



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

Date: Wednesday, 9 December 2015
Time: 9.30am
Meeting Room: Room 1, Level 26
Venue: 135 Albert Street
Auckland

Regulatory and Bylaws Committee

OPEN AGENDA

MEMBERSHIP

Chairperson	Cr Calum Penrose
Deputy Chairperson	Cr Denise Krum
Members	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
Ex-officio	Mayor Len Brown, JP
	Deputy Mayor Penny Hulse

(Quorum 5 members)

Jaimee Maha
Democracy Advisor

2 December 2015

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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.

Independent Māori Statutory Board

- Members of the Independent Māori Statutory Board who are appointed members of the committee remain.
- Independent Māori Statutory Board members and staff remain if this is necessary in order for them to perform their role.

Staff

- All staff supporting the meeting (administrative, senior management) remain.
- Other 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.

Council Controlled Organisations

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

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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:

confirm the ordinary minutes of its meeting, held on Tuesday, 13 October 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 7.7 provides for Public Input. Applications to speak must be made to the Democracy Advisor, in writing, no later than **one (1) clear working day** 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 6.2 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 **one (1) day's** 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 6.1 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.

Decision on a set net and crab pot control for Omaha Beach

File No.: CP2015/18392

Purpose

1. To seek a decision on whether to manage public safety and nuisance issues associated with set netting and crab fishing at Omaha Beach by using existing regulations or by making a control.

Executive Summary

2. On 8 July 2015, the Regulatory and Bylaws Committee requested that staff investigate the making of seasonal crab pot and set net controls at Omaha Beach (resolution number: RBC/2015/24).
3. Concerns about set netting and crab fishing at Omaha Beach have been raised by the Rodney Local Board and members of the Omaha Beach community since early 2013.
4. The Public Safety and Nuisance Bylaw 2013 enables the council to make seasonal controls for recreational activities to ensure public safety and prevent nuisance. Public concerns about the impact of set nets at Omaha Beach were raised during the making of the bylaw. This increased during the development of the first annual summer set net control at Shakespear Regional Park in 2014.
5. To address public concerns, the Regulatory and Bylaws Committee directed staff to monitor set net activities at Omaha Beach over the 2014/15 summer period (resolution number: RBC/2014/55). The purpose of monitoring these beaches was to gather information on public safety and nuisance issues associated with set netting.
6. Between December 2014 and October 2015, the council received 22 emails from members of the Omaha Beach community, 17 of which related to crab fishing and five related to set netting. The majority of the issues raised can be addressed using existing regulation, both within the jurisdiction of the council and other agencies such as the Ministry for Primary Industries.
7. Staff have reviewed the information obtained during this monitoring period and have identified three feasible options for the Regulatory and Bylaws Committee to consider:
Option 1: Do not make set net and / or crab pot controls and instead address issues using existing regulation and education (recommended option)
Option 2: Make summer set net and / or crab pot controls
Option 3: Make a set net and / or crab pot controls all year round.
8. Should the Committee decide to make a control under either Options 2 or 3, it may wish to consider its October 2015 decision where it resolved that the Arkles Bay Set Net Control should not impact customary fishing rights carried out in accordance with the Fishing (Kaimoana Customary Fishing) Regulations 1998.
9. Staff consider that making new set net and / or crab pot controls for Omaha Beach (Option 2 and Option 3) would be disproportionate in response to the issues raised. Staff consider that proactive monitoring and education about existing regulations is the most appropriate approach to addressing public safety and nuisance issues associated with crab fishing and set netting at Omaha Beach (Option 1), given that most of these matters are already regulated.

Recommendations

That the Regulatory and Bylaws Committee:

- a) confirm that its approach to managing public safety and nuisance issues associated with set netting and crab fishing at Omaha Beach is:

EITHER

Option 1: address issues associated with set netting and crab fishing at Omaha Beach using existing regulations and undertaking a targeted education and monitoring program over the 2015/16 summer period.

OR

Option 2: Make summer set net and/ or crab pot controls at Omaha Beach:

- i) within 200 metres (seaward) of the Mean High Water Spring from 20 December to 30 April annually, and
- ii) that do not prevent customary fishing from being carried out at Omaha Beach in accordance with the Fishing (Kaimoana Customary Fishing) Regulations 1998.

OR

Option 3: Make set net and/ or crab pot controls at Omaha Beach:

- i) within 200 metres (seaward) of the Mean High Water Spring at all times, and
- ii) that do not prevent customary fishing from being carried out at Omaha Beach in accordance with the Fishing (Kaimoana Customary Fishing) Regulations 1998.

Comments

Background

10. In May 2015, the staff reported to the Rodney Local Board on the results of the first seasonal set net control at Shakespear Regional Park and the monitoring of Omaha Beach. At that meeting, the board resolved to recommend to the Regulatory and Bylaws Committee that staff investigate the making of seasonal set net and / or crab pot controls at Omaha Beach (resolution number: RD/2015/61).
11. On 8 July 2015, staff presented an update report on set netting activities to the council's Regulatory and Bylaws Committee which included the May recommendation from the Rodney Local Board. The committee resolved to direct staff to investigate the making of summer crab pot and set net controls at Omaha Beach (resolution number: RBC/2015/24).
12. 'Set netting' is a method of catching fish where nets up to 60 metres long are placed adjacent to the beach and anchored to the sea floor with surface floats at either end.
13. 'Crab pots' are baited ring pots used to catch paddle crabs.
14. Staff have investigated whether new set net and crab pot controls are necessary to address concerns raised by members of the Omaha Beach community.

Mandate

15. Under clause 9(3) of the Public Safety and Nuisance Bylaw 2013, the council can make controls restricting recreational activities on beaches (such as set netting or crab fishing) to ensure public safety and prevent nuisance. The bylaw defines nuisance as including a person, thing or circumstance causing unreasonable interference with the peace, comfort or convenience of another person in a public place.

16. In determining whether to make a control under the Public Safety and Nuisance Bylaw, the council must also meet the requirements of the Local Government Act 2002. The council must ensure its controls are:
 - the most appropriate response to an issue
 - evidence-based (there is sufficient and timely evidence the activity is impacting on public safety or causing a “nuisance” (as defined in the bylaw)
 - complements other measures aimed at maintaining public safety at beaches
 - enforceable (i.e. the control can be implemented)
 - made in a transparent manner.
17. The Committee has the delegation to make controls by passing a resolution pursuant to the Public Safety and Nuisance Bylaw.
18. The process for making a control can be initiated as a result of an investigation by council staff or in response to complaints from local boards or the public.
19. The council can only make controls for recreational activities. The council cannot:
 - regulate operations such as crab fishing undertaken by commercial operators
 - make controls to protect fisheries resources and wildlife.
20. These matters fall outside the scope of the council’s jurisdiction under the bylaw making powers of the Local Government Act 2002.
21. The Ministry for Primary Industries is responsible for regulating fisheries resources and the manner in which fishing gear is used through the:
 - Fisheries Act 1996
 - Fisheries (Commercial Fishing) Regulations 2001
 - Fisheries (Amateur Fishing) Regulations 2013 and
 - Auckland and Kermadec Fishery Management Area Recreational fishing rules.

Regulating set netting and crab fishing

22. The council can make a control to prohibit or restrict set net or crab fishing activities at a specified beach for a time or season considered necessary to ensure public safety.
23. As an example, in 2014, the council implemented summer set net controls at Army Bay and Te Haruhi Bay within Shakespear Regional Park to address public safety issues (resolution number: RBC/2014/55).
24. In July 2015, the Committee also resolved to make a seasonal set net control at Arkles Bay within 200 metres (seaward) of the Mean High Water Spring from Labour Weekend to Easter annually (resolution number: RBC/2015/39). The Committee resolved that this control should not restrict customary fishing rights carried out in accordance with the Fishing (Kaimoana Customary Fishing) Regulations 1998 (resolution number: RBC/2015/40).

Problem definition

25. Omaha Beach is situated on the north east coast of Auckland, on the eastern side of the Omaha sandspit adjoining Tawharanui Peninsula (refer to Attachment A: Map of Omaha Beach). The eastern facing beach is approximately 4 kilometres in length. In 2013, there were approximately 650 permanent residents at Omaha, with the population significantly increasing in summer seasons.
26. Since early 2013, the Rodney Local Board and members of the Omaha Beach community have regularly raised concerns about set net and crab fishing activities at Omaha Beach.
27. This increased in 2014, when the council developed its first annual summer set net control at Shakespear Regional Park. In response to the concerns raised at this time, council staff monitored set net activities at Omaha Beach and set up an Auckland Council Set Net email address to gather information and feedback about set net activities.
28. During the monitoring period of the 2014/15 summer, the council’s local parks staff undertook random spot checks at Omaha Beach but observed no set netting activities.

Officers from the Ministry for Primary Industries reported two instances where set netters were found in breach of the Fisheries (Amateur Fishing) Regulations 2013.

29. From December 2014 to October 2015, the council received 22 emails, 17 of which related to crab fishing and five related to set netting at Omaha Beach. Tables 1 and 2 below outlined the type and number of issues raised for crab fishing and set netting respectively.

Table 1: Crab fishing – type and number of issues raised at Omaha Beach from December 2014 to October 2015

Issue	Complaint	Frequency issue raised
Littering	Nets and hooks entangled in pots; ring pots and chicken carcasses used for bait in the water, washed up on the beach	10
Public health and safety	Concern about positioning ring pots with chicken carcasses in shallow water; discourages swimmers from using the area and poses a risk to health	8
Wildlife protection	Risk of harm to dotterels from pests attracted by chicken carcasses washed up on the beach	4
Potential attraction of sharks	Concern that chicken carcasses used in ring pots may attract sharks	3
Navigation safety	Proliferation of ring pots is a hazard to surfers and paddle boarders	2
Anti-social behaviour	Aggressive behaviour of crab fishers	1
Water safety of crab fishers	Near-drowning of crab fisherman caught in a rip while setting a net to catch crabs from a boogie-board	1

Table 2: Set netting - type and number of issues raised at Omaha Beach from December 2014 to October 2015

Issue	Complaint	Frequency issue raised
Risk of swimmers becoming entangled in nets	Nets left unattended are a hazard to swimmers and other water users; one swimmer swam into a set net and had to free themselves from the net	4
Use of set net fishing gear	Set nets in breach of the Fisheries (Amateur Fishing) Regulations 2013; use of milk bottles as floats on set nets with no owner identification	3
Fisheries resources	Concern at unsustainable fisheries harvesting associated with the use of set nets	1
Wildlife protection	Risk of dolphins becoming entangled in set nets	1

30. Some of the concerns identified in Tables 1 and 2 are matters that fall outside the council's jurisdiction of managing public safety and nuisance. Attachment B provides an overview of the work of other agencies in addressing these issues.

Existing regulations that address public safety and nuisance issues raised

31. There are a number of existing regulations aimed at addressing the types of public safety and nuisance issues identified in Tables 1 and 2 above. Table 3 below identifies the relevant regulations that are enforced by Auckland Council.

Table 3: Relevant existing regulation enforced by the council

Issue	Existing regulation
Littering	The Litter Act 1979 prohibits depositing any litter in or on a public place, including any beach and any waters the public has access to for swimming or other recreational purposes.
Navigation safety	The Navigation Safety Bylaw 2014 prohibits a person from placing any item, including fishing apparatus, in the water in a way that causes an obstruction or is likely to injure a person.
Nuisance to swimmers	The Public Safety and Nuisance Bylaw 2013 prohibits wilfully obstructing, disturbing or interfering with any other person in their use or enjoyment of that public place.
Anti-social behaviour	The Public Safety and Nuisance Bylaw 2013 prohibits people from causing a nuisance through excessive noise, disturbing the peace or the reckless use of a vehicle.

32. The outstanding issues raised that are not addressed through existing regulations include:
- the risk of swimmers being entangled in nets left unattended (one person entangled in a net prior to the monitoring period)
 - public health and safety concern for swimmers near chicken carcasses in the water and litter in the water from crab fishing (issue raised eight times).
33. Staff consider the risk of swimmers becoming entangled in set nets at Omaha Beach is relatively low due to the following characteristics of the area:
- length of the beach i.e. approximately 4 km
 - location of the beach in relation to other swimming beaches i.e. other options are nearby
 - distance from Auckland.

Options for the Regulatory and Bylaws Committee to consider

34. Staff have identified three feasible options for the Committee to consider to address public safety and nuisance issues associated with set netting and crab fishing at Omaha Beach.
35. Table 4 below presents and analyses the options with reference to the following objectives for achieving an effective policy outcome at Omaha Beach:
- ensure public safety and prevent nuisance for other recreational beach users
 - be evidence-based – there is sufficient and timely evidence that the activity is impacting on public safety or causing a nuisance (as per the definition of 'nuisance' in the bylaw)
 - be a proportionate and reasonable response to the evidence of the problem
 - be enforceable (it can be implemented due to sufficient resources).

Table 4: Options analysis

Options	Analysis
<p>Option 1: Rather than making specific set net and / or crab pot controls, use the following existing regulations to address public safety and nuisance issues:</p> <ul style="list-style-type: none"> Public Safety and Nuisance Bylaw 2013 (anti-social behaviour, noise, damage, vehicles on beaches, fish offal) Litter Act 1979 (littering) Navigation Safety Bylaw 2014 (obstruction of navigable waters for boats). <p>This option would be supported by proactive monitoring and education of these regulations by the council over the 2015/2016 summer period. (Recommended option)</p>	<p>Benefits:</p> <ul style="list-style-type: none"> Reasonable and proportionate response that avoids duplication (i.e. with existing regulations) Proactive monitoring and education of the Litter Act 1979 may reduce the dumping of chicken carcasses in the water and raise awareness among crab fishers of the impacts on other beach users Face to face communication with recreational fishers may be more effective at reducing problems than formal public notification <p>Disadvantages:</p> <ul style="list-style-type: none"> Education may not be effective at reducing the risk of swimmers being caught in set nets Is not the response requested by members of the community of Rodney Local Board <p>Implementation:</p> <ul style="list-style-type: none"> Officers (both council and Ministry for Primary Industries) would need to liaise and interact with beach users and the local community to improve awareness of existing regulations Collateral for awareness programmes such as signage and brochures could be required <p>Impacts:</p> <ul style="list-style-type: none"> This option may not reduce conflict between set netters and / or crab fishers and other beach users
<p>Option 2: Make summer set net and/ or crab pot controls (To apply from 20 December to 30 April annually extending 200 metres seaward from the Mean High Water Spring).</p> <p>Under this option the Committee may wish to recognise customary fishing rights carried out in accordance with the Fishing (Kaimoana Customary Fishing) Regulations 1998.</p>	<p>Benefits:</p> <ul style="list-style-type: none"> Responds to requests for the council to regulate the use of set nets and crab pots at Omaha Would minimise the risk of swimmers being entangled in set nets Would address issues with rotting bait / carcasses by prohibiting the use of set nets and / or crab pots Avoids potential conflict between set netters and crab fishers and other beach users at peak times <p>Disadvantages:</p> <ul style="list-style-type: none"> May be considered a disproportionate response to the frequency of incidents involving real and potential risk to swimmers from set netting Potential confusion as to what time of the year set netting and crab fishing is prohibited and allowed – even with signage / public notification Could result in displacement to other beaches <p>Implementation:</p> <ul style="list-style-type: none"> Public awareness about the seasonal set net and / or crab pot controls would need to be managed through signage and communication

Options	Analysis
	<p>Impacts:</p> <ul style="list-style-type: none"> • Continues to prohibit two legal activities that are managed by the Ministry for Primary Industries • A control under the bylaw would restrict customary fishing rights unless the Committee chooses to explicitly exclude customary fishing from the control • This option would not affect commercial fishers
<p>Option 3: Make an all year round set net and / or crab pot control (Extending 200 metres seaward from the Mean High Water Spring)</p> <p>Under this option the Committee may wish to recognise customary fishing rights carried out in accordance with the Fishing (Kaimoana Customary Fishing) Regulations 1998.</p>	<p>Benefits:</p> <ul style="list-style-type: none"> • Same as described under Option 2 and would provide a clear statement that set netting and crab fishing are prohibited at all times of the year <p>Disadvantages:</p> <ul style="list-style-type: none"> • May be considered a disproportionate and unreasonable response as the majority of complaints about set nets and crab pots have occurred during the summer period <p>Implementation:</p> <ul style="list-style-type: none"> • Public awareness about the controls would need to be managed through signage and communication <p>Impacts:</p> <ul style="list-style-type: none"> • Continues to prohibit two legal activities that are managed by the Ministry for Primary Industries • A control under the bylaw would restrict customary fishing rights unless the Committee chooses to explicitly exclude customary fishing from the control • This option would not affect commercial fishers

Community views on the options

36. Members of the Omaha Beach community have provided feedback about crab fishing and set netting at Omaha Beach on a number of previous occasions, including:
 - submissions to the Public Safety and Nuisance Bylaw (February 2013 – March 2013) including from the Omaha Beach Community Incorporated
 - public forum presentations to the Regulatory and Bylaws Committee when the Army Bay and Te Haruhi Bay set net control was being considered (November 2014).
37. The Auckland Council Set Net email address has continued to stay open throughout the investigation. During the engagement phase of the project in September, the council received seven emails from members of the Omaha Beach community in support of summer controls for crab fishing and set netting.
38. One of the emails received was from the Omaha Beach Community Incorporated. The group held a planning forum in December 2014 where members of the community unanimously agreed to pursue a set net and crab pot ban. In October 2015, the group sent the council their original submission to the Rodney Local Board which outlined their concerns about set nets and crab pots. Their main point was that the situation remains unchanged and as such support having a ban on set nets and crab pots.
39. There were no alternative views expressed via the Set Net email address.

Views of the Pacific Peoples Advisory Panel and Ethnic Peoples Advisory Panel

40. In September 2015, staff sought feedback from the Pacific Peoples Advisory Panel and Ethnic Peoples Advisory Panel. The feedback from the both panels was:
- neither supported making controls at Omaha Beach
 - preferred approach is education of with crab fishers and set netters to raise awareness of existing regulations
 - beaches are for the use by all ethnicities in New Zealand, and specific groups should not be singled out for regulatory control
 - that the council’s response to making controls should be evidence based such as:
 - statistics of unreasonable interference
 - injuries as a result of getting caught in set nets.
41. The Ethnic Peoples Advisory Panel also suggested methods of education and raising awareness including:
- using distinct markers such as flags in the water to signal where set nets are
 - patrols during the crab fishing season
 - educational workshops and brochures for crab potter sand set netters
 - designated areas specifically for set netting and crab fishing
 - messages through ethnic radio stations and print media in different languages on safe practices while crab fishing and set netting.

Māori engagement

42. Council staff received specific feedback from Nga Maunga Whakahii o Kaipara Development Trust on the investigation. The following feedback was provided:
- any controls proposed to be put in place should be done in consultation with the upper northern iwi groups through a collective hui. This approach was used for the Hauraki Gulf Marine Spatial Plan and ensures mana whenua discuss and agree on the long term management of coastal areas and implications, such as displacement
 - if controls are to be developed, recognition of cultural practices (mahinga kai), rahui (restrictions) and impacts on Māori and marine stocks is essential.
43. Iwi have also previously raised concerns about the displacement of activities to areas such as the Kaipara Harbour. Iwi were concerned that the tidal nature of this area may increase the risk of public safety issues.

Summary of options

44. Table 5 provides an assessment of the options against the objectives outlined in section 29.

Table 5: Summary of analysis of options

Objectives	Option 1	Option 2	Option 3
Ensure public safety and prevent nuisance	✓✓	✓✓	✓✓
Evidence based	✓✓	-	-
Proportionate and reasonable	✓✓	✓	xx
Enforceable by the council	✓	-	-

Rating scale	
✓✓	Strongly meets objectives
✓	Meets objectives
-	Neutral
x	Conflicts with objectives
xx	Strongly conflicts with objectives.

45. There are benefits and disadvantages associated with all three options. The council needs to determine whether making new set net and / or crab pot controls is an efficient and effective intervention to achieve the outcomes sought.
46. Of the 22 emails received from members of the Omaha Beach community, only two of the issues raised related to matters not already addressed by existing regulation. These are:
 - the risk of swimmers being entangled in nets left unattended (issue raised four times, one person entangled in a net), and
 - public health and safety concern for swimmers near chicken carcasses and ring pots in the water (issue raised eight times).
47. Staff consider that Option 1, proactive monitoring and enforcement of existing regulation and education on responsible crab fishing and set netting, is the most reasonable and proportionate response to the public safety and nuisance issues raised.
48. Option 1 is likely to be unpopular with Omaha residents who have expressed support for these activities to be banned from Omaha Beach. However, staff are concerned that Options 2 and 3 would be disproportionate and unreasonable responses to the frequency of incidents involving real and potential risk to swimmers and other water users.

Consideration

Local Board views and implications

49. At their meeting on 10 November 2014, the Rodney Local Board resolved to recommend to the Regulatory and Bylaws Committee that they agree to implement set net and crab fishing controls at Omaha Beach for the 2014/2015 summer daylight saving period (resolution number: RD/2014/263).
50. On 18 May 2015 the Rodney Local Board resolved to support that staff initiate the process of investigating seasonal controls for set net and crab pot activities on Omaha Beach (resolution number: RD/2015/61).

Māori impact statement

51. Staff consider the recommended option (Option 1) would not adversely affect Māori as it would increase the awareness of responsible behaviour amongst set netters and crab fishers.
52. Making a control under the bylaw would restrict the method of set netting for customary fishing at Omaha Beach carried out in accordance with the Fisheries (Kaimoana Customary Fishing) Regulations 1998.
53. The Committee can explicitly exclude customary fishing from the control. This would reduce the impact for Māori. The recommendations of this report enable the Committee to make this decision for Options 2 and 3. This is likely to have a low associated risk to public health and safety, though depending on the extent of customary fishing that may be undertaken using a set net.
54. The Māori Plan for Tamaki Makaurau recognises the customary right of access to fisheries resources for mana whenua and the kaitiaki role of tangata whenua concerning fisheries. The Fisheries (Kaimoana Customary Fishing) Regulations 1998 and Fisheries (Amateur Fishing) Regulations 2013 enable customary fishing for tangata whenua.
55. Further information on feedback from Māori can be seen in the Māori engagement section of this report.

Implementation

56. Staff consider that existing regulations will help to address issues raised by members of the Omaha Beach community. Education and proactive monitoring of the area will improve compliance with these regulations.

57. The council will undertake the following:

- distribute educational material to set netters and crab fishers over the 2015/6 summer period
- proactively monitor the area both from 6 November 2015 to 28 March 2016. This will include both random spot checks and planned coordinated actions based on identified issues in response to recreational fishing patterns i.e. fishing outside normal working hours.

Risks and risk mitigation

58. Risks associated with each option have been identified in Table 6 as well as possible ways to mitigate the risks.

Table 6: Risks associated with identified options

Option	Risk	Mitigation
1	Community concern that reliance on education and proactive monitoring may not alleviate risks to swimmers.	<ul style="list-style-type: none"> • Communication will include key messages that the council is legally constrained to ensure regulation is appropriate and proportionate to the evidence of the issues raised. • Provide education to set netters and crab fishers to be mindful of other beach users.
2	The making of seasonal set net and /or crab pot controls at Omaha may set a precedent that controls can be made for other beaches.	<ul style="list-style-type: none"> • Communication will include key messages that while set netting and crab fishing are legitimate activities the council has a role to maintain public safety for all beach users.
3	There could be questions about the level of evidence to justify an all year round controls on set nets and crab pots given that complaints mainly occur in summer.	<ul style="list-style-type: none"> • The same approach as for Option 2 but also consider reviewing after a year to assess if it is justified.

Attachments

No.	Title	Page
A	Map of Omaha Beach	19
B	Existing regulatory and non-regulatory initiatives administered by other agencies	21

Signatories

Authors	Emma Pilkington - Policy Analyst Rebekah Stuart-Wilson - Principal Policy Analyst
Authorisers	Kataraina Maki - GM - Community & Social Policy

Map of Omaha Beach



ATTACHMENT B: Relevant existing regulation and non-regulatory initiatives administered by other agencies

The below table outlines the agencies responsible for issues that fall outside the council's legislative powers, and the relevant existing regulation and non-regulatory initiatives of those agencies.

Issue	Responsible agency	Existing regulation / non-regulatory initiative
Littering	Ministry of Transport	The Maritime Protection Rules prohibit the discharge of animal carcasses from vessels into the sea within 100 nautical miles of land.
Wildlife protection	Department of Conservation	The Marine Mammals Protection Act 1978 prohibits the placement of any structure or trap in any place that is likely to injure a marine mammal.
Fisheries resources	Ministry for Primary Industries	Catch limits are regulated through the Fisheries (Amateur Fishing) Regulations 2013.
Use of set net fishing gear	Ministry for Primary Industries	<p>The Fisheries (Amateur Fishing) Regulations 2013 require that set nets:</p> <ul style="list-style-type: none"> • have purpose-designed floats at each end marked with the set netter's last name and initials. Use of plastic bottles is illegal. • must not be used in a way that allows fish to be stranded in the net by the falling tide. <p>Commercial fishing activities are regulated through the quota management system and permits are issued to operate from a registered vessel. Note that there are no commercial operators located at Omaha Beach.</p>
Water safety of crab fishers	Watersafe Auckland / Omaha Surf Club	There are no regulatory tools that deal exclusively with the safety of people engaged in crab fishing. Watersafe Auckland, New Zealand Police and Surf Lifesaving New Zealand will be providing water safety education for crab fishers in December at the Watersafe Auckland facility in Westhaven.

In addition to existing regulation for the use of set nets, the Fisheries (Amateur Fishing) Regulations 2013 impose the following restrictions on paddle crab fishing:

- a catch limit of 50 crabs per person per day
- a limit of up to three pots for recreational use per day per person
- up to six pots per day for two or more people using a boat.

Hearings Panel Appointment for Setting Fees under the Food Act

File No.: CP2015/24423

Purpose

1. To appoint a hearings panel to hear submissions on the Statement of Proposal - Setting Fees under the Food Act 2014.

Executive Summary

2. The Food Act 2014 introduces significant improvements to how food safety is addressed by commercial establishments across New Zealand. The new Act places a greater emphasis on the operator being responsible for food safety, and the regulator auditing and verifying that their plan is adequate and being followed correctly.
3. The change to the legislation obligates council to amend how it charges for the services it provides; due to amendments to the registration process and the addition of new verification, auditing and compliance services.
4. The new Food Act enables council to fix fees to recover the direct and indirect costs of any registration, verification, compliance and monitoring functions performed under the Act.
5. At its meeting of 19 November 2015, the Finance and Performance Committee resolved FIN/2015/120:
 - a) to adopt the statement of proposal to fix fees to recover the costs of the Council's functions under the Food Act 2014.
 - b) agree the process for consultation as set out in the report, noting that staff will report back on submissions and the proposed fees to the Regulatory and Bylaws Committee in 2016.
 - c) note that the December 2015 meeting of the Regulatory and Bylaws Committee will appoint hearings panel members to consider the submissions.
6. The timing of the special consultative process is largely determined by central government, commencing soon after the provision of formal guidance from the Ministry of Primary Industry. It must conclude before 01 March 2016 to enable council to recover the costs of the service it provides under the new regime.
7. Engagement with the hospitality industry and other key stakeholders has been positive.
8. This report recommends the appointment of the hearings panel to hear submissions on the Statement of Proposal - Setting Fees under the Food Act 2014.

Recommendation/s

That the Regulatory and Bylaws Committee:

- a) appoint three elected members (one as chair) to a panel to receive, hear and deliberate on submissions and other relevant information on the setting of Food Act Fees, and make recommendations to the Regulatory and Bylaws Committee.
- b) appoint a member of the Independent Maori Statutory Board to the hearings panel.
- c) delegate to the chairperson of the Regulatory and Bylaws Committee the ability to make changes to the panel appointed under recommendation a) where this becomes necessary because of withdrawal or unavailability of any of those persons.
- d) agree for the hearings panel to convene on 28 January 2016.

Background

9. The Food Act 2014 was passed into law in June 2014, replacing the Food Act 1981. A three year transition starts on 1 March 2016. High risk food service businesses with an alcohol on-licence such as hotels, restaurants, bars and cafes will be among the first to transition to the new Act.
10. The new Food Act enables Council to fix fees to recover the direct and indirect costs of any registration, verification, compliance and monitoring functions performed under the Act.
11. The Ministry of Primary Industries has provided guidance on how fees and charges should be determined. The Act states that fees must not recover more than the reasonable costs and must satisfy the follow criteria:

Special Consultative Procedure

12. The Statement of Proposal - Setting Fees under the Food Act 2014, aims to set fees for businesses required registered and or verified by Auckland Council under the Food Act 2014. This will be in effect from 1st March 2016.
13. Prior to fixing fees, the Council is required to consult on the proposed fees using the special consultative procedure as provided in section 83 of the Local Government Act 2002.

Consultation has commenced

14. After approval from the Finance and Performance Committee on 19 November 2015, the consultation period commenced on Friday 20 November and closes on Monday 21 December. Whilst this is not an ideal time to call for submissions the need to get the new fee regime in place by March 2016 makes it unavoidable. If the new fees are not in place by March 2016, council will be unable to any recover fees associated with discharging its functions under the Food Act 2014.
15. The Statement of Proposal has been published on the Shape Auckland website and is also available at council service centres.
16. A public notice was published in the NZ Herald on Friday, 21 November 2016.
17. Officers have written to or emailed the 9000 currently licensed food businesses, advising of the consultation process and providing a set of FAQ's.

Early indications are positive

18. Officers have engaged with industry groups such as Hospitality Association New Zealand (HANZ), Restaurant Association New Zealand (RANZ) and the Chefs Association, who all satisfied with the process and engagement to date.
19. Public hearings will be available for those wishing to present oral submissions
20. It is anticipated that the Hearings Panel will meet on 28 January 2016. This will be dependent on the number of submitters who wish to be heard in person.
21. Following the Hearings Panel, the final report on the setting of Food Act fees will be prepared for consideration by the Governing Body on 9th February 2016.

Consideration

Local Board views and implications

22. Local Boards views will be sought during the special consultative procedure and included in the report following the analysis of responses.

Māori impact statement

23. Food prepared and served on a marae for customary activities is outside the scope of the Act and will not be regulated as the food is not sold or traded.

24. The Food Act Transition project team has engaged with mana whenua, the Independent Māori Statutory Board and will be sharing information with Mataawaka on 11 Nov at the Te Mahurehure Marae in Point Chevalier. This session includes representatives from Te Puni Kokiri and based on the feedback from this hui further engagement will be scheduled for next year.
25. Council officers recommend a member of the Independent Māori Statutory Board be appointed to the hearing panel.

Implementation

26. If this process is not completed before 1st March 2016, there will be implications for new or transitioning food businesses and council will be unable to any recover fees associated with discharging its functions under the Food Act 2014.

Attachments

There are no attachments for this report.

Signatories

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Authorisers	Mervyn Chetty - Manager Environmental Health, Licensing and Compliance Services Grant Barnes - General Manager Licensing and Compliance Services

Update on begging behaviour in the central city

File No.: CP2015/22341

Purpose

1. To receive the update on begging in the central city and compliance with the Public Safety and Nuisance Bylaw 2013.

Executive Summary

2. Begging is a complex social issue often with many underlying drivers that require a multi-agency response.
3. The Public Safety and Nuisance Bylaw 2013 (the Bylaw) controls the manner in which begging is undertaken, creating an offence to do so in a manner that may intimidate or cause a nuisance to any person.
4. Proactive patrols of the central city have been conducted regularly since the passage of the Bylaw, and have intensified since December 2014. Council compliance staff and security contractors regularly encounter breaches of the Bylaw in the inner CBD. Since May 2015, an average of 84 people per month has produced 493 incidents of begging contrary to the Bylaw.
5. Council follows a graduated approach to compliance with an emphasis on promoting voluntary compliance through education, with prosecution as a last resort.
6. Prosecutions have been pursued in relation to fourteen people persistently found to be begging in breach of the bylaw. Five were convicted and discharged, four cases were withdrawn as the individuals could not be found in order to serve a summons, four are awaiting trial and one person was convicted, fined \$100 and charged \$130 costs.
7. From October 2013 to October 2015 the trend in incidents with people found begging in the city centre in breach of the bylaw appears to increase (Appendix A). This is likely due to increased number of compliance patrols resulting in increased opportunities for encounters. Overall, staff have observed a noticeable change in the behaviour of people begging, from aggressive to more passive begging.

Recommendation/s

That the Regulatory and Bylaws Committee:

- a) note the information on begging behaviour in the central city.

Comments

Background

8. The Public Safety and Nuisance Bylaw 2013 has been operational since 26 May 2014. Clause 6(1) (f) of the bylaw states that a person must not use a public place to beg, in a manner that may intimidate or cause a nuisance to any person.
9. The central city is proactively patrolled by security contractors (City Watch), usually up to four times a day. There are also joint patrols with the New Zealand Police and Council staff.
10. Additional patrols have been afforded by funding received from the Heart of the City business association.

11. People begging are provided information on how to seek help from support organisations, such as the City Mission, Lifewise, Community Alcohol and Drug Service, Auckland District Health Board and the Ministry of Social Development.
12. People who are found to be begging in a manner that is in breach of the bylaw are subject to a graduated enforcement approach that includes education, verbal warnings, the issuing of bylaw notices and prosecution.
13. From May 2015 to October 2015 a monthly average of 84 people were found to be begging in the central city in breach of the bylaw. During this same period City Watch patrols recorded on average 493 incidents per month with these individuals. An example of a typical incident would be the asking of a person begging, who was causing a nuisance by obstructing pedestrians, to relocate themselves away from the pedestrian flow on the footpath.
14. Below are examples of actions taken between September and October 2015.

September 2015	October 2015
636 incidents with people begging	493 incidents with people begging
623 verbal warnings	458 verbal warnings
9 written warnings	28 written warnings
3 x Police called	1 x Police called
1 x trespassed from adjacent property	3 x trespassed from adjacent property
99 people identified begging	86 people identified begging

15. To date this year prosecution has been pursued in relation to fourteen people begging in breach of the bylaw. Five were convicted and discharged, four cases were withdrawn as the individuals could not be found in order to serve a summons, four are awaiting trial, and one person has been convicted, fined \$100 and charged \$130 costs.
16. Of these fourteen people, two were specifically encouraged to participate in the New Beginnings Court. Participants have to volunteer for this programme. The New Beginnings Court is an initiative aimed at dealing with persistent public place offenders. To be eligible participants need to meet several criteria, such as having alcohol or substance abuse issues, be suffering from health or mental health issues, and consistently coming to the attention of the Police or justice system through their 'misdemeanour type' or low level offending issues. Of the two people encouraged to attend the New Beginnings Court, one did not take up the offer and the other failed the eligibility criteria by deciding to plead their case in the District Court.
17. Incidents with people begging in the central city, in a manner that is in breach of the bylaw, have steadily increased since October 2013. This is eight months before the bylaw came into effect. A graph of incidents with people begging in the central city from October 2013 is attached in Appendix A.
18. While the number of people begging in the central city has been steadily increasing, enforcement of the bylaw has produced a noticeable change in the behaviour of people begging, from aggressive to more passive begging.

Consideration

Local Board views and implications

19. Local Board views have not been sought in preparing this report however the impact is greatest within the Waitemata Local Board area.

Māori impact statement

20. Māori views have not specifically been obtained in relation to this report but staff acknowledge that this issue may be of interest to Māori.

Implementation

21. There are no recommendations in this report that require implementation.

Attachments

No.	Title	Page
A	Incidents with people begging in the central city	31

Signatories

Authors	Max Wilde - Manager Bylaws and Compliance
Authorisers	Grant Barnes - General Manager Licensing and Compliance Services

Attachment A: Incidents with people begging in the central city

