

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

Date: Tuesday, 19 July 2016
Time: 10.30am
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

14 July 2016

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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

Apologies from Deputy Chairperson DA Krum and Deputy Mayor PA Hulse have 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 Tuesday, 10 May 2016, 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.

5.1 Public Input - Craig Cartwright - Live Music

Purpose

1. Craig Cartwright will address the Regulatory and Bylaws Committee regarding live music.

Recommendation/s

That the Regulatory and Bylaws Committee:

- a) thank Craig Cartwright for his presentation regarding live music.

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 potential set net and crab pot control at Omaha Beach

File No.: CP2016/13161

Item 9

Purpose

1. To seek a decision on whether or not a set net control should now be made under Auckland Council's Public Safety and Nuisance Bylaw 2013 to address local concerns about set netting at Omaha Beach.

Executive summary

2. Since 2013, Omaha Beach residents have consistently raised concerns about set netting activities, and have requested that Auckland Council (the council) take steps to intervene.
3. In December 2015, the Regulatory and Bylaws Committee (the Committee) decided not to make a set net and crab pot control for Omaha Beach and opted to rely on existing regulations to address community concerns.
4. At that meeting, the Committee also directed staff to undertake a targeted education and monitoring program at Omaha Beach over the 2015/16 summer period to manage set netting and crab potting concerns (resolution number: RBC/2015/45).
5. In May 2016, the Committee resolved to "request a report back on the decision made on 9 December 2015 (resolution number RBC/2015/45) to manage public safety and nuisance issues associated with set netting and crab fishing at Omaha Beach, including the consideration of a seasonal ban, and ensuring that Māori feedback is received according to the tikanga requested in paragraph 42 of the agenda report (CP2015/18392)". This report addresses this resolution.
6. The options outlined for the Committee's consideration are:
 - **Option 1: Status quo** – Do not make a control under the Public Safety and Nuisance Bylaw 2013 (the bylaw), and instead manage any issues associated with set netting through existing regulations, and on-going work with the Ministry to educate the public about appropriate fishing practices
 - **Option 2: Seasonal control** – Make a control under the bylaw to restrict set netting in the area within 200 metres seaward of the Mean High Water Spring that applies annually from Labour Day weekend until Easter weekend
 - **Option 3: Year round control:** Make a control under the bylaw to prohibit set netting in the area extending 200 metres seaward from the Mean High Water Spring at all times.
7. For options 2 and 3, the recommendation specifies that the control does not impact customary fishing rights exercised in accordance with the Fishing (Kaimoana Customary Fishing) Regulations 1998. The Committee followed this approach when making the Arkles Bay control in July 2015.
8. Crab potting concerns are all covered by infringement fines under the Litter Act 1979. Crab pot controls are not contained within the above options.
9. There are benefits and disadvantages associated with all three options. The Omaha Beach community clearly prefer a control on set netting. They strongly support Option 3 and do not support Option 1. The Rodney Local Board also supports a control on set netting.

10. Iwi do not have a strong view on whether or not to make a control but would prefer that if the Committee decides to make a control, it is done so on a trial basis to allow the council to consider the impact of any changes resulting from Hauraki Gulf Tipaka Moana Marine Spatial Plan (due for completion in September 2016). Recommendation (b) in this report allows the Committee to respond to this feedback from iwi.
11. Staff consider there is insufficient evidence to justify a prohibition on set netting (i.e. a year round control) given the:
 - relatively low frequency of set netting activity in the area
 - the low likelihood of a swimmer and set net sharing the same part of the water
 - the relatively low risk of entanglement
 - the specific site characteristics of Omaha Beach (i.e. its size and inferior conditions for set netting).
12. Staff consider that Option 1 is the most reasonable and proportionate response to the public safety and nuisance issues raised.

Recommendation/s

That the Regulatory and Bylaws Committee:

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

EITHER

Option 1: Status quo – Do not make a control under the Public Safety and Nuisance Bylaw 2013, and instead manage any issues associated with set netting through:

- i) existing regulations
- ii) continuing to work with the Ministry for Primary Industries to educate the public about appropriate fishing practices as outlined in the Set Net Code of Practice 2016.

OR

Option 2: Seasonal control – Make a control under the Public Safety and Nuisance Bylaw 2013

- i) to restrict set netting in the area within 200 metres seaward of the Mean High Water Spring that applies annually from Labour Day weekend until Easter weekend, and
- ii) that does not impact customary fishing rights exercised in accordance with the Fishing (Kaimoana Customary Fishing) Regulations 1998.

OR

Option 3: Year round control: Make a control under the Public Safety and Nuisance Bylaw 2013:

- i) to prohibit set netting in the area extending 200 metres seaward from the Mean High Water Spring at all times, and
- ii) that does not impact customary fishing rights exercised in accordance with the Fishing (Kaimoana Customary Fishing) Regulations 1998.

AND

- b) where the Committee makes a control under (a), that the Committee agrees to review the control within 12 months to allow the council to consider the impact of any changes resulting from Sea Change – Tai Timu Tai Pari Hauraki Gulf Marine Spatial Plan.

Comments

Background

13. Set netting and crab fishing are recreational activities that take place at Omaha Beach. Set netting is a method of catching fish, where nets of up to 60 metres long are placed adjacent to the beach and anchored to the sea floor, with surface floats at either end. Crab fishing involves the use of baited ring pots.
14. Since 2013, the Omaha Beach Community Incorporated and local residents have consistently raised concerns about these activities, and have requested that Auckland Council (the council) take steps to intervene.

Mandate

15. Under the Public Safety and Nuisance Bylaw 2013 (the bylaw), the council can make controls to “prohibit or restrict” recreational activities, such as set netting and crab potting, on part or all of a beach “for specified times or seasons to ensure public safety and prevent nuisance” (clause 9(3)). 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. The Regulatory and Bylaws Committee (the Committee) has the delegation to make such a control on behalf of the council, by passing a resolution under the bylaw.
17. The Committee can only make a control under the bylaw to regulate recreational activities, and only for the purposes of ensuring public safety and preventing nuisance.
18. The Committee must also meet the requirements of the Local Government Act 2002 by ensuring that the control is:
 - the most appropriate response to the issue
 - evidence-based, i.e. there is sufficient and timely evidence that the activity is impacting on public safety or causing a nuisance, as defined in the Bylaw
 - complementary to other measures aimed at maintaining public safety at beaches
 - enforceable
 - made in a transparent manner.

Scope

19. The scope of the council’s mandate to regulate set netting and crab fishing is limited, as the Ministry for Primary Industries (the Ministry) has the principal responsibility for regulating fisheries at a national level.
20. Table 1 summarises the responsibilities of the Ministry and the council, respectively.

Table 1. Roles of Ministry for Primary Industries and Auckland Council

Activity	Ministry for Primary Industries	Auckland Council
Commercial fishing	<ul style="list-style-type: none"> Sole jurisdiction to regulate commercial fishing nationally 	<ul style="list-style-type: none"> Cannot regulate commercial fishing
Recreational fishing	<ul style="list-style-type: none"> Regulates recreational fishing matters (e.g. the number and size of fish allowed, and the manner in which fishing equipment can be used) through rules and a Code of Practice Can restrict recreational fishing to protect fisheries resources or wildlife 	<ul style="list-style-type: none"> Can prohibit or restrict recreational activities at a specified beach for a specified time to ensure public safety and prevent nuisance Cannot make a control to protect fisheries resources or wildlife
Customary fishing	<ul style="list-style-type: none"> Can appoint Tangata Kaitiaki under the Fisheries (Kaimoana Customary Fishing) Regulations 1998 to manage customary fishing in an identified rohe In other areas, the Fisheries (Amateur Fishing) Regulations 2013 permit customary fishing for the purposes of tangi and hui, if authorised by a marae Committee, a runanga, or a Maori Trust Board. 	<ul style="list-style-type: none"> Has no role in regulating customary fishing

21. The council also plays a strategic role in managing the marine environment and is currently developing the Sea Change – Tai Timu Tai Pari Hauraki Gulf Marine Spatial Plan, in partnership with mana whenua, the Ministry, and other central and local government partners. Once it is completed in 2016, this plan will guide the regulatory authorities that manage the gulf and its catchments. The plan is likely to influence current fisheries regulation, including set netting.

Existing controls

22. Concerns about set netting and crab fishing are not unique to the Omaha Beach area. The council has previously made controls under the bylaw to regulate set netting activities in the following areas:
- Army Bay and Te Haruhi Bay** within Shakespear Regional Park (resolution number RBC/2014/55)
 - Arkles Bay** within 200 metres (seaward) of the mean high water spring from Labour Weekend to Easter annually (resolution number RBC/2015/39).
23. In both of these cases, the Committee was satisfied that controls were necessary to ensure public safety and prevent nuisance.

Committee's previous decisions regarding Omaha Beach

24. The Omaha Beach Community Incorporated and local residents have raised concerns about set netting and crab potting at Omaha Beach on a number of occasions since 2013. In particular, this has included:
- submissions to the council during the development of the Public Safety and Nuisance Bylaw in early 2013
 - numerous public forum presentations to the Rodney Local Board and to the Committee.
25. The Rodney and Hibiscus and Bays local boards have also advocated directly to the Committee for set net controls at Omaha Beach.

26. The table below summarises the council's response to these concerns to date, including the relevant Committee decisions and subsequent actions undertaken by council staff.

Table 2. Summary of the council's response to concerns about set netting at Omaha Beach

	Context	Committee decision	Action
November 2014	<ul style="list-style-type: none"> Staff reported to the Committee seeking a decision about whether to make a set net control at Shakespear Regional Park Chris Martin and Graham Painter addressed the Committee during public input to outline concerns about set netting at Omaha Beach, and to request a control (resolution number: RBC/2014/53) 	<ul style="list-style-type: none"> The Committee opted to make a control for Shakespear Regional Park In response to public input, the Committee also directed staff to monitor set netting activities at Omaha Beach over the 2014/2015 summer period (number: RBC/2014/55) 	<ul style="list-style-type: none"> Staff gathered information about public safety and nuisance issues at Omaha Beach by: <ul style="list-style-type: none"> undertaking random spot checks over the 2014/2015 summer period (though no instances of set netting were recorded) establishing a dedicated email account to record public complaints about set netting
July 2015	<ul style="list-style-type: none"> Staff reported to the Committee with an update on set netting activities in Omaha Beach (and other areas). The report included a recommendation from the Rodney Local Board for staff to investigate the making of seasonal set net and/or crab pot controls for Omaha Beach 	<ul style="list-style-type: none"> The Committee directed staff to investigate the making of summer crab pot and set net controls at Omaha Beach (resolution number: RBC/2015/24) 	<ul style="list-style-type: none"> Staff continued with the monitoring program and prepared an options report for the December 2015 Committee meeting
December 2015	<ul style="list-style-type: none"> Staff reported to the Committee seeking a decision on whether to manage issues associated with set netting and crab fishing at Omaha Beach through existing regulation or by making a control under the Bylaw 	<ul style="list-style-type: none"> The Committee decided not to make a control and instead opted to rely on existing regulations. The Committee also directed staff to undertake a targeted education and monitoring program over the 2015/16 summer period to manage set netting and crab potting concerns at Omaha Beach (resolution number: RBC/2015/45) 	<ul style="list-style-type: none"> The council contracted Insite Security (directed by Chris Martin) to report on incidents of set netting and crab potting between November 2015 and March 2016

	Context	Committee decision	Action
May 2016	<ul style="list-style-type: none"> Staff reported to the Committee with an update on set netting and crab potting at Omaha Beach based on reports from Insite Security The data showed 18 occurrences of set netting and crab potting over five months from November to March. Members of the Omaha community, and the Hibiscus and Bays and Rodney local boards addressed the Committee 	<ul style="list-style-type: none"> The Committee resolved to “request a report back on the decision made on 9 December 2015 (resolution number RBC/2015/45) to manage public safety and nuisance issues associated with set netting and crab fishing at Omaha Beach, including the consideration of a seasonal ban, and ensuring that Māori feedback is received according to the tikanga requested in paragraph 42 of the agenda report (CP2015/18392)” 	<ul style="list-style-type: none"> The reference in the resolution to the “tikanga requested in paragraph 42 of the agenda report” refers to a recommendation provided by Ngā Maunga Whakahii o Kaipara Development Trust for the December report, that the council should consult with all upper northern iwi groups through a collective hui if developing any set netting controls under the bylaw Staff organised a hui for 13 July 2016 with the nine local iwi. Representatives from Ngāti Manuhiri, Ngātiwai, and Te Runanga o Ngāti Whātua were able to attend the hui to discuss their views

27. This report responds to the Committee’s May 2016 resolution and presents the following information for the Committee’s consideration:

- updated information about reported public safety issues associated with set netting
- new data obtained from Water Safety New Zealand
- feedback gathered from mana whenua at a hui held on 13 July 2016.

28. The report enables the Committee to either confirm its December 2015 decision, or to revise its position.

Problem definition

Summary of information previously reported to the Committee

29. Detailed information about the issues and concerns associated with set netting at Omaha Beach was reported to the Committee in December 2015 and May 2016.

30. The December 2015 report focused on complaints raised by local residents and highlighted the following key issues for the period December 2014 to October 2015:

- risk of harm to birds and marine life
- litter and hygiene issues associated with fishing gear being left on the beach or in the water, including chicken carcasses and other bait, hooks, and scales. This issue particularly applies to crab potting
- aggressive behaviour of fishers
- risk of swimmers being caught in set nets.

31. The December 2015 report analysed the complaints and concluded that the issues mostly fall outside the council's mandate under the bylaw, and/or are already addressed under existing legislation:
 - the impact of fishing activities on birds and marine life is addressed through the Fisheries Act 1996, and is managed by the Ministry
 - the Litter Act 1979 is the most appropriate mechanism for dealing with fishing gear left behind. The Ministry also manages recreational set netting through rules, regulations and the 2016 Set Net Code of Practice
 - the bylaw already prohibits wilfully obstructing disturbing or interfering with any other person in their use of enjoyment of a public place.
32. The outstanding concern is whether the risk of entanglement to swimmers at Omaha Beach justifies making a control under the bylaw. In the December 2015 report, staff advised the Committee that the risk of swimmers becoming entangled in a set nets at Omaha Beach is relatively low due to the following characteristics of the area:
 - length of the beach i.e. approximately 4 kilometres
 - location of the beach relative to other swimming beaches i.e. there are other options nearby
 - distance from Auckland.
33. In May 2016, staff provided the Committee with updated monitoring data collected by Insite Security for the period November 2015 to March 2016. The information provided is summarised below:
 - A total of twelve set netting instances were observed, four instances of crab fishing and one instance of drag netting.
 - Of the twelve set net instances observed, set netters were in breach of the Fisheries (Amateur Fishing) Regulations 2013 on a range of counts, in three instances. No public safety and nuisance issues associated with set netting were recorded during this period,
 - Nine of the twelve set netting instances took place after the hours of 7:30pm, which may be considered a low risk to public safety given that it is outside the hours of peak recreational water use.
34. The report indicated that:
 - the incidence of set netting at Omaha Beach is relatively low
 - the risk of public safety and nuisance issues associated with set netting at Omaha Beach is also relatively low. Many of the issues raised by the community are matters within the jurisdiction of the Ministry, rather than the council.
35. At the May 2016 meeting, the following two incidents that were raised during the public input item as having occurred during the monitoring period:
 - an ocean swimmer tangled in a set net ("Incident 1")
 - nippers at risk of entanglement in front of the surf club ("Incident 2").
36. Much of the discussion at the meeting therefore focused on these incidents.

Updated information

37. Following the meeting, staff clarified the detail of the incidents through written statements and phone calls, and confirmed the following:

Incident 1:

- The ocean swimmer incident actually occurred in 2014, before monitoring began, not in 2015/16 as stated at the meeting. The swimmer swam into an unmarked set net on a Sunday morning with a group (generally more confident ocean swimmers in the group swim about 50 metres offshore), and was startled and concerned but not tangled.
- The set net she encountered had no floats, which is against the Ministry rules.

Incident 2:

- Surf life guards removed a set net in front of the surf club in March 2016 before junior surf club “nippers” aged between 6-14 were due to start Sunday morning training.
 - The set net did not breach the Ministry’s rules.
 - The set net was located about 80 metres offshore and was anchored to the bottom with sandbags. This means the net was further away from the shore than most confident ocean swimmers venture.
 - This incident was not reported during the monitoring period.
38. In addition to clarifying the details of these specific incidents, staff also obtained new incident data from Water Safety New Zealand for the period 2009 to 2015. The data show that:
- nationally, there are no recorded deaths from swimmers being entangled in set nets during this period
 - in Auckland, one drowning death that occurred while fishing with a net was recorded in 2011.
39. After considering this new information, staff still consider the risk of being tangled in a set net at Omaha Beach remains relatively low, although the potential impact is high.

Options for consideration

40. As reported to the Committee in December 2015, staff have identified three options to help address any public safety and nuisance issues associated with set netting at Omaha Beach.
41. The options are
- **Option 1: Status quo** – Do not make a control under the bylaw, and instead manage any issues associated with set netting through existing regulations, and on-going work with the Ministry to educate the public about appropriate fishing practices
 - **Option 2: Seasonal control** – Make a control under the bylaw to restrict set netting in the area within 200 metres seaward of the Mean High Water Spring that applies annually from Labour Day weekend until Easter weekend
 - **Option 3: Year round control:** Make a control under the bylaw to prohibit set netting in the area extending 200 metres seaward from the Mean High Water Spring at all times.
42. For options 2 and 3, the recommendation specifies that the control does not impact customary fishing rights exercised in accordance with the Fishing (Kaimoana Customary Fishing) Regulations 1998. The Committee followed this approach when making the Arkles Bay control in July 2015.

43. Crab potting concerns are all covered by infringement fines under the Litter Act 1979. For this reason, staff have not included crab pot controls within the above options.

Options analysis

44. The following tables provide further information about the options proposed for the Committee’s consideration.

Table 3: Analysis of Option 1: Status quo

Description: *Do not make a control under the Bylaw, and instead manage any issues associated with set netting through existing regulations, and on-going work with the Ministry to educate the public about appropriate fishing practices.*

	Analysis
Benefits	<ul style="list-style-type: none"> Reasonable and proportionate response Avoids duplication with existing regulations
Disadvantages	<ul style="list-style-type: none"> Education may not be effective at reducing the potential risk of entanglement in set nets that do not comply with good practice and Ministry rules Does not respond to views of the community or the local boards
Implementation	<ul style="list-style-type: none"> Council staff (and the Ministry) would need to liaise directly with beach users, the local community including Ngāti Manuhiri to improve awareness of existing regulations Collateral for awareness programmes such as signage and brochures may be required
Impacts	<ul style="list-style-type: none"> May not reduce conflict between set netters and other beach users
Risks and risk mitigation	<ul style="list-style-type: none"> Local communities are concerned that relying on education may not alleviate risks to swimmers. Although the risk is relatively low, the impact would be very serious. <ul style="list-style-type: none"> The council can help to mitigate this by proactively educating set netters about best practices and the need to be mindful of other beach users Communication would also outline the legal requirements that the council must meet to ensure any controls are supported by appropriate evidence

Table 4: Analysis of Option 2: Seasonal control

Description: *Make a control under the bylaw to restrict set netting in the area within 200 metres seaward of the Mean High Water Spring that applies annually from Labour Day weekend until Easter weekend.*

	Analysis
Benefits	<ul style="list-style-type: none"> Reduces the risk of entanglement Avoids potential conflict between set netters and other beach users at peak summer time Responds to requests for the council to regulate set netting at Omaha Beach
Disadvantages	<ul style="list-style-type: none"> Higher risk that this option could be considered a disproportionate response to the issues, particularly as there were no entanglements during the monitoring period Potential confusion as to what time of the year set netting is allowed, even with appropriate signage and public notification
Implementation	<ul style="list-style-type: none"> Public awareness about a seasonal set net control would need to be managed through signage and communications
Impacts	<ul style="list-style-type: none"> Limits an otherwise legal recreational activity managed by the Ministry under the Fisheries Act 1996 A control may displace the activity to other beaches, though iwi have indicated that the site characteristics of Omaha Beach mean it is not typically the preferred location for set netting

Risks and risk mitigation	<ul style="list-style-type: none"> • Banning summer set netting at Omaha Beach may set a precedent for other beaches <ul style="list-style-type: none"> ○ Communication will include key messages that while set netting is a legitimate activity, the council has a role to maintain public safety for all beach users. Other key messages will be that council can only restrict set netting on public safety and nuisance grounds based on evidence of potential harm. • There may be insufficient evidence to justify a control given the relatively low frequency of set netting activity in the area, and the relatively low likelihood of a swimmer and set net sharing the same part of the water. Moreover, data shows that no one in New Zealand has died from swimming into a set net since record keeping began in 2009. <ul style="list-style-type: none"> ○ Communication would need to emphasise that while set netting is a legitimate activity, the risk to swimmers can never be completely eliminated, and the council has a role to maintain public safety for all beach users. • There is risk that some set netters who feel a control is unjustified may choose not to comply <ul style="list-style-type: none"> ○ Implementing a control would require the council to allocate sufficient resources to communication and enforcement activities.
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Table 5. Analysis of Option 3: Year round control

Description: *Make a control under the bylaw to prohibit set netting in the area extending 200 metres seaward from the Mean High Water Spring at all times.*

	Analysis
Benefits	<ul style="list-style-type: none"> • Minimises the risk of entanglement • Avoids potential conflict between set netters and other beach users at peak summer time • Would provide a clear statement that set netting is prohibited at all times of the year
Disadvantages	<ul style="list-style-type: none"> • May be considered a disproportionate and unreasonable response to the issues, as the majority of complaints about set nets have occurred during the summer period. Moreover, there were no entanglements during the monitoring period
Implementation	<ul style="list-style-type: none"> • Public awareness about a seasonal set net control would need to be managed through signage and communications
Impacts	<ul style="list-style-type: none"> • Limits an otherwise legal recreational activity managed by the Ministry under the Fisheries Act 1996 • A control may displace the activity to other beaches, though iwi have indicated that the site characteristics of Omaha Beach mean it is not typically the preferred location for set netting
Risks and risk mitigation	<ul style="list-style-type: none"> • Staff consider there is insufficient evidence to justify a prohibition on set netting (i.e. a year round control) given the: relatively low frequency of set netting activity in the area, the low likelihood of a swimmer and set net sharing the same part of the water, the relatively low risk of entanglement, and the specific site characteristics of Omaha Beach (i.e. its size and inferior conditions for set netting). Moreover, data shows that no one in New Zealand has died from swimming into a set net since record keeping began in 2009. <ul style="list-style-type: none"> ○ Communication would need to emphasise that while set netting is a legitimate activity, the risk to swimmers can never be completely eliminated, and the council has a role to maintain public safety for all beach users.

Community, local board and advisory panel views

45. As indicated to the Committee at its May 2016 meeting, given the short timeframe available to prepare this report, staff were unable to undertake additional engagement with the Omaha community, the Rodney Local Board or the council’s advisory panels.

46. The views of these groups, as reported to the Committee in December 2015, are summarised below for the Committee’s reference.

• **Table 6. Summary of community, local board and advisory panel views**

Community views	Local Board views	Advisory Panels’ views
<ul style="list-style-type: none"> Local residents and the Omaha Beach Community Incorporated strongly support a control on set netting (options 2 and 3) This view is unanimous among those that have provided feedback or views to the council 	<ul style="list-style-type: none"> The Rodney Local Board has formally recommended that the Committee make a set netting control (options 2 and 3) on a number of occasions, including by resolution in in November 2014 and May 2015 The Rodney and Hibiscus and Bays local boards have also advocated directly to the Committee for set net controls at Omaha Beach 	<ul style="list-style-type: none"> In September 2015, both the Pacific Peoples Advisory Panel and the Ethnic Peoples Advisory Panel stated they do support making set netting controls at Omaha Beach. The Panels would prefer an educative approach to raise awareness among set netters about existing regulations (Option 1) The Panels also stated that the council’s response must be evidence based

Maori views on the options

47. Staff invited the following iwi to participate in hui to discuss the impacts of a potential set netting control at Omaha Beach on their rohe:

- Ngāti Manuhiri
- Ngāti Whātua o Kaipara
- Ngāti Maru
- Ngāti Paoa
- Ngātiwai
- Ngāti Whātua o Ōrākei
- Te Kawerau a Maki
- Te Runanga o Ngāti Whātua
- Te Uri o Hau.

48. The hui took place on 13 July 2016 in Orewa. Representatives from Ngāti Manuhiri, Ngātiwai, and Te Runanga o Ngāti Whātua were able to attend and provide their views. All present respected Ngāti Manuhiri’s decision as mana whenua.

49. Displacement was not a major concern for those present. Participants stated that set netting takes place at Omaha infrequently, and mostly only by inexperienced fishers.

50. However, participants considered that set netting issues are relevant to multiple beaches (i.e. not just Omaha) and suggested a regional approach may be appropriate.

51. Overall, mana whenua would not oppose a ban on set netting, as they considered that Omaha is not a good place to fish due to the volume of beach users undertaking other recreational activities (e.g. swimming and paddle boarding), as well as strong surf action and fast currents. Participants requested that any control should be made on a trial basis only to take into account the Sea Change – Tai Timu Tai Pari Hauraki Gulf Marine Spatial Plan and resulting changes to fisheries regulations. This is addressed in recommendation b).

Summary of options

52. Each option is assessed in the table below against the bylaw and the requirements of the Local Government Act 2002. The council must ensure its controls:
- ensure public safety and prevent nuisance for other recreational beach users
 - are 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)
 - are a proportionate and reasonable response to the evidence of the problem
 - are enforceable.

Table 7: Summary of options against criteria

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.

53. There are benefits and disadvantages associated with all three options. The Omaha Beach community clearly prefer a control on set netting. They strongly support Option 3 and do not support Option 1. The Rodney Local Board also supports a control on set netting.
54. Iwi do not have a strong view on whether or not to make a control but would prefer that if the Committee decides to make a control, it is done so on a trial basis to allow the council to consider the impact of any changes resulting from Sea Change – Tai Timu Tai Pari Hauraki Gulf Marine Spatial Plan (due for completion in late 2016). Recommendation b) in this report allows the Committee to respond to this feedback from iwi.
55. Staff consider there is insufficient evidence to justify a prohibition on set netting (i.e. a year round control) given the:
- relatively low frequency of set netting activity in the area
 - the low likelihood of a swimmer and set net sharing the same part of the water
 - the relatively low risk of entanglement
 - the specific site characteristics of Omaha Beach (i.e. its size and inferior conditions for set netting).
56. Staff consider that Option 1 is the most reasonable and proportionate response to the public safety and nuisance issues raised.

Consideration

Local board views and implications

57. At its meeting on 10 November 2014, based on Chris Martin's deputation about the risks to public safety (resolution number RD/2014/262), the Rodney Local Board resolved to recommend to the Regulatory and Bylaws Committee that it 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).
58. 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).
59. On 10 May 2016, representatives from Rodney Local Board and Hibiscus Coast Bays Local Board both made oral presentations supporting a ban on set netting at Omaha Beach at the Regulatory and Bylaws Committee meeting.

Māori impact statement

60. 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.
61. Options 2 and 3 would have the potential to impact customary fishing at Omaha Beach. Therefore staff have specifically drafted the recommendations to address the enable the Committee to make a control without affecting customary fishing rights carried out in accordance with the Fisheries (Kaimoana Customary Fishing) Regulations 1998.
62. 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.
63. Further information on feedback from Māori, including views expressed at the 13 July 2016 hui is provided in the Māori engagement section of this report.

Implementation

64. The implementation requirements associated with the options are outlined in the options analysis section above, and are summarised as follows:
 - No additional activity would be required to implement Option 1 over and above existing business activities
 - Option 2 and 3 would require additional implementation activity. Both options would require:
 - the same compliance activities, though with varying scale and frequency
 - additional costs for proactive patrols and responding to complaints, including the reallocation of resource to Warkworth during the summer period
 - funding for signage
 - a dedicated vehicle suitably branded for summer patrols
 - a communications plan
 - local liaison contacts established for regular catch ups (including Ngāti Manuhiri).

65. Auckland Council compliance officers would not be able to remove a set net from the water unless it was causing an immediate health and safety danger. In these situations the council officer on site would install temporary signs on the beach warning of the set net and arrange for its removal.
66. Due to the practical difficulties of investigating set netting complaints after dark, council officers would respond to such complaints early the following morning.

Attachments

No.	Title	Page
A	Map of Omaha Beach and sea floor	23

Signatories

Authors	Caroline Lonsdale - Principal Policy Analyst Belinda Hansen - Team Leader Social Policy and Bylaws Max Wilde - Manager Bylaws and Compliance Michael Sinclair - Manager Social Policy and Bylaws
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Areas with less than 5 metres of water at low tide - Omaha Beach



Information Items

File No.: CP2016/11869

Purpose

1. To receive a summary and provide a public record of memos, information reports, or briefing papers that have been distributed to committee members since 4 April 2016.

Executive Summary

2. This is an information-only report which aims to provide greater visibility of information circulated to committee members via memo or other means, where no decisions are required.
3. The following memos were circulated:
 - Review of Alcohol Signage (Māngere-Ōtāhuhu Local Board) – 4 April 2016
 - Dog Attack in Takanini – 12 April 2016 – **CONFIDENTIAL (not attached)**
 - Simplifying Dog Access Rules – 28 April 2016
 - Property Maintenance and Nuisance Bylaw – 8 June 2016
 - Update on the Public Safety and Nuisance Bylaw, Window Washers – 9 June 2016
 - Alcohol Control Bylaw Signage Project (Local Board Members) – 17 June 2016
 - Process update on Omaha beach set netting report back to Regulatory and Bylaws Committee – 21 June 2016
 - Abandoned Puppy – 28 June 2016
 - Abandoned Puppy (Update) – 5 July 2016
 - Update on Boarding House Compliance Activities – 7 July 2016
4. These documents can be found on the Auckland Council website, at the following link:
<http://infocouncil.aucklandcouncil.govt.nz/>
 - at the top of the page, select meeting “Regulatory and Bylaws Committee” from the drop-down tab and click ‘View’;
 - Under ‘Attachments’, select either HTML or PDF version of the document entitled ‘Extra Attachments’
5. Note that, unlike an agenda report, **staff will not be present to answer questions about items referred to in this summary.** Committee members should direct any questions to the author.

Recommendation/s

That the Regulatory and Bylaws Committee:

- a) receive the summary of information memos since 4 April 2016.

Item 10

Attachments

No.	Title	Page
A	Review of Alcohol Signage (Māngere-Ōtāhuhu Local Board) Memo - 4 April 2016 <i>(Under Separate Cover)</i>	
B	Simplifying Dog Access Rules Memo - 28 April 2016 <i>(Under Separate Cover)</i>	
C	Update on the implementation of the Property Maintenance and Nuisance Bylaw - 7 June 2016 <i>(Under Separate Cover)</i>	
D	Update on the Public Safety and Nuisance Bylaw, Window Washers - 9 June 2016 <i>(Under Separate Cover)</i>	
E	Alcohol Control Bylaw Signage Project (Local Board Members) - 17 June 2016 <i>(Under Separate Cover)</i>	
F	Process Update on Omaha beach set netting report back to Regulatory and Bylaws Committee - 21 June 2016 <i>(Under Separate Cover)</i>	
G	Abandoned Puppy - 28 June 2016 <i>(Under Separate Cover)</i>	
H	Abandoned Puppy (Update) - 5 July 2016 <i>(Under Separate Cover)</i>	
I	Update on Boarding House Compliance Activities - 7 July 2016 <i>(Under Separate Cover)</i>	

Signatories

Author	Jaimee Maha - Democracy Advisor
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