); 7,7.1,7.2,7.3 (control of skateboards); 8,8.1 (public display of goods) and First Schedule (skateboarding)	
Rodney District Council General Bylaw 1998: Chapter 8: Public Places  [Ref: Attachment B]	Allow the following residual clauses to be automatically revoked on 31 October 2015:  4.2(a) (activities deemed to be nuisance in the vicinity of persons or animals)	
Waitakere City Council Public Places Bylaw 2010  [Ref: Attachment B]	Allow the following residual clauses to be automatically revoked on 31 October 2015:  5.1 Clause 5 (d - busker definition), (e - cemetery manager definition), (i), (k - market) (l - hawker) (m - mobile shop), (o - outdoor cafe), (s - stall)	

### Legacy bylaws to be confirmed

22. Staff recommend that seven whole legacy bylaws and residual parts of 12 other legacy bylaws, on six topics, should be confirmed by resolution of the governing body.

*Confirm for later review*

23. For five topics, staff recommend the bylaws should remain in force until 31 October 2020. The five topics are: freedom camping (eight bylaws); electric and barbed wire fences adjacent to public land (two bylaws), wharves (two bylaws); construction in road corridors (four bylaws); and on-site waste water (four bylaws).
24. Staff expect to review the bylaws on each of these topics prior to this date, and to make specific recommendations about whether to retain, replace, or revoke each one, as part of this process. However, if such a review was not completed, the bylaws would be deemed to be revoked on 31 October 2020.
25. This five-year timeframe is an indication of the council's intention to use the confirmation process under section 63 of the Local Government (Auckland Transitional Provisions) Act 2010 as an interim measure to allow more time for the council to complete its Bylaw Review Programme.
26. The rationale for this interim approach is slightly different for each topic, but can generally be summarised as follows:
- for the bylaws regarding the management of freedom camping (eight sets of residual parts), staff require additional time, post 31 October 2015, to complete the level of analysis required by the Local Government Act 2002. This Act requires the council to determine whether a bylaw is the most appropriate approach to address the issue, the form of such a bylaw and the drafting of the proposed provisions.
  - nine of the remaining legacy bylaws relate to the management of activities in areas under Auckland Transport jurisdiction. These are:
    - two bylaws regarding public wharves;

- seven bylaws that regulate construction activities in the road corridor and public place.

The operation of these bylaws, and decisions about them, have implications for both the council and Auckland Transport. Staff have consulted with Auckland Transport on the current and future use of these bylaws and recommend that they be confirmed by the council before 31 October 2015. This will allow the council to conduct a detailed review, in conjunction with Auckland Transport, between October 2015 and 31 October 2020.

- for the bylaws regarding on-site wastewater management (one full bylaw, three sets of residual parts), staff recommend preserving the status quo until the relevant provisions of the Proposed Auckland Unitary Plan become operative and have legal effect:
  - The Proposed Auckland Unitary Plan, as notified on 30 September 2013, specifically regulates issues relevant to the on-site wastewater bylaws. However, the council has received submissions regarding these provisions, which are currently being considered by the independent hearing panel, so these provisions are subject to change.
  - The date by which the Proposed Auckland Unitary Plan process is completed and the plan becomes operative is at this time uncertain. It is currently anticipated that hearings on the Proposed Auckland Unitary Plan will conclude in early 2016, with the panel's recommendation report to be provided to the council in mid-2016. The council will then make decisions on recommendations, and following the resolution of any appeals, the Unitary Plan will become operative. There is potential for the Unitary Plan to be made operative in stages.
  - If the legacy bylaws were to lapse on 31 October 2015, there would be a transitional period where no regulations were in place. Once the relevant Proposed Auckland Unitary Plan provisions are operative, staff will be able to provide more specific recommendations on the future of the on-site wastewater bylaw provisions.

*Confirm until Proposed Auckland Unitary Plan made operative*

27. There is one remaining legacy bylaw regarding billboards. Staff recommend this bylaw be confirmed by the governing body so that it remains in force until the relevant provisions of the Proposed Auckland Unitary Plan become operative. Once this has occurred, the bylaw would be automatically revoked and the Unitary Plan will become the sole instrument for regulating billboard matters. The specific provisions regarding billboards in the Proposed Auckland Unitary Plan have already been confirmed and are no longer subject to change.

*Consultation*

28. For all bylaws proposed for confirmation, the council will need to consult with the public using the special consultative procedure under the Local Government Act 2002. This report therefore requests that the Regulatory and Bylaws Committee recommend that the governing body adopt the Statement of Proposal: Confirmation of Legacy Bylaws 2015, contained in Attachment A of this report (recommendation (c)).
29. Further detail on the specific bylaws proposed for confirmation is provided in Table 3 below.

**Table 3: Specific detail on legacy bylaws to be confirmed for review at a later date**

Topic	Legacy bylaw	Staff recommendation	Rationale
Freedom camping (i.e. camping outside a designated camping ground) [Reference: Attachment A]	Residual clauses of Auckland City Council Bylaws: Bylaw No. 20 Public Places 2008	Confirm the following residual clauses by 31 October 2015: 20.3.1 (g),(v) and 20.8	<ul style="list-style-type: none"> <li>Under the Freedom Camping Act 2011, freedom camping is now generally permitted throughout New Zealand, except where it is restricted or prohibited through a bylaw. Confirming the legacy bylaws:                             <ul style="list-style-type: none"> <li>retains some regulation of freedom camping across Auckland</li> <li>avoids opening up new areas where camping is currently not permitted</li> <li>mitigates risk of associated environmental, safety and traffic issues</li> <li>affords the council more time to fully assess the requirements for an Auckland-wide freedom camping bylaw, in the context of the Freedom Camping Act 2011.</li> </ul> </li> </ul>
	Residual clauses of Auckland Regional Council Parks Bylaw 2007	Confirm the following residual clauses by 31 October 2015: 6.1(b) and 8	
	Residual clauses of Franklin District Council Public Places Bylaw 2007	Confirm the following residual clauses by 31 October 2015: 5(5)(b) and First Schedule	
	Residual clauses of Manukau City Consolidated Bylaw 2008 Chapter 9 General Nuisance, Safety and Behaviour in Parks and Public Places	Confirm the following residual clauses by 31 October 2015: 4.1( a ) and (b)	
	Residual clauses of North Shore City Bylaw 2000 Part 2 Public Places	Confirm the following residual clauses by 31 October 2015: 2.3.1 (g) and (j)	
	Residual clauses of Papakura District Council Public Places Bylaw 2008	Confirm the following residual clauses by 31 October 2015: 3.4(b) and 18.1	
	Residual clauses of Rodney District Council General Bylaw 1998 Chapter 8 Public Places	Confirm the following residual clauses by 31 October 2015: 6.1(a) and (c); 7 and 8	
	Residual clauses of Waitakere City Council Public Places Bylaw 2010	Confirm the following residual clauses by 31 October 2015: 6.1(i), 7.1(a), 17, 18 and 19	
Electric fences on property adjacent to public land [Reference: Attachment A]	Papakura District Council Public Places Bylaw 2008 (residual clauses)	Confirm the following residual clauses by 31 October 2015: 12.1	<ul style="list-style-type: none"> <li>Retains existing mechanisms for regulating electric fences and barbed wire fences on property adjacent to public places.</li> <li>This allows the council to incorporate that issue into its review of the Public Nuisance and Safety Bylaw 2013.</li> </ul>
	Waitakere City Council Public Places Bylaw 2010 (residual clauses)	Confirm the following residual clauses by 31 October 2015: 15.2 (b)	
Wharves [Reference: Attachment A]	Auckland City Council Bylaws: Bylaw No. 8 Wharves 2008	Confirm whole bylaw before 31 October 2015	<ul style="list-style-type: none"> <li>Retains existing regulatory mechanisms for protecting areas where prohibitions or restrictions exist</li> <li>Affords the council and Auckland Transport more time to undertake a detailed review.</li> </ul>
	Rodney District Council General Bylaw 1998 Chapter 12 Use of Public Wharves and Boat Ramps	Confirm whole bylaw before 31 October 2015	
Construction activities in the road	Auckland City Council Bylaws: Bylaw No. 6 Construction 2008	Confirm whole bylaw before 31 October 2015	<ul style="list-style-type: none"> <li>Confirming the four bylaws by 31 October 2015 allows for a comprehensive review at a later</li> </ul>

Item 10

corridor and public places [Reference: Attachment A]	Franklin District Council Public Places Bylaw 2007	Confirm the following residual clauses by 31 October 2015: 11	<p>date when the council and Auckland Transport can determine the most appropriate way of addressing it.</p> <ul style="list-style-type: none"> <li>Auckland Transport has indicated that it wishes to see consistent regulation across Auckland with respect to vehicle crossings and the maintenance of verandahs.</li> </ul>
	Manukau City Consolidated Bylaw 2008 Chapter 5 Construction, Development, Street Damage and Vehicle Crossings	Confirm whole bylaw before 31 October 2015	
	North Shore City Council Bylaw 2000: Part 13 Construction and Scaffolding	Confirm whole bylaw before 31 October 2015	
	North Shore City Council Bylaw 2000: Part 2 Public Places	Confirm the following residual clauses by 31 October 2015: 2.11	
	Papakura District Council Public Places Bylaw 2008	Confirm the following residual clauses by 31 October 2015: 9	
	Rodney District Council General Bylaw 1998 Chapter 9 (Road Crossings and Numbering of Premises) (in part)	Confirm the following residual clauses by 31 October 2015: 4, 5 and 6	
On-site wastewater [Reference: Attachment A]	Auckland City Council Bylaws: Bylaw No. 29 Waiheke Wastewater 2008	Confirm whole bylaw before 31 October 2015	<ul style="list-style-type: none"> <li>Preserves status quo as interim measure, pending outcome of Proposed Auckland Unitary Plan consultation and hearings process</li> <li>Avoids creating gap in regulation during transitional period of 31 October 2015 and date when Proposed Auckland Unitary Plan becomes fully operative (some time in 2016)</li> <li>Confirming the existing bylaw provisions for on-site wastewater management, ensures that the review process will be informed by confirmed Unitary Plan provisions rather than those subject to change</li> </ul>
	Residual clauses of North Shore City Bylaw 2000 Part 20: Wastewater	Confirm the following residual clauses by 31 October 2015 20.1.2, 20.2.1, 20.2.2, 20.7.3	
	Residual clauses of Papakura District Council Wastewater Bylaw 2008	Confirm the following residual clauses by 31 October 2015: 1; 9; 10, 11, 12, 13, 14, and 16	
	Residual clauses of Rodney District Council General Bylaw 1998 Chapter 20 Wastewater Drainage	Confirm the following residual clauses by 31 October 2015: 2, 9 and 12	

<p>Billboards [Reference: Attachment A]</p>	<p>Auckland City Council Bylaws: Bylaw No. 27B Billboards 2007</p>	<p>Confirm whole bylaw before 31 October 2015</p>	<ul style="list-style-type: none"> <li>• Preserves status quo as interim measure, pending outcome of Proposed Auckland Unitary Plan consultation and hearings process</li> <li>• Avoids creating a gap in regulation during the transitional period of 31 October 2015 and the date when Proposed Auckland Unitary Plan becomes operative (some time over 2016-2017).</li> <li>• Staff have assessed that the provisions of the current billboards bylaw will no longer be required once the relevant provisions of the Proposed Auckland Unitary Plan become operative. At that point, the council could revoke the billboards bylaw.</li> </ul>
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Item 10

**Legacy bylaws not covered in this report**

30. The table below provides information about five legacy bylaws that fall outside the scope of this report.

**Table 4: Legacy bylaws requiring separate approach**

Topic	Legacy bylaws	Reason for separate approach
<p><b>Boarding houses</b></p>	<p>Auckland City Council Bylaws: Bylaw No. 4 Hostels 2008</p>	<ul style="list-style-type: none"> <li>• The complexity of this topic has warranted a separate report to the Regulatory and Bylaws Committee (also to be considered on 8 July 2015).</li> <li>• That report recommends that the bylaws should be allowed to lapse as there are sufficient controls available through other means. These include national legislation and regulations and existing provisions under Auckland-wide bylaws.</li> </ul>
	<p>The following residual clauses of the Rodney District Council General Bylaw 1998 Chapter 10 Sanitation and Cleanliness of Buildings and Places of Public Resort: 1.1;2.0;3.1(a)-(d),3.2;6.1-6.5;7.1; Schedule 1,2 &amp; 3</p>	
<p><b>Managing stock on roads</b></p>	<p>Franklin District Council Livestock on Roads Bylaw 2010</p>	<ul style="list-style-type: none"> <li>• These legacy bylaws (or residual parts) are deemed to be Auckland Transport bylaws. Decisions about these bylaws are therefore outside the scope of the Regulatory and Bylaw Committee's delegations.</li> <li>• Auckland Transport is responsible for reviewing these bylaws.</li> </ul>
	<p>Residual clauses of the Rodney District Council General Bylaw 1998 Chapter 6 Stock on Roads</p>	

<p><b>Traffic control</b></p>	<p>The following residual clauses of the North Shore City Council Bylaw 2000: Part 6 (Traffic Control):</p> <p>6.5 (and any part of 6.1 (definitions) that relate to 6.5)</p>	<ul style="list-style-type: none"> <li>• The residual part of this legacy bylaw is deemed to be an Auckland Transport bylaw and therefore the question of whether the bylaw needs to be confirmed does not apply. Decisions about this bylaw are for AT and are outside the scope of the Regulatory and Bylaw Committee’s delegations.</li> <li>• During the adoption by Auckland Transport of the Traffic Bylaw 2012, it revoked this bylaw but retained the residual clauses to regulate the Northern Busway.</li> <li>• Auckland Transport is responsible for reviewing this bylaw.</li> </ul>
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**Local board views and implications**

31. The Local Government Act 2002 prohibits councils from delegating their powers to make, amend and revoke bylaws. In the Auckland Council context, this means that all decisions on bylaws must be made by the governing body and local boards have no decision-making role.
32. However local boards do have a role in identifying and communicating local views and preferences on bylaw matters to the governing body. Local boards can also propose the making, amendment or revocation of local bylaws to the governing body.
33. For the purpose of this report, where staff are recommending that a legacy bylaw be allowed to be automatically revoked, local board views and preferences have been considered as follows:
  - staff have provided regular updates to local boards on the Bylaws Review Programme, and specifically the intention to allow several legacy bylaws to be automatically revoked.
  - in May 2015, staff formally reported to the Hibiscus and Bays Local Board on the proposal to allow the Rodney District Council General Bylaw 1998 Chapter 23 Prohibition of Set Netting – Arkles Bay to lapse. The report indicated that there are sufficient regulatory tools through the Public Safety and Nuisance Bylaw 2013 to manage the activity. The Board passed a resolution (HB/2015/60) recommending to the Regulatory and Bylaws Committee that the bylaw remain in place until a total new set net control made under the Public Safety and Nuisance Bylaw 2013 is developed, at which stage the bylaw will be automatically revoked.
  - members of the Orakei Local Board have participated in the Orakei Basin Advisory Group, where the proposal to lapse the Auckland City Council Bylaws: Bylaw No. 19 Orakei Basin 2006 has been regularly discussed.
34. Local boards have also been advised of all other proposals regarding legacy bylaws covered in this report. Moreover, if the governing body adopts the Regulatory and Bylaws Committee’s recommendations on the bylaws to be confirmed, the council will consult with local boards as part of the review process for each of the confirmed bylaws.

**Māori impact statement**

35. In developing the recommendations included in this report for each topic (or set of bylaws), staff undertook a literature review to gain a preliminary understanding of the impact that the lapsing or the confirmation of these bylaws could have on Māori.
36. Staff are satisfied that the approaches recommended (i.e. the proposed lapsing or confirmation of each bylaw) would not have a greater impact on Māori than on the general population of Auckland.

37. In relation to any future bylaw reviews, the council will consult with Māori as part of the review of each of the confirmed bylaws.

## Implementation

38. As outlined above, the bylaws that staff recommend should be allowed to lapse are no longer required. Accordingly, staff do not expect any operational impacts.
39. If the governing body adopts the Statement of Proposal: Confirmation of Legacy Bylaws 2015, the council will commence the special consultative procedure under the Local Government Act 2002. The council will publicly notify the proposal to confirm the relevant bylaws.
40. The bylaws that are proposed to be confirmed as transitional measures pending the Proposed Auckland Unitary Plan having legal effect will continue to be implemented using the current allocated resources.
41. The bylaws that are proposed to be confirmed to enable staff to review and consider possible new Auckland-wide bylaws will be developed as part of the Community and Social Policy Department's ongoing programme, using the allocated resources.

## Attachments

No.	Title	Page
A	Statement of Proposal - Confirmation of Legacy Bylaws 2015	
B	Analysis of legacy bylaws recommended for automatic revocation on 31 October 2015	

## Signatories

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## Update report on set net controls

File No.: CP2015/09382

### Purpose

1. To recommend investigating the making of set net controls at Omaha Beach and Arkles Bay and further monitoring of set net activities over the 2015/2016 summer period at Hatfields Beach, Browns Bay, Matakatia Beach and Campbells Bay.

### Executive Summary

2. On 20 December 2014, the first annual summer set net control was implemented at Army Bay and Te Haruhi Beach within Shakespear Regional Park. The control was made due to complaints made by park visitors over the past three summers about public safety risks associated with set netting, including risks to swimmers from drifting nets and restrictions for kayakers and paddle boarders accessing the shore.
3. Auckland Council park rangers reported that the control worked well with positive comments from the general public, and that recreational conflict over use of the shallow water was resolved.
4. During the development of this set net control, concerns had been raised by the community and the Rodney and Hibiscus and Bays local boards about the impact of set netting at Hatfields Beach, Browns Bay and Omaha Beach. The Regulatory and Bylaws Committee did not impose set net controls at these beaches, but directed council staff to monitor these areas over the 2014/2015 summer period. Set netting was observed on three occasions at Hatfields Beach but not at Browns Bay or Omaha Beach. These observations were based on random spot checks.
5. To assist with monitoring, an Auckland Council 'Setnet' email address was published on the council website and 36 emails were received. Most of the emails were reports of animal carcasses used as bait for crab potting that had been left on Omaha Beach, and complaints about an increase in set net activities at Matakatia Beach.
6. Over the 2014/2015 summer period, Ministry for Primary Industries Fisheries Officers found set netters in breach of the Fisheries (Amateur Fishing) Regulations 2013 on two instances at Browns Bay and three instances at Omaha. The Ministry for Primary Industries is responsible for regulating set netting for the purpose of fisheries protection. Offences at Browns Bay and Omaha included the use of unmarked set nets, nets tied to navigational poles on the shore, and the use of stakes to set nets.
7. Staff recommend investigating the making of seasonal crab pot and set net controls at Omaha Beach and proactive monitoring of set net activities at Hatfields Beach, Browns Bay and Matakatia Beach over the 2015/2016 summer period.
8. Staff also recommend the making of a set net control at Arkles Bay to replace the Rodney District Council – Prohibition of Set Netting Arkles Bay Bylaw. The bylaw is considered inappropriate because the making of controls under the Public Safety and Nuisance Bylaw 2013 is a more appropriate regulatory method to manage public safety and nuisance problems associated with set netting.

## Recommendations

That the Regulatory and Bylaws Committee:

- a) request staff investigate the making of seasonal crab pot and set net controls at Omaha Beach and a set net control at Arkles Bay.
- b) note that staff will undertake further monitoring of set net activities at Hatfields Beach, Browns Bay, Matakatia Beach and Campbells Bay over the 2015/2016 summer period.

## Comments

### Background

9. Set netting is a fishing method defined by the Fisheries (Amateur Fishing) Regulations 2013. The method involves using a gill net or another type of net to entangle fish, and nets are typically set in the water with a weighted groundline, anchors or weights and surface floats at either end.
10. While set netting is a legal activity, there are occasions where the activity conflicts with other recreational beach activities, and can result in safety hazards for other beach users.
11. On 20 December 2014, an annual summer set net control was implemented at Army Bay and Te Haruhi Bay within Shakespear Regional Park following approval of the control by the Regulatory and Bylaws Committee in November 2014 (RBC/2014/55). The control was the first set net control to be developed under the Public Safety and Nuisance Bylaw 2013.
12. The control was implemented because both council staff and park visitors questioned the appropriateness of set netting at Te Haruhi Beach and Army Bay given that these beaches are popular locations for a large range of water related recreational activities, particularly over the summer months. Complaints had been made over three summers about incidences where swimmers had come across drifting nets and nets were restricting access to the shore for kayakers and paddle boarders.

### Effectiveness of summer set net control at Shakespear Regional Park

13. The control was publicly notified in the New Zealand Herald and on the Auckland Council website.
14. Staff report that the seasonal control resolved recreational conflict over use of the shallow water. From the outset, regional parks staff were proactive in communicating the rules to set netters who generally responded well to the control with a noticeable reduction in the activity within the first week of the control coming into effect. There was also a corresponding decline in illegal camping or overnight stays in the area and late night vehicle activities in parks. There were two breaches of the control at Te Haruhi Bay, one occurred in late December and the other on a Saturday in March. The control was in place until 31 March.
15. Staff working at these beaches report that the control worked well with positive comments from the general public. The effectiveness of the control was contingent on having dedicated enforcement staff on-site throughout that period. Many of these activities took place on the weekend or after hours and a basic tenet for making any control (as with a bylaw) is that sufficient staff resources are required in order for it to be effective.

### Set net activities at Omaha, Hatfields Beach and Browns Bay

16. During the process of developing the set net control at Shakespear Regional Park, concerns had been raised by the community and the Rodney and Hibiscus and Bays local boards about the impact of set netting at Omaha Beach, Hatfields Beach and Browns Bay. The Regulatory and Bylaws Committee did not impose set net controls at these beaches, but directed council staff to monitor these three beaches over the 2014/2015 summer period.

17. To assist with the monitoring of beaches over the 2014/2015 summer period, in December 2014 council staff set up an email address to gather information that would be used to support a decision on whether or not to investigate the making of controls restricting set netting from those beaches on the grounds of public safety. A full account of emails received can be seen in Attachment A. The email address can be accessed on the Auckland Council website and advises people to either email or contact the call centre for more information or to make a complaint.
18. Issues relating to set netting, results of monitoring at the three beaches as well as public feedback about set netting at other beaches are presented below.

### **Omaha**

19. Concerns about the impact of set netting at Omaha Beach have been raised by the Rodney local board and members of the community since early 2013 when a number of submissions to the Public Safety and Nuisance Bylaw were made calling for controls on the activity. In 2014, the Omaha Residents and Ratepayers Association wrote to the Rodney Local Board in support of implementing a control not only on set nets but crab pots at Omaha Beach. Representatives of the Omaha community presented to the Regulatory and Bylaws Committee at the November 2014 meeting recommending controls on both these activities for the 2014/2015 summer period. The Regulatory and Bylaws Committee did not impose set net controls at Omaha instead directing staff to monitor this area over the 2014/2015 summer period.
20. During random spot checks council staff did not observe set netting activities at Omaha Beach. The observations were based on random spot checking and do not indicate that set netting did not occur. This is reflected in the fact that Auckland District Fisheries Officers observed illegal set netting at Whangateau Harbour near Omaha where a number of nets were set with stakes. Warning letters were issued to each of the offenders and one offender was fined as it was their second offence.
21. Additionally by the end of April 2015, the council had received 36 emails, of which 13 were specifically about Omaha Beach. Issues raised in the emails included:
  - illegal use of set nets under the Fisheries (Amateur Fishing) Regulations 2013
  - animal carcasses/fish offal used as bait left on the beach
  - abandoned set nets and crab pots
  - concern for the safety of set netters following a near drowning incident
  - proximity of nets and crab pots to other beach users
22. Based on the monitoring of set net activities over the summer period and public feedback to date, staff recommend investigating the making of crab pot and set net controls for Omaha Beach. Education for ethnic communities on water safety and responsible crab potting may also help to reduce conflict amongst beach users at Omaha.
23. The process for investigating controls at Omaha would include:
  - consultation with affected stakeholders,
  - consideration of legal implications,
  - investigation of resource implications,
  - investigation of possible impacts on other beaches as a result of displacement.
24. Should the council not pursue investigating controls at Omaha, conflict will continue to occur between recreational beach users and frustrated residents due to abandoned set nets and animal carcasses on the beach.

### **Hatfields Beach**

25. Similar to Omaha, the issue of set netting at Hatfields Beach has been raised by members of the community over the past few years. Submissions were made to the Public Safety and Nuisance Bylaw and a member of the Hatfields Beach community presented to the Regulatory and Bylaws Committee in November 2014. The main concerns expressed by the public have been the conflict between recreational beach users and obstruction for boats due to set nets.
26. Set netting was observed on three occasions by council staff at Hatfields Beach over the 2014/15 summer period. As with Omaha, The observations were based on random spot checking and do not indicate set netting did not occur. Auckland District Fisheries Officers did not report any incidences of illegal set netting activities.
27. Feedback received to the set net email address regarding Hatfields Beach over the 2014/15 summer show that anti-social behavior such as reckless driving on the beach and littering were more of a concern than the activity of set netting.

### **Browns Bay**

28. Over the monitoring period of 20 December 2014 to 31 March 2015, the Ministry for Primary Industries received one report to their call centre of illegal set net activities at Browns Bay. A net was set at the northern end of the beach using stakes. Auckland District Fisheries Officers also observed illegal set netting on routine patrols at Browns Bay where there were two un-marked set nets.
29. Public feedback received through the 'Setnet' email address, as well as feedback from the Ministry for Primary Industries, show that set netters at Browns Bay were not complying with the Fisheries (Amateur Fishing) Regulations 2013.
30. Based on the results over the previous summer period, staff recommend that further monitoring of set net activities at Hatfields and Browns Bay be undertaken over the 2015/2016 summer period.

### **Set net activities at other beaches**

#### **Matakatia and Campbells Bay**

31. Staff received a number of complaints about set netting at Matakatia Bay 2014/2015 summer period. This may be as a result of the seasonal control at neighbouring Army and Te Haruhi Bays over the summer period. There were also comments about set netting activities at Campbells Bay.
32. Given that this is the first time that there have complaints about this activity at Matakatia and Campbells Bay, staff recommend that these two beaches be monitored over the 2015/2016 summer period to determine if illegal set netting activities are being undertaken or impacting on public safety or causing a nuisance.

#### **Arkles Bay**

33. Staff recommend the making of a set net control at Arkles Bay to replace the Rodney District Council – Prohibition of Set Netting Arkles Bay Bylaw (which staff are recommending to lapse on 31 October 2015). The bylaw is considered unnecessary because the making of controls under the Public Safety and Nuisance Bylaw 2013 is the most appropriate regulatory method to manage public safety and nuisance problems associated with set net activities. The decision to allow the bylaw to lapse is out of scope of this report but will be included in a separate decision-making report.

### Additional staff recommendations

34. In addition to the recommendations made above, staff recommend raising public awareness of the national set net regulations and the role of the Ministry for Primary Industries in regulating set netting is a key aspect to responding to public concern about set nets.
35. In addition to the process for investigating the making of controls, staff will provide public education on the mechanism of controls, in particular that they are enforced in the same way as a bylaw.
36. Recommendations and stakeholder feedback will be reported to the Regulatory and Bylaws Committee for consideration at the October 2015 meeting. This will allow time for implementation of signage and public notices before the summer holiday period. The council 'Setnet' email address will also continue to remain active to receive complaints from members of the public.

## Consideration

### Local Board views and implications

37. The views of the Rodney and Hibiscus and Bays local boards were sought at their business meetings in May 2015.
38. At their meeting the Rodney Local Board resolved to recommend to the Regulatory and Bylaws Committee that staff initiate the process of investigating seasonal controls for set net and crab pot activities on Omaha Beach (RD/2015/61).
39. The Hibiscus and Bays Local Board resolved to recommend to the Regulatory and Bylaws Committee that:
  - the Rodney District Council Prohibition of Set Netting - Arkles Bay Bylaw remain in place until such time as a new total set net control can be put in place under the Public Safety and Nuisance Bylaw 2013
  - the council undertake the process of making a total set net control for Arkles Bay before 31 October 2015
  - staff initiate the process of investigating the making of seasonal or total set net controls for Browns Bay and Hatfields Beach before 31 October 2015 under the Public Safety and Nuisance Bylaw 2013
  - staff undertake further monitoring of set netting activities at Matakatia and Campbells Bay over the 2015/2016 summer period (HB/2014/207).
40. Issues related to set netting have not been raised by any other local boards.

### Māori impact statement

41. Māori views have not been specifically sought in relation to this report. The views of Māori will be obtained during the investigation of making controls for Omaha Beach and Arkles Bay.
42. Local iwi were invited to provide their feedback on the seasonal control at Shakespear Regional Park and council staff met with a representative from mana whenua and mataawaka. Feedback from representatives was that any control put in place for public safety reasons should not be designed to impose restrictions on Māori customary fishing rights or fishing for sustenance.
43. Feedback also included concern about the impact displacement would have on areas such as the Kaipara Harbour which, given its tidal nature, may pose a public safety issue for those who are unfamiliar with the area.

## Implementation

44. Implementation issues will be considered as part of the process for investigating the making of controls at Omaha Beach and Arkles Bay. This includes considering staff resources to enforce any proposed controls. The success of the seasonal control at Shakespear Regional Park was due to the on-going presence of staff during that time. Local beaches do not have the same level of staff resources and often set netters are present outside of normal working hours such as weekends and during the night.
45. The cost for signage, brochures and public notices in the New Zealand Herald is estimated to be between \$2000 - \$3000 for each beach. While there is existing signage at Arkles Bay this signage would need to be replaced.
46. Proactive monitoring of Hatfields Beach, Browns Bay and Campbells Bay will also incur additional costs.

## Attachments

No.	Title	Page
A	Public feedback received through the Auckland Council 'Setnet' email address from 20 December 2014 to 31 April 2015	

## Signatories

Authors	Emma Pilkington - Policy Analyst Rebekah Stuart-Wilson - Principal Policy Analyst Helgard Wagener - Team Leader Policies and Bylaws
Authorisers	Kataraina Maki - GM - Community & Social Policy

## Evidence gathering for Boarding House project in South Auckland

File No.: CP2015/12600

### Purpose

1. To inform on the results of the boarding house evidence gathering project in South Auckland.

### Executive Summary

2. The objective of this project was to inspect 20 boarding houses in South Auckland.
3. The project evaluated the conditions of the boarding houses, the effectiveness of current legislation, and where limitations to council's powers may exist.
4. The project was carried out by council's regulatory departments and focused on building safety, environmental health and sanitation issues and resource consenting requirements. The team was also assisted by other council departments, social service agencies and the New Zealand Fire Service.
5. The inspections disclosed that the majority of boarding houses were found to be in breach of at least one of the following regulatory mechanisms:
  - Building Act 2004
  - Housing Improvement Regulations 1947
  - District Plan (Auckland Council District Plan Operative Manukau Section 2002)
6. The most significant issues identified were breaches of fire safety rules and unconsented building works.
7. An assessment of the environmental health and building safety breaches identified as part of the inspections, determined that these could be reasonably addressed by the application of existing legislation/regulations without the need for any additional regulatory tools.

### Recommendation/s

That the Regulatory and Bylaws Committee:

- a) note that council officers using a combined regulatory approach can manage the environmental health and building safety issues relating to boarding houses without the creation of a specific bylaw, by utilising existing legislation/regulations, especially;
  - Building Act 2004 and associated regulations
  - Health Act 1956 and associated regulations
  - Resource Management Act 1991
- b) note that staff will develop an operational plan to proactively monitor and inspect boarding houses.

### Discussion

#### Background

8. It is estimated there are approximately 160 boarding houses across Auckland. The evidence council held prior to this project as to the overall condition of boarding houses was minimal, with the majority of information held being anecdotal.

9. The Building Act 2004, the Building Code 1992, the Health Act 1956, Housing Improvement Regulations 1947 and the Resource Management Act 1991 are the principal legislative or regulatory tools applicable to boarding houses. They variously control building safety and environmental health and sanitation. These tools provide council the power to enter, inspect, issue cleansing orders or notices to fix, abate nuisances, prosecute, and take other enforcement action where it determines non-compliance.
10. The council, through the Regulatory and Bylaws Committee, is currently undertaking a review of legacy bylaws relating to boarding houses.
11. This includes assessment of the issues associated with boarding houses, whether the existing legislation is effective and the most appropriate policy responses including whether additional regulatory or non-regulatory tools are needed to deal with environmental health and building safety issues.

### **Purpose of project**

12. The evidence gathering project was established to:
  - inspect a representative sample of South Auckland boarding houses using existing legislation in a way that integrated council departments and provided a better understanding of issues associated with boarding houses.
  - specifically, collect data to assist with the review of legacy boarding house bylaws and development of policy responses.
13. This pilot project was a combined approach with joint inspections undertaken by building control, resource consent and the environmental health teams of a sample of 20 boarding houses, utilising the powers under the current legislation. The project was undertaken in legacy Manukau City Council area as existing information systems were used to record inspection data across the regulatory teams.

### **Methodology**

14. An implementation plan for the inspections was developed in conjunction with government departments and social services support agencies. This included agreement on the inspection approach to provide reasonable notice to boarding house managers, agreement on project resources and the development of a comprehensive inspection checklist.
15. As part of preparing for implementation an extensive contingency plan was established in the event that a boarding house would require immediate closure due to extremely unsafe conditions. This involved coordination with the Ministry of Social Development, Ministry of Business & Innovation, New Zealand Police, the Salvation Army, Monte Cecilia Housing Trust, Corrections New Zealand and council's Civil Defence & Emergency Management department Community Safety team.
16. Once agreed, the implementation plan was communicated to all councillors by way of a briefing sheet and a report was presented to the Community Development and Safety Committee.
17. A list of target boarding houses was developed and agreed. The list was based on an existing council register of 10 premises and additional information supplied by government departments and support agencies.
18. Identified boarding houses were sent notification letters advising of scheduled inspections that allowed between 5-10 days' notice.
19. Prior to the onsite inspections, council officers completed desktop reviews of properties utilising existing council information, for example, resource consents, building consents and GIS records.
20. On-site inspections were carried out simultaneously by resource consent, building control, environmental health officers and the New Zealand Fire Service.

21. Officers completed inspections by following a prepared checklist based on relevant legislation and regulations. Officers inspected all communal areas, a selection of private bedrooms and the exterior of the buildings.
22. Following onsite inspections officers completed file notes and identified issues that needed to be rectified. Notification letters and applicable notices were then prepared and sent to building owners and boarding house managers.
23. Council officers are continuing to work with property owners to ensure all boarding houses are compliant, this includes providing advice and re-inspecting completed works.

## Results

24. Inspection of 20 properties took place during March and April 2015. One property was deemed not to qualify as a boarding house. Of the 19 boarding houses inspected, 17 properties were considered non-complying and required remedial actions by the property owner.
25. There were nine properties that breached district plan rules, the majority of planning issues encountered related to the increase in intensity of the property, often due to the addition of caravans or subsidiary dwellings. Identified breaches and actions required to comply were communicated to property owners by letter. Follow-up meetings and inspections are being carried out by officers.
26. There were nine properties that breached the Housing Improvement Regulations, the majority of issues related to the presence of food appliances in bedrooms, the lack of ventilation and minor flooring damage. Identified breaches and actions required to comply were communicated to property owners by letter. Follow-up meetings and inspections are being carried out by officers.
27. At many sites there was evidence that significant cleaning had recently taken place prior to the scheduled inspections, therefore potentially reducing the volume of issues identified.
28. There were 13 properties that breached the Building Act. The majority of building issues related to breaches of fire safety related rules, over occupancy and unconsented building works. The following Building Act notices have been issued:
  - 2 x Dangerous & Insanitary Building Notice (DIBN)
  - 5 x Dangerous Building Notice (DBN)
  - 13 x Notice to Fix (NTF)
29. Excessive occupancy was identified as being in breach of resource consent and building compliance schedules limits at multiple sites due to the addition of caravans/cabins or the completion of unconsented building works. To remedy these infringements, the boarding house owners have a number of options including reducing occupancy numbers or pursuing regulatory options to increase occupancy limits.
30. Overcrowding – anecdotal accounts suggest that overcrowding is considered a significant issue associated with boarding houses. While a few overcrowding issues were noted during the inspections, it was not as significant as anticipated. This could be attributed to the low number of tenants present at the time of inspections and that the owners were notified of the inspections. This issue will be looked at more closely through a proactive monitoring programme.
31. The Ministry of Social Development (MSD) has been briefed on the results of the inspections including the potential risk of evictions, and have provided council with support collateral for distribution and instructions for contacting a support centre should the need arise.
32. Officers are continuing to work with boarding house owners to make inspected boarding houses safe and compliant within reasonable timeframes.

### Implications on current operational practices

33. The results of the inspections suggest that living conditions found in the South Auckland boarding houses inspected are below legislative requirements especially in regard to fire safety related rules and occupancy limits.
34. There is no evidence to suggest that the conditions encountered as part of the inspection programme are specific or limited to South Auckland boarding houses.
35. Current legislation was considered adequate to address issues encountered as part of the inspections.
36. Proactive inspections provide a method of identifying issues and improving living conditions.
37. Boarding houses can be inspected and managed proactively utilising a coordinated multi-department approach.
38. The provision of a master list of boarding houses across Auckland is a barrier to completing further proactive inspections as current information is limited.
39. Council will share the results of this project and continue to work with central government and support agencies in the development of a proactive monitoring programme for boarding houses and potential changes to national legislation or regulations.

### Consideration

#### Local Board views and implications

40. As this is an update report to the committee on the pilot boarding houses project, the views of the local boards were not sought. However, communication has been ongoing with Southern local boards. A workshop is scheduled with the Mangere-Otahuhu Local Board.
41. As part of the Bylaw Review Programme, the Social Policy and Bylaw team held workshops with local boards in 2013, discussing issues and options of both legacy bylaws, and potential future outcomes of the bylaw review project.

#### Māori impact statement

42. As this is an update report to committee on the pilot boarding houses project no specific input was sought. The Social Policy and Bylaws team discussed the review of legacy bylaws related to boarding houses and hostels during two hui held at Orewa and Manukau in March 2015.

### Implementation

43. Regulatory Services need to investigate options for introducing a proactive monitoring programme for boarding houses across the Auckland region including the resourcing for such a programme and the sourcing of a region wide list/register.

### Attachments

There are no attachments for this report.

### Signatories

Authors	Bradley Matson – Project Manager, Integrated Bylaw Review Implementation Programme
Authorisers	Mervyn Chetty - Manager Environmental Health, Licensing and Compliance Services Grant Barnes - General Manager Licensing and Compliance Services

## Review of Boarding Houses Bylaws

File No.: CP2015/13092

### Purpose

1. The purpose of this report is to seek agreement to allow the Auckland City Council Hostels Bylaw 2008 and the Rodney District Council Sanitation and Cleanliness of Buildings and Places of Public Resort Bylaw 1998 be automatically revoked on the 31 October 2015.

### Executive Summary

2. This report reviews the contents of the Auckland City Council Hostels Bylaw 2008 and the Rodney District Council Sanitation and Cleanliness of Buildings and Places of Public Resort Bylaw 1998 to see if they are still relevant, effective and required.
3. Auckland Council inherited the Auckland City Council Hostels Bylaw 2008 and the Rodney District Council Sanitation and Cleanliness of Buildings and Places of Public Resort Bylaw 1998. The legacy Manukau City Council utilised an informal register and inspected 16 boarding houses annually. Other legacy councils inspected properties based on complaints from the public, utilising the relevant central government legislation.
4. This review of the boarding houses bylaws and the central government legislation included in-depth investigation and analysis of each applicable rule as well as consultation and engagement with internal and external stakeholders to help identify the most appropriate means to address the issues seen in boarding houses in Auckland.
5. On 17 June 2014, staff held a workshop with the Regulatory and Bylaws Committee members to present an issues and options paper and inform the members of the findings of the staff and obtain guidance from the members of the committee on the preferred option. The results of that workshop were that the majority of councillors preferred a proactive approach to regulating boarding houses. Councillors suggested additional investigation and analysis of a proactive approach.
6. In January 2015, a proactive inspection pilot project was conducted by the council's Licensing and Compliance Services. This pilot project provided additional evidence and information to the Social Policy and Bylaws staff to help identify issues in boarding houses in Auckland, test central government legislation and assist staff to make a recommendation on the current bylaws.
7. This pilot project provided a successful method of identifying issues and improving living conditions and demonstrated that current legislative powers are adequate to manage and inspect boarding houses. The two legacy bylaws provided are not required for the inspection process.
8. The Regulatory and Bylaws Committee is advised of the results of the pilot project in a separate report from Licensing and Compliance Services.
9. Based on the bylaw review process to date (including research and investigation, issues and options analysis, the findings of the inspections pilot project and consultation and engagement) staff concur that the current legislative provisions are adequate to address issues associated with boarding houses.
10. Staff therefore recommend allowing the relevant legacy boarding houses / hostels bylaws to be automatically revoked on 31 October 2015.
11. Staff do not recommend the development of a new bylaw but propose a proactive coordinated multidepartment approach by developing a register of boarding houses and a boarding houses operational plan to assist the inspection of boarding houses using current already established legislation.

## Recommendations

That the Regulatory and Bylaws Committee:

- a) agree to allow the following legacy bylaws for boarding houses to be automatically revoked on the 31 October 2015:
  - Auckland City Council Hostels Bylaw 2008
  - Rodney District Council Sanitation and Cleanliness of Buildings and Places of Public Resort Bylaw 1998

## Comments

### *Background*

12. Following the amalgamation of the seven legacy territorial authorities in Auckland, the council inherited the Auckland City Council Hostel Bylaw 2008 and the Rodney District Council Sanitation and Cleanliness of Buildings and Places of Public Resorts Bylaw 1998. Manukau City Council did not have a bylaw but did have a voluntary register of 16 boarding houses and resolved to inspect boarding houses on an annual basis to assess compliance with legislation. Other legacy councils inspected properties based on complaints from the public.
13. In February 2011, the Regulatory and Bylaws Committee endorsed the bylaws review programme of work which was the council's response to its legislative obligations to review all existing bylaws. A review of the legacy bylaws is required to be completed by 31 October 2015.
14. Auckland Council is empowered to make bylaws to protect the health of our community and may inspect and take steps to abate any identified nuisances or conditions likely to be injurious to the health of the public.
15. This boarding houses bylaw review has been undertaken in consultation with the council's environmental health officers, building inspectors, property department and staff of Community Development and Safety (Homelessness) to discuss options and recommendations.
16. There is currently no consistent approach to addressing minimum standards on maintenance, cleanliness, occupancy levels and building safety. The review of the bylaws from the former Rodney District and Auckland City Councils, together with an analysis of existing legislation addressing issues such as unsafe or unsanitary conditions, has presented the council with an opportunity to assess the most appropriate means to manage boarding houses.
17. The boarding houses bylaw review included examining the existing regulations and comparing those to the legacy bylaws as well as a review of council's current activities and legal powers to proactively enter and inspect boarding houses and recover costs for that service.
18. An issues and options paper was completed in 2014. Detailed analysis, research, background papers and an environmental scan, to look at what other local authorities nationally and internationally have done to regulate boarding houses has been completed. An informal list of known boarding houses was developed with external stakeholders and a pilot project inspecting 19 boarding houses was completed to provide additional information on the effectiveness of regulating boarding houses using central government legislation.

**Outcomes sought**

19. The outcomes sought of the boarding houses bylaw review process are to ensure:
- the health and wellbeing of tenants living in boarding houses, some of whom are vulnerable
  - a consistent approach to regulating boarding houses that does not duplicate current legislation
  - that if the two legacy council bylaws are not required, the council is still fulfilling its health and safety obligations in relation to boarding houses
  - the recommended approach is practical, easy and effective for Licensing and Compliance Services to implement.

**Central government legislation**

20. Current legislation on building safety, environmental health and sanitation that the council can apply to boarding houses includes:
- Resource Management Act 1991
  - Building Act 2004
  - Building Code
  - Health Act 1956
  - Housing Improvements Regulations 1947
  - Local Government Act 2002
  - Residential Tenancies Act
21. The above legislation enables the council to respond to complaints, inspect boarding houses, enforce rules, develop a register for boarding houses and provides an infringement process for non-compliance.

**Central government response – Social Services Select Committee review of legislation**

22. The Social Services Select Committee has recently conducted an inquiry into boarding houses in New Zealand to consider the regulatory and legislative frameworks that apply to boarding houses. The committee wanted to determine if the current frameworks provided adequate protection to vulnerable tenants.
23. Specifically the Social Services Select Committee discussed aligning the terminology related to boarding houses, investigating a New Zealand register for boarding houses and sharing of boarding house details between organisations and territorial authorities.
24. Additionally the committee recommended updating relevant sections of the Health Act 1956, the Housing Improvement Regulations 1947, the Building Act 2004, the Residential Tenancy Act 1986 and the Local Government Act 2002 to make the minimum standards more reflective of modern standards and align penalties to reflect actual cost of inspections and enforcement.
25. In January 2015, central government responded and recommended:
- increasing the levels of infringements and introducing minimum standards
  - aligning the penalties more closely to true costs
  - developing a shared register of boarding houses across New Zealand.
26. No timeframes for implementation of the resolutions have been set.
27. The outcomes of this inquiry will assist the council in cost recovery and management of this sector.

### ***Boarding house definitions***

28. The definition of boarding houses has caused issues when regulating this industry as it varies from one act or code to another. The term 'boarding houses' generally captures a wide range of accommodation facilities and includes common items in the definition such as occupants having paid for exclusive use of a bedroom or part of a bedroom and sharing other facilities such as a kitchen or living area. Varying occupancy levels are required by the different statutes or regulations, for example five or more occupants per boarding house that are not a part of the family unit.
29. Generally a boarding house is not an off licence, hospital, aged persons home, mental health or disability service, camping ground, motel or hotel.
30. A comprehensive definition for 'boarding houses' would be required to develop a register of boarding houses for Auckland.
31. District Planning and Building Control do not assess 'boarding house' issues any differently to any other building with occupants and do not treat them in any special way or have any special procedures; therefore the definition is not such an issue for them during inspections.

### ***National and international environmental scan***

32. Territorial authorities are responsible for ensuring:
  - building safety
  - compliance with consented land use
  - environmental health and sanitation of boarding houses.
33. Investigation into other New Zealand territorial authorities' approaches to boarding houses was concluded. Of 27 local authorities sampled, 16 did not have a 'hostel' or 'boarding houses' bylaw. Five local councils used the New Zealand Bylaw Standard for hostels and a further two had specific 'Apartment Buildings and Boarding Houses Bylaws'.
34. The New Zealand Bylaw Standard for hostels and the Apartment Buildings and Boarding Houses Bylaw broadly regulate similar matters relating to the building safety, health and sanitation.
35. An investigation of international approaches to boarding houses has been completed. In Australia, the seven states have multiple pieces of legislation that work to regulate boarding houses to differing degrees. Victoria, Queensland, South Australia, the Northern Territory and Tasmania have regulations specifically pertaining to boarding houses or low cost accommodation. Western Australia does not have regulations directly related to boarding houses but they are expected to comply with health regulations within their state and also register with the local health authority.
36. The most comprehensive legislation in Australia is in New South Wales with the Boarding Houses Act 2012, which came into force in 2013. This provided an effective means to regulate the industry and enforce regulation.
37. In the United Kingdom, housing associations are private, not for profit organisations that provide low cost housing. The Department for Communities and Local Government created guidance for landlords and a healthy housing and safety rating system to manage boarding houses.

### ***Boarding Houses Options***

38. In 2014, staff developed an issues and options paper and proposed three options. Consultation and engagement was completed on the issues and options paper with internal and external stakeholders.
39. Five of the 21 local boards preferred using existing legislation and inspection on complaint, two preferred regulating through a bylaw with regular inspections, five had no preference and nine local boards did not respond.

40. On 17 June 2014, at a workshop held with the Regulatory and Bylaws Committee, councillors expressed a preference for a proactive approach to the management of boarding houses and requested additional research and investigation on the most appropriate mechanism to manage boarding houses.

**Council boarding houses bylaw review analysis**

41. Analysis comparing the items and issues detailed in the two legacy bylaws and the current legislation relevant to boarding houses is attached in Appendix 1: Table of analysis.
42. This analysis illustrates that most items or issues contained in the legacy council bylaws can already be covered by central government legislation and therefore the bylaws are not required. Additionally, having different approaches and rules for different areas of Auckland is not practical or equitable.
43. During March and April 2015, a boarding houses inspection pilot project was conducted in South Auckland where 19 boarding houses were inspected. A separate report by Licensing and Compliance Services is submitted to the committee to inform it of the details and results of this pilot project.
44. Overall, the staff did not identify issues that were outside the scope of existing legislation and all issues were able to be adequately addressed by existing legislation. The two legacy bylaws provided no added value to the inspection process.

**Option Analysis**

45. Updated details of each option are below along with analysis of the positive and negative aspects of each option.

Option	Description	Advantages	Disadvantages
<p>Option A: Status Quo – retain two bylaws, the informal register and use central government legislation</p>	<ul style="list-style-type: none"> <li>• The status quo would mean keeping the two legacy bylaws for Auckland City and Rodney District Council areas</li> <li>• Manukau City Council area would retain its informal register and proactively inspect boarding house as well as inspect by complaint.</li> <li>• Other areas of Auckland will be inspected by complaint only and utilise central government legislation.</li> <li>• This would not revoke the current bylaws.</li> </ul>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> No additional costs or resources required due to inspecting regime not changing</li> <li><input checked="" type="checkbox"/> No change required to systems or processes.</li> </ul>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Does not achieve the sought outcomes of this review.</li> <li><input checked="" type="checkbox"/> The legacy bylaws are not actively being used by inspectors</li> <li><input checked="" type="checkbox"/> Status quo not supported by external stakeholders</li> <li><input checked="" type="checkbox"/> Inability to enforce some aspects of the current bylaws i.e. how often bed-clothes are changed.</li> <li><input checked="" type="checkbox"/> Status quo provided an inconsistent approach across Auckland and therefore would result in inequitable outcomes across populations and areas of Auckland</li> <li><input checked="" type="checkbox"/> It duplicates existing legislation.</li> </ul>

Item 13

Option	Description	Advantages	Disadvantages
<p>Option B: Regulate through a new bylaw and licence, inspect all boarding houses</p>	<ul style="list-style-type: none"> <li>Initiate the development of a new Auckland-wide bylaw to regulate boarding houses</li> <li>Bylaw could enable the introduction of licensing for all boarding houses and introduce licensing and inspection fees.</li> </ul>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Will achieve some of the sought outcomes</li> <li><input checked="" type="checkbox"/> Aligns with council's role of protecting public health and safety</li> <li><input checked="" type="checkbox"/> Licensing fee provides for cost recovery for enforcement</li> <li><input checked="" type="checkbox"/> Provides reassurance to the community of the regulation of boarding houses.</li> </ul>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Duplicates existing legislation</li> <li><input checked="" type="checkbox"/> Difficulty in defining boarding houses for a register</li> <li><input checked="" type="checkbox"/> Very transient industry, houses can close or rename to avoid detection, especially when a fee to register and license is imposed</li> <li><input checked="" type="checkbox"/> Change for all legacy council areas due to licence aspect</li> <li><input checked="" type="checkbox"/> Cost associated with developing a bylaw and the special consultative procedure</li> <li><input checked="" type="checkbox"/> Would not be operational for some time due to special consultative procedure timeframes</li> <li><input checked="" type="checkbox"/> Cost for additional resources to actively inspect properties and manage a licensing regime</li> <li><input checked="" type="checkbox"/> A licensing system imposes costs onto council and boarding house operators – even those who do not present problems</li> <li><input checked="" type="checkbox"/> Costs of licensing likely to be passed on tenants, which could lead to homelessness for more vulnerable tenants.</li> </ul>

Option	Description	Advantages	Disadvantages
<p>Option C: Use existing legislation, housed in central government, to set standards and best practice for boarding houses.</p> <p><i>Recommended Option</i></p>	<ul style="list-style-type: none"> <li>Officers will utilise current central government legislation for inspections and coordinate enforcement actions as required with other agencies</li> <li>Cost recovery for inspection and enforcement under enabling legislation</li> <li>This would revoke the current bylaws.</li> </ul>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> No duplication as it uses existing legislation (i.e. Building Act and Health Act) to inspect and take action to address issues.</li> <li><input checked="" type="checkbox"/> Will achieve some of the outcomes of the review</li> <li><input checked="" type="checkbox"/> No license cost to boarding houses. Errant boarding houses will have a re-inspection and may need to pay a re-inspection fee</li> <li><input checked="" type="checkbox"/> Threat of a re-inspection fee likely to encourage boarding houses to comply with standards</li> <li><input checked="" type="checkbox"/> Able to clarify which agencies are responsible for enforcing boarding houses standards</li> <li><input checked="" type="checkbox"/> Aligns with council's role of protecting public health and safety</li> <li><input checked="" type="checkbox"/> No administrative burden of a licensing regime.</li> </ul>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Very transient industry, houses can close or rename to avoid detection</li> <li><input checked="" type="checkbox"/> No licensing fee therefore no cost recovery – other than if a re-inspection fee were charged</li> <li><input checked="" type="checkbox"/> Charging a fee for re-inspection could be passed on to already vulnerable tenants.</li> </ul>

**Recommendations**

46. Staff recommend that the council allows the legacy bylaw provisions that relate to boarding houses / hostels to be automatically revoked on 31 October 2015. Staff propose that the council use existing legislation, set best practice for boarding houses through an Auckland Council boarding houses operational plan and investigate a proactive inspection regime.
47. Staff consider this the most appropriate way of addressing particular boarding house issues because the current bylaws are:
  - inconsistent and would create inequitable outcomes in different areas of Auckland
  - inconsistent with the analysis of health and hygiene risks undertaken through this review
  - not actively utilised by inspectors and duplicate current legislation.
48. Typical boarding house tenants tend not to complain about less than appropriate safety and hygiene conditions and are less likely to be aware of their rights to complain. This may reduce the effectiveness of an enforcement approach that is dependent on complaints.

49. The development of an operational plan to proactively monitor and inspect boarding houses using existing legislation will set best practice for boarding houses and enable a proactive and consistent inspection regime to regulate the industry. This will enable the council to ensure that the industry complies with operational standards. Additionally taking a proactive approach provides an incentive for boarding houses to comply with the operational standards and enables the council to protect health and safety of its most vulnerable communities.

## Consideration

### Local Board views and implications

50. In 2013, boarding houses issues and options workshops were conducted with local boards. Feedback from those discussions varied from the creation of a licensing system for boarding houses, through to the council utilising current legislation and advocating for a voluntary code of practice.
51. Communication with local boards has continued throughout the process, most recently with the southern boards being proactive in communicating with council staff regarding the results of the inspection pilot project. A memo was sent to all local boards with the results of the inspection pilot project.
52. Southern Local boards in particular have been active in voicing the need for a proactive practical approach to managing and inspecting boarding houses in Auckland.

### Māori impact statement

53. Staff undertook a literature review of key documents to gain a preliminary understanding of the impact the proposal potentially has on Māori. Specific views of Māori in relation to property maintenance were gathered at two hui held at Orewa and Manukau in March 2015. The proposed measures were supported by representatives of Māori that attended the hui.
54. Although Māori do tend to be more represented in boarding house tenancies in general, the areas that are covered by the two legacy bylaws are not areas with high representation of Māori. There is no greater impact on Māori than on the general population as a result of the automatic revocation of the legacy bylaws.

## Implementation

55. If approved by the committee, the two legacy bylaws will automatically be revoked on 31 October 2015. As the two legacy bylaws are not required, the revocation will not result in any effect on the regulation of boarding houses. Existing legislation provides adequate regulatory measures to assist the council to address issues at boarding houses.

## Attachments

No.	Title	Page
A	Appendix 1 Analysis Table	

## Signatories

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