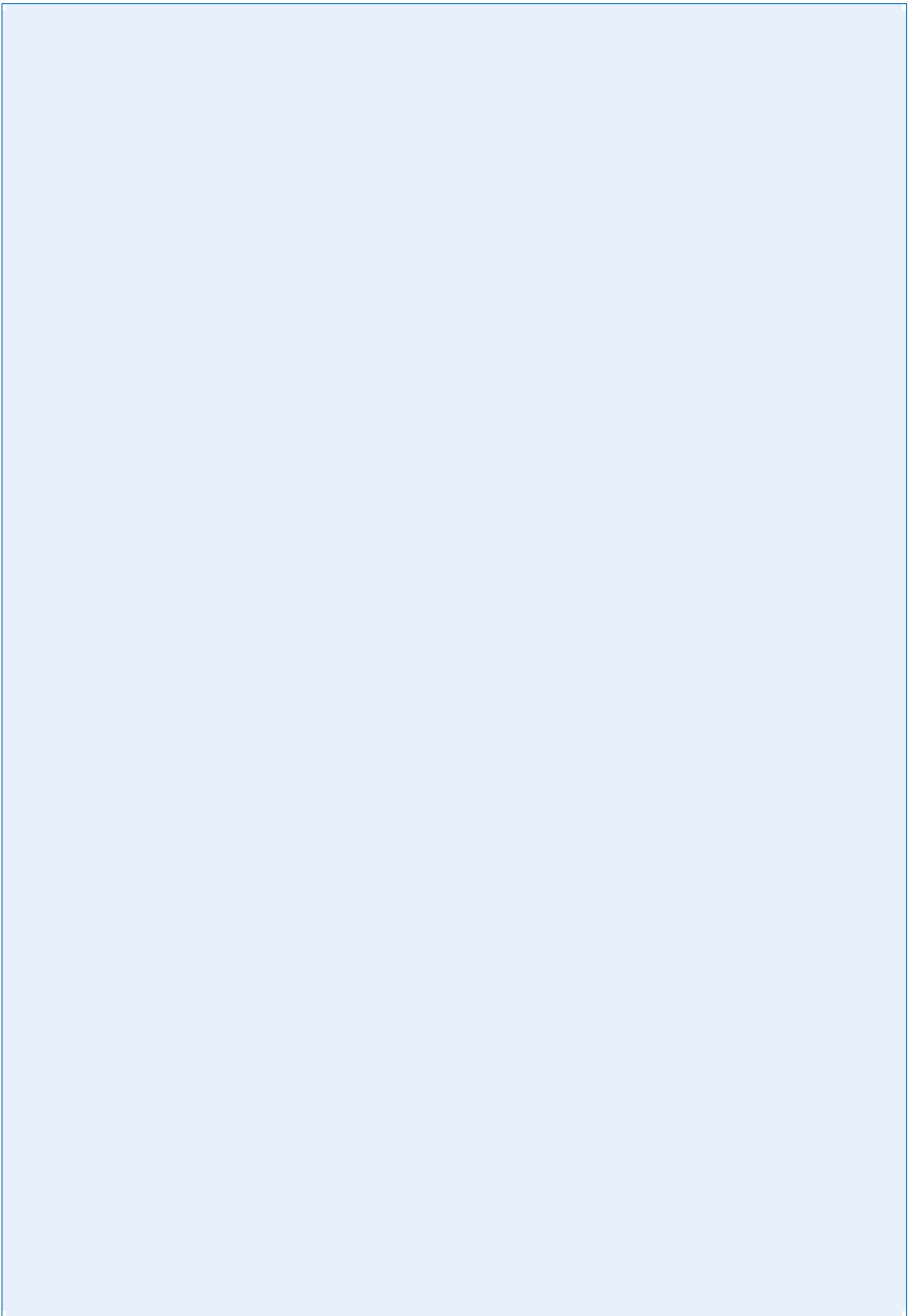


Assessment of public safety and nuisance behaviours and opportunities 2017

Public Safety and Nuisance Bylaw 2013

Te Ture ā-Rohe Marutau ā-Iwi me
te Whakapōrearea 2013





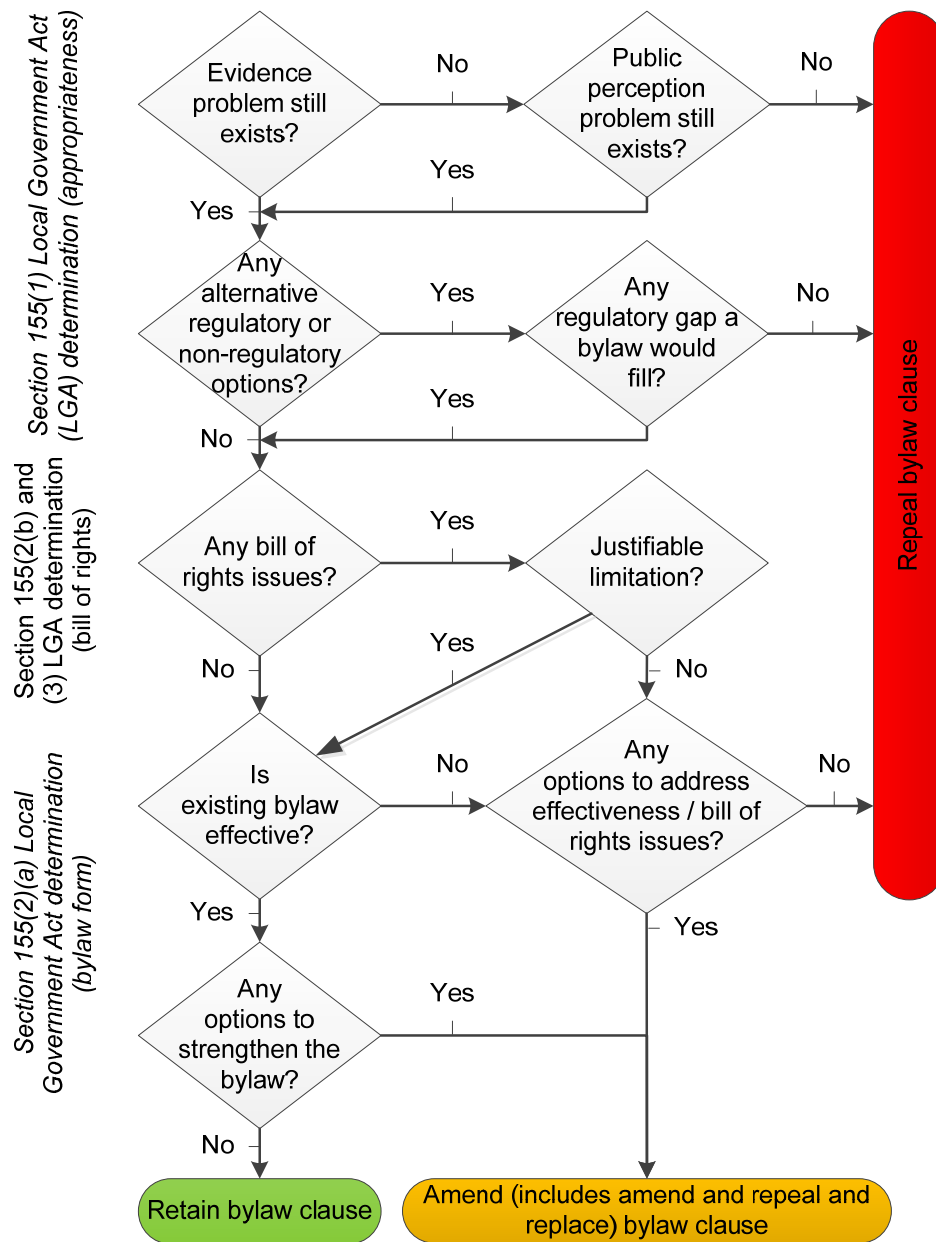
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Purpose of the document

1. The purpose of this document is to:
 - provide an assessment of, and recommendations for, public safety and nuisance behaviours against key legislative criteria shown in Figure 1 below
 - identify opportunities to improve the Bylaw form in general.
2. The assessment is based on the findings in the Auckland Council Public Safety and Nuisance Bylaw Review Findings Report August 2017 (the findings) in **Attachment A**.

Figure 1: Illustration of assessment of public safety and nuisance behaviours



Behaviour 1: Intimidating or nuisance behaviour

What is the existing bylaw clause?

3. Clause 6 states:
 - (1) A person must not use a public place to
 - (f) beg in a manner that may intimidate or cause a nuisance to any person.

Section 155(1) Local Government Act determination (appropriateness)

Is there evidence that the matters contained in the existing bylaw clause are still a problem?

4. Yes. While there has been a decrease in intimidating and nuisance begging overall, down from 500 incidences in October 2016, there were still more than 300 incidences in May 2017 (see graph 3 of the findings report).
5. Council complaint data shows an increase in calls for service from 2015 to 2016 for a range of begging related behaviours.
6. Qualitative research identified begging as a key issue of concern for Aucklanders. Night time begging and verbal abuse from people engaged in begging are the biggest safety concerns. Begging in a way that obstructs others is the biggest annoyance.

Are there alternative regulatory or non-regulatory options available?

7. Yes. The Police can use section 21 of the Summary Offences Act 1981 where begging behaviour is intimidating. However, the threshold of police intervention is much higher than under the existing bylaw and does not address the concerns around aggressive and nuisance begging.
8. The findings discuss a range of other regulatory non-regulatory options that are considered to be inappropriate or complementary:
 - banning begging would be ineffective. A ban will likely be ignored by people begging or at best result in displacement, raise unrealistic enforcement expectations, and may give raise issues about the rights and freedoms of people who beg
 - non-regulatory options are complimentary (not an alternative) to support and provide sustainable alternatives or pathways to one of the Auckland's most vulnerable populations.

Is there any regulatory gap that a bylaw would fill?

9. Yes. The bylaw provides council with an effective regulatory mechanism to engage with the begging community in order to promote passive begging at a lower threshold to police intervention.

Section 155(2)(b) and (3) Local Government Act determination (Bill of Rights Act 1990)

Does the existing bylaw clause give rise to implications under the New Zealand Bill of Rights Act 1990?

10. Yes. The bylaw clause may give rise to implications under the New Zealand Bill of Rights Act 1990 in terms of the freedom of expression (section 14) and freedom of movement (section 18). This is because of the potential to limit a person's ability to communicate with the public and move freely in a public area.
11. This is considered to be a reasonable limitation on people's rights and freedoms and therefore not inconsistent with the New Zealand Bill of Rights Act 1990. This is because the rights will only be restricted if the person is intimidating or causing a nuisance to another person.

Section 155(2)(a) Local Government Act determination (bylaw form)

Is the existing bylaw clause effective in addressing the problem?

12. Yes. The bylaw clause has been effective in providing a regulatory mechanism for council staff and contractors to authoritatively engage with people who beg.
13. While prosecution under the bylaw has not been effective, the bylaw clause has enabled complementary non-regulatory initiatives that use compliance with the bylaw clause as a form of leverage to encourage passive begging. These initiatives have helped to reduce the overall number of incidences of aggressive and nuisance begging.

Are there any options to strengthen the existing bylaw clause?

14. Yes. Better regulating begging behaviour that causes an obstruction would strengthen the bylaw clause. Any amended bylaw should include consideration of:
 - clearer reference to begging that may obstruct any person
 - a clearer definition of obstruction or link to other obstruction controls in the bylaw.

Recommended option

15. Staff recommend that the bylaw about intimidating or nuisance begging in a public place be amended to better regulate begging in a way that obstructs other people.
16. While begging in public places still occurs, the bylaw provides an effective regulatory mechanism to engage with the begging community in order to authoritatively promote passive begging. This has seen a reduction in complaints regarding intimidating or nuisance begging.

Behaviour 2: Car window washing

What is the existing bylaw clause?

17. Clause 6 states:
- (1) A person must not use a public place to
 - (g) wash or offer to wash a vehicle or any part thereof, in a manner that may be unsafe or intimidate or cause a nuisance to any person, or cause an obstruction to traffic.

Section 155(1) Local Government Act determination (appropriateness)

Is there evidence that the matters contained in the existing bylaw clause are still a problem?

18. Yes. Council logged 505 complaints or calls to service for car window washing in 2015 and 314 in 2016. Police also report a large number of calls for service in regard to car window washing. In addition, 87 per cent of respondents to the survey had seen someone washing car windows for money at traffic lights or a road intersection in Auckland in the last 12 months.
19. The quantitative research shows that 81 per cent of respondents surveyed felt that car window washing is a safety hazard for window washers and other road users.

Are there alternative regulatory or non-regulatory options available?

20. Yes. The recently passed Land Transport Amendment Act 2017 prohibits pedestrians washing or offering to wash vehicles on a road unless the vehicle is legally parked. Police have powers to either prosecute offenders or issue infringement fines.
21. In addition, police have powers under the Summary Offences Act 1981 to deal with aggressive and intimidating behaviour that constitutes a threat to public safety.
22. These statutory provisions provide more effective enforcement powers than possible under a bylaw (including the existing bylaw clause).

Is there any regulatory gap that a bylaw would fill?

23. No. The activity occurs at road intersections which is controlled by Auckland Transport and the findings identified that the bylaw has been ineffective.

Recommended option

24. Staff recommend that the bylaw clause about window washing be repealed. The bylaw clause does not effectively address the problem largely due to the limited bylaw enforcement powers. Reliance on police powers under the recently passed Land Transport Amendment Act 2017 and the Summary Offences Act 1981 is likely to provide a more effective approach to the problem.

Behaviour 3: Wilful obstruction, disturbance or interference

What is the existing bylaw clause?

25. Clause 6 states:

- (1) A person must not use a public place to
 - (a) wilfully obstruct, disturb or interfere with any other person in their use or enjoyment of that public place.

Section 155(1) Local Government Act determination (appropriateness)

Is there evidence that the matters contained in the existing bylaw clause are still a problem?

26. Yes. The findings have addressed the behaviours in this bylaw clause as part of the specific feedback for clauses 6(1)(b)–(g), 6(1)(2) and 6(1)(3). The more specific feedback can be applied generically, in doing so it supports the finding that generally wilful obstruction, disturbance or interference is still a problem.

Are there alternative regulatory or non-regulatory options available?

27. Yes. Sections 12, 21 and 22 of the Summary Proceedings Act 1981 may provide a regulatory alternative to the bylaw clause:

- section 12 (acts endangering safety) relates to a person placing or making an obstruction in circumstances that are likely to cause injury
- section 21 (intimidation) relates to a person intending to frighten or intimidate another person
- section 22 (obstructing a public way) relates to obstructing public ways such as roads, paths and malls.

Is there any regulatory gap that a bylaw would fill?

28. Yes. A bylaw provides the opportunity to state behavioural expectations more clearly than legislation identified in the previous section, and supports council staff to engage with people to prevent potential incidents at the lower end of the graduated response approach (e.g. education, informal warnings).

29. The Summary Proceedings Act 1981 does not address:

- non-physical/human obstructions, disturbances or interferences with any person other than in a public way
- other obstructions outside a public way that do not meet the threshold of “circumstances likely to cause injury” or an intention to “frighten or intimidate another.”

Section 155(2)(b) and (3) Local Government Act determination (Bill of Rights Act 1990)

Does the existing bylaw clause give rise to implications under the New Zealand Bill of Rights Act 1990?

30. Yes. The bylaw clause may give rise to implications under the New Zealand Bill of Rights Act 1990 in terms of the freedom of movement (section 18). This is because of the potential to limit a person's ability to move freely in a public area.
31. This is considered to be a reasonable limitation on people's rights and freedoms and therefore not inconsistent with the New Zealand Bill of Rights Act 1990. This is because the right will only be restricted if the person is deliberately interfering with the use or enjoyment of a public place by another person.

Section 155(2)(a) Local Government Act determination (bylaw form)

Is the existing bylaw clause effective in addressing the problem?

32. Yes. The bylaw is effective insofar as it:
 - sets clearer behavioural expectations than the Summary Proceedings Act 1981
 - supports council staff to engage with the people to prevent potential incidents at the lower end of the graduated response approach (e.g. education, informal warnings).

Are there any options to strengthen the existing bylaw clause?

33. Yes. The bylaw clause can be made more certain (definitive, meaningful, reasonable, validatable, enforceable). Any amended bylaw clause should include consideration of better identifying the interaction with the Summary Proceedings Act 1981.

Recommended option

34. Staff recommend that the wilful obstruction, disturbance or interference bylaw clause be amended. These behaviours are still a concern, and a bylaw clause provides an opportunity to set clearer behavioural expectations than the Summary Proceedings Act 1981. The bylaw clause also supports engagement between council staff and communities or individuals to prevent potential incidents at the lower end of the graduated response approach (for example, through education or informal warnings).

Behaviour 4: Using an instrument or personal address system

What is the existing bylaw clause?

35. Clause 6 states:

- (1) A person must not use a public place to
 - (b) create a nuisance through the use or playing of any instrument (musical or otherwise), any type of public address system, or from making any excessive sound or noise.

Section 155(1) Local Government Act determination (appropriateness)

Is there evidence that the matters contained in the existing bylaw clause are still a problem?

36. Yes. While findings show that there was only one personal address system (PA) or instrument complaint in 2015 and 2016, busking complaints numbered 56 in 2015 and 153 in 2016. Busking complaint data does not specify whether the issue was related to using a PA system, an instrument, or causing excessive noise in a public place, however, it is likely these factors led to the complaint. Of the Aucklanders surveyed, 52 per cent experienced being disturbed by this type of noise in the last 12 months.
37. The findings show that 84 per cent of respondents surveyed considered announcements, speeches or music played over loud speakers in a way that may disturb people could be a nuisance issue. Other stakeholders identified the use of loud speakers on bicycles as being a concern.

Are there alternative regulatory or non-regulatory options available?

38. No. While section 327 of the Resource Management Act 1991 provides for the issue of excessive noise directions, this does not provide a regulatory alternative to the bylaw as it:
 - regulates excessive noise emitted from private property not from public places
 - prohibits the use of PA systems and instruments that emit excessive noise, not that create a nuisance.

Section 155(2(b) and (3) Local Government Act determination (Bill of Rights Act 1990)

Does the existing bylaw clause give rise to implications under the New Zealand Bill of Rights Act 1990?

39. Yes. The bylaw clause may give rise to implications under the New Zealand Bill of Rights Act 1990 in terms of the freedom of expression (section 14). This is because of the potential to limit a person's ability to express opinions and impart information in an amplified form.

40. Where instruments or PA systems are used for commercial and/or entertainment purposes, this is considered to be a reasonable limitation on people's rights and freedoms and therefore not inconsistent with the New Zealand Bill of Rights Act 1990. This is because the rights will only be restricted if the person is creating a nuisance or making excessive sound of noise.

Section 155(2)(a) Local Government Act determination (bylaw form)

Is the existing bylaw clause effective in addressing the problem?

41. No. The findings identified that the bylaw clause does not appear to be effective due to a lack of enforcement.

Are there any alternative options to improve the effectiveness of the existing bylaw clause?

42. Yes. The findings identified that enforceability could be improved by making the bylaw clause more certain (definitive, meaningful, reasonable, validatable, enforceable). Any amended bylaw clause should include consideration of:
- a definition for the terms "excessive noise" and "nuisance"
 - better identifying the interaction with the Resource Management Act 1991.

Recommended option

43. Staff recommend that the bylaw clause about nuisance from playing instruments or using PA systems in a public place be amended. A bylaw is still necessary given the number of complaints, but amendments are required to improve enforceability.

Behaviour 5: Reckless use of any “material or thing”

What is the existing bylaw clause?

44. Clause 6 states:
- (1) A person must not use a public place to
 - (c) use any material or thing (including a vehicle, bicycle, motorised scooter, model aircraft, skateboard, roller skates or roller blades, shopping trolley or similar object) recklessly or in a manner which may intimidate, be dangerous, be injurious to or cause a nuisance to any person.

Section 155(1) Local Government Act determination (appropriateness)

Is there evidence that the matters contained in the existing bylaw clause are still a problem?

45. Yes. The findings show that while the number of complaints to council is low, the number of people who experience a problem is high. Council received only 55 complaints in 2016, all about skateboarding. However, the quantitative survey found that 50 per cent of all respondents had seen or experienced skateboarding in a way that may harm others in the last 12 months.

Are there alternative regulatory or non-regulatory options available?

46. Yes. Police can use sections 8, 37 and 38 of the Land Transport Act 1998 to address the use of vehicles (including bicycles and skateboards) on a road carelessly or without reasonable consideration for other persons using the road.
47. There is potential for police to use section 13 of the Summary Offences Act 1981, which makes it an offence for a person to recklessly use a thing in manner that is likely to cause injury.
48. For the operation of drones and model aircraft, sections 43A and 44 of the Civil Aviation Act 1990 regulate the careless or dangerous use of an aircraft (including remotely piloted aircraft or drones). In addition, the Civil Aviation Authority of New Zealand Rules require:
- consent be obtained before a person operates drones in airspace above persons or property (rule 101.207)
 - the minimisation of hazards to persons, property and other aircraft (rule 101.13).
49. In response to the Civil Aviation Authority Rules, Auckland Council has developed interim guidelines on flying drones (unmanned aerial vehicles) on public land. The interim rules permit flyers to use council parks (with certain exceptions). Flyers are required to be courteous of other park users and must comply with the code of conduct that prohibits certain behaviour, including: flying over sports fields, vehicles, other users of the park, livestock, and sensitive wildlife habitats.

50. Auckland Transport only allows certified drone operators to apply for permission to fly a drone over or around Auckland Transport controlled roads and property. Drone flights are prohibited in the proximity of public transport stations, on board buses, ferries, or trains, and on roads around the Auckland Zoo.
51. The findings identified some non-regulatory options such as more indoor and outdoor skateparks, increased public education and security staff. However, these are complementary rather than alternatives to regulatory options.

Is there any regulatory gap that a bylaw would fill?

52. Yes. A bylaw provides the opportunity to state behavioural expectations more clearly than the provisions discussed above. The provisions do not provide comprehensive coverage of the behaviours identified in the bylaw clause. The Acts have a higher threshold than the current bylaw clause and would not address lower scale behaviour, particularly nuisance behaviour. Specifically, the Land Transport Act 1998 only regulates careless driving of a vehicle on a road and not in other public places.
53. The guidelines provided by Auckland Council and Auckland Transport do not remove the need for a bylaw clause as:
 - they only relate to the operation of unmanned aerial vehicles
 - the Auckland Council guidelines cross-reference and explicitly rely on the existing bylaw clause
 - the Auckland Transport rules only apply to roads and property it controls.

Section 155(2)(b) and (3) Local Government Act determination (Bill of Rights Act 1990)

Does the existing bylaw clause give rise to implications under the New Zealand Bill of Rights Act 1990?

54. Yes. The bylaw clause may give rise to implications under the New Zealand Bill of Rights Act 1990 in terms of freedom of movement (section 18). This is because of the potential to limit a person's ability to move freely in a public area.
55. This is considered to be a reasonable limitation on people's rights and freedoms and therefore not inconsistent with the New Zealand Bill of Rights Act 1990. This is because the rights will only be restricted if the person is using the material or thing recklessly or in a manner which may intimidate, be dangerous, be injurious to or cause a nuisance to any person.

Section 155(2)(a) Local Government Act determination (bylaw form)

Is the existing bylaw clause effective in addressing the problem?

56. Yes. The findings identified that the bylaw is effective in managing this behaviour when used in conjunction with integrated design, crime prevention through environmental design and education.

Are there any options to strengthen the existing bylaw clause?

57. Yes. The bylaw clause can be made more certain (definitive, meaningful, reasonable, validatable, enforceable). Any amended bylaw clause should include consideration of better regulation for the reckless use of drones.
58. Other suggestions in the findings are considered unnecessary. For instance, a definition of “reckless” is considered unnecessary given its ordinary dictionary meaning.

Recommended option

59. Staff recommend that the bylaw clauses about the reckless use of any “material or thing” be amended to better regulate the use of drones. This behaviour is a problem that can be effectively addressed in a bylaw.

Behaviour 6: Nuisance or dangerous fencing

What are the existing bylaw clauses?

60. Clause 6 states:

- (1) A person must not use a public place to
 - (d) install or maintain a fence (including a razor-wire and electric fence) in a manner that may cause an injury or nuisance to any person.

61. There are three legacy bylaws that remain in force.

62. Clause 12 of the Papakura District Council Public Places Bylaw 2008 states:

12 Restriction on Use of Barbed Wire and Electrified Fences

12.1 A person must not, in any public place, except with the prior written permission of Council, erect or permit to be erected any electrified fencing or barbed wire along, or within 1 metre of any boundary line between any land or building on the one side, and any public place on the other side.

A matter Council will consider when an application is made for permission for any electrified fencing along, or within 1 metre of any boundary line is the existence of any other barrier or device between the public place and the electrified fencing or barbed wire which would prevent accidental harm being caused to any person from the electric fencing or barbed wire.

Provided that this sub-clause shall not prohibit the placing of such barbed wire at a height of not less than 2 metre or electrified fencing not less than 3 metres from the level of the ground of any such public place.

63. Clause 15 of the Waitakere City Council Public Places Bylaw 2010 states:

15.2 Fences constructed with barbed wire, razor wire or electrified wire

- (b) Any fence constructed wholly or in part of barbed wire, razor wire or electrified wire or any fence that is designed or constructed so as to be likely to inflict injury the elements of the fence which are likely to inflict injury must be at least 2 metres above ground level. Where it is not possible for there to be a 2 metre clearance from the ground, the fence must be made safe by other means so as not to cause injury to any person or animal.

64. Clause 3 Manukau City Consolidated Bylaw 2008: Chapter 5 - Construction, Development, Street Damage and Vehicle Crossings states:

3.1 No person may:

- (a) erect a fence which could cause injury to persons in a public place, except that electric fences and barbed wire fences are permitted for stock control purposes in a rural zone;

Section 155(1) Local Government Act determination (appropriateness)

Is there evidence that the matters contained in the existing bylaw clause are still a problem?

65. Yes, but limited. Complaints regarding nuisance or dangerous fencing are rare, with 33 complaints in 2015 and 4 complaints in 2016. Only eight per cent of respondents surveyed had actually seen or experienced nuisance or dangerous fencing. There was a suggestion that the bylaw addresses fences that are dangerous at eye level.

Are there public perceptions that the matters contained in the existing bylaw clause are still a problem?

66. Yes. The quantitative research shows that 91 per cent of respondents surveyed felt that dangerous or nuisance fencing is a public safety and nuisance issue of varying severity.

Are there alternative regulatory or non-regulatory options available?

67. No. Regulatory and non-regulatory options have been raised but neither are practicable.
68. The Local Government Act 2002 (s215-223) provides for removal orders for fences, but this is intended to apply to people who have committed offences and the fence is used to either conceal, intended to injure or is intimidating.
69. Non-regulatory self-regulation supported by information (a code of conduct or good practice) may satisfy the views of rural farmers, but is less likely to be effective in urban areas. Further, when problems do occur, council's regulatory options are limited to civil proceedings. Civil proceedings are an ad-hoc approach to the problem and may be less of a deterrent than a bylaw.

Section 155(2(b) and (3) Local Government Act determination (Bill of Rights Act 1990)

Does the existing bylaw clause give rise to implications under the New Zealand Bill of Rights Act 1990?

70. No. The bylaw does not give rise to implications under the New Zealand Bill of Rights Act 1990.

Section 155(2)(a) Local Government Act determination (bylaw form)

Is the existing bylaw clause effective in addressing the problem?

71. Yes. On the rare occasion the bylaw clause has been used to respond to a complaint, the problem has been addressed at the lower end of the graduation response approach (e.g. a conversation with and agreement from the owner).

Are there any options to strengthen the existing bylaw clause?

72. Yes. The bylaw clause can be made more certain (definitive, meaningful, reasonable, validatable, enforceable). Any amended bylaw clause should include consideration of:
- removing any inconsistency between existing bylaw clauses about fencing
 - appropriate bylaw clauses for fences for stock management purposes
 - the regulation of fences that are dangerous "at eye level"
 - whether the bylaw clause is more appropriately contained in the Auckland Council Property Maintenance and Nuisance Bylaw 2015.

Recommended option

73. Staff recommend that the bylaw clauses about fences be amended. Nuisance and dangerous fencing is still a problem that can be effectively addressed in a bylaw. A number of suggestions have been made to strengthen the bylaw, particularly in relation to fences for stock management purposes.

Behaviour 7: Mind-altering substances in a public place

What is the existing bylaw clause?

74. Clause 6 states:
- (1) A person must not use a public place to
 - (e) consume, inject or inhale or distribute or offer for sale any mind-altering substance.

Section 155(1) Local Government Act determination (appropriateness)

Is there evidence that the matters contained in the existing bylaw clause are still a problem?

75. Yes. The findings show that while the number of complaints to council is low, the quantitative survey found a number of people witnessing the problem.
76. Council received only six complaints in 2015 and 16 complaints in 2016. However, the quantitative survey found that 34 per cent of all respondents had seen or experienced mind-altering substances in a public place in the last 12 months.
77. Recent media coverage has also highlighted an increase in the use of mind-altering substances, resulting in at least seven related deaths in Auckland.

Are there alternative regulatory or non-regulatory options available?

78. Yes. Police can use the Psychoactive Substances Act 2013 and the Misuse of Drugs Act 1975 in relation to illegal substances, which includes unapproved synthetic products.
79. A range of non-regulatory alternatives were suggested. These include public education and awareness (for clarification of what is covered under this bylaw clause and what is covered by police), greater support for whanau based support and addiction services. However, these suggestions are complimentary options, rather than alternatives to regulatory controls.

Is there any regulatory gap that a bylaw would fill?

80. Yes. A bylaw would address problems caused by the mind-altering effects from the misuse of commercially available (legal) products (e.g. glue and spray cans). The statutory provisions identified in the previous section only address the problems from the use of illegal substances.

Section 155(2)(b) and (3) Local Government Act determination (Bill of Rights Act 1990)

Does the existing bylaw clause give rise to implications under the New Zealand Bill of Rights Act 1990?

81. No. The bylaw does not give rise to implications under the New Zealand Bill of Rights Act 1990. It does not restrict the freedom of movement of a person in a public place only the behaviour they may undertake.

Section 155(2)(a) Local Government Act determination (bylaw form)

Is the existing bylaw clause effective in addressing the problem?

82. No. The existing bylaw clause contains such a wide definition of mind-altering substance as to encompass all substances; illegal drugs, synthetics and commercially available products. This definition creates a significant overlap with the statutory provisions used by police that are more effective in addressing the problem. This jurisdictional overlap has further led to confusion in enforcement with both police and council deferring complaints to the other.
83. The findings also identified that council bylaw enforcement staff are ill-equipped to enforce the bylaw clause, particularly with uncooperative or aggressive people under the influence of mind altering substances.
84. At most, a bylaw provides the opportunity to state clear behavioural expectations, and may support council staff to engage with the people under the influence of mind altering substances at the lower end of the graduated response approach.

Are there any alternative options to improve the effectiveness of the existing bylaw clause?

85. The bylaw clause can be made more certain (definitive, meaningful, reasonable, validatable, enforceable). Any amended bylaw clause should include consideration of:
- limiting the definition of a mind-altering substance to the misuse of commercially available (legal) products.
 - the health and safety of council bylaw enforcement staff in any graduated response approach.

Recommended option

86. Staff recommend that the Bylaw about mind-altering substances in public places be amended to limit the definition of mind-altering substance to commercially available substances. The use of mind-altering substances is still a problem for which a bylaw has limited effectiveness. Nevertheless, a bylaw provides the opportunity to state clear behavioural expectations, and may support council staff to engage with the people under the influence of mind altering substances at the lower end of the graduated response approach.

Behaviour 8: Graffiti

What is the existing bylaw clause?

87. Clause 6 states:
- (2) Except at a facility or site specifically provided, or with the prior written approval of the council or a council controlled organisation, a person must not use a public place to
 - (a) display or fix any graffiti ... on any property that is under the control of the council or a council controlled organisation.

Section 155(1) Local Government Act determination (appropriateness)

Is there evidence that the matters contained in the existing bylaw clause is still a problem?

88. Yes. There is sufficient evidence that graffiti in a public place is still an issue.
89. The findings show that while the number of complaints (requests for service) remains relatively high (between 200 and 450 complaints per month) there has been a downward trend between July 2013 and February 2017. Complaints have decreased by 23 per cent during this time.

Are there alternative regulatory or non-regulatory options available?

90. Yes. The findings identified one alternative regulatory option and four complimentary non-regulatory options.
91. Graffiti eradication is provided for under the Long Term Plan 2012 – 2022. Council's approach to graffiti has a well-known and well utilised eradication strategy. Information regarding the council approach to graffiti prevention is easily accessible.
92. The regulatory alternative to the bylaw is continued reliance on section 11A of the Crimes Act 1981 and police to prosecute under the Act for repeat offenders. Case files used to identify repeat offenders are compiled by council contractors. Continued reliance on this alternative regulatory option will ensure the continuation of the current eradication and enforcement approach as detailed in the findings report.
93. The non-regulatory options are complementary, rather than an alternative to, regulatory options. These include reinstatement and support for the education phase of the graffiti prevention model, approving public spaces for graffiti art / artists to use without prior approval, more murals and better lighting in graffiti hot spots.

Is there any regulatory gap that a bylaw would fill?

94. No. The current bylaw clause is not currently being utilised. Further, the success of the graffiti eradication programme without a bylaw being used in support further highlights that retention would be unnecessary.

Recommended option

95. Staff recommend that the Bylaw clause, insofar as it refers to graffiti in public places, should be repealed.
96. While instances of graffiti complaints remain high, the bylaw clause is unnecessary, as the behaviour is being effectively managed without reliance on the bylaw clause.

Behaviour 9: Fly-posting

What is the existing bylaw clause?

97. Clause 6 states:
- (2) Except at a facility or site specifically provided, or with the prior written approval of the council or a council controlled organisation, a person must not use a public place to:
 - (a) display or fix any...posters, signs, or advertising devices on any property that is under the control of the council or a council controlled organisation.

Section 155(1) Local Government Act determination (appropriateness)

Is there evidence that the matter contained in the existing bylaw clause is still a problem?

98. Yes. The findings identified that 36 per cent of people surveyed had witnessed the unauthorised fly-posting in the last 12 months. Feelings of annoyance are the most typical response at 44 per cent, with 63 per cent overall having a negative feeling.
99. The findings also identified that the behaviour is not as significant as other public safety and nuisance behaviours. Of those people surveyed, 33 per cent were not bothered by the behaviour. Further, bylaw enforcement staff do not consider this behaviour a high priority or high impact issue.

Are there alternative regulatory or non-regulatory options available?

100. Yes. Police can use section 33 of the Summary Offences Act 1981 in relation to any person who without the consent of the owner or occupier, affixes any placard, banner, poster, or other material bearing any writing or pictorial structure, or to or from any tree.
101. Non-regulatory council controlled community notice boards provide approved places for posters, but these are complementary, rather than alternatives, to regulatory options.

Is there any regulatory gap that a bylaw would fill?

102. Yes. A bylaw can manage the use of public places more clearly than the Summary Offences Act 1981. For instance, the Auckland Council Signage Bylaw 2015 allows the use of posters in certain circumstances as an efficient form of consent.
103. A bylaw also supports council staff to engage with the people to address fly-posting complaints using a graduated response approach.

Section 155(2)(b) and (3) Local Government Act determination (Bill of Rights Act 1990)

Does the existing bylaw clause give rise to implications under the New Zealand Bill of Rights Act 1990?

104. Yes. The bylaw clause may give rise to implications under the New Zealand Bill of Rights Act 1990 in terms of the freedom of expression (section 14). This is because of the potential to limit a person's ability to express opinions and impart information through fly-posting.
105. This is considered to be a reasonable limitation on people's rights and freedoms and therefore not inconsistent with the New Zealand Bill of Rights Act 1990. This is because using a public place to display or fix posters, signs, or advertising infringes on the property rights of the council and potentially cause a problem.

Section 155(2)(a) Local Government Act determination (bylaw form)

Is the existing bylaw clause effective in addressing the problem?

106. Yes. The findings identified that the bylaw has been somewhat effective.

Are there any options to strengthen the existing bylaw clause?

107. Yes. The bylaw clause can be made more certain (definitive, meaningful, reasonable, validatable, enforceable). Any amended bylaw clause should include consideration of better alignment with and relocation to the Auckland Council Signage Bylaw 2015.

Recommended option

108. Staff recommend that the bylaw clause about fly-posting be amended to better align with and be relocated to the Auckland Council Signage Bylaw 2015. Fly-posting is still a problem, albeit of lesser significance and impact to other public safety and nuisance behaviours.

Behaviour 10: Lighting of outdoor fires

What is the existing bylaw clause?

109. Clause 6 states:

- (2) Except at a facility specifically provided, or with the prior written approval of the council or a council controlled organisation, a person must not use a public place to
 - (b) light a fire (except in an appliance designed for outdoor cooking subject to any restriction imposed by the council on the lighting of fires).

Section 155(1) Local Government Act determination (appropriateness)

Is there evidence that the matters contained in the existing bylaw clause are still a problem?

110. No. Council received four complaints in 2015 and 16 in 2016. These complaints do not differentiate between fires in public or private places. Further, the qualitative research identifies that only 16 per cent of respondents have experienced this behaviour in the past 12 months.

Are there public perceptions that the matters contained in the existing bylaw clause are still a problem?

111. Yes. The findings show that while the number of complaints to council and personally experiencing the behaviour is low, public and stakeholder perception is that the behaviour would elicit an emotional response ranging from annoyance to fear or perceived threat (88 per cent of respondents).

Is there a regulatory gap that a bylaw would fill?

112. No. The findings identified two regulatory alternatives and three non-regulatory options, however none are practicable as:

- the Fire and Emergency Service has yet to make a decision on whether it will regulate the lighting of outdoor fires under the Fire and Emergency New Zealand Act 2017
- existing council pollution controls and response regulate “smoky” fires for the protection of health, property and environment, not fires specifically for public safety or to prevent public nuisance¹
- non-regulatory options are complimentary, rather than practicable alternatives to a bylaw (e.g. increased public BBQ and cooking areas, controlled public bonfire events and increased awareness).

¹ Refer Auckland Unitary Plan chapter E.14 Air quality objectives and policies

Section 155(2)(b) and (3) Local Government Act determination (Bill of Rights Act 1990)

Does the existing bylaw clause give rise to implications under the New Zealand Bill of Rights Act 1990?

113. No. The bylaw does not give rise to implications under the New Zealand Bill of Rights Act 1990. It does not restrict the freedom of movement of a person in a public place only the behaviour they may undertake.

Section 155(2)(a) Local Government Act determination (bylaw form)

Is the existing bylaw clause effective in addressing the problem?

114. Unsure. The prohibition may have established levels of voluntary compliance.

115. The findings identified that when complaints are received, instead of using the bylaw, the response is through Fire and Emergency New Zealand or council's pollution hotline response contractors. However, neither of these options prohibits the behaviour, rather they manage adverse effects of the behaviour. Given the significant public safety and nuisance risk associated with the behaviour, the prohibition is warranted.

Are there any options to improve the effectiveness of the existing bylaw clause?

116. Yes. The existing bylaw clause could be amended to be more certain. Any amended bylaw clause should consider:

- a definition of 'appliance designed for outdoor cooking'
- guidance for the permit process.

Recommended option

117. Staff recommend that the existing bylaw clause about the lighting of outdoor fires in a public place be amended. While other regulatory mechanisms may be used to respond to complaints, a bylaw establishes the expected behaviour that fires are only lit in public places using an appliance designed for outdoor cooking or with the permission of council.

Behaviour 11: Setting off fireworks in a public place

What is the existing bylaw clause?

118. Clause 6 states:

- (3) A person must not set off fireworks, flares or any other explosive material:
 - (a) In a public place, except with the prior written approval of the council or council controlled organisation; and
 - (b) In any other place, in a way that does or is likely to create a nuisance or endanger any person, property, dog or other animal in a public place.

Section 155(1) Local Government Act determination (appropriateness)

Is there evidence that the matters contained in the existing bylaw clause are still a problem?

119. Yes. The findings show that 67 fireworks complaints were received in 2015 and 2016. Licensing and Compliance Services staff advised that the number of firework complaints at Guy Fawkes, and to a lesser degree on Chinese New Year and New Year's Eve, lead to difficulties in enforcement.
120. The quantitative research found that of those respondents surveyed, 37 per cent of respondents reported seeing or experiencing this issue in the past 12 months. Further, 77 per cent of respondents surveyed felt that setting off private fireworks in public places is a public safety and nuisance issue of varying severity.

Are there alternative regulatory or non-regulatory options available?

121. Yes. There is a regulatory alternative under the Summary Offences Act 1981. Section 35 provides that "every person is liable to a fine not exceeding \$200 who ... in any public place, sets off or throws any firework or explosive material in such a manner as to be likely to cause injury to, or to alarm, any person".
122. On balance this regulatory alternative is not supported by staff. It would result in a regulatory gap as it does not prohibit the use of private fireworks in public places, rather the way the fireworks are used. This could be perceived as de facto approval of setting off fireworks in a public place, resulting in increased incidents.
123. The Auckland Unitary Plan also addresses fireworks as a temporary activity², providing guidance as to the hours when lighting fireworks can be undertaken. Generally, this is between 5pm and 10.30pm, except for New Year's Eve when the cut off time extends to 1am on New Year's Day³.

² Chapter E40 Temporary Activities, E40.6.7 Lighting of fireworks.

³ The hours change to between 5pm and 12am with an event license or permit.

Is there any regulatory gap that a bylaw would fill?

124. Yes. The bylaw complements the regulatory options as it provides a blanket prohibition of setting off fireworks in public places. This avoids any regulatory gaps that would result from solely relying on the Summary Offences Act 1981.

Section 155(2)(b) and (3) Local Government Act determination (Bill of Rights Act 1990)

Does the existing bylaw clause give rise to implications under the New Zealand Bill of Rights Act 1990?

125. No. The bylaw does not give rise to implications under the New Zealand Bill of Rights Act 1990.

Section 155(2)(a) Local Government Act determination (bylaw form)

Is the existing bylaw clause effective in addressing the problem?

126. Yes. The bylaw is effective insofar as it:

- sets clearer behavioural expectation than the Summary Offences Act 1981 by prohibiting the behaviour
- supports council staff to engage with the people to address obstruction complaints at the lower end of the graduated response approach (e.g. education, informal warnings).

Are there any options to strengthen the existing bylaw clause?

127. Yes. The bylaw clause can be made more certain (definitive, meaningful, reasonable, validatable, enforceable). Any amended bylaw clause should include consideration of:

- better identifying the interaction with section 35 of the Summary Offences Act 1981
- clarifying where the behaviour applies to council controlled public places or Auckland Transport controlled public places
- greater alignment with the Auckland Unitary Plan provisions regarding the lighting of fireworks.

Recommended option

128. Staff recommend that the bylaw clause about setting off fireworks in a public place be amended. Staff consider that the bylaw clause is necessary given the high number of fireworks complaints received and the fact it is the only option that provides a blanket prohibition of setting off fireworks in public places.

Are there any options to strengthen the existing bylaw clause?

139. Yes. The bylaw clause can be made more certain (definitive, meaningful, reasonable, validatable, enforceable). Any amended bylaw clause should include consideration of:
- better identifying the interaction with the Crimes Act 1961, Summary Offences Act 1981, Local Government Act 2002 and Litter Act 1979
 - clarifying where the behaviour applies to council controlled public places or Auckland Transport controlled public places
 - clarifying whether the behaviour is about damage, misuse, loss, or use
 - better alignment with the Auckland Council Stormwater Bylaw 2015 in relation to any water course, or stormwater drain or channel
 - better alignment with the Auckland Council Solid Waste Bylaw 2013 in relation to depositing materials.

Recommended option

140. Staff recommend that the bylaw clauses about damage be amended. 'Damage' in all its various forms are still a problem. A bylaw provides the opportunity to clearly state the behavioural expectations, and support council staff to engage with the people to prevent potential damage at the lower end of the graduated response approach (e.g. education, informal warnings). A number of suggestions have been made to strengthen the bylaw.

Are there any options to strengthen the existing bylaw clause?

152. Yes. The bylaw clause can be made more certain (definitive, meaningful, reasonable, validatable, enforceable). Any amended bylaw clause should include consideration of:
- better identifying the interaction with section 22 of the Summary Offences Act 1981 and section 355 of the Local Government Act 1974
 - clarifying where the behaviour applies to council controlled public places or Auckland Transport controlled public places
 - where certain behaviours should be prohibited to avoid the potential for obstructions or mis-use of public places
 - better alignment with the Trading and Events Bylaw 2015 about goods in public places.

Recommended option

153. Staff recommend that the bylaw clauses about obstructions be amended.
154. 'Obstructions' in all its various forms are still a problem. A bylaw provides the opportunity to clearly state the behavioural expectations, prohibit certain activities avoid the potential for obstructions or mis-use of public places, and support council staff to engage with the people to address obstruction complaints at the lower end of the graduated response approach (e.g. education, informal warnings). A number of suggestions have been made to strengthen the bylaw.

Behaviour 14: Restricting access to parks and beaches

What is the existing bylaw clause?

155. Sub-parts of Clause 9 states:

Additional controls for parks and beaches

- (1) The council may restrict or close entry to all or any portion of a park or beach during such times as are considered necessary to prevent damage to, ensure public safety in or around, or allow maintenance of the park or beach.
- (2) The council may temporarily set aside whole or part of a park or beach for the exclusive use of particular groups or for specified activities during set times. The council may charge for the exclusive use of any or part of a park or beach.
- (5) In addition to any other control that applies to a public place, a person must not:
 - (a) enter a park or beach or any part thereof that is closed to the public
 - (c) engage in any recreational activity that is prohibited or restricted by the council on a park or beach, or any part thereof
 - (d) enter in or remain on any part of a park or beach marked out for a recreational activity while that recreational activity is in progress unless that person is a competitor, participant or official taking part in the recreational activity.

Section 155(1) Local Government Act determination (appropriateness)

Is there evidence that the matters contained in the existing bylaw clause are still a problem?

156. No. The findings did not identify any of these behaviours as being of particular concern. This finding is supplemented by the lack of council complaint data in relation to these behaviours.

Are there public perceptions that the matters contained in the existing bylaw clause are still a problem?

157. Yes. Operational staff support the retention of these clauses.

158. A number of local boards identified these behaviours as being of concern in a general sense.

Are there alternative regulatory or non-regulatory options available?

159. Yes. Parks Management Plans may also address permitted, controlled and discretionary activities and park closures.

160. Temporary activities are also provided for under the Auckland Unitary Plan and the Trading and Events in Public Places Bylaw 2015.

Is there a regulatory gap that a bylaw would fill?

161. The bylaw clauses will address any potential gaps that may arise, specifically any needs for access restrictions on parks and beaches that are not otherwise addressed under available regulatory mechanisms.

Section 155(2)(b) and (3) Local Government Act determination (Bill of Rights Act 1990)

Does the existing bylaw clause give rise to implications under the New Zealand Bill of Rights Act 1990?

162. Yes. The bylaw clause may give rise to implications under the New Zealand Bill of Rights Act 1990 in terms of freedom of movement (section 18). This is because of the potential to limit a person's ability to move freely in a public area.
163. This is considered to be a reasonable limitation on people's rights and freedoms and therefore not inconsistent with the New Zealand Bill of Rights Act 1990. This is because the rights will only be restricted where necessary to prevent damage to, ensure public safety in or around, or allow maintenance of the park or beach, or for a temporary period of time.

Section 155(2)(a) Local Government Act determination (bylaw form)

Is existing bylaw effective?

164. Yes, in that it provides a mechanism to temporarily restrict or close entry to all or parts of a park or beach should the need arise.

Any options to strengthen the bylaw?

165. Yes. Improved criteria and process may improve decision-making and certainty. Any amended bylaw clause should include consideration of:
- improved guidance in decision-making criteria
 - ensuring ease of understanding.

Recommended option

166. Staff recommend that the additional restricting access controls for parks and beaches be amended as required in order to provide further guidance and clarity.

Behaviour 15: Set-netting and other beach recreational activity controls

What is the existing bylaw clause?

167. Clause 9 states:

- (3) The council may make controls to prohibit or restrict any recreational activity on the whole or part of any beach, during such times and/or seasons as are considered necessary, to ensure public safety and prevent nuisance. Recreational activities include:
 - (a) fishing activities (for example, set-netting and surfcasting); and
 - (b) other activities that may cause a nuisance or endanger into public safety.
- (4) The council must ensure public notice is given of any control made under subclause (3), in a manner that the council considers appropriate in the circumstances.

Section 155(1) Local Government Act determination (appropriateness)

Is there evidence that the matters contained in the existing bylaw clause is still a problem?

168. No. The findings show that the number of complaints to council is low. Council received one complaint in 2015, and six complaints in 2016, all in relation to set-netting. The quantitative survey found that 19 per cent of all respondents had seen or experienced set-netting off a beach in the last 12 months. However, these findings may highlight the effectiveness of the set-netting seasonal restrictions.

Are there public perceptions that the matters contained in the existing bylaw clause is still a problem?

169. Yes. The findings highlight beach communities continued public safety and nuisance concerns regarding set-netting. Certain controls (Army Bay) have been considered to be warranted by Ministry of Primary Industries Officials. Stakeholders agree that the implementation of controls has curtailed the behaviour.

Are there alternative regulatory or non-regulatory options available?

170. No. The findings did not identify any alternative regulatory options to address the safety risks associated with other beach users becoming entangled in set nets.

171. Three non-regulatory options were identified, however these are complimentary, rather than alternatives, to existing bylaw controls.

Section 155(2)(b) and (3) Local Government Act determination (Bill of Rights Act 1990)

Does the existing bylaw clause give rise to implications under the New Zealand Bill of Rights Act 1990?

172. No. The bylaw does not give rise to implications under the New Zealand Bill of Rights Act 1990. It does not restrict the freedom of movement of a person in a public place only the activities they may undertake.

Section 155(2)(a) Local Government Act determination (bylaw form)

Is the existing bylaw clause effective in addressing the problem?

173. Yes, stakeholders agree that the implementation of controls has curtailed the behaviour.

Are there any options to strengthen the existing bylaw clause?

174. Yes. Improved criteria and process may address concerns about decision-making and displacement. Any amended bylaw clause should include consideration of:

- improving guidance in decision-making criteria
- requirements around the periodic review of existing controls.

Recommended option

175. Staff recommend that the Bylaw about set-netting and other beach controls be amended. The bylaw clause is effective in enabling set net restrictions, but could be strengthened.

Behaviour 16: Vehicles on parks and beaches

What is the existing bylaw clause?

176. Clause 9 states:

- (5) In addition to any other control that applies to a public place, a person must not:
 - (b) except in the case of an emergency, or with the prior written approval of the council:
 - (i) land or take off in an aircraft from a park or beach;
 - (ii) use an aircraft to set down, pick up, or recover any person, animal, carcass, or article of any description on or from a park or beach.
 - (e) drive, ride, propel or wheel any vehicle on a park except on places specified by the council for the driving or riding of vehicles and subject to any controls that council specifies
 - (f) park any vehicle except in a place set aside on a park by the council for parking and subject to any controls that the council specifies;
 - (j) stop or stand a vehicle or leave a bicycle on a park in such a place that it causes or is likely to cause obstructions to any entrance, thoroughfare, path or track;
 - (m) except in the case of an emergency, or with the prior written approval of the council, drive, ride, propel or wheel or park any vehicle on a beach. This restriction does not apply to any person driving a vehicle by a direct route at a speed not exceeding 10km/h on a beach where vehicular access is permitted, to deposit or retrieve a boat in the water. Every vehicle must be removed from the beach immediately upon retrieval or depositing of the boat
 - (n) leave a boat on a beach –
 - (i) in a place that is prohibited or restricted by the council; or
 - (ii) in any way that causes an obstruction or a nuisance.
 - (o) obstruct access to boat ramps or boat launching facilities on a beach.

Section 155(1) Local Government Act determination (appropriateness)

Is there evidence that the matters contained in the existing bylaw clause are still a problem?

177. Yes. There is sufficient evidence that vehicles, boats or aircrafts on either or both parks and beaches is still an issue. The definition of 'vehicle' under the Land Transport Act 1998 is used in the bylaw and includes bicycles and skateboards.

Section 155(2)(b) and (3) Local Government Act determination (Bill of Rights Act 1990)

Does the existing bylaw clause give rise to implications under the New Zealand Bill of Rights Act 1990?

188. Yes. The bylaw clause may give rise to implications under the New Zealand Bill of Rights Act 1990 in terms of freedom of movement (section 18). This is because of the potential to limit a person's ability to move freely in a public area.
189. This is considered to be a reasonable limitation on people's rights and freedoms and therefore not inconsistent with the New Zealand Bill of Rights Act 1990. This is because the purpose of the bylaw is to protect the physical safety of the public and avoid damage to the natural and physical environment of beaches and parks.

Section 155(2)(a) Local Government Act determination (bylaw form)

Is the existing bylaw clause effective in addressing the problem?

190. Yes, in relation to boats left on beaches. Enforcement staff apply the bylaw clauses as needed; this is an effective mechanism to ensure owners or users move the boat.
191. No, in relation to driving or parking vehicles on parks or beaches. The bylaw is difficult to enforce as staff do not have the power to stop vehicles and cannot easily get driver's details. While individuals details can be requested, there is no recourse should an individual refuse, or give false details.
192. Council staff cannot respond immediately to complaints of this nature. Often the perpetrators have left by the time staff arrive.

Are there any alternative options to improve the effectiveness of the existing bylaw clause?

193. Yes. The bylaw clause can be made more certain (definitive, meaningful, reasonable, validatable, enforceable). Any amended bylaw clause should include consideration of:
- ensuring emergency access to all public places
 - clarifying where the behaviour applies to council controlled public places or Auckland Transport controlled public places
 - better alignment with other obstruction clauses in the bylaw and section 22 of the Summary Offences Act 1081
 - where certain behaviours should be prohibited to avoid the potential for obstructions or mis-use of public places
 - processes and guidelines in order to permit certain activities on a case by case basis.

Recommended option

194. Staff recommend that the Bylaw clauses in relation to vehicles on parks or beaches be amended.
195. Vehicle use on parks or beaches remains a concern to the public and council staff. A bylaw provides a mechanism to clearly state the behavioural expectations and to request compliance when behaviour does not meet these expectations. A number of suggestions have been made to strengthen the bylaw.

Behaviour 17: Possessing or using a weapon

What is the existing bylaw clause?

196. Clause 9 states:

- (5) In addition to any other control that applies to a public place, a person must not
- (k) possess or use any weapon, trap or instrument of a dangerous nature on a park.

Section 155(1) Local Government Act determination (appropriateness)

Is there evidence that the matters contained in the existing bylaw clause is still a problem?

197. No. Possessing or using a weapon of a dangerous nature in a park did not come up as a significant issue through engagement and research. There were no reported incidents where this bylaw clause has been used.

Are there public perceptions that the matters contained in the existing bylaw clause is still a problem?

198. Yes. The quantitative survey data identified that while only six per cent of respondents had seen a member of the public using an unauthorised animal trap in a park in the last 12 months, this behaviour elicited a nett nuisance of 92 per cent. The most common reaction, held by 42 per cent of respondents, was one of significant frustration or anger.

Are there alternative regulatory or non-regulatory options available?

199. Possession or use any weapon, trap or instrument of a dangerous nature generally is covered under existing criminal legislation:

- the Crimes Act 1961 section 202 regarding setting traps, and section 202A regarding possession of offensive weapons⁴ or disabling substances
- the Summary Offences Act 1981 section 13 regarding things endangering public safety, and section 14 regarding the possession of knives
- the Animal Welfare Act 1999 section 34 regarding restrictions on use of traps and devices to kill, manage, entrap, capture, entangle, restrain, or capturing, entangling, restraining or immobilising an animal, and section 36 regarding obligations relating to traps.

⁴

202A Possession of offensive weapons or disabling substances

- (1) In subsection (4)(a) offensive weapon means any article made or altered for use for causing bodily injury, or intended by the person having it with him or her for such use.
- (2) In subsection (4)(b) offensive weapon means any article capable of being used for causing bodily injury.

Is there any regulatory gap that a bylaw could fill?

200. Yes. None of the regulatory options generally prohibits the behaviour in a public place; they either manage how the behaviour is being carried out (e.g. with reckless disregard for the safety of others), or the reason for the behaviour (e.g. if a person has a reasonable excuse).
201. Given the significant public safety and nuisance risk associated with the behaviour, the prohibition is warranted.

Section 155(2)(b) and (3) Local Government Act determination (Bill of Rights Act 1990)

Does the existing bylaw clause give rise to implications under the New Zealand Bill of Rights Act 1990?

202. No. The bylaw does not give rise to implications under the New Zealand Bill of Rights Act 1990. It does not restrict the freedom of movement of a person in a public place only the activities they may undertake.

Section 155(2)(a) Local Government Act determination (bylaw form)

Is the existing bylaw clause effective in addressing the problem?

203. Yes. The bylaw is effective insofar as it sets clearer behavioural expectations than the Crimes Act 1961, the Summary Offences Act 1981 and the Animal Welfare Act 1999 in that the behaviour is clearly prohibited in public places.

Are there any options to strengthen the existing bylaw clause?

204. Yes. The bylaw could be strengthened to provide further clarity as to what is covered. A further consideration includes better alignment with the alternative regulatory options.

Recommended option

205. Staff recommend that the bylaw clause about weapons be amended.
206. The public perception is that this behaviour remains of significant concern. A prohibition on this behaviour is warranted given the significant public safety risks associated with it.

Behaviour 18: Cleaning or leaving fish or fish offal on a beach

What is the existing bylaw clause?

207. Clause 9 states:

(5) in addition to any other control that applies to a public place, a person must not:

(p) clean or leave any fish or fish offal on a beach.

Section 155(1) Local Government Act determination (appropriateness)

Is there evidence that the matters contained in the existing bylaw clause are still a problem?

208. Yes. There is sufficient evidence that cleaning or leaving fish or fish offal on a beach is still an issue. This behaviour occasionally occurs and staff are required to respond. Complaints also relate to the depositing of fish offal in or next to public bins on the beach.

209. Further, the quantitative survey data identified that 23 per cent of respondents, almost a quarter, had seen or experienced this behaviour in the past 12 months.

Are there alternative regulatory or non-regulatory options available?

210. Yes. This behaviour could be managed under the Litter Act 1979. Council staff are warranted officers under the Act, and therefore have the power to issue infringement notices. This is an immediate and effective enforcement tool, more efficient in deterring behaviour than the threat of prosecution.

211. Clear signage and public education may also be useful tools in managing this behaviour.

212. Staff have suggest that, where complaints relate to fish offal being deposited in or next to public bins, the bins could be removed. The intent of this suggestion is to encourage people to take the fish or fish offal home or elsewhere for disposal.

Is there a regulatory gap that a bylaw would fill?

213. No. Leaving fish or fish offal is more effectively dealt with under the Litter Act 1979 as infringement notices have an immediate deterrent effect. The bylaw already contains general clauses regarding nuisance behaviour in public places which can be applied in relation to cleaning fish on a beach.

Recommended option

214. Staff recommend that the bylaw clause be repealed. The regulation and control of this behaviour is more effectively addressed under the Litter Act 1979 and existing bylaw controls regarding nuisance behaviour.

Behaviour 19: Interfering with safety or lifesaving equipment

What is the existing bylaw clause?

215. Clause 9 states:

- (5) In addition to any other control that applies to a public place, a person must not:
 - (q) except in the case of an emergency, or with the prior written approval of the council use or interfere with any lifesaving equipment or warning device or notice on a beach

Section 155(1) Local Government Act determination (appropriateness)

Is there evidence that the matters contained in the existing bylaw clause are still a problem?

216. No. There is insufficient evidence that interference with lifesaving and safety equipment is still an issue. The findings show that there have been no reported incidents.

Are there public perceptions that the matters contained in the existing bylaw clause are still a problem?

217. Yes. There is sufficient concern that interference with lifesaving and safety equipment is still an issue.
218. The quantitative research found that 95 per cent of respondents surveyed felt that interference with lifesaving and safety equipment was a nuisance or safety issue. Thirty-six per cent of respondents would feel fearful or felt that it is a threat to safety. Compliance staff favoured retaining the bylaw clause due to the serious threat to public safety that could result from this behaviour.

Are there alternative regulatory or non-regulatory options available?

219. No. The findings did not identify any alternative regulatory or non-regulatory options.

Section 155(2(b) and (3) Local Government Act determination (Bill of Rights Act 1990)

Does the existing bylaw clause give rise to implications under the New Zealand Bill of Rights Act 1990?

220. No. The bylaw does not give rise to implications under the New Zealand Bill of Rights Act 1990.

Section 155(2)(a) Local Government Act determination (bylaw form)

Is the existing bylaw clause effective in addressing the problem?

221. It is difficult to assess whether the existing bylaw clause is effective as there are no recorded incidents of interfering with lifesaving or safety equipment. However, in the event that an incident occurred, the ability to take enforcement action under the bylaw is important given the public safety risk and the absence of any other regulatory tools.

Are there any options to strengthen the existing bylaw clause?

222. No options to strengthen the existing bylaw clause specifically have been identified. General commentary as to bylaw form and ease of understanding are applicable.

Recommended option

223. Staff recommend that the bylaw clause prohibiting the use or interference with any lifesaving equipment or warning device or notice on a beach be retained.

224. Staff consider that while there have been no reported incidents, there is a sufficient safety concern to justify the retention of the bylaw. This conclusion is strengthened by the absence of any regulatory or non-regulatory alternatives.

Behaviour 20: Other additional controls for parks and beaches

What is the existing bylaw clause?

225. Sub-parts of Clause 9 states:

Additional controls for parks and beaches

- (5) In addition to any other control that applies to a public place, a person must not:
- (g) engage in any activity on a park that is prohibited or restricted by a parks management plan;
 - (h) enter or remain on a park for the purpose of carrying out any activity for which approval from the council is required under a parks management plan or other regulation without that approval;
 - (i) leave any gate on a park in a different position from that which that person finds it. Gates found open must be left open and gates found closed must be left closed;
 - (l) remove, harm or kill any animal or release or lose control of any animal under that person's control.

Section 155(1) Local Government Act determination (appropriateness)

Is there evidence that the matters contained in the existing bylaw clause are still a problem?

226. No. The findings did not identify any of these behaviours as being of particular concern. This finding is supplemented by the lack of council complaint data in relation to these behaviours.

Are there public perceptions that the matters contained in the existing bylaw clause are still a problem?

227. Yes. Operational staff support the retention of these clauses even though there is no specific evidence to support this.

228. A number of local boards identified these behaviours as being of concern in a general sense, however did not elaborate further.

Are there alternative regulatory or non-regulatory options available?

229. Yes. Parks Management Plans will address subclauses (g), (h), and (i) and the Animal Management Bylaw 2015 may address part of subclause (l).

Is there any regulatory gap that a bylaw would fill?

230. These bylaw clauses may provide a further regulatory mechanism for operational staff to enforce sections of the Parks Management Plans if no other mechanism is available.

Section 155(2)(b) and (3) Local Government Act determination (Bill of Rights Act 1990)

Does the existing bylaw clause give rise to implications under the New Zealand Bill of Rights Act 1990?

231. Yes. The bylaw clause may give rise to implications under the New Zealand Bill of Rights Act 1990 in terms of the freedom of expression (section 14) and freedom of movement (section 18) depending on the nature of the activities prohibited or restricted by a parks management plan.

232. On the face of it, this is a reasonable limitation on people's rights and freedoms and therefore not inconsistent with the New Zealand Bill of Rights Act 1990. This is because it would be reasonable to limit the activities carried out at parks and beaches for reasons such as safety, prevention of damage or nuisance. However, guidelines on the types of activities prohibited under a parks management plan would be helpful to ensure there are no unreasonable limitations.

Section 155(2)(a) Local Government Act determination (bylaw form)

Is the existing bylaw clause effective in addressing the problem?

233. The bylaw clauses provide a mechanism to seek compliance in relation to behavioural concerns as they arise.

Any options to strengthen the bylaw?

234. Yes. The bylaw clause can be made more appropriate (definitive, meaningful, and enforceable). Any amended bylaw clause should include consideration of:

- ensuring ease of understanding
- better alignment or guidelines relating to parks management plans
- better alignment with the Animal Management Bylaw 2015.

Recommended option

235. Staff recommend that the other additional controls for parks and beaches, as contained in clauses 9(5)(g), (h), (i) and (l), be amended and incorporated into clearer and more appropriate sections. Staff consider that the bylaw clause is a useful tool to address these behaviours as and when they arise.

Are there alternative regulatory or non-regulatory options available?

238. Yes. Council can use section 232 of the Local Government Act 2002 which makes it an offence to wilfully or maliciously damage local authority works or property.
239. The findings identified a number of non-regulatory options. However these are complementary, rather than alternatives, to regulatory options.

Is there any regulatory gap that a bylaw would fill?

240. Yes. A bylaw addresses the use of non-approved numbers and destruction or defacing of numbers on private property, which are not addressed in section 232 of the Local Government Act 2002.
241. A bylaw also provides the opportunity to state behavioural expectations more clearly than the Local Government Act 2002, and supports council staff to engage with the public and building owners on the importance of accurate and accessible street names and numbers (e.g. education, informal warnings).

Section 155(2)(b) and (3) Local Government Act determination (Bill of Rights Act 1990)

Does the existing bylaw clause give rise to implications under the New Zealand Bill of Rights Act 1990?

242. Yes. The bylaw clause may give rise to implications under the New Zealand Bill of Rights Act 1990 in terms of the freedom of expression (section 14). This is because of the potential to limit a person's ability to express opinions and impart information by painting, erecting or affixing a name on a road, a road name on a building, or a number.
243. This is considered to be a reasonable limitation on people's rights and freedoms and therefore not inconsistent with the New Zealand Bill of Rights Act 1990. This is because painting, erecting or affixing a road name may infringe the property rights of the council or other private property owners and potentially affect the ability of people to navigate, particularly people who rely on public transport.

Section 155(2)(a) Local Government Act determination (bylaw form)

Is the existing bylaw clause effective in addressing the problem?

244. Yes. The bylaw clause is effective insofar as it states a clear behavioural expectation and supports council staff to engage with people when problems arise, particularly in relation to building numbers.
245. The findings (page 144 and 148) identified that some stakeholders do not think the bylaw has been effective. However, this is due to a reactive approach to bylaw enforcement and not the bylaw itself.

Are there any options to strengthen the existing bylaw clause?

246. Yes. The bylaw clause can be made more certain (definitive, meaningful, reasonable, validatable, enforceable). Any amended bylaw clause should include consideration of:

- removing operational references
- the relationship of the bylaw clause with section 232 of the Local Government Act 2002.

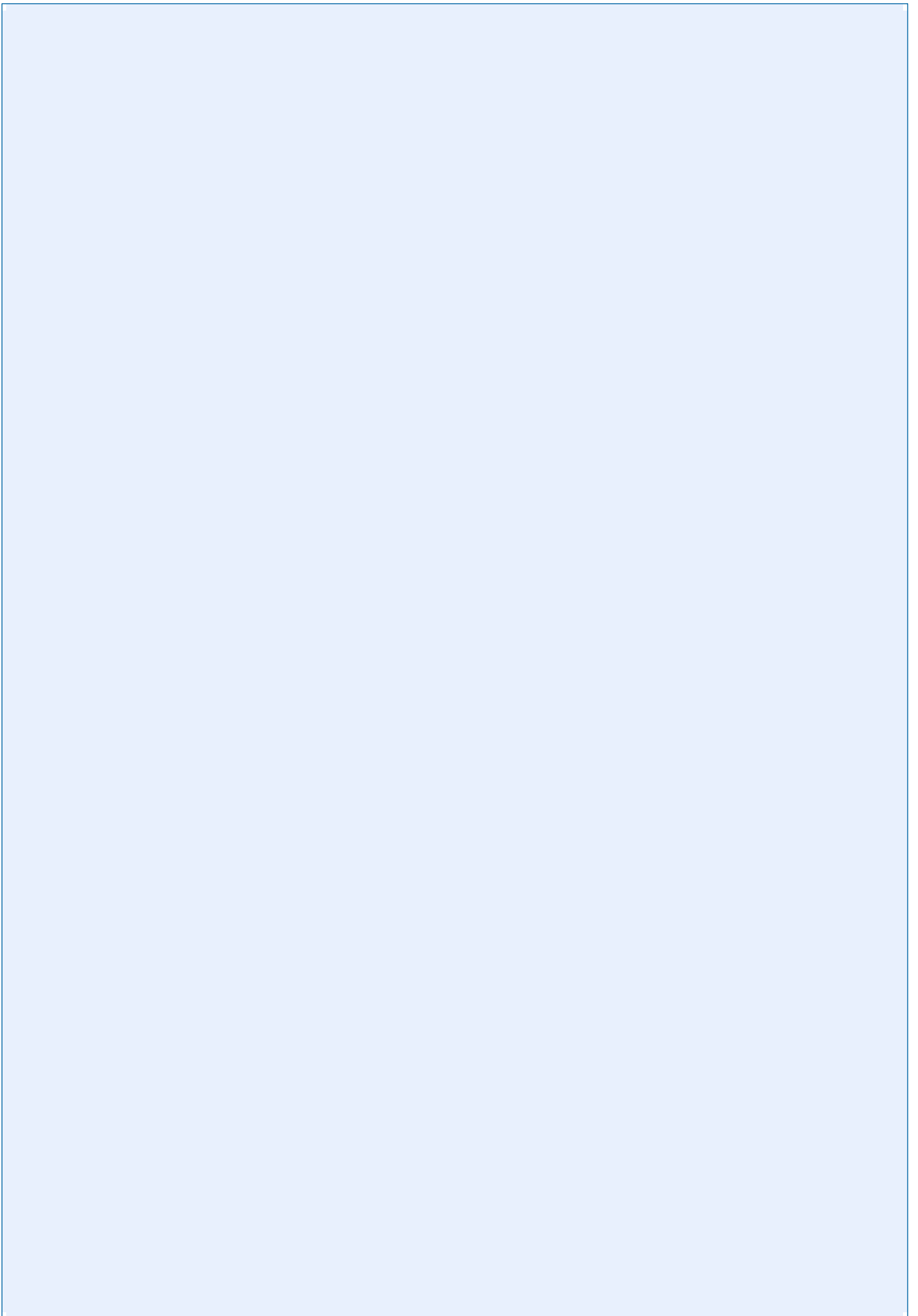
Recommended option

247. Staff recommend that the street naming and building numbering bylaw clauses be amended. A bylaw provides the opportunity to clearly state the behavioural expectations, and supports council staff to engage with individuals and communities, particularly in response to complaints about numbering. Changes have been suggested to strengthen the bylaw.

Opportunities to improve the general form of the bylaw

248. Through the review process, staff identified opportunities to improve the general form of the Bylaw. These improvements include:

- amending the Bylaw so it can be communicated easier. Possible opportunities to achieve this include dividing the Bylaw into smaller issues-based bylaws, changing the structure to put the substantive content first, simplifying the language, and greater use of visuals.
- amending the Bylaw to reflect a strict liability offence where appropriate. This may improve future opportunities to issue infringement notices for certain behaviours. Amending the Bylaw does not mean the council will be able to issue infringement notices. Central government must first make the necessary regulations under the Local Government Act 2002. To date central government has not made any such regulations.
- amending the Bylaw where appropriate, so it applies to only council controlled public places rather than all public places (including those privately owned).
- amending the Bylaw to more clearly manage behaviours on land controlled by Auckland Council and not Auckland Transport.



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