

# DRAFT- NOT COUNCIL POLICY

## BYLAW CLAUSE 7(1)(a) and 7(3) - Damaging, removing, disturbing, or interfering with council property

### STATUTORY OBLIGATIONS/POWERS

- Council has authority to make a bylaw about damage in public places to address public nuisance, public health and safety, offensive behaviour, and the use of public places under the Local Government Act 2002 (s145, s146), and the Health Act 1956 (s64).

### ISSUE IN 2013

- Damage to public property in any public place.
- Poor perceptions of public safety, potential for injury or damage to property.
- High maintenance cost to the council and Auckland Transport due to vandalism (\$1.4 million in 2011/12).
- Loss of facilities and services due to damage and reduced usability of public places.
- No further data available on scale or impact of the issue in 2013.

### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To manage the use of public places by prohibiting damage or misuse of structures, property and assets owned, managed or under the control of Auckland Council and Auckland Transport. To protect council property from interference or wilful damage and destruction.
- Auckland Council and Auckland Transport made bylaws to prohibit “damaging, removing, disturbing or interfering with any property” under their control unless approved. Network utility operators exempt.
- Powers to enforce bylaw include: court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage, or power to request name and address.
- Penalties for bylaw breaches include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council retroactively responds to complaints and repairs damage.

### ISSUE IN 2018

- Safety, damage, nuisance, and use of public places.
- There were 52 general damage complaints in 2016.
- 21 per cent of Aucklanders surveyed witnessed damage to council property. Of those surveyed, 97 per cent felt either annoyed, frustrated, angry, fearful or threatened. Intentional damage generated stronger emotional responses.

### OUTCOME SOUGHT IN 2018

- To ensure public safety, and minimise damage, nuisance, and misuse of public places from damage, removal, disturbance, or interference to council property.

### BYLAW EVALUATION

#### Still an issue requiring a bylaw response?

✓ Yes. There is still an issue that regulation can help address.

\* There are feasible regulatory alternatives to a bylaw for damage to council property:

- Police powers under the Summary Offences Act 1981 (s11) can address wilful (intentional or reckless) damage to any property. Penalties include a maximum three-month prison term or a \$2,000 court fine.
- Police powers under the Summary Offences Act 1981 (s11A) can address graffiti vandalism, tagging, defacing etc any property. Penalties include a maximum three-month prison term or a \$2,000 court fine.
- Police powers under the Summary Offences Act 1981 (s12) can address removal of any protective structure. Penalties include imprisonment not exceeding 3 months or a fine not exceeding \$2,000.
- Council can use powers under the Local Government Act 2002 (s232) to address any damage to council-controlled property or works. The penalty includes a maximum \$20,000 court fine.
- Council can use powers under the Resource Management Act 1991 (s9) for breaches of the unitary plan in relation to archaeological, heritage, and waahi tapu sites. Penalties include maximum two-year prison term, or fine not exceeding \$300,000, or fine not exceeding \$10,000 per day for a continuing offence.

Note: Police powers under the Crimes Act 1961 (s269) can address intentional or reckless damage to any property, if he or she knows that danger to life is likely. The penalty includes imprisonment not exceeding 10 years. This is not considered a feasible alternative.

**Bylaw effective / efficient?** \* No. The bylaw can be difficult to enforce. Identification of offenders is difficult unless there is a witness or the offender is caught in the act by officers, and there is no recourse for people refusing to give details to officers. There is also a need to ensure health and safety of staff.

<b>Bylaw clearly written?</b> ✘ No. The clause is long and hard to read.		
<b>Public aware of bylaw?</b> ✘ Likely to be low. There are no known public awareness initiatives.		
<b>Bylaw fit for the future?</b> ✔ While it could be used for damage, adequate powers already exist under the Local Government Act 2002 and the Summary Offences Act 1981.		
<b>Bill of Rights:</b> ✔ Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights 1990.		
<b>SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b> A bylaw is not the most appropriate way to address damage to council property now and in the future. Council already has adequate powers under Local Government Act 2002 and the Summary Offences Act 1981.		
<b>OPTIONS</b>		
<b>Option 1: Status quo – Retain bylaw</b> <ul style="list-style-type: none"> <li>Bylaw prohibits damage to council property, unless approved by council. Network utility operators exempt.</li> <li>Council responds to complaints and repairs damage.</li> <li>Police can use powers under Summary Offences Act 1981.</li> </ul>	<b>Option 2: Amend bylaw to improve certainty</b> <ul style="list-style-type: none"> <li>Bylaw more clearly prohibits damage to council property, unless approved by council. Network utility operators exempt.</li> <li>Council responds to complaints and repairs damage.</li> <li>Police can use powers under Summary Offences Act 1981.</li> </ul>	<b>Option 3: (RECOMMENDED) Revoke bylaw – Rely on existing legislation</b> <ul style="list-style-type: none"> <li>No bylaw.</li> <li>Use Local Government Act 2002 and Resource Management Act 1991 instead of bylaw.</li> <li>Council responds to complaints and repairs damage.</li> <li>Police can use powers under Summary Offences Act 1981.</li> </ul>
<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✘ Bylaw difficult to enforce. Difficult to identify offenders. Need to ensure health and safety of officers.</li> </ul>	<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✘ Bylaw difficult to enforce. Difficult to identify offenders. Need to ensure health and safety of officers.</li> <li>✔ Bylaw more certain. Bylaw drafted to be easier to read and understand.</li> </ul>	<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✘ Local Government Act 2002 difficult to enforce. Difficult to identify offenders. Need to ensure health and safety of officers.</li> <li>✔ Simplifies council’s regulations.</li> </ul>
<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>✔ No. Bylaw does not give rise to any unjustified regulations under the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>✔ No. Bylaw does not give rise to any unjustified regulations under the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>Not applicable.</li> </ul>
<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✘ While it could be used for damage, adequate powers already exist under the Local Government Act 2002 and the Summary Offences Act 1981.</li> </ul>	<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✔ While it could be used for damage and is more certain, adequate powers already exist under the Local Government Act 2002 and the Summary Offences Act 1981.</li> </ul>	<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✔ Uses existing powers under the Local Government Act 2002 and the Summary Offences Act 1981.</li> </ul>
<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>There are no specific implications for Māori.</li> </ul>	<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>There are no specific implications for Māori.</li> </ul>	<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>There are no specific implications for Māori.</li> </ul>
<b>SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b> Bylaw should be revoked (Option 3) to use existing legislative powers to address damage to council property. Taking this approach will still enable council to respond to complaints while simplifying council regulations.		

References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 18.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 7, 104, 105,106, 174.
- Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242(4) and Health Act 1956 s66, s128.

# DRAFT – NOT COUNCIL POLICY

## BYLAW CLAUSE 7(1)(b) and 7(3)– Polluting, damaging or obstructing a water or storm water course.

### STATUTORY OBLIGATIONS/POWERS

- Council has authority to make a bylaw about damage to public places to address nuisance, public health and safety, offensive behaviour, and the use of public spaces under the Local Government Act 2002 (s145, s146) and the Health Act 1956 (s64).

### ISSUES IN 2013

- Damage to public property in any public place.
- Poor perception of public safety, potential for injury or damage to property.
- High maintenance cost to the Council and Auckland Transport due to vandalism (\$1.4 million in 2011/12).
- No further data available on scale or impact of the issue in 2013.

### OUTCOMES SOUGHT AND BYLAW RESPONSE IN 2013

- To manage the use of public places by prohibiting damage or misuse of structures, property and assets owned, managed or under the control of Auckland Council and Auckland Transport. To protect public property from interference, wilful damage or destruction.
- Auckland Council and Auckland Transport made bylaws to prohibit damage to any public place through “polluting, damaging, placing any obstruction in, or interfering with any water course or stormwater drain or channel”. Network utility operators exempt.
- Powers to enforce bylaw include: court injunction, removal of works, seizure of property, powers of entry, cost recovery, or power to request name and address.
- Penalties for bylaw breaches include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council officers co-ordinate the remediation of pollution, damage or obstruction following a complaint.

### ISSUES IN 2018

- Safety, damage and nuisance. 599 drain covers stolen or missing in South Auckland in last five-years.
- 15 per cent of Aucklanders surveyed directly witnessed pollution or damage to a watercourse or stormwater drain. Of those surveyed, 98 per cent felt either annoyed, frustrated, angry, fearful or threatened. Respondents were more tolerant of accidental damage.
- Pollution or damage to waterways generated the most negative emotion of the 34 issues surveyed.

### OUTCOMES SOUGHT NOW (2018)

- To ensure public safety and minimise damage and nuisance from pollution, obstruction or interference with any watercourse, stormwater drain or channel.

### BYLAW EVALUATION

#### Is there still a problem requiring a bylaw response:

- ✓ Yes. There is still an issue that regulation can help to address.
- ✗ There are feasible regulatory alternatives to the Bylaw:
  - The Auckland Council Stormwater Bylaw 2015 already addresses pollution, damage or obstruction to a water course or stormwater drain related to a stormwater network, including open drains, watercourses, inlet structures, pipes and other conduits. **However, it is not exactly comparable and would require amendment to cover the matters contained in the Bylaw.**
  - Police powers under the Summary Offences Act 1981 (s11) address wilful (intentional or reckless) damage to any property. Penalties include a maximum 3-month prison term or maximum \$2,000 court fine.
  - Police powers under the Summary Offences Act 1981 (s12) address obstructions or removal of any protective structure in a public place. Penalties include a maximum 3-month prison term or maximum \$2,000 court fine.
  - Council powers under the Local Government Act 2002 (s232) address wilful, negligent or malicious damage, obstruction, interference with a water work, water race or drainage work under the control of council. Penalties include a maximum 3-year prison term or maximum \$20,000 court fine.

#### Bylaw effective/efficient?

- ✗ No. Bylaw difficult to enforce. Difficult to identify offenders unless there is a witness, or if offender is caught in the act. There is no recourse for people who refuse to give details to officers.
- ✗ Bylaw overlaps provisions in the Auckland Council Stormwater Bylaw 2015.

<b>Bylaw clearly written?</b>		
<ul style="list-style-type: none"> <li>✗ No. Bylaw overlaps provisions in the Auckland Council Stormwater Bylaw 2015.</li> <li>✗ Bylaw is confusing as under damage it also refers to polluting, obstruction and interfering.</li> </ul>		
<b>Public awareness of bylaw?</b> ✗ Likely to be low. There are no known public awareness initiatives.		
<b>Bylaw fit for the future?</b> ✗ No. Overlaps with provisions in the Auckland Council Stormwater Bylaw 2015.		
<b>Bill of Rights:</b> ✓ Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights 1990.		
<b>SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b>		
A bylaw is an appropriate way to address public safety and minimise damage and nuisance from pollution, obstruction in or interference with any watercourse, stormwater drain or channel. The Bylaw is not the most appropriate form of bylaw because it overlaps with provisions of the Stormwater Bylaw 2015. The Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990		
<b>OPTIONS</b>		
<b>Option 1: Status quo – Retain bylaw</b> <ul style="list-style-type: none"> <li>• Bylaw prohibits damage to watercourses, stormwater drains or channels, unless approved by council. Network utility operators exempt.</li> <li>• Council responds to complaints and repairs damage.</li> </ul>	<b>Option 2: (RECOMMENDED) Amend bylaw to remove overlap with Stormwater Bylaw</b> <ul style="list-style-type: none"> <li>• Stormwater Bylaw amended to prohibit damage to watercourses, stormwater drains or channels, unless approved by council. Network utility operators exempt.</li> <li>• Equivalent provisions in Bylaw repealed.</li> <li>• Council responds to complaints and repairs damage.</li> </ul>	<b>Option 3: Revoke bylaw and use existing regulation</b> <ul style="list-style-type: none"> <li>• Council uses Stormwater Bylaw 2015 and Local Government Act 2002 for damage to council property.</li> <li>• Council responds to complaints and repairs damage.</li> <li>• Police can use powers under Summary Offences Act 1981 for damage to any property, and obstruction and removal of protective structures in public places.</li> </ul>
<b>Effectiveness/Efficiency:</b> <ul style="list-style-type: none"> <li>✗ Bylaw difficult to enforce. Difficult to identify offenders. Need to ensure health and safety of officers.</li> <li>✗ Bylaw duplicates provisions in the Stormwater Bylaw 2015.</li> </ul>	<b>Effectiveness/Efficiency:</b> <ul style="list-style-type: none"> <li>✗ Bylaw difficult to enforce. Difficult to identify offenders. Need to ensure health and safety of officers.</li> <li>✓ Streamlines council’s regulations.</li> </ul>	<b>Effectiveness/Efficiency:</b> <ul style="list-style-type: none"> <li>✗ Regulations difficult to enforce. Difficult to identify offenders. Regulations are not exactly comparable. There will be technical gaps.</li> </ul>
<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>✓ Does not give rise to any unjustified implications under New Zealand Bill of Rights 1990.</li> </ul>	<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>✓ Does not give rise to any unjustified implications under New Zealand Bill of Rights 1990.</li> </ul>	<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>Not applicable.</li> </ul>
<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✗ Overlaps with provisions in the Stormwater Bylaw 2015.</li> </ul>	<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✓ All issues associated with stormwater contained in the Stormwater Bylaw 2015.</li> </ul>	<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✗ Regulations are not exactly comparable. There will be technical gaps.</li> </ul>
<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>✓ Implications for Māori role as Kaitiaki over the environment.</li> </ul>	<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>✓ Implications for Māori role as Kaitiaki over the environment.</li> </ul>	<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>✓ There are no specific implications.</li> </ul>
<b>SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b>		
The bylaw should be amended (Option 2) to amend the Stormwater Bylaw 2015 to address public safety and minimise damage and nuisance from pollution, obstruction in or interference with any watercourse, stormwater drain or channel. Taking this approach will still enable council to respond to complaints while streamlining regulations.		

References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 18.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 7, 102, 107, 111.
- Catch-pit safety review 2017 by Auckland Council and Auckland Transport.
- Legislative requirements: Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242(4) and Health Act 1956 s66, s128.

# DRAFT – NOT COUNCIL POLICY

## BYLAW CLAUSE 7(1)(c) and 7(3) - Prohibits damage by placing a structure, opening a drain or disturbing a surface.

### STATUTORY OBLIGATIONS/POWERS

- Council may make a bylaw about damage to public places to address nuisance, public health and safety, offensive behaviour, and the use of public spaces under the Local Government Act 2002 (s145, s146), and the Health Act 1956 (s64).

### ISSUES IN 2013

- Damage to public property in any public place.
- Poor perception of public safety, potential for injury or damage to property.
- High maintenance cost to the Council and Auckland Transport due to vandalism (\$1.4 million in 2011/12).
- No further data available on scale or impact of the issue in 2013.

### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To manage the use of public places by prohibiting damage or misuse of structures, property and assets owned, managed or under the control of Auckland Council and Auckland Transport. To protect public property from interference, wilful damage or destruction.
- Auckland Council and Auckland Transport bylaws prohibit “placing a structure, opening a drain or disturbing a surface that is likely to be injurious to or cause a nuisance to any person or to cause damage to that public place”.
- Network utility operators exempt.
- Powers to enforce bylaw include: court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage, or power to request name and address.
- Penalties for bylaw breaches include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council responds to complaints and repairs damage.
- No specific complaints received in 2015 or 2016.

### ISSUES IN 2018

- Safety and damage.
- There were 52 complaints of damage to roads in 2016.
- 599 drain covers stolen or missing in South Auckland in the last five years.
- Neither the qualitative or quantitative research findings specifically address this issue.

### OUTCOME SOUGHT NOW (2018)

- To ensure public safety and minimise damage and nuisance to public places from placing a structure, opening a drain or disturbing a surface in a public place.

### BYLAW EVALUATION

#### Is there still a problem requiring a bylaw response:

- ✓ Yes, there is still an issue that regulation can help to address.
- ✗ There are feasible regulatory alternatives to the bylaw in relation to injury and damage. These alternatives are not exactly comparable to the Bylaw:
  - Council can use powers under the Local Government Act 2002 (s232) to address wilful, negligent or malicious damage, obstruction, interference with a drainage work or any works or property under council control. Penalties include imprisonment not exceeding 3 years or a fine not exceeding \$20,000 or both.
  - Police powers under the Summary Offences Act 1981 (s12) can address removal of any protective structure and (s11) can address wilful, intentional or reckless damage to any property. Penalties for both include imprisonment not exceeding 3 months or a fine not exceeding \$2,000.
  - Police powers under the Crimes Act 1961 (s269) can address intentional or reckless damage to any property, where danger to life is likely. The penalty includes imprisonment not exceeding 10 years.

#### Bylaw effective / efficient?

- ✗ Bylaw difficult to enforce due to difficulty identifying offenders unless there is a witness, or the offender is “caught in the act”. There is no recourse for people refusing to give details to officers. There is also a need to ensure health and safety of staff.

<b>Bylaw clearly written?</b> ✘ No. Bylaw lacks clarity. It is unclear whether it is about damage or safety and nuisance.		
<b>Public awareness of bylaw?</b> ✘ Likely to be low. There are no known public awareness initiatives.		
<b>Bylaw fit for the future?</b> ✘ No. Bylaw lacks clarity. The Local Government Act 2002, the Summary Offences Act 1981 and the Crimes Act 1961 address injury and damage.		
<b>Bill of Rights:</b> ✓ Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights 1990.		
<b>SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b> A bylaw is not the most appropriate way to address issues about placing a structure, opening a drain, or disturbing a surface in a public place. Adequate powers already exist under the Local Government Act 2002, Summary Offences Act 1981, and Crimes Act 1961.		
<b>OPTIONS</b>		
<b>Option 1: Status quo - Retain bylaw.</b>  <ul style="list-style-type: none"> <li>Bylaw prohibits damage to public places by placing a structure, opening a drain or disturbing a surface. Network utility operators exempt.</li> <li>Council responds to complaints and repairs damage.</li> </ul>	<b>Option 2: Amend bylaw to improve certainty</b>  <ul style="list-style-type: none"> <li>Bylaw prohibits damage to public places by placing a structure, opening a drain or disturbing a surface. Network utility operators exempt.</li> <li>Council responds to complaints and repairs damage.</li> </ul>	<b>Option 3: (RECOMMENDED) Revoke bylaw and rely on existing legislation</b>  <ul style="list-style-type: none"> <li>No bylaw.</li> <li>Council use powers under the Local Government Act 2002 to address damage.</li> <li>Council responds to complaints and repairs damage.</li> <li>Police use powers under the Summary Offences Act 1981 and the Crimes Act 1961 to address injury and damage.</li> </ul>
<b>Effectiveness/Efficiency:</b> <ul style="list-style-type: none"> <li>✘ Bylaw difficult to enforce. Difficult to identify offenders.</li> <li>✘ Bylaw not easy to read and understand.</li> </ul>	<b>Effectiveness/Efficiency:</b> <ul style="list-style-type: none"> <li>✘ Bylaw difficult to enforce. Difficult to identify offenders.</li> <li>✓ Bylaw drafted to better reflect the problem and be easier to read and understand.</li> </ul>	<b>Effectiveness/Efficiency:</b> <ul style="list-style-type: none"> <li>✘ Legislation difficult to enforce. Difficult to identify offenders.</li> <li>✘ Simplifies council's regulations.</li> <li>✘ Police unlikely to prioritise enforcement.</li> </ul>
<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>✓ Does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>✓ Does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of Rights implications:</b> Not applicable.
<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✘ Bylaw not easy to read and understand.</li> <li>✘ Duplicates existing regulations.</li> </ul>	<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✓ Bylaw drafted to better reflect the problem and be easier to read and understand.</li> <li>✘ Duplicates existing regulations.</li> </ul>	<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✘ Does not address placing a structure and disturbing a surface.</li> </ul>
<b>Māori impact:</b> <ul style="list-style-type: none"> <li>✘ No specific implications for Māori.</li> </ul>	<b>Māori impact:</b> <ul style="list-style-type: none"> <li>✘ No specific implications for Māori.</li> </ul>	<b>Māori impact:</b> <ul style="list-style-type: none"> <li>✘ No specific implications for Māori.</li> </ul>
<b>SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b> The bylaw should be revoked (Option 3) to rely on existing legislation for injury and damage from placing a structure, opening a drain or disturbing a surface in a public place. Taking this approach will still enable a response to complaints while simplifying council regulations.		

References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 18.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 7, 109, 116, 174.
- Legislative requirements: Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242(4) and Health Act 1956 s66, s128.

# DRAFT - NOT COUNCIL POLICY

## BYLAW CLAUSE 7(1)(d) and 7(3) - Prohibits depositing, moving or removing rock, shingle, sand, vegetation, or any material or artefact unless approved by council

### STATUTORY OBLIGATIONS/POWERS

- Council may make a bylaw about damage in public places to address public nuisance, public health and safety, offensive behaviour, and the use of public spaces under the Local Government Act 2002 (s145, s146), and the Health Act 1956 (s64).

### ISSUE IN 2013

- Damage in any public place caused by depositing, moving, or removing rock, shingle, sand, vegetation, or any material or artefact. Poor perceptions of public safety, reduced use of public places, nuisance.
- Potential for injury or damage to property, increased antisocial behaviour.
- High maintenance costs to the council and Auckland Transport due to vandalism (\$1.4 million in 2011/2012).
- No further data available on scale or impact of the issue in 2013.

### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To manage the use of public places by prohibiting damage or misuse of structures, property and assets owned, managed or under the control of Auckland Council and Auckland Transport. To protect council property from interference or wilful damage and destruction.
- Auckland Council and Auckland Transport made bylaws to prohibit “depositing, moving or removing rock, shingle, sand, vegetation, or any material or artefact” in a public place unless approved. Network utility operators exempt.
- Powers to enforce bylaw include: court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage, or power to request name and address.
- Penalties for bylaw breaches include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council retroactively responds to complaints and repairs damage.

### ISSUE IN 2018

- Safety, nuisance, and misuse of public places.
- There were 52 related damages complaints in 2016.
- Licensing and Regulatory Compliance identified several instances of depositing grass clippings or weeds in public places or leaving building materials such as wood in a public place adjacent to a building site.
- Of Aucklanders surveyed 18 per cent had seen someone damaging trees or removing plants from a public space, 20 per cent had seen someone dumping weeds in a public place and 22 per cent had seen someone removing natural materials such as sand or rocks from a public place.
- Of those surveyed, between 79 and 96 per cent felt annoyed, frustrated, angry, fearful or threatened. Intentional damage generated stronger emotional responses.

### OUTCOME SOUGHT IN 2018

- To ensure public safety, and to minimise nuisance, damage, and the misuse of public places from the depositing, moving or removing rock, shingle, sand, vegetation, or any material or artefact in a public place.

### BYLAW EVALUATION

#### Still an issue requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can help address.
- ✗ There are feasible regulatory alternatives in relation to the deposition of material:
  - Council can use powers under the Litter Act 1979 and the Solid Waste Bylaw 2012 to regulate the deposition of material. Penalties include a fine not exceeding \$5,000.
  - Police powers under the Summary Offences Act 1981 (s11) can address wilful (intentional or reckless) damage to any property. Penalties include a maximum three-month prison term or a \$2,000 court fine.
  - Council can use powers under the Local Government Act 2002 (s232) to address any damage to council-controlled property or works. Penalties include a maximum \$20,000 court fine.
- ✗ There are no feasible alternatives to a bylaw for moving or removing rock, shingle, sand, vegetation, or any material or artefact. This is more of a safety, nuisance and misuse of public places issue.

<p><b>Bylaw effective / efficient?</b></p> <ul style="list-style-type: none"> <li>✓ The Bylaw can still address issues related to regulatory provisions for moving or removing rock, sand, shingle or any material or artefact.</li> <li>✗ Bylaw difficult to enforce due to difficulties in identifying offenders unless there is a witness, or the offender is caught in the act. There is no recourse for people refusing to give details to officers.</li> </ul>		
<p><b>Bylaw clearly written?</b> ✗ No. Bylaw is not easy to read and understand. Bylaw overlaps with other clauses.</p>		
<p><b>Public aware of bylaw?</b> ✗ Likely to be low. There are no known public awareness initiatives.</p>		
<p><b>Bylaw fit for the future?</b> ✗ No. Bylaw lacks clarity and does not properly reflect the problem. Bylaw could be used for damage, but adequate powers exist under Local Government Act 2002, Litter Act 1979, Solid Waste Bylaw 2012 and Summary Offences Act 1981.</p>		
<p><b>Bill of Rights:</b> ✓ Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights 1990.</p>		
<p><b>SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b></p> <p>A bylaw is not the most appropriate way to address damage from depositing any material on a public place. Council already has adequate powers under the Litter Act 1979, Solid Waste Bylaw 2012, Local Government 2002 Act and Summary Offences Act 1981. A bylaw is the most appropriate way to address issues about moving or removing rock, shingle, sand, vegetation, or any material or artefact in a public place. The bylaw form is not the most appropriate form because it lacks clarity. The current bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</p>		
<p><b>OPTIONS</b></p>		
<p><b>Option 1: Status quo – Retain bylaw</b></p> <ul style="list-style-type: none"> <li>• Bylaw prohibits damage to public places from depositing, moving or removing rock, sand, shingle, vegetation or any material or artefact, unless approved by council. Network utility operators exempt.</li> <li>• Council responds to complaints and repairs damage.</li> </ul>	<p><b>Option 2: (RECOMMENDED) Amend bylaw to better reflect the problem and address regulatory gaps</b></p> <ul style="list-style-type: none"> <li>• Bylaw more clearly addresses safety, nuisance and misuse of public places from moving or removing rock, sand, shingle, vegetation or any material or artefact. Network utility operators exempt.</li> <li>• Council responds to complaints and repairs damage.</li> <li>• Use Litter Act 1979, Solid Waste Bylaw 2012, Local Government Act 2002 and Summary Offences Act 1981 to address damage.</li> </ul>	<p><b>Option 3: Revoke bylaw – Rely on existing regulation</b></p> <ul style="list-style-type: none"> <li>• No bylaw.</li> <li>• Use Litter Act 1979, Solid Waste Bylaw 2012, Local Government Act 2002 to address damage and deposition of materials.</li> <li>• Police can use powers under the Summary Offences Act 1981 to address damage.</li> <li>• Council responds to complaints and repairs damage.</li> </ul>
<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✗ Bylaw difficult to enforce. Difficult to identify offenders. Need to ensure health and safety of officers.</li> <li>✗ Bylaw not easy to read and understand.</li> <li>✗ Duplicates existing regulations in relation to depositing of material.</li> </ul>	<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✗ Bylaw difficult to enforce. Difficult to identify offenders. Need to ensure health and safety of officers.</li> <li>✓ Bylaw more certain. Bylaw drafted to better reflect the problem and be easier to read and understand.</li> <li>✓ Streamlines council’s regulations (does not duplicate any existing regulations).</li> </ul>	<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✗ Regulation difficult to enforce. Difficult to identify offenders. Need to ensure health and safety of officers.</li> <li>✗ Bylaw does not address moving or removing rock, sand, shingle, vegetation or any material or artefact.</li> <li>✓ Streamlines council’s regulations (does not duplicate any existing regulations).</li> </ul>
<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ No. Bylaw does not give rise to any unjustified regulations under the New Zealand Bill of Rights Act 1990.</li> </ul>	<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ No. Bylaw does not give rise to any unjustified regulations under the New Zealand Bill of Rights Act 1990.</li> </ul>	<p><b>Bill of Rights implications:</b></p> <p>Not applicable.</p>

<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✘ Bylaw not easy to read and understand.</li> <li>✘ Bylaw duplicates existing regulations in relation to depositing of material.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw more certain. Bylaw drafted to better reflect the problem and be easier to read and understand.</li> <li>✓ Streamlines council's regulations (does not duplicate any existing regulations).</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✘ Bylaw does not address moving or removing rock, sand, shingle, vegetation or any material or artefact.</li> </ul>
<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>✓ Implications to Māori role as Kaitiaki over the environment.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>✓ Implications to Māori role as Kaitiaki over the environment.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>✘ Implications to Māori role as Kaitiaki over the environment.</li> </ul>
<p><b>SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b>  The bylaw should be amended (Option 2) to rely on existing regulations for damages and more clearly address safety, nuisance and misuse of public places from moving or removing rock, sand, shingle, vegetation or any material or artefact. Taking this approach will better reflect the problem and address regulatory gaps.</p>		

References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 18.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 104, 105.
- Legislative requirements: Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242(4) and Health Act 1956 s66, s128.

# DRAFT- NOT COUNCIL POLICY

## BYLAW CLAUSE (7)(1)(e) and 7(2)- Removing, damaging, planting, sowing or scattering the seeds of, any tree, shrub or plant of any kind

### STATUTORY OBLIGATIONS/POWERS

- Council has authority to make a bylaw about damage in public places to address public nuisance, public health and safety, offensive behaviour, and the use of public places under the Local Government Act 2002 (s145, s146), and the Health Act 1956 (s64).

### ISSUE IN 2013

- Damage to trees, shrubs and plants in any public place. Poor perceptions of public safety, potential for injury or damage to property or persons. No further data available on scale or impact of the issue in 2013.

### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To manage the use of public places by prohibiting damage or misuse of structures, property and assets owned, managed or under the control of Auckland Council and Auckland Transport.
- Auckland Council and Auckland Transport made bylaws to prohibit “removing or damaging any tree, shrub or plant of any kind ... or planting, sowing, or scattering the seed of any tree, shrub, or plant” in a public place unless approved. Exemptions apply to any person maintaining the grass verge on any road adjacent to their premises.
- Powers to enforce bylaw include: court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage, or power to request name and address.
- Penalties for bylaw breaches include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council retroactively responds to complaints and repairs damage.

### ISSUE IN 2018

- Safety, damage, nuisance, and use of public places. This is low level issue and does occur on occasion.
- 18 per cent of Aucklanders surveyed witnessed damage or removal of trees or plants from a public place. Of those surveyed, 95 per cent felt either annoyed, frustrated, angry, fearful or threatened. Intentional, malicious, large scale, or repeated damage generated stronger emotional responses. Survey respondents placed high importance on protecting the environment from harm and the enjoyment of the community.

### OUTCOME SOUGHT IN 2018

- To ensure public safety, and minimise damage, nuisance, and misuse of public places from damaging, removing, planting, sowing or scattering of seeds, of any tree, shrub or plant on public places.

### BYLAW EVALUATION

#### Still an issue requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can help address.
- ✓ There are feasible alternatives to a bylaw about damage to trees, shrubs or plants:
  - Council can use powers under the Resource Management Act 1991 (s9) for breaches of the unitary plan in relation to trees in open space zones that contribute to cultural, amenity, landscape and ecological values, and vegetation. Penalties include imprisonment not exceeding 2 years, a fine not exceeding \$300,000, or a fine not exceeding \$10,000 per day for a continuing offence.
  - Council can use powers under the Local Government Act 2002 (s232) to address any damage to council-controlled property or works. Fine not exceeding \$20,000, imprisonment not exceeding 3 years, or both.
  - Police powers under the Summary Offences Act 1981 (s11) can address wilful (intentional or reckless) damage to any property. Penalties include imprisonment not exceeding 3 months, fine not exceeding \$2,000.
- \* There are no feasible alternatives to a bylaw for planting, sowing or scattering seeds. This is more of a safety, nuisance and use of public places issue.

**Bylaw effective / efficient?** \* No. Bylaw not necessarily a deterrent as damage sometimes occurs when a public place is deserted. The bylaw can be difficult to enforce. Identification of offenders is difficult unless there is a witness or the offender is caught in the act by officers. There is no recourse for people refusing to give details to officers. There is also a need to ensure health and safety of staff.

**Bylaw clearly written?** \* No. The bylaw clause is not easy to read.

**Public aware of bylaw?** \* Likely to be low. There are no known public awareness initiatives.

**Bylaw fit for the future?** \* No. Bylaw lacks clarity and does not properly reflect the problem. Bylaw could be used for damage, but adequate legislative powers already exist.

**Bill of Rights:** ✓ Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.

**Section 160(1) Local Government Act 2002 Recommendation:**

A bylaw is not the most appropriate way to address damage or removal of trees, shrubs or plants in a public place. Council already has adequate powers under the Local Government Act 2002, Resource Management Act 1991, and Summary Offences Act 1981. A bylaw is the most appropriate way to address planting, sowing or scattering of seeds in public places. The bylaw form is not the most appropriate form because it lacks clarity. The current bylaw does not give rise to any implications under the Bill of Rights Act 1990.

**OPTIONS**

<p><b>Option 1: Status quo – Retain bylaw</b></p> <ul style="list-style-type: none"> <li>• Bylaw prohibits damaging, removing, or planting, sowing or scattering of seeds of any trees, plants or shrubs in public places.</li> <li>• Council responds to complaints and repairs damage.</li> </ul>	<p><b>Option 2: (RECOMMENDED) Amend bylaw to properly reflect the problem and address regulatory gaps</b></p> <ul style="list-style-type: none"> <li>• For damage rely on Local Government Act 2002, and Summary Offences Act 1981.</li> <li>• Bylaw more clearly addresses safety, nuisance and misuse of public places from planting, sowing, or scattering of seeds.</li> <li>• Council responds to complaints and repairs damage.</li> </ul>	<p><b>Option 3: Revoke bylaw – Rely on existing regulation</b></p> <ul style="list-style-type: none"> <li>• No bylaw.</li> <li>• Council use Local Government Act 2002 and Resource Management Act 1991 to address damage.</li> <li>• Police can use powers under the Summary Offences Act 1981 to address damage.</li> <li>• Council responds to complaints and repairs damage.</li> </ul>
<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✗ Bylaw difficult to enforce. Difficult to identify offenders. Need to ensure health and safety of officers.</li> <li>✗ Bylaw not easy to read and understand.</li> <li>✗ Duplicates existing regulations in relation to damage.</li> </ul>	<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✗ Bylaw difficult to enforce. Difficult to identify offenders. Need to ensure health and safety of officers.</li> <li>✓ Bylaw more certain. Bylaw drafted to better reflect the problem and to be easier to read and understand.</li> <li>✓ Streamlines council regulations (does not duplicate any existing regulations).</li> </ul>	<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✗ Bylaw difficult to enforce. Difficult to identify offenders. Need to ensure health and safety of officers.</li> <li>✗ Does not address trees outside open space zones or which do not contribute to cultural, amenity, landscape or ecological values.</li> <li>✗ Does not address safety, nuisance and misuse of public places from planting, sowing, or scattering of seeds.</li> <li>✓ Streamlines council regulations.</li> </ul>
<p><b>Bill of Rights Implications:</b></p> <ul style="list-style-type: none"> <li>✓ No. Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</li> </ul>	<p><b>Bill of Rights Implications:</b></p> <ul style="list-style-type: none"> <li>✓ No. Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</li> </ul>	<p><b>Bill of Rights Implications:</b></p> <p>Not applicable.</p>
<p><b>Fit for the future:</b></p> <ul style="list-style-type: none"> <li>✗ Bylaw not easy to read and understand.</li> <li>✗ Duplicates existing regulations in relation to damage.</li> </ul>	<p><b>Fit for the future:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw more certain. Bylaw drafted to better reflect the problem and to be easier to read and understand.</li> <li>✓ Streamlines council regulations.</li> </ul>	<p><b>Fit for the future:</b></p> <ul style="list-style-type: none"> <li>• Does not address safety, nuisance and misuse of public places from planting, sowing, or scattering of seeds.</li> </ul>
<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>• Implications for Māori role as Kaitiaki over the environment.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>• Implications for Māori as Kaitiaki over the environment.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>• Implications for Māori as Kaitiaki over the environment.</li> </ul>

**Section 160(3) Local Government Act 2002 recommendation:**

Bylaw should be amended (Option 2) to rely on existing regulations for damages and more clearly address safety, nuisance and misuse of public places from planting, sowing, or scattering seeds. Taking this approach will better reflect the problem and address regulatory gaps.

References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 18.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 106, 115, 116, 117, 176.
- Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242(4) and Health Act 1956 s66, s128.

# DRAFT - NOT COUNCIL POLICY

**BYLAW CLAUSE: 8(1)(a) Prohibits obstructions caused by placing or leaving any material, object, thing or structure in a public place without prior written approval from the council**

## STATUTORY OBLIGATIONS/POWERS

- Council may make a bylaw about obstructions to address public nuisance, health, safety, offensive behaviour, or use of public places under the Local Government Act 2002 (s145, s146), and to address public health and nuisance under the Health Act 1956 (s64).

## ISSUE IN 2013

- Obstructions in public places.
- No further data available on scale or impact of issue in 2013.

## OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To ensure safe and accessible public places for the use of everyone in the community and to minimise the uncontrolled use and occupation of footpaths, accessways and other public places.
- Auckland Council and Auckland Transport made bylaws to prohibit a person using a public place to “place or leave any material, object, thing or structure” without approval.
- Powers to enforce bylaw include: court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage, or power to request name and address.
- Penalties for bylaw breaches include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

## BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council responds to complaints as a low priority using a graduated compliance approach.

## ISSUE IN 2018

- Obstruction, nuisance, safety, or misuse of public places.
- 796 general obstruction and 100 footpath obstruction complaints were received in 2016.
- Between 24 and 28 per cent of Aucklanders surveyed witnessed obstructions in public places from building materials, tents, and private property. Of those surveyed, 87 to 88 per cent felt annoyed, frustrated, angry, fearful or threatened.

## OUTCOME SOUGHT IN 2018

- To ensure public safety, and to minimise obstruction, nuisance, and the misuse of public places from materials, objects, things or structures placed or left in a public place.

## BYLAW EVALUATION

### Still an issue requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can address.
- ✗ There are no feasible regulatory alternatives to a bylaw:
  - Police powers under the Summary of Offences Act 1981 (s22) is limited to obstructions of a public way, and would not include parks, for instance. The penalty is a maximum \$1,000 fine.
  - Police powers under the Summary of Offences Act 1981 (s12) can address obstructions in a public place likely to cause injury, not nuisance. Penalties include a maximum 3-month prison term or maximum \$2,000 court fine.

### Bylaw effective / efficient?

- ✓ Bylaw can be effective in addressing issues because offenders can be easily identified.
- ✗ Bylaw can be difficult to enforce. There is no definition of obstruction which makes it a subjective term that is open to interpretation.
- ✗ Licensing and regulatory compliance staff suggest the bylaw clearly apply to any object stored or left in a public place, not only those causing an obstruction.

**Bylaw clearly written?** ✗ Arguably open to interpretation. Is the clause about safety, obstruction, nuisance, and the misuse of a public places, or only where an activity causes an obstruction?

**Public aware of bylaw?** ✗ No. Limited awareness. No promotion of bylaw.

**Bylaw fit for the future?** ✗ No. Issue is unlikely to change. Bylaw can be effective, but issue is not clearly written.

**Bill of Rights:** ✓ Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights 1990.

**SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

A bylaw is an appropriate way to address issues associated with safety, obstruction, nuisance, and the misuse of a public places from materials, objects, things or structures placed or left on a public place. The Bylaw is not the most appropriate form of bylaw because it is not written clearly. The Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.

**OPTIONS****Option 1: Status quo – Retain bylaw**

- Bylaw prohibits placing or leaving any material, object, thing or structure in a public place in a way that causes an obstruction, unless approved by council.
- Council responds to complaints.

**Option 2: (RECOMMENDED) Amend bylaw to improve certainty**

- Bylaw prohibits use of public places to place or leave any material, object, thing or structure unless approved by council, regardless of whether it causes an obstruction (exemptions may apply).
- Council responds to complaints.

**Option 3: Revoke bylaw and rely on police powers**

- No bylaw.
- No enforcement role for council.
- Police use s12 and s22 of the Summary of Offences Act 1981 to address obstructions to public ways or where likely to cause an injury in a public place.

**Effectiveness and efficiency:**

- ✓ Bylaw enables the issue to be addressed where it arises.
- ✗ Bylaw can be difficult to enforce because the term obstruction is open to interpretation.

**Effectiveness and efficiency:**

- ✓ Bylaw enables the issue to be addressed where it arises.
- ✓ Bylaw drafted to clearly apply to the use of public places, not only where it causes an obstruction.
- ✓ Exemptions can be provided where appropriate.

**Effectiveness and efficiency:**

- ✗ Police unlikely to prioritise enforcement.
- ✗ Bylaw does not address obstruction, nuisance and misuse in all public places unless on a public way or where likely to cause injury.

**Bill of rights implications:**

- ✓ No. Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.

**Bill of rights implications:**

- ✓ No. Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.

**Bill of rights implications:**

Not applicable.

**Fit for future:**

- ✗ No. Bylaw is not clearly written, leaving potential for inconsistent decisions in the future.

**Fit for future:**

- ✓ Yes. The Bylaw is more certain.

**Fit for future:**

- ✗ No. Bylaw does not address obstruction, nuisance and misuse in all public places unless on a public way or where likely to cause injury.

**Māori impact/risk:**

- Risk around impact on homeless (who are more likely to be Māori) storing possessions in public places - however not an issue where it does not cause an obstruction.

**Māori impact/risk:**

- Risk around impact on homeless (who are more likely to be Māori) leaving items in public places requires investigation.

**Māori impact/risk:**

- There are no specific implications for Māori.

**SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

The Bylaw should be amended (Option 2) to prohibit placing or leaving things in a public place, unless approved by council. Exemptions, if appropriate, can be provided and should be investigated. Taking this approach will better prevent issues associated with safety, obstruction, nuisance, and the misuse of a public places.

## References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 21.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 118, 120, 177, 179.
- Local Government Act 2002 s162, s163, s164-168, s171-174, s176; s178 and Health Act 1956 s66(2), s128.

# DRAFT- NOT COUNCIL POLICY

## BYLAW CLAUSE 8(1)(b) and 8(2) – Prohibits obstruction of a public place by any part of a building, structure or tent

### STATUTORY OBLIGATIONS/POWERS

- Council may make a bylaw about obstructions to address nuisance, public health and safety, offensive behaviour, and the use of public spaces under the Local Government Act 2002 (s145, s146), and the Health Act 1956 (s64).

### ISSUES IN 2013

- Safety, nuisance, access, and use of public places.
- Obstructions in public places causing trip hazards, impeding pedestrian and vehicle flow, visual impact.
- Sources of obstructions range from overgrown vegetation, building materials, gates left open over footpaths, port-a-loos, tents, and shipping containers.
- Obstructions typically on footpaths and road reserves.
- Important issue for disability community where obstructions can cause trip hazards, and hinder access for prams, wheelchairs, and mobility scooters.

### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To ensure that safe and accessible public places are provided for the use of everyone in the community and to minimise the uncontrolled use and occupation of footpaths, access ways and other public spaces.
- Auckland Council and Auckland Transport made bylaws that prohibit the use of a public place to “erect, construct, or place a building, structure, tent or projection of a building, structure or tent or any part thereof, on, under, over or across a public place”, without approval.
- Clause 8(2) of the Auckland Council bylaw exempts tents erected temporarily for shade provided they do not create a visual obstruction, impede or obstruct movement of people or vehicles, and do not cause a nuisance.
- Powers to enforce bylaw include: court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage, or power to request name and address.
- Penalties for bylaw breaches include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council responds to complaints as a low priority using a graduated compliance model.

### ISSUES IN 2018

- Obstruction, public safety, nuisance, and use of public places.
- There were 795 general obstruction complaints in 2016.
- 28 per cent of Aucklanders surveyed witnessed building materials, a shelter or a tent in a public space in a way that obstructs the public. Of those, 89 per cent felt annoyed, frustrated, angry, fearful or threatened. Overall, obstructions of public places were more likely to be of concern to older Aucklanders (60 years or older).
- The Disability Advisory Panel has concerns about obstructions for people with accessibility needs.

### OUTCOME SOUGHT NOW (2018)

- To ensure public safety and minimise obstructions, nuisance and misuse of public places from buildings, structures or tents in public places.

### BYLAW EVALUATION

#### Is there still a problem requiring a bylaw response:

- ✓ Yes. There is still an issue regulation can help address
- \* There are no feasible regulatory alternatives to the bylaw:
  - Police powers under the Summary Offences Act 1981 (s22) can address obstruction to a public way, which does not include parks. The penalty is a maximum \$1,000 fine.
  - Police powers under the Summary Offences Act 1981 (s12) can address obstruction likely to cause injury. Penalties include a maximum 3-month prison term or maximum \$2,000 court fine.

#### Bylaw effective / efficient?

- \* Can be difficult to enforce. No definition of obstruction means it is subjective term open to interpretation. Licensing and Regulatory Compliance staff suggest the bylaw clearly apply to any object stored or left in a public place, not only those causing an obstruction.
- ✓ Can be effective in addressing issues as offenders likely to be identifiable.
- ✓ Exemption for tents or similar structures erected temporarily for shade provides for reasonable use.

**Bylaw clearly written?** \* Arguably open to interpretation. Is the clause about safety, obstruction, nuisance, and the use of public places, or only where an activity causes an obstruction?

<b>Public awareness of bylaw?</b> ✖ No. Limited awareness. No promotion of bylaw.		
<b>Bylaw fit for the future?</b> ✖ No. The issue is unlikely to change. The Bylaw can be effective but is not clearly written.		
<b>Bill of Rights:</b> ✓ Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.		
<b>SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b> A bylaw is an appropriate way to address issues associated with safety, obstruction, nuisance, and the misuse of a public places from any part of a building, structure or tent in a public place. The Bylaw is not the most appropriate form of bylaw because it is not clearly written. The Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.		
<b>OPTIONS</b>		
<b>Option 1: Status quo. Retain bylaw</b> <ul style="list-style-type: none"> <li>Bylaw prohibits building, structures and tents in public places, in a way that causes an obstruction unless approved by council</li> <li>Council responds to complaints.</li> </ul>	<b>Option 2: (RECOMMENDED) Amend bylaw to improve certainty</b> <ul style="list-style-type: none"> <li>Bylaw prohibits use of public places for buildings, structures and tents, unless approved by council (exemptions may apply).</li> <li>Council responds to complaints.</li> </ul>	<b>Option 3: Revoke bylaw. Rely on Police powers</b> <ul style="list-style-type: none"> <li>No bylaw.</li> <li>Police use s12 and s22 of the Summary of Offences Act 1981 to address obstructions to public ways or where obstructions likely to cause an injury in a public place.</li> </ul>
<b>Effectiveness/Efficiency:</b> <ul style="list-style-type: none"> <li>✓ Bylaw enables the issue to be addressed where it arises.</li> <li>✖ Can be difficult to enforce because the term obstruction is open to interpretation.</li> </ul>	<b>Effectiveness/Efficiency:</b> <ul style="list-style-type: none"> <li>✓ Bylaw enables the issue to be addressed where it arises.</li> <li>✓ Bylaw more certain. Bylaw drafted to clearly apply to the use of public places (not only where it causes an obstruction).</li> <li>✓ Exemptions can be provided where appropriate</li> </ul>	<b>Effectiveness/Efficiency:</b> <ul style="list-style-type: none"> <li>✖ Does not address obstruction safety, nuisance and misuse unless obstruction on a public way or likely to cause injury.</li> <li>✖ Police unlikely to prioritise enforcement.</li> </ul>
<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>✓ No. Bylaw does not give rise to any unjustified regulations under the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>✓ No. Bylaw does not give rise to any unjustified regulations under the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of Rights implications:</b> Not applicable.
<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✓ No. Bylaw is not clearly written leaving potential for inconsistent decisions in the future.</li> </ul>	<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✓ Yes. The bylaw is more certain.</li> </ul>	<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✖ No. Bylaw does not address obstruction, safety, nuisance or misuse, unless obstruction on a public way or likely to cause injury.</li> </ul>
<b>Māori impact or risk:</b> <ul style="list-style-type: none"> <li>✓ Risk around homeless (who are more likely to be Māori) not an issue where it does not cause an obstruction.</li> </ul>	<b>Māori impact or risk:</b> <ul style="list-style-type: none"> <li>✓ Risk around impact on homeless (who are more likely to be Māori) storing possessions in public places requires investigation.</li> </ul>	<b>Māori impact or risk:</b> <ul style="list-style-type: none"> <li>✓ Risk around homeless (who are more likely to be Māori) not an issue where it does not cause an obstruction.</li> </ul>
<b>SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b> The Bylaw should be amended (Option 2) to prohibit placing any building, structure or tent in a public place regardless of whether it causes an obstruction. Exemptions can be provided and should be investigated. Taking this approach will better address the safety, obstruction, nuisance, and misuse of public places.		

References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 21, 22, 23, 52.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 16, 118, 119, 120, 226.
- Legislative requirements: Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242(4) and Health Act 1956 s66, s128.

# DRAFT - NOT COUNCIL POLICY

## BYLAW CLAUSE 8(1)(c) – Prohibits vegetation encroachment over a public place

### STATUTORY OBLIGATIONS/POWERS

- Council may make a bylaw about obstructions to address nuisance, public health and safety, offensive behaviour, and the use of public spaces under the Local Government Act 2002 (s145, s146) and the Health Act 1956 (s64).

### ISSUES IN 2013

- Overhanging vegetation blocking footpaths.
- No further data available on the scale or impact of the issue in 2013.

### OUTCOMES SOUGHT AND BYLAW RESPONSE IN 2013

- To ensure that safe and accessible public places are provided for the use of everyone in the community.
- Auckland Council and Auckland Transport made bylaws to prohibit “vegetation to encroach over a public place in a manner that may cause a nuisance to any person or an obstruction to traffic”.
- Powers to enforce bylaw include: court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage, or power to request name and address.
- Court penalties for bylaw breaches include: a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council responds to complaints as a low priority using a graduated compliance response.

### ISSUES IN 2018

- Obstruction, nuisance and safety.
- There were 796 general obstruction complaints and 429 complaints about obstructions to footpaths or public places in 2016.
- 46 per cent of Aucklanders surveyed had personally witnessed vegetation encroachment on a public place. Of those surveyed, 88 per cent said they would feel annoyed, frustrated, angry, fearful, or threatened.
- Vegetation encroachment is of concern for people with accessibility needs and youth.
- Staff consider that most of the issues are likely to occur on the Auckland Transport System (e.g. roads and footpaths) which is the jurisdiction of Auckland Transport. However, some issues are anticipated to occur on parks and walkways that are under the control of Auckland Council.

### OUTCOMES SOUGHT NOW (2018)

- To ensure public safety and minimise obstruction and nuisance from vegetation encroachment over public places.

### BYLAW EVALUATION

#### Still an issue requiring a bylaw response:

- ✓ Yes. There is still an issue requiring a bylaw response.
- ✗ There are no feasible regulatory alternatives to the bylaw for vegetation encroachment:
  - Police powers under the Summary Offences Act 1981 (s12) can address obstructions in a public place likely to cause injury, not nuisance. Penalties include a maximum 3-month prison term or maximum \$2,000 court fine.
  - Police powers under the Summary Offences Act 1981 (s22) can address obstructions on a public way, which does not include other public places such as parks. The penalty is a maximum \$1,000 court fine.
  - Council powers under the Local Government Act 1974 (s355) are limited to obstruction to traffic or drainage on roads and public ways which are an Auckland Transport responsibility and do not address nuisance.

#### Bylaw effective/efficient? –

- ✓ Bylaw can be effective in addressing issues as offender is likely to be identifiable.
- ✗ Bylaw can be difficult to enforce. No definition of obstruction makes it a subjective term open for interpretation.

**Bylaw clearly written?** ✗ No. The reference to “traffic” creates uncertainty about whether this is an Auckland Transport issue, and in what circumstances issues would arise outside of the Auckland Transport System (roads).

**Public awareness of bylaw?** ✗ No. Limited awareness. No promotion of the bylaw.

**Bylaw fit for the future?** ✗ The bylaw can be effective but is not clearly written. The issue is unlikely to change.

**Bill of Rights:** ✓ Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.

**SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

A bylaw is an appropriate way to address vegetation encroachment over public places. The Bylaw is not the most appropriate form of bylaw because it is not clearly written. The Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.

**OPTIONS**

<p><b>Option 1: Status quo - Retain bylaw.</b></p> <ul style="list-style-type: none"> <li>Bylaw prohibits vegetation encroachment over public places that may cause obstruction to traffic or nuisance to people in public places, unless approved by council.</li> <li>Council responds to complaints.</li> </ul>	<p><b>Option 2: (RECOMMENDED)</b> <b>Amend bylaw to better reflect the problem.</b></p> <ul style="list-style-type: none"> <li>Bylaw prohibits vegetation encroachment over public places that may cause safety, obstruction, or nuisance issues to people in public places, unless approved by council.</li> <li>Council responds to complaints.</li> </ul>	<p><b>Option 3: Revoke bylaw - Rely on existing regulation.</b></p> <ul style="list-style-type: none"> <li>No Bylaw.</li> <li>Police can use s12 and s22 of the Summary Offences Act 1981 to address obstructions.</li> <li>Auckland Transport can use s355 of the Local Government Act 1974 to address vegetation causing an obstruction to traffic or drainage on roads.</li> </ul>
<p><b>Effectiveness/Efficiency:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw enables the issue to be addressed where it arises.</li> <li>✗ Bylaw can be difficult to enforce. The term 'obstruction' open for interpretation.</li> </ul>	<p><b>Effectiveness/Efficiency:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw enables the issue to be addressed where it arises.</li> <li>✓ Bylaw more certain. Bylaw drafted to better define obstruction.</li> </ul>	<p><b>Effectiveness/Efficiency:</b></p> <ul style="list-style-type: none"> <li>✗ Bylaw does not address obstruction and nuisance on public way or where likely to cause injury.</li> </ul>
<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ No. Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</li> </ul>	<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ No. Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</li> </ul>	<p><b>Bill of Rights implications:</b></p> <p>Not applicable.</p>
<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✗ No. Bylaw is not clearly written and leaves potential for inconsistent decisions in the future.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✓ Yes. The bylaw is more certain.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✗ No. Does not address obstruction and nuisance on public way or where likely to cause injury.</li> </ul>
<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>✓ There are no specific implications for Māori.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>✓ There are no specific implications for Māori.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>✓ There are no specific implications for Māori.</li> </ul>

**SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

The Bylaw should be amended (Option 2) to prohibit vegetation encroachment over public places that may cause safety, obstruction, or nuisance issues to people in public places. Taking this approach will better prevent issues associated with obstruction, nuisance or safety to people in public places.

## References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 21, 52.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 120, 122, 123, 124.
- Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242(4) and Health Act 1956 s66, s128.

# DRAFT- NOT COUNCIL POLICY

## BYLAW CLAUSE 8(1)(d) - Hanging a door or gate that encroaches on a public place

### STATUTORY OBLIGATIONS/POWERS

- Council may make a bylaw about obstructions to address public nuisance, health, safety, offensive behaviour, and use of public places under the Local Government Act 2002 (s145, s146), and to address public health and nuisance under the Health Act 1956 (s64).

### ISSUE IN 2013

- Obstruction of footpaths and other public places was of concern to disability groups local boards and business.
- No further data available on scale or impact of the issue in 2013.

### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To ensure that safe and accessible public places are provided for the use of everyone in the community.
- Auckland Council and Auckland Transport made bylaws to prohibit a person hanging “a door or gate on any premises capable of being swung over or across or otherwise encroaching on a public place”.
- Powers to enforce bylaw include: court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage, or power to request name and address.
- Penalties bylaw breaches include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council responds to complaints as a low priority using graduated enforcement approach.

### ISSUE IN 2018

- Obstruction, nuisance and safety.
- No specific data available. In 2016, there were 796 general obstruction complaints and 429 complaints about general obstructions on footpaths and public places.
- Complaints about overhanging gates are thought to be rare. Licensing and Regulatory Compliance officers recall one instance in the last decade where a gate was upgraded after engagement with owner.
- 15 per cent of Aucklanders surveyed had personally witnessed a gate or door obstructing a public place. Of those surveyed, 96 per cent said they would feel annoyed, frustrated, angry, fearful, or threatened.
- Complaints about obstructions often reflect concerns for people with accessibility needs.

### OUTCOME SOUGHT IN 2018

- To ensure public safety and minimise obstruction and nuisance from doors or gates being swung over or across public places.

### BYLAW EVALUATION

#### Still an issue requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can help address.
- ✓ There are no feasible alternatives to a bylaw for hanging a door or gate that encroaches on a public place:
  - Police powers under the Summary of Offences Act 1982 (s22) limited to obstructions of a public way and would not include parks for instance. The penalty includes a fine not exceeding \$1,000.
  - Police powers under the Summary of Offences Act (s12) limited to obstructions that are likely to cause injury in a public place and does not include nuisance. Penalties include can imprisonment not exceeding 3 months or a fine not exceeding \$2,000.

#### Bylaw effective / efficient? -

- ✓ Bylaw can be effective in addressing issues as offender is likely to be identifiable.
- ✓ The bylaw has enabled the issue to be addressed where it has arisen at the lower end of the graduated enforcement.
- ✗ Can be difficult to enforce. No definition of obstruction making it a subjective term that is open to interpretation. Licensing and regulatory compliance staff suggest the bylaw clearly apply to any object stored or left in a public place not only those causing obstruction.

**Bylaw clearly written?** ✗ Arguably open to interpretation. Is the clause about obstruction, nuisance or safety or only where it causes an obstruction?

**Public aware of bylaw?** ✗ Limited awareness. No promotion of bylaw.

**Bylaw fit for the future?** ✗ The issue is unlikely to change. The Bylaw can be effective but is not clearly written.

**Bill of Rights:** ✓ Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights 1990.

**SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

A bylaw is an appropriate way to address issues about doors or gates being swung over or across public places. The Bylaw is not the most appropriate form of bylaw because it is not clearly written. The Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.

**OPTIONS**

<b>Option 1: Status quo – Retain bylaw</b> <ul style="list-style-type: none"> <li>Bylaw prohibits hanging a door or gate that encroaches on a public place, unless approved by council.</li> <li>Council responds to complaints.</li> </ul>	<b>Option 2: (RECOMMENDED) Amend bylaw to improve certainty</b> <ul style="list-style-type: none"> <li>Bylaw prohibits use of public places to hang a door or gate that encroaches on a public place, unless approved by council, regardless of whether it causes an obstruction.</li> <li>Council responds to complaints.</li> </ul>	<b>Option 3: Revoke bylaw and rely on police powers</b> <ul style="list-style-type: none"> <li>No bylaw.</li> <li>No enforcement role for council.</li> <li>Police use s12 and s22 of the Summary of Offences Act 1981 to address hanging doors or gates that obstruct a public way or are likely to cause an injury in a public place.</li> </ul>
<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✓ Bylaw enables the issue to be addressed where it arises.</li> <li>✗ Can be difficult to enforce. The term obstruction is arguably open to interpretation.</li> </ul>	<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✓ Bylaw enables the issue to be addressed where it arises.</li> <li>✓ Bylaw more certain. Bylaw drafted to clearly apply to the use of public places (not only where it causes an obstruction).</li> </ul>	<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✗ Does not address safety, obstruction and nuisance issues in all public places, unless on a public way or where likely to cause injury.</li> <li>✗ Police unlikely to prioritise enforcement.</li> </ul>
<b>Bill of rights implications:</b> <ul style="list-style-type: none"> <li>✓ No. Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of rights implications:</b> <ul style="list-style-type: none"> <li>✓ No. Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of rights implications:</b> <p>Not applicable.</p>
<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✗ No. The Bylaw is not clearly written leaving potential for inconsistent decisions in the future.</li> </ul>	<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✓ Yes. Bylaw more certain.</li> </ul>	<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✗ No. Bylaw does not address safety, obstruction and nuisance issues in all public places, unless on a public way or where likely to cause injury.</li> </ul>
<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>There are no specific implications for Māori.</li> </ul>	<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>There are no specific implications for Māori.</li> </ul>	<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>There are no specific implications for Māori.</li> </ul>

**SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

The Bylaw should be amended (Option 2) to increase certainty by prohibiting hanging a door or gate that encroaches on a public place regardless of whether it causes an obstruction. Taking this approach will more effectively ensure public safety and minimise obstruction and nuisance from doors or gates being swung over or across public places.

References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 21, 52.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 120, 126, 127, 177.
- Legislative requirements: Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242(4) and Health Act 1956 s66, s128.