

# **Amendment of the Auckland Transport Election Signs Bylaw 2013 and its impact on local parks**

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## **Purpose**

1. The purpose of this report is to:
  - update the Waitemata Local Board on the changes to the Auckland Transport Election Signs Bylaw
  - propose a nine week time restriction on public election sign sites.

## **Executive summary**

2. On 1 August 2017 the Auckland Transport Board amended the Auckland Transport Election Signs Bylaw 2013 (“the Bylaw”) which removed the nine week time restriction on the display of election signs. This change came about due to concerns that the time restrictions may limit the right to freedom of expression in the New Zealand Bill of Rights Act 1990 (“BoRA”).
3. Due to the Bylaw amendment, public sites, including those in local parks and reserves, can now be used for election signs for longer than nine weeks. Signs must relate to a specific election, and must be removed prior to the day of the election. However, there is no limit on the length of time that they can be erected prior to the election.
4. Under section 14 (freedom of expression) of the BoRA everyone has the right to freedom of expression. Under section 5 (justified limitations) of the BoRA the rights and freedoms contained in the Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
5. Local boards must balance the need to provide adequate advertising locations to allow the democratic process to run smoothly, while ensuring that parks and reserves are not overly encumbered with election signage.
6. Election signs restrict the public use of parks, have an impact on amenity and create potential safety issues. Increasing the amount of time that election signs can be erected for will lead to additional compliance and maintenance costs.
7. Staff recommend that local boards limit the time period for election signs on parks and reserves to a nine week period. This option would still provide for election signs in parks and reserves and meet community expectations. These changes would apply to the upcoming by-elections in February 2018 and any future elections, unless the decision is revisited.
8. A nine week period is also consistent with the Electoral Act 1993, which provides that no limitation contained in a bylaw restricts election advertising for a period of nine weeks prior to a general election. This legislation contemplates that local authorities may seek to limit the display of election signs, but provides an override for a nine week period. Further, a nine week restriction for public sites has been in place in Auckland since the bylaw was made in 2013, and therefore continuation of this restriction is in line with community expectations. The complaint to the Minister of Transport in 2016 concerned private sites, which are not affected by the proposal to reintroduce a time restriction on public sites.

## **Recommendations**

That the Waitemata Local Board:

- a) Amend landowner approvals for election signs to provide a nine week time restriction on local parks and reserves identified in the List of Election Sign Sites

- b) Request that Auckland Transport's Traffic Control Committee provide a nine week time restriction for election signs on road reserve to provide a consistency for public sites across Auckland
- c) Request that Auckland Transport's Traffic Control Committee consider updating their List of Election Sign Sites to reflect these time restrictions in accordance with clause 6 of the Election Signs Bylaw 2013.

## **Comments**

### **Background**

- 9. On 1 August 2017 the Auckland Transport Board amended the Auckland Transport Election Signs Bylaw 2013 ("the Bylaw"). This amendment, among other things, removed the nine week time restriction on the display of election signs.
- 10. During the 2016 local body election, a private citizen requested the Minister of Transport to disallow the Bylaw under the provisions of the Land Transport Act 1998. This was due to the time restrictions on the display of election signs, the Bylaw breached the right to freedom of expression in the New Zealand Bill of Rights Act 1990 ("BoRA"). The Minister took no action at the time, but required Auckland Transport to review the time restriction in 2017.
- 11. Prior to the amendment, Auckland Transport consulted with the public and stakeholders. Of the 51 submissions received, 40 disagreed with the proposed removal of the time restriction. They raised concerns over visual pollution issues (loss of amenity if signs remained longer than a nine-week period) and increased safety risk associated with the lack of maintenance and the temporary nature of such signage and supporting structures.
- 12. Auckland Transport specifies which public sites are suitable for the display of election signs. The report to the Auckland Transport Board (1 August 2017) concluded that time restrictions could be imposed through this process (by only permitting public sites to be used for limited periods of time). This was thought sufficient to address concerns raised by submitters on this issue. Auckland Transport will be seeking feedback from local boards on signage sites prior to the 2019 local body elections. The Auckland Transport website provides a list of the current election sign sites (<https://at.govt.nz/about-us/bylaws/election-signs-bylaw/#v>).
- 13. Local Boards have the jurisdiction of local parks and reserves. Prior to the 2016 local body elections, Auckland Transport sought feedback from local boards about the use of local parks and reserves for the use of temporary election signs. Auckland Transport updated the List of Election Sign Sites (located on the Auckland Transport website) following consideration of local board feedback. Due to the Bylaw amendment, these sites, including those in local reserves, can now be used for election signs for periods longer than nine weeks, and this needs review.

### **Existing issues caused by election signs**

- 14. During the run up to the 2017 general election (1 July 2017 to 29 Sep 2017), council received 131 complaints about election signs. Of those complaints received 63 were about signs being placed in the wrong location, 20 were about oversized signs, 17 raised maintenance issues and 11 complaints were about early placement. There were also a small number of complaints about signs being erected on private property without permission, multiple signs being located on one site and safety hazards. Twenty percent of the complaints were associated with signs on parks and reserves. Community Facilities noted that existing issues with election signs relate to broken signs, which are often abandoned and become an eyesore or hazard.
- 15. Council staff anticipate that if election signs are erected for a period longer than nine weeks, there will be additional issues with amenity and safety. Safety concerns include risks associated with signs collapsing or blowing down and broken hoardings creating hazards like sharp edges.

16. There will also be additional complaints and increased council costs associated with compliance and park maintenance.

### **Freedom of expression**

17. The following analysis of considerations under BoRA has been prepared by council's Legal and Risk Department.
18. Under section 14 (freedom of expression) of the BoRA everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form. Restricting the time period that parties and candidates for election can erect signs promoting their election campaigns restricts the freedom of expression.
19. Under section 5 (justified limitations) of the BoRA the rights and freedoms contained in the Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
20. The section 5 inquiry has been summarised in a leading Supreme Court case (*R v Hansen* [2007] NZSC 7) as follows:
- (a) does the limiting measure serve a purpose sufficiently important to justify some limitation of the right or freedom?
  - (b) If so, then:
    - (i) is the limit rationally connected with the objective?
    - (ii) does the limit impair the right or freedom no more than is reasonably necessary for sufficient achievement of the objective?
    - (iii) is the limit in due proportion to the importance of the objective?
21. In considering the approach to determining whether a limiting measure impairs a right "no more than is reasonably necessary", the Court of Appeal in *Ministry of Health v Atkinson* [2012] 3 NZLR 456 endorsed the following approach from a Canadian case:
- "The law must be carefully tailored so that rights are impaired no more than necessary. The tailoring process seldom admits of perfection and the courts must accord some leeway to the legislator. If the law falls within a range of reasonable alternatives, the courts will not find it overbroad merely because they can conceive of an alternative which might better tailor objective to infringement. On the other hand, if the government fails to explain why a significantly less intrusive and equally effective measure was not chosen, the law may fail."
22. The Court of Appeal agreed that if there is an alternative option that will have less impact, it does not follow that the option adopted is necessarily outside the range of reasonable alternatives.

#### *Purpose of restriction*

23. The purposes of the proposed time restriction on public sites are set out above and can be summarised as:
- minimising the risk to public safety (e.g. signs collapsing or blowing down, broken hoardings creating hazards like sharp edges)
  - allowing the public to have access and use of public reserves with minimal disruption
  - maintaining visual amenity in public places
  - limiting the amount of public expenditure that must be spent on compliance monitoring and enforcement, and the maintenance of parks and reserves
24. These are legitimate concerns that justify some limitation on the freedom of expression.

#### *Connection with objective*

25. The proposed time restrictions are rationally connected with the achievement of these purposes. Limiting the amount of time that an election sign may be displayed (and therefore

limiting expression on such signs) is intended to promote and protect public safety and/or amenity, protect access to public parks and reserves, and minimise expenditure on compliance and maintenance.

*Restriction no more than reasonably necessary*

26. The proposed nine week restriction is a reasonable limit on the freedom of expression for signs in public places. The restriction applies only to signs on the designated public sites. Elections signs may be displayed without time restriction on any private property (including commercial billboards and poster board sites). Further, the election signs to which the restriction applies are located in public places, where there is no general right to have the structure in any event - the bylaw therefore effectively authorises the sign (and the expression) when it would not otherwise be allowed.
27. Election signs are only one means of advertising a candidate or party in an election. Other options open to candidates include the internet (e.g. social media advertising), radio or television advertising, pamphlets, letterbox drops, public meetings, and advertising on vehicles.
28. A nine week period is also consistent with the Electoral Act 1993, which provides that no limitation contained in a bylaw restricts election advertising for a period of nine weeks prior to a general election. This legislation contemplates that local authorities may seek to limit the display of election signs, but provides an override for a nine week period. Further, a nine week restriction for public sites has been in place in Auckland since the bylaw was made in 2013, and therefore continuation of this restriction is in line with community expectations. The complaint to the Minister of Transport in 2016 concerned private sites, which are not affected by the proposal to reintroduce a time restriction on public sites.
29. Given the wide range of advertising and promotional opportunities open to candidates, the proposed restriction on public parks and reserves does not restrict the freedom of expression more than reasonably necessary.

*Proportionality*

30. Overall, the proposed time restriction is not considered to be a disproportionate limit on freedom of expression, given the importance of the objectives. Ensuring the public safety of park users is a matter of very high importance, and there is also a high amenity value in regulating the proliferation of election signage that occurs prior to every election. A reasonably high level of interference with freedom of expression might therefore be justifiable. In fact, however, the time restriction involves only a reasonably modest limit on freedom of expression. It is a measured response, far from being a blanket ban, and candidates can still promote or otherwise express themselves using other means. The proposed restriction is consistent with community expectations and the Electoral Act, and many other councils around New Zealand similarly restrict election signage, suggesting the proposal is not out of step with what is considered reasonable regulation of election signs that are in or visible from public places.
31. The proposed time restriction is therefore not considered to be inconsistent with the BoRA. Such limits as there are on freedom of expression are reasonable and "can be demonstrably justified in a free and democratic society", in terms of section 5 of that Act.

**Options**

32. Local boards have the following options available to them, which are discussed in more detail below:
  - Continue without a time limit on public election signs
  - Amend landowner approvals to limit the time period to nine weeks prior to an election
  - Amend landowner approvals to limit the time period of shorter or longer than nine weeks
  - Revoke landowner approval for election signs on parks and reserves.

33. The pros and cons of each approach are provided in Table 1.

**Option 1 - Continue without a time limit on public election signs**

34. Under the do nothing option, local boards would continue to allow use of the parks and reserves as provided for in the List of Election Sign Sites. There would be no time limit on how long the signs could remain on parks and reserves. Staff do not recommend this option.

**Option 2 - Limit time period to nine weeks on parks and reserves**

35. Under this option, election signs on parks and reserves would be limited to a time period of nine weeks before the election date. This would be consistent with the timeframes that local boards agreed to when Auckland Transport sought feedback on the sites in the List of Election Sign Sites. It is also consistent with the time limitations imposed during the general elections. This option would still provide for election signs in parks and reserves and meet community expectations (as the nine week time period has been past practice).

36. If this option was selected, local boards would need to request that Auckland Transport to resolve to update the list sites that are suitable for the display of election signs under clause 6 of the Bylaw.

37. Staff recommend that the Local Board adopt this option.

**Option 3 - Amend landowner approvals to limit the time period of shorter or longer than nine weeks**

38. Under this option election signs on parks and reserves would be limited to a time period, with the length determined by the local board. The key disadvantage of this proposal is that if different sites have different time limits, this could lead to confusion for candidates and the public and lead to inadvertent non-compliance, therefore it is not recommended

39. As with option two, local boards would need to instruct Auckland Transport to resolve to update the list sites that are suitable for the display of election signs under clause 6 of the Bylaw.

**Option 4 - Revoke landowner approval for election signs on parks and reserves**

40. Under this option, landowner approval for election signs on parks and reserves would be revoked. While this option would remove the impacts of election signs on parks and reserves, it would also reduce the available locations for election signs, therefore it is not recommended.

Table 1 – Pros and cons of options for election signs on parks and reserves

	<b>Pros</b>	<b>Cons</b>
Option 1 – Continue without a time limit on public election signs	<ul style="list-style-type: none"> <li>• Consistent administration of the Bylaw across local boards</li> <li>• Opportunity to update time limits is provided when Auckland Transport undertakes a review of public election sign sites.</li> </ul>	<ul style="list-style-type: none"> <li>• Provides the opportunity for candidates to erect signs at any time, and retain them there until the day prior to the election</li> <li>• Potential to “privatise” parks and reserves where signage is located over extended periods of time</li> <li>• Potential to increase maintenance costs (e.g. mowing around signage)</li> <li>• Potential to increase the compliance costs of administering signage under the Bylaw</li> <li>• Increased risk to safety due to the temporary nature of signage and decay of signs over time</li> </ul>

		<ul style="list-style-type: none"> <li>Increased opportunity to progressively impact on amenity, where signs become scruffy from prolonged exposure to the elements</li> <li>Increased chance of public dissatisfaction and complaints.</li> </ul>
Option 2 - Limit time period to nine weeks on parks and reserves	<ul style="list-style-type: none"> <li>Continues the status quo (prior to the Bylaw change), and is consistent with community expectation</li> <li>Limits the adverse impacts of signage (visual amenity, safety)</li> <li>Limits the impact on maintenance contracts (e.g. mowing around signs)</li> <li>Limits safety and amenity concerns to a nine week timeframes</li> <li>Consistent with the nine week Electoral Act timeframe.</li> </ul>	<ul style="list-style-type: none"> <li>Small loss of amenity and use of parks and reserves due to election signage over a short period of time</li> <li>Needs Auckland Transport to also impose a nine week time limit on road reserve to ensure consistency.</li> </ul>
Option 3 - Amend landowner approvals to limit the time period of shorter or longer than nine weeks	<ul style="list-style-type: none"> <li>Limits the adverse impacts of signage (visual amenity, safety)</li> <li>Limits the impact on maintenance contracts (e.g. mowing around signs)</li> <li>Limits safety and amenity concerns to a short timeframe.</li> </ul>	<ul style="list-style-type: none"> <li>Inconsistent timeframe across local board areas would be confusing for candidates, the public and council staff</li> <li>If the timeframes are shortened significantly, there may be freedom of expression implications under the BoRA.</li> </ul>
Option 4 - Revoke landowner approval for election signs on parks and reserves	<ul style="list-style-type: none"> <li>Removes any effects caused by election signs on parks and reserves.</li> </ul>	<ul style="list-style-type: none"> <li>The number of public places for election signs is decreased across the Auckland region</li> <li>If there are very limited election sign locations, there may be freedom of expression implications under the BoRA.</li> </ul>

41. Option 2 is the preferred option because it continues to provide for election signs on parks and reserves and is consistent with what local boards have previously agreed when making previous decisions on placement of election signs.
42. The inclusion of a nine week time limit provides some consistency with the Electoral Act. During the nine weeks before polling day the display of election advertisements are not subject to prohibitions imposed in other enactments or in bylaws imposed by local authorities.
43. Staff also consider that a consistent approach to time limits across all local board areas is important. This is because it will provide consistent rules and messaging across the region for candidates, the public and council staff.

## **Consideration**

### **Local board views and implications**

44. This report seeks direction from the local board on whether or not to impose a timeframe on election signs in parks and reserves under the Auckland Transport Election Signs Bylaw 2013. All other local boards are also considering the report to ensure there is a consistent set of rules for election signs across Auckland.

### **Māori impact statement**

45. The impacts associated with election signs are considered to have a similar impact on Māori compared to the general population. There has been no specific engagement with iwi or mana whenua as part of this report.

## **Implementation**

46. Information provided to candidates for the upcoming February 2018 by-elections will include the location of public election sign sites and time restrictions agreed by local boards and Auckland Transport.
47. These changes would apply to the upcoming by-elections in February 2018 and any future elections, unless the decision is revisited.

## **Attachments**

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## **Signatories**

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