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

Date: Thursday, 10 May 2018
Time: 9.30am
Meeting Room: Room 1, Level 26
Venue: 135 Albert St

Komiti Whakahaere ā-Ture / Regulatory Committee
OPEN AGENDA

MEMBERSHIP

Chairperson
Cr Linda Cooper, JP
Deputy Chairperson
Deputy Mayor Bill Cashmore
Members
Cr Josephine Bartley
Cr Fa’ananana Efeso Collins
Cr Richard Hills
Cr Daniel Newman, JP
Cr Dick Quax
Cr Sharon Stewart, QSM
IMSB Chair David Taipari
Cr Wayne Walker
Cr John Watson
IMSB Member Glenn Wilcox

(Ex-officio)
Mayor Hon Phil Goff, CNZM, JP

(Quorum 5 members)

Maea Petherick
Senior Governance Advisor

3 May 2018

Contact Telephone: (09) 890 8156
Email: maea.petherick@aucklandcouncil.govt.nz
Website: www.aucklandcouncil.govt.nz

Note: The reports contained within this agenda are for consideration and should not be construed as Council policy unless and until adopted. Should Members require further information relating to any reports, please contact the relevant manager, Chairperson or Deputy Chairperson.
Terms of Reference

Responsibilities

The committee is responsible for regulatory hearings (required by relevant legislation) on behalf of the council. The committee is responsible for appointing independent commissioners to carry out the council’s functions or delegating the appointment power (as set out in the committee’s policy). The committee is responsible for regulatory policy and bylaws. Where the committee’s powers are recommendatory, the committee or the appointee will provide recommendations to the relevant decision-maker.

The committee’s key responsibilities include:

- decision-making (including through a hearings process) under the Resource Management Act 1991 and related legislation
- hearing and determining objections under the Dog Control Act 1996
- decision-making under the Sale and Supply of Alcohol Act 2012
- hearing and determining matters regarding drainage and works on private land under the Local Government Act 1974 and Local Government Act 2002 (this cannot be sub-delegated)
- hearing and determining matters arising under bylaws
- receiving recommendations from officers and appointing independent hearings commissioners to a pool of commissioners who will be available to make decisions on matters as directed by the Regulatory Committee
- receiving recommendations from officers and deciding who should make a decision on any particular matter including who should sit as hearings commissioners in any particular hearing
- monitoring the performance of regulatory decision-making
- where decisions are appealed or where the committee decides that the council itself should appeal a decision, directing the conduct of any such appeals
- considering and making recommendations to the Governing Body regarding the regulatory and bylaw delegations (including to Local Boards)
- regulatory fees and charges
- recommend bylaws to Governing Body for consultation and adoption
- appointing hearings panels for bylaw matters
- review local board and Auckland water organisation proposed bylaws and recommend to Governing Body
- set regulatory policy and controls, including performing the delegations made by the Governing Body to the former Regulatory and Bylaws Committee, under resolution GB/2012/157 in relation to dogs and GB/2014/121 in relation to alcohol.
- engage with local boards on bylaw development and review
- adopting or amending a policy or policies and making any necessary sub-delegations relating to any of the above areas of responsibility to provide guidance and transparency to those involved.

Not all decisions under the Resource Management Act 1991 and other enactments require a hearing to be held and the term “decision-making” is used to encompass a range of decision-making processes including through a hearing. “Decision-making” includes, but is not limited to, decisions in relation to applications for resource consent, plan changes, notices of requirement, objections, existing use right certificates and certificates of compliance and also includes all necessary related decision-making.

In adopting a policy or policies and making any sub-delegations, the committee must ensure that it retains oversight of decision-making under the Resource Management Act 1991 and that it provides for councillors to be involved in decision-making in appropriate circumstances.
For the avoidance of doubt, these delegations confirm the existing delegations (contained in the chief executive’s Delegations Register) to hearings commissioners and staff relating to decision-making under the RMA and other enactments mentioned below but limits those delegations by requiring them to be exercised as directed by the Regulatory Committee.

Relevant legislation includes but is not limited to:

- All Bylaws
- Biosecurity Act 1993
- Building Act 2004
- Dog Control Act 1996
- Fencing of Swimming Pools Act 1987
- Gambling Act 2003; Land Transport Act 1998
- Health Act 1956
- Local Government Act 1974
- Local Government Act 2002
- Local Government (Auckland Council Act) 2009
- Resource Management Act 1991
- Sale and Supply of Alcohol Act 2012
- Waste Minimisation Act 2008
- Maritime Transport Act 1994
- Related Regulations

**Powers**

(i) All powers necessary to perform the committee’s responsibilities.

**Except:**

(a) powers that the Governing Body cannot delegate or has retained to itself (section 2)
(b) where the committee’s responsibility is limited to making a recommendation only.

(ii) Power to establish subcommittees.
Exclusion of the public – who needs to leave the meeting

Members of the public

All members of the public must leave the meeting when the public are excluded unless a resolution is passed permitting a person to remain because their knowledge will assist the meeting.

Those who are not members of the public

General principles

- Access to confidential information is managed on a “need to know” basis where access to the information is required in order for a person to perform their role.
- Those who are not members of the meeting (see list below) must leave unless it is necessary for them to remain and hear the debate in order to perform their role.
- Those who need to be present for one confidential item can remain only for that item and must leave the room for any other confidential items.
- In any case of doubt, the ruling of the chairperson is final.

Members of the meeting

- The members of the meeting remain (all Governing Body members if the meeting is a Governing Body meeting; all members of the committee if the meeting is a committee meeting).
- However, standing orders require that a councillor who has a pecuniary conflict of interest leave the room.
- All councillors have the right to attend any meeting of a committee and councillors who are not members of a committee may remain, subject to any limitations in standing orders.

Independent Māori Statutory Board

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

Staff

- All staff supporting the meeting (administrative, senior management) remain.
- Other staff who need to because of their role may remain.

Local Board members

- Local Board members who need to hear the matter being discussed in order to perform their role may remain. This will usually be if the matter affects, or is relevant to, a particular Local Board area.

Council Controlled Organisations

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

Apologies from Deputy Chairperson BC Cashmore and Cr E Collins have been received.

2 Declaration of Interest

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as a member and any private or other external interest they might have.

3 Confirmation of Minutes

That the Regulatory Committee:

a) confirm the ordinary minutes of its meeting, held on Thursday, 12 April 2018, including the confidential section, as a true and correct record.

4 Petitions

At the close of the agenda no requests to present petitions had been received.

5 Public Input

Standing Order 7.7 provides for Public Input. Applications to speak must be made to the Governance Advisor, in writing, no later than one (1) clear working day prior to the meeting and must include the subject matter. The meeting Chairperson has the discretion to decline any application that does not meet the requirements of Standing Orders. A maximum of thirty (30) minutes is allocated to the period for public input with five (5) minutes speaking time for each speaker.

At the close of the agenda no requests for public input had been received.

6 Local Board Input

Standing Order 6.2 provides for Local Board Input. The Chairperson (or nominee of that Chairperson) is entitled to speak for up to five (5) minutes during this time. The Chairperson of the Local Board (or nominee of that Chairperson) shall wherever practical, give one (1) day's notice of their wish to speak. The meeting Chairperson has the discretion to decline any application that does not meet the requirements of Standing Orders.

This right is in addition to the right under Standing Order 6.1 to speak to matters on the agenda.

At the close of the agenda no requests for local board input had been received.
7 Extraordinary Business

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

“An item that is not on the agenda for a meeting may be dealt with at that meeting if-

(a) The local authority by resolution so decides; and

(b) The presiding member explains at the meeting, at a time when it is open to the public,-

(i) The reason why the item is not on the agenda; and

(ii) The reason why the discussion of the item cannot be delayed until a subsequent meeting.”

Section 46A(7A) of the Local Government Official Information and Meetings Act 1987 (as amended) states:

“Where an item is not on the agenda for a meeting,-

(a) That item may be discussed at that meeting if-

(i) That item is a minor matter relating to the general business of the local authority; and

(ii) the presiding member explains at the beginning of the meeting, at a time when it is open to the public, that the item will be discussed at the meeting; but

(b) no resolution, decision or recommendation may be made in respect of that item except to refer that item to a subsequent meeting of the local authority for further discussion.”

8 Notices of Motion

There were no notices of motion.
Health and Hygiene Bylaw Review 2018 and direction for any changes

File No.: CP2018/06225

Te take mō te pūrongo / Purpose of the report
1. To seek a determination on the outcome of the statutory review on the Auckland Council Health and Hygiene Bylaw 2013 and make a decision about its future.

Whakarāpopototanga matua / Executive summary
2. To enable the Regulatory Committee to determine the outcome of the statutory review of the Auckland Council Health and Hygiene Bylaw 2013 (Bylaw) and decide its future staff have completed an options report.
3. On 12 April 2018 the committee endorsed the statutory review findings on the Bylaw (REG/2018/1) and approved a report back on options.
4. Staff recommend the Regulatory Committee determine that a bylaw is still the most appropriate way to manage health and hygiene issues.
5. Staff also recommend that the council agree Option two: amend current bylaw framework and separate code to better manage health and hygiene issues. This will further minimise health risks to people using services that involve contact with the human body by:
   - covering a broader range of services including massage, water play parks and splash pads, and services that risk breaking or burning membranes
   - requiring operators to display a health licence
   - making the tā moko exemption clearer
   - better recognising traditional Pacific tattoo.
6. Amendments to the existing bylaw framework are supported by Environmental Health officers and stakeholders, who consider the existing approach to be effective and certain.
7. Reputational risk that service operators will be concerned about amending the bylaw and having an opportunity to provide feedback. This is mitigated by future public consultation.
8. If approved, staff will prepare a statement of proposal and amended bylaw for approval by the Regulatory Committee and Governing Body. Public notification will follow, before a final decision is made by the Governing Body.

Ngā tūtohunga / Recommendation/s
That the Regulatory Committee:

a) agree that council has completed its statutory review of the Auckland Council Health and Hygiene Bylaw 2013 in accordance with section 160(1) Local Government Act 2002 and determine that the outcome of the review is that:
   i) a bylaw is the most appropriate way to minimise the health risks for people using services that involve contact with the human body.
   ii) the Auckland Council Health and Hygiene Bylaw 2013 is not the most appropriate form of bylaw because it does not properly regulate certain services.
   iii) the Auckland Council Health and Hygiene Bylaw 2013 does not give rise to any implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.

b) agree that Option two: amend current bylaw framework and separate code is the preferred option to better manage health and hygiene issues that responds to the statutory review findings.

c) request a statement of proposal that amends the Auckland Council Health and Hygiene Bylaw 2013 as detailed in Attachment A for Option two: amend current bylaw framework and separate code.
Horopaki / Context

The Health and Hygiene Bylaw 2013 aims to minimise public health risks

9. The Auckland Council Health and Hygiene Bylaw 2013, Te Ture ā-Rohe Whakamaru Hauora 2013 (Bylaw) aims to minimise public health risks to people using services that involve contact with the human body (e.g. beauty and health treatments, body modification).

10. The Bylaw aligns with the Auckland Plan, including the strategic direction to “improve the education, health and safety of Aucklanders, with a focus on those most in need.”

11. The Bylaw establishes a regulatory framework (Figure 1) that:
   - uses service types to create broad categories to cover new services as they emerge
   - identifies which service types require a licence (all except other specified services)
   - identifies which service types must comply with minimum standards (all service types)
   - identifies exemptions (e.g. health practitioners)
   - enables minimum standards for specific services to be adopted in a separate code of practice (Code). The Code can be amended by the Regulatory Committee to cover new services or changes to existing services as they emerge.

Figure 1: Health and Hygiene Bylaw 2013 framework

The Local Government Act 2002 sets out the Bylaw statutory review requirements

12. Auckland Council must complete a statutory review of the Bylaw by 27 June 2018.¹ To complete the statutory review the council must determine whether:²
   - a bylaw is the most appropriate way of addressing the issues contained in the Bylaw
   - the Bylaw is the most appropriate form of bylaw
   - the Bylaw gives rise to implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.

¹ Local Government Act 2002, sections 158.
² Local Government Act 2002, sections 160(1) and (2).
13. Following the statutory review, the council can propose the Bylaw be confirmed, amended, revoked or replaced using a public consultative process.\(^3\)

**Tātaritanga me ngā tohutohu / Analysis and advice**

14. On 12 April 2018 the committee endorsed the statutory review findings on the Bylaw and approved a report back on options (REG/2018/2). Staff used the findings and committee resolutions to help complete the statutory review and develop options for consideration.

**Assessment against Local Government Act 2002 statutory review requirements**

*A bylaw is the best way to minimise health risks*

15. The findings identify that a bylaw is still the most appropriate way to minimise health risks for people using services that involve contact with the body. Health risks include transfer of blood-borne diseases, melanoma and bodily injury.

16. A bylaw enables council to proactively minimise health risks for people who use these services, and provides certainty and guidance for businesses about acceptable practices. This supports council’s duty to improve, promote and protect public health under the Health Act 1956.\(^4\)

**The Health and Hygiene Bylaw 2013 is not in the most appropriate form**

17. The findings identify that the Bylaw is not the most appropriate form of bylaw. The Bylaw:
   - does not cover existing and new services that pose a public health risk (massage, waterplay parks and splash pads, and services that risk breaking or burning membranes)
   - does not appropriately regulate eyeball tattoo considering the very high-risk of permanent damage to eyesight.

**The Bylaw does not give rise to any New Zealand Bill of Rights Act 1990 implications**

18. There are potential limitations to freedom of expression. However, these limitations are justified because of the significant health risks the Bylaw seeks to minimise. Therefore, there are no implications under and the Bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990.

**Assessment of options in response to the Local Government Act 2002 statutory review**

19. Staff identified three options in response to the findings of the statutory review:
   - Option one: status quo – no changes to current bylaw framework and separate code
   - Option two: amend current bylaw framework and separate code
   - Option three: new risk-based bylaw framework and separate code

20. Staff discounted Option four (respond to complaints using Health Act 1956) as it does not respond to the problem addressed by the Bylaw or the objective of minimising health risks.

21. Staff assessed each option against assessment criteria that reflect the core objective of minimising health risks, as well as council’s statutory duties under the Local Government Act 2002.\(^5\)

22. Table 1 provides a summary of the full assessment contained in Attachment A. The “✓” and “x” reflect the impact of the option against each criterion relative to other options. For instance, the more “✓”, the better the option.

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\(^3\) Local Government Act 2002, sections 160(3).

\(^4\) Health Act 1956, section 23.

\(^5\) Local Government Act 2002, sections 3, 10, 14 and 155.
### Table 1: Summary of assessment of options

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<th></th>
<th>Effectiveness at minimising health risks</th>
<th>Efficiency at minimising health risks</th>
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<tbody>
<tr>
<td>Option one: status quo – no change to current bylaw framework supported by Code</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Option two: amend current bylaw framework supported by Code</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Option three: new risk-based bylaw framework supported by Code</td>
<td>✓</td>
<td>✗</td>
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23. Staff recommend Option two: amend the current bylaw framework as it:
- further minimises health risks by covering a broader range of current and new services, including services that risk breaking or burning membranes, water play parks and splash pads, and massage
- improves on the status quo (Option one) which is effective and certain
- is more efficient than Option three because it can be achieved without additional resourcing or implementation costs
- would make the tā moko exemption clearer
- would better recognise traditional Pacific tattoo
- would require operators to display a health licence.

24. Option three: risk-based bylaw framework would also further minimise health risks and cover any unanticipated future services without requiring a bylaw amendment. However, the key trade-offs are:
- risk of incorrectly classifying services because of a lack of reliable data
- operational risks as a risk-based approach is untested for these industries
- additional resourcing, expert advice and implementation costs. The estimated starting cost for initial expert advice is $70,000.

25. Staff consider the risk of future services not being covered under Option two is small and can be mitigated by amending the Bylaw. In addition, both Options two and three would require updates to the Code to ensure there are minimum standards for new services.

### Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe / Local impacts and local board views

26. Local board members participated in cluster workshops (October 2017) and support the current Bylaw. Members concerned about unlicensed operators, tattooists and manicure/pedicure services.

27. Bylaw regulation of traditional Pacific tattoo is significant for Southern local board members and their communities. Option two provides better recognition of the cultural significance of traditional Pacific tattoo.

### Tauākī whakaaweawe Māori / Māori impact statement

28. The Bylaw has significance for Māori as providers and users of services. Tā moko has great cultural and spiritual significance and is recognised as a taonga protected under Te Tiriti o Waitangi. Staff sought written feedback from 32 mana whenua and mataawaka marae committees responsible for administering tā moko practice. Staff also interviewed tā moko artists and members of Māori health organisations.

29. Māori stakeholders support the current exemption for tā moko but consider removing the reference to "non-commercial" would better reflect practice. Māori stakeholders consider referencing Te Tiriti o Waitangi would clarify the exemption. The proposed Option two amendments would address these concerns.
**Ngā ritinga ā-pūtea / Financial implications**
31. The cost of the Bylaw review and implementation will be met within existing baselines.

**Ngā raru tūpono / Risks**
32. Reputational risk that service operators will be concerned about amending the bylaw and having an opportunity to provide feedback. This is mitigated by future public consultation.

**Ngā koringa ā-muri / Next steps**
33. If the recommendations in this report are approved, staff will prepare a:
   - statement of proposal which will include an amended bylaw and compliance approach
   - report to the Regulatory Committee to recommend the Governing Body adopt the statement of proposal for the purposes of public consultation and to appoint a panel to consider public submissions.

**Ngā tāpirihanga / Attachments**

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**Ngā kaihaina / Signatories**

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<tbody>
<tr>
<td>Julia Harker - Policy Analyst</td>
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<td>Bonnie Apps - Policy Analyst</td>
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<tr>
<td>Kataraina Maki - GM - Community &amp; Social Policy</td>
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<td>Penny Pirrit - Director Regulatory Services</td>
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Health and Hygiene Bylaw 2013 Review
2018 Options report

Introduction
This report analyses the options available to council in response to the statutory review of the Auckland Council Health and Hygiene Bylaw 2013 (Bylaw).

The report draws on the “Auckland Council Health and Hygiene Bylaw 2013: 2018 Review Findings Report”. Staff presented the findings of the statutory review to the Regulatory Committee on 12 April 2018. The Regulatory Committee endorsed the following key findings (decision no. REG/2018/21):

- services that contact the body continue to pose health risk, including the transfer of viral and bacterial infections, cancer and injury to the body
- new services emerge at a fast pace and not all are appropriately regulated by the Bylaw
- the Bylaw and its implementation have effectively minimised most public health risks
- stakeholders agree the Bylaw minimises public health risks and could be improved
- health risks are managed by licenses and minimum standards.

The options considered in this report flow from these findings.

Executive summary
To enable Auckland Council to decide how to respond to the findings from the statutory review of the Auckland Council Health and Hygiene Bylaw 2013 (Bylaw), staff assessed options using Local Government Act 2002 criteria, including:

- Option 1: status Quo - service type bylaw framework supported by separate Code
- Option 2: amended service type bylaw framework supported by separate Code
- Option 3: risk-based bylaw framework supported by Code
- Option 4: respond to complaints only using Health Act 1956.

Staff recommend Option 2 because it:

- further minimises health risks by covering a broader range of current and new services, including services that risk breaking or burning membranes, water play parks and massage
- improves on the status quo (Option 1) which stakeholders consider effective and certain
- is more efficient than Option 3 because it can be achieved without additional resourcing or implementation costs
- would make the tā moko exemption clearer
- would better recognise traditional Pacific tattoo
- would require operators to display a health licence.

Option 3 would also further minimise health risks and cover any unanticipated future services without requiring a bylaw amendment. However, the key trade-offs are:
Attachment A

- risk of incorrectly classifying services because of a lack of reliable data
- operational risks as a risk-based approach is untested for these industries
- additional resourcing, expert advice and implementation costs. The estimated starting cost for initial expert advice is $70,000.

Staff consider the risk of future services not being covered under Option 2 is small and can be mitigated by amending the Bylaw. In addition, both Options 2 and 3 would require updates to the Code to ensure there are minimum standards for new services.

Option 4 was discounted because it does not respond to the problems, objectives and desired outcomes.

Status quo and problem definition

Status quo

The current bylaw (status quo) is a service type bylaw framework which:

- defines four service types: services that pierce the skin, risk breaking the skin, risk burning the skin, and other specified services (e.g. beauty treatments, body modification, sunbeds)
- identifies which service types require a licence (all except other specified services)
- identifies which service types must comply with minimum standards (all services)
- enables minimum standards to be adopted in a separate code of practice (Code)
- identifies exemptions (e.g. health practitioners).

Original problem statement and status quo

When the Bylaw was made staff defined the original problem as:

“inconsistent protection from health and hygiene risks for persons using or administering services that pierce the skin, risk breaking the skin, risk burning the skin, or involve risks of infection.”

The current bylaw was introduced to respond to this problem by amalgamating all legacy bylaws to provide a single bylaw for services for the whole region.

Current and future problem

The current problem is that not all services that risk transferring infection or causing injury are covered by the bylaw. In addition, some services that are already covered by the bylaw, such as pedicure services, are still causing health problems.

Services pose a range of health risks to the public as they pierce or contact the skin and other tissues. Common health risks include:

- blood borne infection (e.g. hepatitis B and C)
- bacterial infections (e.g. staphylococcus)
- fungal infections (e.g. tinea, candida)
- gastrointestinal infection (e.g. campylobacter, E.coli)
- allergic reactions and chemical poisoning (e.g. piercing metals, tattoo ink)
- burning and damage to skin and eyes (e.g. laser, intense pulsed light)
Attachment A

- cancers (e.g. melanoma from sun-bed use)
- injury to the body (e.g. damage to eyesight, tissue or organ damage).

Such health risks can be heightened where:

- premises are not kept clean and hygienic
- equipment is not properly sterilised between customers
- contaminated materials are not disposed of appropriately
- operators do not have sufficient training to use equipment properly
- medical grade equipment and materials are accessible online
- customers have an impaired immune system, potentially because of long-term illnesses such as diabetes

The current Bylaw framework restricts council’s ability to cover all services through the limited definitions of services types, for example services that “risk breaking the skin”, and the Code needs to be updated to include specific standards for new services.

Without further intervention, the public will continue to be harmed in future as new treatments and techniques are introduced at a rapid pace.

Scale and magnitude of the problem

The services that are not currently regulated by the bylaw either because of service type definition or lack of specific minimum standards for the service include:

- eyeball tattoo
- platelet-rich plasma injections
- vaginal laser treatments
- ultrasound and cooling pressure panels
- derma-blading
- permanent acupuncture
- waterplay parks
- massage.

Except for waterplay parks and massage, the number of people potentially harmed by unregulated new services is low. However, the potential consequences of unsafe practice for services such as eyeball tattoo and platelet-rich plasma injections are significant (e.g. permanent blindness and transfer of Hepatitis B and C).

Waterplay parks and massage have a wider potential impact than the other services. However, the level of potential harm is lower. Waterplay parks have the same risks as swimming pools which are subject to minimum standards under the bylaw and are frequented by children who are vulnerable to infections such as gastroenteritis. Massage is one of the most commonly used forms of complementary medicine. A high number of ACC claims (35,370 in 2012-2017) have been made in Auckland for massage related injury, mostly involving soft tissue injury.

Pedicure is currently regulated by the bylaw but is still causing health problems. Most complaints received by council were about manicure/pedicure services (estimated 80) and ACC claims for pedicure increased 90 per cent between 2012-2016. Anecdotally a large
Attachment A

number of people use manicure/pedicure services and the number of premises and employees has increased.

**Stakeholder view of problem**

Stakeholders (including health experts, Environmental Health officers and industry organisations) consider services continue to pose risks to the community, particularly where appropriate sterilisation and hygiene practices are not observed.

Auckland Regional Public Health Service identified that in many circumstances it can be difficult to link resulting infections to an operator.

**Objectives**

The objectives of a regulatory response to this problem are to:

1. minimise health risks to reduce harm to people using commercial services that involve contact with the human body, including by:
   (i) ensuring comprehensive coverage of both current and emerging services that pose health risks.
2. meet legislative requirements under the Local Government Act 2002 including:
   (i) giving effect to its identified priorities and desired outcomes in an efficient and effective manner (section 14)
   (ii) ensuring any bylaw does not give rise to any implications or is inconsistent with the New Zealand Bill of Rights Act 1990 (sections 155 and 160).

These objectives are aligned with the council’s obligations under the Health Act 1956 to “improve, promote and protect public health within Auckland” and the Auckland Plan strategic direction to “improve the education, health and safety of Aucklanders, with a focus on those most in need.”

**Outcomes**

The key desired outcome is that the public are protected from harm caused by services that contact the body.
Attachment A

Options

Staff identified the following options to achieve the outcome sought:

- Option 1: status quo – service type bylaw framework supported by separate Code
- Option 2: amended service type bylaw framework supported by separate Code
- Option 3: risk-based bylaw framework supported by Code
- Option 4: respond to complaints only using Health Act 1956. This option does not respond to the problems, objectives and outcomes set out above. However, council needs to consider whether the current bylaw should be revoked when reviewing a bylaw under the Local Government Act 2002.

A more detailed description of the options is provided below.

Two other options were identified (bylaw that includes minimum standards and industry self-regulation) but excluded from any further assessment:

- A bylaw that includes all minimum standards for services (not in a separate code): This option was excluded because it would be less flexible than Options 1-3. Options 1-3 allow the Code to be updated by the Regulatory Committee in response to changes in technologies and treatments. This is more efficient than amending the Bylaw through the Governing Body which is likely to require a special consultative procedure under the Local Government Act 2002.

- Industry self-regulation (i.e. revoke the Bylaw and not respond to complaints): This was excluded because the council has a duty to improve, promote and protect public health under the Health Act 1956. Option 4 provides a viable alternative that revokes the Bylaw and instead relies on powers under the Health Act 1956 to respond to complaints.

Option 1: status quo – service type bylaw framework supported by Code

Bylaw form

Option 1 retain the current service type bylaw framework (Figure 1) which:

- defines four service types: services that pierce the skin, risk breaking the skin, risk burning the skin, and other specified services (e.g. beauty treatments, body modification, sunbeds)
- identifies which service types require a licence (all except other specified services)
- identifies which service types must comply with minimum standards (all services)
- enables minimum standards to be adopted in a separate code of practice (Code)
- identifies exemptions (e.g. health practitioners).
Attachment A

Figure 1: Current bylaw framework

Code of practice
The Code would be reviewed in 2019 following the confirmation of the current Bylaw.

Implementation
Approximately 81 per cent of inspection and administrative costs would continue to be recovered from licensing fees. The cost of responding to complaints are not cost recoverable.

Compliance and enforcement
Operators are required to be licensed and comply with minimum standards. Environmental Health officers carry out annual licensing inspections and respond to complaints. Currently there is 95 percent compliance with minimum standards on inspection.

The Environmental Health Unit takes a graduated enforcement approach to Bylaw compliance. This is based on members of the public voluntarily choosing to conform. While the ultimate enforcement tool under the Bylaw is prosecution, officers seldom use this option.

Except operators of swimming pools and colon hydrotherapy which need only comply with minimum standards.
Attachment A

Any enforcement action is taken under the Local Government Act 2002\(^2\) or Health Act 1956.\(^3\) A maximum fine of $20,000\(^4\) may be sought under the Local Government Act 2002, or a maximum fine of $500 and $50 per day under the Health Act 1956.\(^5\)

Where an operator offers sun-bed services to a customer under 18 years, officers can continue to issue an infringement notice and require operators to pay $10,000 infringement fee under the Health Act 1956.\(^6\)

Pros and cons

Pros

- Proactively minimises health risks by requiring operators to comply with the Code and inspections to ensure compliance.
- Most operators comply with the bylaw and code on inspection.
- Stakeholders support the existing bylaw which is considered effective and certain.
- The Bylaw framework and code are flexible as the Code can be changed by the Regulatory Committee.
- Prosecution under the Local Government Act 2002 can result in a higher fine than under the Health Act 1956 with a greater deterrent effect.
- Compliance costs are low as 81 per cent licensing costs recoverable.
- Recognises importance of tā moko by exempting from Bylaw.

Cons

- Bylaw and Code do not expressly cover new services, such as eyeball tattoo.
- Categorisation of services by service type does not clearly identify health risks or provide a graduated enforcement response related to that risk.
- Code must be continually updated to ensure new services are properly regulated.
- Ongoing compliance problems with pedicure services and unlicensed services.
- Stakeholders (including health experts) consider it could be improved, including to better regulate new services.
- Tā moko exemption does not reflect actual practice and does not include reasons for exemption.

Risks

There is a current and future reputational risk to council because new services are not regulated by the Bylaw or Code (e.g. eyeball tattooing and dermal fillers).

Mitigation

- Public information made available about the practical application of the Bylaw and Code.
- Timely updates to the Code.

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\(^2\) Local Government Act 2002, sections 162-188.
\(^3\) Health Act 1956, sections 33-42.
\(^5\) Health Act 1956, sections 33 and 66.
\(^6\) Health Act 1956, sections 114-116B.
Attachment A

Option 2: amended bylaw supported by Code

Bylaw form
This option improves on the current service type bylaw framework in Option 1 by:

- amending all service types and definitions to include reference to “skin” and “tissue”
- including massage as an “other specified service” and require operators to comply with minimum standards
- prohibiting eyeball or scleral tattoo unless carried out by a health practitioner
- changing the definition of “swimming pool” to include “water play parks”
- requiring operators to display health licence
- clarifying the tā moko exemption to remove reference to “non-commercial” and include reasons for the exemption
- amend bylaw to more clearly recognise the significance of traditional Pacific tattoo.

A more detailed assessment of the above amendments is contained in Table 2.

Code of practice
The Code can be reviewed following amendments to the current Bylaw.

Implementation
Implementation, licensing and compliance would be the same as Option 1.

Pros and cons
Pros
- Proactively minimises health risks by requiring operators to comply with the Code and inspections to ensure compliance.
- Amending service type definitions include all services with health risks of concern.
- Stakeholders (including Environmental Health officers) support an improved existing bylaw framework as it is considered effective and certain.
- Stakeholders support minor improvements, including changes to definitions and exemptions.
- The Bylaw framework and code are flexible as the Code can be changed by the Regulatory Committee.
- Prosecution under the Local Government Act 2002 can result in a higher fine than under the Health Act 1956 with a greater deterrent effect.
- Compliance costs are likely to be similar to option 1.
- Recognises importance of tā moko by exempting from Bylaw. Exemption would be clarified to reflect practice and include reasons for exemption.
- Better recognises traditional Pacific tattoo.
Attachment A

Cons

- Categorisation of services by service type does not clearly identify health risks or provide a graduated enforcement response related to that risk.
- Code must be continually updated to ensure new services are properly regulated.
- On their own, improvements are unlikely to address ongoing compliance problems with pedicure services and unlicensed operators.

Risks

Small risk that future emerging services are not clearly regulated by the Bylaw or Code.

Mitigation

- Public information made available about the practical application of the Bylaw and Code.
- Timely updates to the Code.

Option 3: risk-based bylaw framework supported by Code

Bylaw form

This option would make a new bylaw that regulates services based on the risk posed to public health (see Figure 2) which:

- defines four risk categories: very high, high, moderate or low-risk
- identifies which risk categories require a licence
- identifies which risk categories must comply with minimum standards
- enables minimum standards to be adopted in a separate code of practice (Code)
- identifies exemptions (e.g. health practitioners).

The level of risk would be determined using a risk matrix that includes potential harm caused by the service and the potential frequency of this harm. Prior to drafting, staff would need to further investigate the risk assessment process and receive guidance from health risk assessment experts. Obtaining supporting scientific analysis (similar to the Food Act 2014 risk assessment) would cost upwards of $70,000.

The new bylaw would also include the following improvements from Option 2 (see Table 2 for assessment of amendments):

- require operators to display a health licence
- clarification of any ō moko exemption
- ensuring the bylaw recognises traditional Pacific tattoo.
Attachment A

Figure 2: Risk-based bylaw framework (Option 3)

HEALTH AND HYGIENE BYLAW
RISK-BASED FRAMEWORK

Classifies services by risk
- Very high
- High
- Moderate
- Low

Minimum standards
Identifies risk categories that must comply with minimum standards

Licensing
Identifies risk categories that must be licensed

Code of Practice
Enables council to make a code of practice that contains minimum standards

Exemptions
Identifies service providers that are exempt from the bylaw

Health and Hygiene Code of Practice 2013
Minimum Standards for specific services

**Code of practice**
The Code with be replaced in 2019 with a new Code that categorises services by risk with general standards related to risk level.

**Implementation**
Implementation would be similar to Options 1 and 2. The main change will be an additional requirement for the Environmental Health Unit to:
- undertake a risk assessment for all existing and new services
- develop and maintain a schedule of services classified by risk
- identify which services are licensed, comply with minimum standards, or are exempt
- reassess the health risks of existing services if there is a change in practice that affects risk.

Risk assessment costs would not be recovered under the current fee structure.
Attachment A

_Licensing and compliance_

The same licensing and compliance regime would apply and enforcement options would be the same as Options 1 and 2.

_PROs and cons_

**Pros**
- Proactively minimises health risks by requiring operators to comply with minimum standards and inspections to ensure compliance.
- New services are regulated by the bylaw even if outside current service types.
- Clear rationale for regulatory response as directly relates to health risk.
- Reflects regulatory trend towards risk-based models.
- The bylaw framework and code are flexible as minimum standards can be changed by the Regulatory Committee.
- Prosecution for bylaw under the Local Government Act 2002 can result in a higher fine than under the Health Act 1956 with a greater deterrent effect.
- Recognises importance of tā moko by exempting from Bylaw. Exemption would be clarified to reflect practice and include reasons for exemption.
- Better recognises traditional Pacific tattoo.

**Cons**
- Environmental Health officers do not support this approach as it is a fundamental change to the current bylaw framework which is effective and certain.
- Implementing a risk-based bylaw framework would require extensive policy and operational research and development (e.g. Food Act 2014).
- Increased demand on operational resources for ongoing health risk assessments.
- Need to replace bylaw as requires a significant change in approach to regulating services.
- Further bylaw review required five years after bylaw made.

**Risks**
- Risk of incorrectly classifying services because of a lack of reliable data
- Operational risks as risk-based approach is untested for these industries.
- Reputational risk if service operators object to risk assessment or risk assessments not carried out promptly for new services.

**Mitigation**
- Ensure risk assessment is robust.
- Public information about the risk assessment process and the practical application of the Bylaw and Code.
- Timely updates to the Code.
Attachment A

Option 4: respond to complaints using Health Act 1966

Option 4 does not respond to the problems, objectives and outcomes set out above. However, council needs to consider whether the current bylaw should be revoked when reviewing a bylaw under the Local Government Act 2002.

Option 4 would revoke the Bylaw. Environmental Health Officers would instead rely on existing powers under the Health Act 1956 to investigate and take action where a health nuisance complaint is made about a service.

Code of practice

The Code will be revoked on the date the Bylaw is revoked.

Implementation

Environmental Health officers would no longer carry out licensing inspections and any non-recoverable costs from this regime would be removed. However, officers would still be required to carry out complaints inspections which are fully funded by rates.

Licensing and compliance

Officers would rely on their powers under the Health Act 1956 to inspect operator premises and take enforcement action where there is a nuisance or any condition likely to be “injurious to health”. 7

It is an offence to cause or permit a nuisance under the Health Act 1956 (maximum fine $500 and $50 per day). 8 Where an operator offers sun-bed services to a customer under 18 years, officers can issue an infringement notice and require operators to pay $10,000 infringement. 9

Pros and cons

Pros

- Reduced compliance costs to business.
- Reduced implementation costs in the short term as officers not required to run licensing programme.

Cons

- Risk of harm is not minimised (and may increase) as harm likely to occur before officers act.
- Health Act 1956 provides less deterrence for poor practices as lesser penalty than under Local Government Act 2002.
- Stakeholders do not support option given the potential health risks and increased harm.
- Potential uncertainty for operators and council officers because there would be no clear standards to comply with or be assessed against.
- Likely increase in complaints which in medium to long term will increase costs to ratepayers for non-recoverable inspections.
- Health Act 1956 does not require consideration of implications for Māori.

7 Health Act 1956, sections 33-42.
8 Health Act 1956, sections 33 and 66.
9 Health Act 1956, sections 114-116B.
Attachment A

Risks

- Risk of harm is not minimised (and may increase) as harm likely to occur before officers act.
- Reputational risk if public concerned about council reducing health protection.
- Future reputational risk if council needs to make new bylaw to address likely increase in complaints.

Mitigation

- Promoting good practice using non-regulatory tools (e.g. the Code could become a guideline).

Options assessment

Preliminary legal assessment

Bylaws must comply with certain legal requirements to be valid, including: that they are authorised by statute, and are not repugnant or unreasonable. Staff consider all four options meet these preliminary legal requirements.

New Zealand Bill of Rights Act 1990 assessment

Options 1, 2 and 3 raise potential limitations to freedom of expression. However, these are justified limitations because of the significant public health risks the bylaw seeks to minimise. Therefore, there are no implications and the options are not inconsistent with the New Zealand Bill of Rights Act 1990.

Option 4 does not require the preparation of a bylaw and therefore a New Zealand Bill of Rights Act 1990 assessment is not required.

Assessment against criteria

Staff have completed a comparative assessment against criteria. These criteria reflect the objectives of a regulatory response to this problem identified above:

1. minimise health risks to reduce harm to people using commercial services that involve contact with the human body, including by:
   (i) ensuring comprehensive coverage of both current and emerging services that pose health risks

2. meet legislative requirements under the Local Government Act 2002 including:
   (i) giving effect to its identified priorities and desired outcomes in an efficient and effective manner (section 14)
   (ii) ensuring any bylaw does not give rise to any implications or is inconsistent with the New Zealand Bill of Rights Act 1990 (section 155).

The criteria and a summary of the assessment is shown in Table 1. The “✓” and “✗” reflect the impact of the option against each criterion relative to other options. For instance, the more “✓”, the better the option.
Table 1: Summary of assessment of options against stated objectives

<table>
<thead>
<tr>
<th>Option</th>
<th>Effectiveness at minimising health risks</th>
<th>Efficiency at minimising health risks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option 1: status quo – service type bylaw framework supported by Code</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>While the status quo proactively minimises health risks, some services are not included because of service type definitions (e.g. vaginal laser treatment and massage) and there is potential for harm to occur.</td>
<td></td>
</tr>
<tr>
<td>Option 2 amended bylaw supported by Code</td>
<td>✓ ✓</td>
<td>✓ ✓</td>
</tr>
<tr>
<td></td>
<td>Option 2 would further minimise health risks by amending service type definitions to cover all current and emerging services identified by the review.</td>
<td></td>
</tr>
<tr>
<td>Option 3 risk-based bylaw framework supported by Code</td>
<td>✓ ✓</td>
<td>×</td>
</tr>
</tbody>
</table>
| | Option 3 would further minimise health using a health risk assessment to cover all services that meet threshold levels of risk. | | Option 3 is less efficient than status quo and Option 2 because it would require:  
  - expert research and development of risk-based framework (estimated initial cost of at least $70,000)  
  - ongoing health risk assessments  
  - a further bylaw review within five years (instead of 10 years under Options 1 and 2). |
| Option 4 respond to complaints using Health Act 1956 | × × | × × |
| | Option 4 would not minimise health risks (which may increase) as harm must occur before officers act. | | Option 4 is the least efficient as it is likely to result in increased complaints which in the medium to long term will increase costs to ratepayers for non-recoverable complaints inspections. |
Attachment A

Analysis and recommendations

Based on analysis against assessment criteria and the pros and cons of each option, staff recommend Option 2: amended bylaw supported by code because it:

- further minimises health risks by covering a broader range of current and new services, including services that risk breaking or burning membranes, water play parks and massage
- improves on the status quo (Option 1) which stakeholders consider effective and certain
- is more efficient than Option 3 because it can be achieved without additional resourcing or implementation costs
- would make the tā moko exemption clearer
- would better recognise traditional Pacific tattoo
- would require operators to display a health licence.

Option 3 (risk-based bylaw framework) would also further minimise health risks and cover any unanticipated future services without requiring a bylaw amendment. However, the key trade-offs are:

- risk of incorrectly classifying services because of a lack of reliable data
- operational risks as a risk-based approach is untested for these industries
- additional resourcing, expert advice and implementation costs. The estimated starting cost for initial expert advice is $70,000.

Staff consider the risk of future services not being covered under Option 2 is small and can be mitigated by amending the Bylaw. In addition, both Options 2 and 3 would require updates to the Code to ensure there are minimum standards for new services.

Option 1 (status quo) is effective and certain but does not regulate new services that are covered in Options 2 and 3.

Option 4 (respond to complaints using Health Act 1956) is the least effective option because harm is likely to have occurred before council responds and the cost of responding to complaints cannot be recovered from operators.
### Table 2: Detailed assessment of potential Option 2 bylaw amendments

<table>
<thead>
<tr>
<th>Proposed Amendment</th>
<th>Pros</th>
<th>Cons</th>
<th>Risks and Mitigation</th>
<th>New Zealand Bill of Rights Act 1990</th>
</tr>
</thead>
</table>
| Include massage as other specified service (Recommended) | • Ensures massage regulated and responds to high number of ACC claims.  
• Can raise training and qualification standards through minimum standards in Code.  
• Less inspections required than if licensed.  
• Avoids over-regulation of lower-risk industry. | • As not licensed will not be inspected unless complaints made.  
Minimum standards that require training or qualifications could increase compliance costs for operators. | • Council perceived as over-regulating a relatively low-risk service.  
*Mitigation*  
Ensure stakeholders consulted during drafting and special consultative procedure. | • Staff have not identified any limitations to the rights and freedoms protected under the New Zealand Bill of Rights Act 1990. Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act. |

| Require that eyeball tattoo only carried out by health practitioners (Recommended) | • Protects public from very-high risk of permanent blindness.  
• May reduce number of people seeking eyeball tattoo before it becomes popular.  
• Unlikely to have an impact on licensing and compliance resourcing.  
• Protects vulnerable people (e.g. youth) from blindness and/or irreversible changes to eye colour. | • Overall effectiveness limited as may have procedure done outside of Auckland. | • Council perceived as interfering with people’s physical autonomy.  
*Mitigation*  
Ensure stakeholders are informed and consulted during drafting and special consultative procedure. | • There are potential limitations to freedom of expression as it is unlikely that a health practitioner would agree to perform the service. However, these limitations are justified because of the health risks this amendment seeks to minimise. Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act. |

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10 Health risks include retinal detachment, perforation and eye infections that may lead to blindness. See Auckland Council Health and Hygiene Bylaw 2013: 2018 Review Findings Report in Agenda for the Regulatory Committee meeting on 12 April 2018 for further details.
### Attachment A

<table>
<thead>
<tr>
<th>Proposed Amendment</th>
<th>Pros</th>
<th>Cons</th>
<th>Risks and Mitigation</th>
<th>New Zealand Bill of Rights Act 1990</th>
</tr>
</thead>
<tbody>
<tr>
<td>Change definition of &quot;swimming pool&quot; to include &quot;water play parks&quot; and &quot;splash pads&quot; (Recommended) must comply with minimum standards but not required to be licensed</td>
<td>Regulation would minimise health risks which are similar to swimming pools (e.g. gastroenteritis). Ensures any future private water play parks are properly regulated. Will not increase number of inspections as not required to be licensed. Council operated water play parks already treated like swimming pools. Protects children from infections.</td>
<td>None identified.</td>
<td>Council perceived as over-regulating a relatively low-risk service that is currently only operated by council. <strong>Mitigation</strong> Ensure stakeholders consulted during drafting and special consultative procedure.</td>
<td>Staff have not identified any limitations to the rights and freedoms protected under the New Zealand Bill of Rights Act 1990. Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act.</td>
</tr>
<tr>
<td>All service types and definitions include reference to skin and &quot;tissue&quot; (Recommended)</td>
<td>Ensures services that impact membranes (e.g. vaginal laser treatment) are regulated and health risks minimised. Removes current ‘loop- hole’ in Bylaw. Officers already inspecting operators that carry out these types of services. Protects women accessing these services.</td>
<td>None identified.</td>
<td>None identified.</td>
<td>Staff have not identified any limitations to the rights and freedoms protected under the New Zealand Bill of Rights Act 1990. Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act.</td>
</tr>
<tr>
<td>Require operators to display health</td>
<td>Raises public awareness of requirement to be licensed. Public more likely to contact the council if no licence</td>
<td>None identified.</td>
<td>Public think licence means the council is vouching for the quality of the service.</td>
<td></td>
</tr>
</tbody>
</table>
## Attachment A

### Item 9

<table>
<thead>
<tr>
<th>Proposed Amendment</th>
<th>Pros</th>
<th>Cons</th>
<th>Risks and Mitigation</th>
<th>New Zealand Bill of Rights Act 1990</th>
</tr>
</thead>
</table>
| licence (Recommended) | displayed.  
• Operators see commercial value of licensing to attract customers.  
• Increased public knowledge of protections under Bylaw. | | | |
| | | | Mitigation  
• Licence clearly explains does not verify quality of service, only that complies with minimum standards. | education function of the amendment. Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act. |
| Introduce operator grading similar to food premises (Not recommended) | Raises public awareness of requirement to be licensed.  
• Public can assess differences in standards between operators.  
• Operators see commercial value of licensing and improving standards to attract customers.  
• Increased public knowledge of protections under Bylaw as ratings often attract publicity. | Assessment of whether operator meets hygiene minimum standards better suited to “pass-fail” regime.  
• Allowing lower grade services to operate may increase health risks for public than if pass/fail test applied.  
• Will require development of grading scheme for each specific service.  
• More complicated inspection process that could appear to assess quality of services. | Public think grading relates to quality of the service.  
Mitigation  
• Licence clearly explains does not verify quality of service, only that complies with minimum standards to certain grade. | There are potential limitations to freedom of expression. However, these limitations justified because of the public health education function of the amendment. Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act. |
## Attachment A

<table>
<thead>
<tr>
<th>Proposed Amendment</th>
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<th>Cons</th>
<th>Risks and Mitigation</th>
<th>New Zealand Bill of Rights Act 1990</th>
</tr>
</thead>
</table>
| **Update Code (Recommended)**     | • An up-to-date Code will better enable operators and officers to minimise public health risks.  
• Ensures all members of the public are protected by up-to-date minimum standards.  
• Clear standards for officers and operators.  
• Avoids reliance on Health Act 1956 enforcement powers. | • Increased resourcing requirements to properly review Code. | • Operators disagree with minimum standards.  
**Mitigation**  
• Ensure stakeholders consulted during drafting and special consultative procedure. | • Staff have not identified any limitations to the rights and freedoms protected under the NZBORA. Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act. |
| **Clarification of any tā moko exemption**  
Remove “non-commercial” reference from tā moko exemption.  
Include reasons for the exemption. (Recommended) | • Does not impact effectiveness as will not change the number of tā moko artists authorised by marae committees.  
• Does not affect implementation or enforcement of Bylaw. | • None identified. | • Artists could use marae authorisation to set up commercial premises beyond what the marae intended.  
**Mitigation**  
• Officers will have to determine whether tā moko are working under authority of marae. | • Staff have not identified any limitations to the rights and freedoms protected under the NZBORA. Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act. |
## Attachment A

### Item 9

<table>
<thead>
<tr>
<th>Proposed Amendment</th>
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<th>Cons</th>
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</tr>
</thead>
</table>
| Amend bylaw to more clearly recognise the significance of traditional Pacific tattoo (Recommended) | - Pacific tattoo artists more likely to comply with Bylaw and minimum standards if bylaw more clearly includes traditional practices.  
- Potentially increase voluntary compliance because Pacific tattoo artists will be more aware of the need to comply with the Bylaw and Code.  
- Reduces health risks for people in Pacific and wider community. | - None identified. | - Perception council is over-regulating traditional practices.  
**Mitigation**  
Held workshop with Pacific community and key stakeholders are supportive.  
Consultation during process of drafting amendments. | - Staff have not identified any limitations to the rights and freedoms protected under the NZBORA. Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act. |
| Amend bylaw to exempt traditional Pacific tattoo from licensing and minimum standards (Not recommended) | - Exemption will not minimise significant health risks, including reported cases of serious infections.  
- Traditional Pacific tattoo is a culturally significant practice and some stakeholders consider it should have equal status with tā moko which is exempt. | - Participants may be vulnerable to unsafe practices by inexperienced Pacific tattoo artists.  
- Officers would respond to complaints using Health Act 1956 but only after harm caused.  
- No established authority to oversee traditional Pacific tattoo practice. | - Perception that council is exempting high-risk services contrary to health expert advice.  
- Risk that exemption could be interpreted more widely than intended and no overseeing authority to confirm legitimacy of practitioners.  
**Mitigation**  
Ongoing engagement with community to establish authority to oversee Pacific tattoo artists. | - Staff have not identified any limitations to the rights and freedoms protected under the NZBORA. Therefore, the proposed amendment does not give rise to any implications and is not inconsistent with the Act. |
Findings of the legacy on-site wastewater bylaws review

Te take mō te pūrongo / Purpose of the report
1. To endorse the findings of the legacy on-site wastewater bylaws review and begin the process to revoke the four legacy on-site wastewater bylaws.

Whakarāpopototanga matua / Executive summary
2. To complete a statutory review of four legacy on-site wastewater bylaws (the legacy bylaws) in Rodney, North Shore, Waiheke and Papakura, staff have prepared a review findings report.
3. The findings report confirms that while failing on-site wastewater systems are still polluting waterways, the legacy bylaws are not required to address this issue.
4. Staff recommend that the Committee agree to revoke the legacy bylaws as:
   - the Auckland Unitary Plan and existing legislation already regulate on-site wastewater systems, and the legacy bylaws provide no additional regulation
   - existing legislation has stronger enforcement powers than the legacy bylaws
   - enforcement officers and local boards identified that there is no need for the legacy bylaws.
5. There is a reputation risk in revoking the legacy bylaws. The public may think that the council is reducing regulations managing pollution of waterways. This can be mitigated through clear public communication about existing rules and regulations.
6. If approved, staff will prepare a Statement of Proposal for the June 2018 committee meeting.

Ngā tūtohunga / Recommendation/s
That the Regulatory Committee:

a) endorse the findings report, "Review of On-site Wastewater Bylaws: Findings Report April 2018" (Attachment A)

b) agree to begin the process to revoke the following on-site wastewater legacy bylaws:
   i) all clauses of the Auckland City Council Bylaws: Bylaw No. 29 (Waiheke Wastewater Bylaw 2008) (i.e. the whole legacy bylaw)
   ii) residual clauses of the North Shore City Bylaw 2000: Part 20 Wastewater
   iii) residual clauses of the Rodney District Council General Bylaw 1998: Chapter 20 Wastewater Drainage
   iv) residual clauses of the Papakura District Council Wastewater Bylaw 2008.

c) request that a Statement of Proposal to revoke the four legacy council bylaws referred in (b) above be prepared for approval.
Horopaki / Context

The legacy bylaws were intended to be replaced by the Auckland Unitary Plan

7. In October 2015 the Governing Body\(^6\) confirmed the following legacy bylaws to preserve their requirements until the relevant provisions of the then Proposed Auckland Unitary Plan became operative:
   - North Shore City Bylaw 2000
   - Rodney District Council 1998
   - Waiheke Wastewater 2008
   - Papakura District Council Wastewater Bylaw 2008

8. The legacy bylaw provisions were developed by former councils to ensure that septic tanks and domestic wastewater treatment systems are properly installed and maintained to prevent system failure and pollution.

The Local Government Act 2002 requires a statutory review of the legacy bylaws

9. Auckland Council must complete a statutory review of the legacy bylaws by 31 October 2020\(^7\). To complete the statutory review, council must determine whether a bylaw is the most appropriate way\(^8\) of addressing on-site wastewater problems.

10. To undertake the statutory review of the legacy on-site wastewater bylaws, staff undertook research and engagement within council and prepared a findings report.

11. The findings from this engagement and research are contained in the “Review of On-site Wastewater Bylaws: Findings Report April 2018” (Attachment A).

Tātaritanga me ngā tohutohu / Analysis and advice

On-site wastewater systems are still polluting waterways

12. The review findings confirm that there is still a problem to be managed. On-site wastewater system failure does contribute to the pollution of the region’s waterways.

13. High levels of Escherichia coli (E. coli) readings across the region’s waterways provide evidence of contamination. It is likely that failure of on-site wastewater systems contributes. DNA testing has shown human faecal waste is a contributing E. coli source which links the contamination to on-site wastewater failure.

14. Water quality monitoring is limited in the region. Many coastal settlement areas with large numbers of on-site wastewater systems, such as Leigh, Whenuapai and Sandspit, are not monitored.

15. The resulting contamination poses significant public health risks and negatively impacts on the ecological health of waterbodies and aquatic life in affected areas.

16. Customer calls\(^9\) to council regarding neighbours’ malfunctioning on-site wastewater systems (leaks, overflows, smells) also confirm that systems fail.

---

\(^6\) Resolution number GB/2015/112
\(^7\) Local Government Act 2002, section 158
\(^8\) Local Government Act 2002, section 160(1)
\(^9\) 97 OSWW complaints and questions received between July 2017 and November 2017 (see Attachment A for summary)
Auckland Unitary Plan and existing legislation regulate on-site wastewater systems

17. Several pieces of legislation work in tandem to regulate different aspects of on-site wastewater systems as seen in the diagram below.

[Diagram showing various laws regulating on-site wastewater systems]


19. The legacy bylaws regulate issues that are already addressed by the Auckland Unitary Plan and existing legislation. Staff have identified that there is no regulatory gap.

Existing legislation has more enforcement power than the on-site wastewater bylaws

20. The Auckland Unitary Plan (through the Resource Management Act 1991) and the Building Act 2004 provide stronger enforcement requirements compared to the legacy bylaws. This includes the ability to inspect systems, issue infringements, serve notices to stop and/or remedy, recover costs and prosecute.

21. The legacy bylaws under the Local Government Act 2002 have no power to issue infringement notices, so fines can only be issued on conviction.

22. Engagement with council’s enforcement officers identified there is no need for the legacy bylaws to manage on-site wastewater issues.

The legacy bylaws not appropriate way to address on-site wastewater pollution issues

23. A summary of the assessment of retaining or revoking the legacy bylaws against legislative requirements under the Local Government Act 2002 is included in Attachment B.

24. The legacy bylaws are not the most appropriate way to address pollution problems caused by on-site wastewater system failure. They are no longer effective or efficient in their management of these issues.

25. The legacy bylaws are not fit for the future as they duplicate provisions of the Auckland Unitary Plan and other legislation.

26. Staff advise that the legacy bylaws no longer fulfil a regulatory purpose in the management of pollution problems caused by on-site wastewater system failure.
27. Staff recommend that the legacy bylaws should be revoked to rely on the more effective and efficient way of controlling standards for on-site wastewater systems through compliance with the Auckland Unitary Plan and other legislation.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe / Local impacts and local board views
28. In December 2017 the Local Board Chairs’ Forum discussed the legacy bylaw review. Six local boards requested individual workshops which were held in February and March 2018 with Rodney, Great Barrier, Waitakere, Waiheke, Franklin and Upper Harbour local boards.
29. The key matters raised through the local board engagement were:
   • no extra regulatory tools are needed, utilise the existing enforcement powers
   • current rules and regulations need to be explained and communicated more simply
   • increase environmental monitoring and improve knowledge base
   • consider maintenance incentives for owners who cannot afford system upkeep.

Tauākī whakaaweawe Māori / Māori impact statement
30. The health of Auckland’s river and water systems is significant to Māori as water is seen as the essence of all life. As other regulations help protect water, the legacy bylaw review will not have an impact on Māori above the status quo.
31. Representatives of the mana whenua and mataawaka communities have expressed interest in being engaged during formal public consultation on this issue.

Ngā ritenga ā-pūtea / Financial implications
32. Costs relating to the special consultative procedure will be covered within existing budget. These costs would be incurred whether the bylaws were retained or revoked.

Ngā raru tūpono / Risks
33. If council revokes the legacy bylaws, there is a risk that the public will view this as a reduction in regulations managing pollution of waterways. This will be mitigated through clear public communication about the existing rules and regulations.

Ngā koringa ā-muri / Next steps
34. If the Committee agrees to revoke the legacy bylaws, staff will prepare a Statement of Proposal for approval at the June 2018 committee meeting.

Ngā tāpirihanga / Attachments

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Ngā kaihaina / Signatories

<table>
<thead>
<tr>
<th>Author</th>
<th>Maclean Grindell - Policy Analyst</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authorisers</td>
<td>Kataraina Maki - GM - Community &amp; Social Policy</td>
</tr>
<tr>
<td></td>
<td>Penny Pirrit - Director Regulatory Services</td>
</tr>
</tbody>
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Review of On-site Wastewater Bylaws

Findings report

April 2018
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</tr>
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</table>
1 Summary of key findings

The legacy on-site wastewater bylaws were intended to be replaced by the Auckland Unitary Plan

- The Governing Body renewed the legacy on-site wastewater (OSWW) bylaws in 2015, so there would be no regulatory gap until relevant provisions in the Auckland Unitary Plan became operative.
- The legacy OSWW bylaws are now redundant as the operational Auckland Unitary Plan is council’s guiding regulation for on-site wastewater management.

The issues the legacy on-site wastewater bylaws set out to address are still evident

- On-site wastewater systems are still an issue as evidenced by:
  - human-sourced E. coli contamination across the region’s waterways
  - customer calls to council identifying OSWW system malfunctions.

The legacy on-site wastewater bylaws are not needed

The Auckland Unitary Plan replaces the need for the legacy on-site wastewater bylaws. Further evidence and reasoning are detailed in the four points below.

1. The legacy on-site wastewater bylaws do not provide additional regulation

- The bylaws only provide an additional stipulation of requiring OSWW users to send in their maintenance records proactively to council or when asked.
- The Auckland Unitary Plan already regulates record keeping by requiring OSWW maintenance records to be kept on site for inspection by council’s officers.
- Proactive record keeping is achievable through building relationships with OSWW service providers and effectively communicating responsibilities to OSWW users.

2. Existing legislation has greater enforcement power than the bylaws

- Current legislation provides more options for enforcement including the ability to issue on-spot fines, serve abatement notices and issue large fines on conviction.

3. Engagement with council’s OSWW stakeholders revealed no need for bylaws

- Key findings from engagement included:
  - current rules and regulations need to be simplified and communicated to OSWW users
  - council needs a central database of OSWW systems and increased environmental monitoring
  - council should consider incentives as some owners cannot afford to maintain their OSWW systems
  - council should increase relationship building with pump out contractors to alert council to impending OSWW issues and failures
  - building relationships with OSWW operators and maintenance providers is crucial to an effective maintenance reporting scheme. The bylaw assists, but it is not required for having records sent to council.

4. The Auckland Unitary Plan is the appropriate means for addressing OSWW management

- If changes to regulation are needed, they should be administered through a plan change of the Auckland Unitary Plan OSWW provisions instead of a bylaw.
2 Introduction

2.1 Purpose of the report

This report presents findings from the review of Auckland Council’s legacy bylaws for on-site wastewater (OSWW) management. The current legacy OSWW bylaws include:

- North Shore City Bylaw 2000
- Rodney District Council 1998
- Waiheke Wastewater 2008
- Papakura District Council Wastewater Bylaw 2008

Auckland Council (council) has a statutory responsibility under the Local Government Act 2002 to review these bylaws by 31 October 2020.

2.2 Key questions

To meet council’s statutory review requirements under section 160(1) of the Local Government Act 2002, the bylaws must be determined as the most appropriate way of addressing the perceived problem. To identify this requirement, the review asked the following key questions:

- What plans and legislation currently regulate OSWW management?
- Are the issues the OSWW bylaws set out to address still evident?
- Are the bylaws still the most appropriate means for managing on-site wastewater systems?
  - Do the bylaws provide extra regulation compared to existing legislation?
  - Do the bylaws provide greater enforcement power than existing legislation?
  - Do council’s OSWW stakeholders identify additional issues a bylaw could address?

2.3 Why review now

2.3.1 Legacy OSWW bylaws were intended to be replaced by Auckland Unitary Plan provisions

In October 2015 the Governing Body\(^1\) confirmed the four legacy OSWW bylaws would remain in effect until 31 October 2020, at which time they would be automatically revoked.

The Governing Body’s decision was taken under the recommendation from the Regulatory and Bylaws Committee\(^2\) in July 2015 to preserve status quo (keep the bylaws) until the relevant provisions of the Proposed Auckland Unitary Plan became operative.

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1 Governing Body, 29 October 2015, Resolution number GB/2015/112
2 Regulatory and Bylaws Committee, 08 July 2015, Resolution number RBC/2015/23
The Auckland Unitary Plan OSWW regulations became operational in September 2016. Section 20A of the Resource Management Act 1991 gave OSWW users six months to comply with the new Unitary Plan standards or to obtain a resource consent. With the Auckland Unitary Plan provisions now applying to all OSWW systems, the legacy bylaws could be reviewed for redundancy.

### 2.3.2 OSWW bylaw review aligns with Healthy Water’s OSWW management review

Auckland Council’s Environment, Climate Change and Natural Heritage Committee passed a resolution\(^3\) in March 2016 noting a cross-council project team would develop options to better manage privately-owned OSWW systems. The council unit, Healthy Waters, is leading this project and the bylaws unit is part of the project team. The results from the legacy OSWW bylaw review will provide insights to help Healthy Waters develop options for OSWW management.

### 2.4 Scope

The review will include:

- the nature and extent of issues associated with inadequate OSWW management in Auckland
- the effectiveness of the legacy OSWW bylaws in addressing these issues
- whether a new bylaw is necessary to address these issues or whether we already have sufficient tools available (such as in the Resource Management Act 1991 and Unitary Plan).

#### 2.4.1 Out of scope

The review will not include:

- water pollution issues associated with the reticulated wastewater system managed by Watercare Services Limited, including:
  - wastewater overflows from Auckland’s reticulated wastewater network, particularly from the older combined stormwater/sewer system
  - wastewater issues regulated by the Water Supply and Wastewater Network Bylaw 2015
  - properties which are on Watercare’s reticulated network and therefore do not use an OSWW system.
- regulating other sources of water pollution, such as stormwater, farming activities and industry
- specific proposals about how to fund OSWW maintenance and upgrades.

\(^3\) RES ENV/2016/7
2.5 Methodology

Various research and engagement methods were used to gain insight on the key questions.


This research also drew on information provided by Healthy Waters on the nature of OSWW system failure and the scale of the problem through environmental monitoring from the Safeswim Programme and previous water studies.

Stakeholder engagement: Written communications and meetings were conducted with council staff to seek input on the regulatory framework, how it works internally and if additional regulation is required. Interviews were held with council staff from Auckland Unitary Plan, Licensing & Regulatory Compliance, Healthy Waters, Resource Consents, Building Consents, Engineering and Technical Services and Regulatory Litigation Services.

Local Board workshops: All local boards were invited to engage and provide feedback on the issue. Informal workshops were held with six local boards who were presented with the current regulatory framework and asked questions regarding known issues and whether additional enforcement powers are needed.

Analysis of past OSWW bylaw reviews: The legacy bylaws were reviewed in 2014/2015 by the then Planning Policies and Bylaws unit, and the results of those reviews were considered.

3 What currently governs OSWW management?

Auckland’s OSWW systems are governed by the following plans and legislation:

Regional plan and legislation
- Auckland Unitary Plan (live 2016)
- Resource Management Act 1991
- Building Act 2004
- Health Act 1956
- Local Government Act 2002 (bylaws)

Legacy OSWW bylaws
- North Shore City Bylaw 2000
- Rodney District Council 1998
- Waiheke Wastewater 2008
- Papakura District Council Wastewater Bylaw 2008
3.1 National legislation regulating OSWW systems

National legislation for regulating OSWW systems includes the Building Act 2004, Health Act 1956 and Resource Management Act 1991. These Acts work in tandem to regulate different aspects of OSWW management as demonstrated below in Figure 1.

**Figure 1 – Summary of the national legislation for OSWW management**

Source: Ministry for the Environment, July 2008, Proposed National Environmental Standard for On-site Wastewater Systems

3.1.1 Building Act 2004

The Building Act 2004 classifies OSWW systems as a building which must obtain consent. It must be designed and installed properly and operate in a safe and sanitary manner. Administered by the council’s building consents and compliance teams, Section G13 (Foul Water) of the Building Code specifically sets out the requirements for on-site wastewater systems’ design and construction. *Technical Publication 58 On-site Wastewater Systems: Design and Management Manual 2004* (TP58) provides additional guidance for the design and maintenance of on-site treatment and disposal systems for domestic wastewater. TP58 is used as the basis for the assessment and approval of building consents. It is currently being reviewed with an updated Guidance Document (GD06) to be issued shortly.

3.1.2 Health Act 1956

The Health Act 1956 dictates that all dwellings must have suitable appliances for disposing of wastewater in a sanitary manner. This regulation means that if a dwelling has no sewer access available, it is then required to treat wastewater on-site. The Health Act 1956 goes on to regulate septic tank desludging and sludge disposal and focusses on improving, promoting and protecting public health. The Health Act 1956 allows territorial authorities to issue cleansing and closure orders or require repairs if residential facilities, including OSWW systems, are insanitary.
3.1.3 Resource Management Act 1991

The Resource Management Act 1991 focusses on the health of the environment and gives power to the Unitary Plan to regulate permitted standards regarding flow rate, technical design, management and reducing adverse effects on the environment. Section 15 of the Resource Management Act 1991 prohibits anyone from discharging contaminants into water or onto land in circumstances which may result in that contaminant entering water, unless the discharge is expressly allowed by a rule in a regional plan.

3.2 The Auckland Unitary Plan

The Auckland Unitary Plan prescribes permitted standards for discharging treated domestic wastewater onto or into land via a land application disposal system.

Under the provisions of the Auckland Unitary Plan, the majority of OSWW devices are considered permitted activities. Along with Auckland Unitary Plan key standards, if the flow rate is less than 2m³ and the ratio of site area to discharge volume is greater than 1.5m² per litre a day, the OSWW system is permitted. As such, only about 2,000 of the estimated 50,000-60,000 devices in the region are not permitted and have resource consents.

Auckland Unitary Plan key standards for all on-site wastewater systems include:

- no significant adverse effects on public health, environmental health or Mana Whenua
- regular maintenance by a suitably qualified OSWW provider in accordance to:
  - Technical Publication 58 On-site Wastewater Systems: Design and Management Manual 2004 (TP58)
  - the manufacture’s recommendations
  - or service provider’s recommendations.
- septic tank inspections at least every three years and advanced treatments inspections every six months
- records of each maintenance action must be retained and made available on site for inspection by the council.
3.3 OSWW legacy bylaws and Waitakere targeted rate

The legacy bylaws seek to ensure septic tanks and domestic wastewater treatment systems are installed and maintained in a manner which prevents the failure of the system. A summary is provided below in Table 1. For a complete breakdown of the legacy bylaws see Appendix 7.4.

Table 1 - Summary of legacy OSWW bylaws

<table>
<thead>
<tr>
<th>Legacy OSWW bylaw</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Shore City 2000</td>
<td>Stipulates:</td>
</tr>
<tr>
<td></td>
<td>- wastewater must be treated and disposed on-site if no sewer access</td>
</tr>
<tr>
<td></td>
<td>available</td>
</tr>
<tr>
<td></td>
<td>- OSWW systems shall be operated and maintained in accordance with TP58</td>
</tr>
<tr>
<td></td>
<td>- where there is evidence of system failure or no maintenance contract</td>
</tr>
<tr>
<td></td>
<td>in place, the owner must remedy at their expense.</td>
</tr>
<tr>
<td>Papakura District Council 2008</td>
<td>Stipulates:</td>
</tr>
<tr>
<td></td>
<td>- building consent procedures must be followed in accordance to TP58</td>
</tr>
<tr>
<td></td>
<td>- pump-outs must occur every three years with records sent to council</td>
</tr>
<tr>
<td></td>
<td>- officers have right of inspection</td>
</tr>
<tr>
<td></td>
<td>- breaches to the bylaw must be remedied at owner’s cost.</td>
</tr>
<tr>
<td>Rodney District Council 2008</td>
<td>Stipulates:</td>
</tr>
<tr>
<td></td>
<td>- maintenance records must be sent to council when requested</td>
</tr>
<tr>
<td></td>
<td>- officers can serve written notice if an OSWW system fails</td>
</tr>
<tr>
<td></td>
<td>- officers can take appropriate remedial steps at the cost of the occupier.</td>
</tr>
<tr>
<td>Waiheke 2008</td>
<td>Stipulates:</td>
</tr>
<tr>
<td></td>
<td>- officers have right to necessary inspections</td>
</tr>
<tr>
<td></td>
<td>- sufficient detail must be provided with a building consent</td>
</tr>
<tr>
<td></td>
<td>- systems must be pumped out every three years with records proactively</td>
</tr>
<tr>
<td></td>
<td>sent to council.</td>
</tr>
</tbody>
</table>

3.3.1 Waitakere pump-out targeted rate

Although not a bylaw, approximately 4,400 OSWW systems in the former Waitakere City Council non-urban area, now mainly the Waitakere Ranges Local Board and parts of Henderson-Massey Local Board, have their systems pumped out every three years by council. Costs are recovered at a targeted rate of $185.13 as of February 2016. A high-level performance assessment is carried out as part of the pump out process and property owners are notified of any faults.
4 Are the issues the bylaws set out to address still evident?

Key findings

- The legacy OSWW bylaws seek to prevent the failure of OSWW systems.
- Failing OSWW systems are still an issue as evidenced by:
  - human-sourced E. coli contamination in waterways
  - customer calls to council identifying OSWW system leaks, overflows, bad smells and lack of maintenance.

4.1 Purpose of the legacy OSWW bylaws

Council does not currently provide a reticulated wastewater system to everyone in Auckland. Many of Auckland’s property owners in rural and coastal areas without access (est. 50,000-60,000 households⁴) must provide and manage their own OSWW systems.

The legacy bylaws seek to ensure septic tanks and domestic wastewater treatment systems are installed and maintained in a manner which prevents the failure of the system.

4.2 Failing OSWW systems are contaminating waterways

OSWW systems are known to be failing from evidence of high levels of Escherichia coli (E. coli) readings across the region’s waterways. DNA testing has identified human excrement to be a cause. The resulting contamination poses significant public health risks and negatively impacts on the ecological health of waterbodies and aquatic life in affected areas.

Auckland Council’s Safeswim Monitoring Programme determines the bacteriological water quality of recreational water across the region during summer. The 2013/2014 Safeswim Summary Report identified unsuitable levels of E. coli for swimming in some of Auckland’s streams and beaches.

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⁴ See Appendix 7.1 for estimate methodology
Exceedances frequently occurred at the following lagoons and beaches in 2013/14:

- Piha South Lagoon
- Karekare Lagoon
- Titirangi Beach
- Te Atatu Beach
- Piha North Lagoon
- Huia Beach
- French Bay
- Christmas Beach
- Bethells Lagoon
- Wood Bay Beach
- Laingholm Beach

Contamination is still as issue as the 2017/18 summer Safeswim website\(^5\) had long-term water quality alerts for the following areas:

- Cox’s Bay
- Laingholm Beach
- Meola Reef
- Wood Bay
- Piha North Lagoon
- Armour Bay
- Weymouth Beach
- Taumanu East
- Little Oneroa Lagoon
- Green Bay
- Fosters Bay
- Wairau Outlet
- Clarks Beach
- Piha Lagoon
- Titirangi Beach
- Bethells Lagoon

DNA testing revealed human faecal matter was a contributing source to E. coli in the water. Failing OSWW systems are a potential cause for this contamination.

Areas during the 2017/18 summer where council’s water quality monitoring showed hazards from human faecal contamination are listed below:

- Piha Lagoon (Waitakere)
- Little Oneroa Lagoon (Waiheke)
- North Piha Lagoon (Waitakere)
- Bethells (Te Henga) Lagoon (Waitakere)
- Foster Bay (Huia)

As water quality monitoring is limited in the region, many coastal settlement areas with large numbers of OSWW systems, such as Leigh, Whenuapai and Sandspit are not monitored.

\(^5\) https://www.safeswim.org.nz/
4.3 Call centre complaints and queries identify OSWW failure

There is no central location where council tracks all communications from Aucklanders regarding OSWW issues. The following lists from Licensing & Regulatory Compliance and Customer Services provide a snapshot of communications received regarding OSWW systems.

Table 2 - Licensing & Regulatory Compliance OSWW customer communications

<table>
<thead>
<tr>
<th>Customer Communications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licensing &amp; Regulatory Compliance, Environmental Health, July 2017 - November 2017</td>
</tr>
<tr>
<td><strong>38 people</strong> – complained about smelly systems, overflow, and leaks onto neighbouring properties</td>
</tr>
<tr>
<td><strong>35 people</strong> – needed maintenance and pump out, tank alarm going off</td>
</tr>
<tr>
<td><strong>21 people</strong> – had questions about septic tanks (how to get emptied, replaced or apply for a resource consent)</td>
</tr>
<tr>
<td><strong>3 people</strong> – had formal complaints about septic tanks in general or on the cost of resource consent renewal</td>
</tr>
</tbody>
</table>

Table 3 - Customer Experiences OSWW customer communications

<table>
<thead>
<tr>
<th>Customer Communications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer Experiences, Customer Services, September 2016 – March 2018</td>
</tr>
<tr>
<td><strong>9 calls</strong> – complained about pump out (either council contractor did a poor job, showed up unannounced, or left the site a mess)</td>
</tr>
<tr>
<td><strong>4 calls</strong> – complained about neighbour’s leaking OSWW systems and council not doing anything about it</td>
</tr>
<tr>
<td><strong>2 calls</strong> – complained about resource consents being confusing and costly</td>
</tr>
<tr>
<td><strong>1 call</strong> – queried on incentives for OSWW systems</td>
</tr>
<tr>
<td><strong>1 call</strong> – complemented a pump out well done</td>
</tr>
</tbody>
</table>
5 Are the bylaws still the most appropriate means for managing OSWW systems?

To assess if the bylaws are the most appropriate means for addressing OSWW management, the topic is broken down into three sections. The first section identifies if the bylaws supplement the existing plans and legislation, the second explores if the bylaws have more enforcement power than existing legislation, and the third section identifies the views of council’s OSWW stakeholders.

5.1 Do the bylaws provide extra regulation than the Auckland Unitary Plan and legislation?

Key findings

- The legacy bylaws only provide an additional stipulation by requiring OSWW users to send in their maintenance records proactively to council or when asked.

- The Auckland Unitary Plan already regulates record keeping by requiring OSWW maintenance records to be kept on site for inspection.

The Auckland Unitary Plan, Resource Management Act 1991, Building Act 2004, and Health Act 1956 provide rules to cover all aspects of OSWW regulation including design, installation, operation and maintenance. These legislations also have powers of enforcement including the ability to inspect systems, issue infringements, serve notices to stop and/or remedy, recover costs and prosecute.

Staff conducted a comparison analysis to identify any gaps or areas in the OSWW legacy bylaws not covered in the Unitary Plan or Acts. Out of the 55 clauses in the OSWW legacy bylaws, only three have requirements not included in the Auckland Unitary Plan, Resource Management Act 1991, Building Act 2004 or Health Act 1956.

See Appendix 7.4 for a line by line breakdown of the legacy bylaws and where in the Auckland Unitary Plan or Acts the stipulations are matched. Provisions in the OSWW legacy bylaws which are not stipulated by the Auckland Unitary Plan or Acts are listed in the following table.
Table 4 - OSWW bylaw provisions not stipulated by the Auckland Unitary Plan or Acts

<table>
<thead>
<tr>
<th>OSWW bylaw provisions not stipulated by the Auckland Unitary Plan, Resource Manage Act 1991, Building Act 2004 or Health Act 1956</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waiheke Wastewater 2008 Section 29.5.3 – after pump out the property owner shall provide a copy of the receipt for having this work done to the Waiheke Service Centre of the Auckland City Council within 14 days of the tank being pumped out</td>
</tr>
<tr>
<td>Papakura District Council Wastewater Bylaw 2008 Section 13.3 – the property owner shall provide a copy of the receipt for having this work done to Papakura District Council within 14 days of the tank being pumped out</td>
</tr>
<tr>
<td>Rodney District Council 1998 Section 9.3 - The owner or occupier of an allotment utilising on-site a wastewater treatment or disposal system shall, within 10 working days of receipt of written request from an Authorised Officer provide the following information:</td>
</tr>
<tr>
<td>a. the make and model of on-site treatment installed, if known; and</td>
</tr>
<tr>
<td>b. a copy of any manufacturers maintenance and operation requirements and performance standards; and</td>
</tr>
<tr>
<td>c. evidence, to the satisfaction of the officer, that an effective operation and maintenance programme for the system is in place.</td>
</tr>
</tbody>
</table>

5.2 Do the bylaws provide greater enforcement power than existing legislation?

The various acts regulating OSWW management have an array of legislative powers available for enforcement. The legacy bylaws, created under the Local Government Act 2002, have the least amount of enforcement power as they have no power to issue infringement notices. This limitation means fines can only be issued on conviction.

The Resource Management Act 1991 and Building Act 2004 provide more options and range of fines including the ability to issue on-spot fines, serve abatement notices and issue large fines on conviction. See Table 2 on the next page for a comparison on the enforcement powers of each legislation.
## Table 5 - Enforcement powers of legislation

<table>
<thead>
<tr>
<th>Act</th>
<th>Officers can inspect property</th>
<th>Officers can enter dwelling house</th>
<th>Infringement offence and fee (aka ‘instant fine’) process available</th>
<th>Notice to stop and/or require action to remedy (immediate action by enforcement officers)</th>
<th>Recover costs of remediying</th>
<th>Prosecution through courts and penalties on conviction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Government Act 2002 (bylaws)</td>
<td>✔</td>
<td>✗</td>
<td>✗</td>
<td>Can send letters to those in breach, but the legal process associated with an abatement notice is not triggered</td>
<td>✔</td>
<td>Fine on conviction of up to $20,000</td>
</tr>
<tr>
<td>Resource Management Act 1991</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>(RMA s338) Up to $750 Resource Management (Infringement Offences) Regulations, Schedule 1</td>
<td>✔</td>
<td>Fine on conviction up to $300,000 fine or 2 years imprisonment</td>
</tr>
<tr>
<td>Health Act 1956</td>
<td>✔</td>
<td>✔</td>
<td>✗</td>
<td>(HA s34)</td>
<td>✔</td>
<td>If no penalty provided, liable on conviction to a fine up to $500 and $50 every day offence continues</td>
</tr>
<tr>
<td>Building Act 2004</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>BA s168(1) $1,000 for failing to comply with a notice requiring work or a notice to fix (Infringement Offences Regulations - schedule 1)</td>
<td>✔</td>
<td>Fine on conviction up to $200,000 and not exceeding $20,000 for every day offence continues</td>
</tr>
</tbody>
</table>
5.3 Do council’s OSWW stakeholders identify any additional issues a bylaw could address?

5.3.1 Auckland Unitary Plan views

Key findings from Auckland Unitary Plan

- A plan change of the Unitary Plan, not a bylaw, is the appropriate mechanism to use if changes to OSWW regulation are required.

- A bylaw could serve a purpose if a council licensing scheme for OSWW systems is developed.

- Current legislative enforcement powers are sufficient for managing OSWW systems.

- A bylaw would not regulate anything above the current requirements in the Unitary Plan.

Auckland Unitary Plan regulation staff provided advice for the OSWW bylaw review in August 2017 to help staff understand the regulatory framework.

Themes

The Unitary Plan is the more appropriate tool: Council has determined that the most effective way of controlling the design standards of new wastewater systems is through compliance with the Auckland Unitary Plan.

Although the requirements for a bylaw change would have an easier consultation and appeal process than a plan change, it would not be appropriate to create a bylaw just to avoid a more stringent and time-consuming consultation process.

Licensing/permitting scheme: A bylaw can be used to supplement Auckland Unitary Plan rules, where the proposed requirements do not fit as easily into a Resource Management Act 1991 context, i.e. a licensing/permitting scheme.

Unitary Plan standards could require an OSWW central database: While the Auckland Unitary Plan currently does not require a list of all septic tanks to be compiled, this could be achieved by way of an additional Auckland Unitary Plan standard that requires existing and proposed tanks be ‘registered’. However, given that this is a city-wide rule, thought would have to be given as to whether the cost of maintaining those records would be proportionate to the benefit of holding that information.

There is already an obligation to keep records of maintenance and allow council officers to inspect those records in the Auckland Unitary Plan. Therefore, added benefit of requiring records sent to council proactively may be minimal.
Enforcement powers are sufficient: The Resource Management Act 1991 and Auckland Unitary Plan provisions cover all eventualities, and this is a matter of making use of council’s enforcement powers. The bylaws would not cover anything that is not already addressed by the consenting and permitted activity regime.

5.3.2 Local board views

Key findings from local board engagement

- Current rules and regulations need to be simplified and communicated to OSWW users.
- Council needs a better understanding of the scale of OSWW systems’ effect on Auckland. This could be achieved through developing a central database of OSWW systems and increased environmental monitoring.
- Council should consider incentives as some owners cannot afford to maintain their OSWW systems.
- No extra regulatory tools are needed. Council needs to utilise the enforcement powers already available.

Local boards were provided with a presentation on the current state of OSWW management and the legacy OSWW bylaw review at the Local Board Chairs’ Forum in December 2017. During the forum, six local boards requested individual workshops:

- Rodney
- Waiheke
- Great Barrier
- Franklin
- Waitakere
- Upper Harbour

As requested, staff held informal workshops with each of the above local boards. They were presented an overview of the current state of Auckland’s OSWW systems and given an in depth look at the current OSWW regulatory framework. Local board members were asked questions regarding issues with OSWW management, how it could be improved, and specifically on their views if additional regulatory powers were needed. Themes identified from the workshops are listed below with a complete breakdown in Appendix 7.2.

Themes

More education is required (Rodney, Great Barrier, Upper Harbour): Increased education is needed around the existing legislation as many are unaware of their obligations to manage their own systems. People move out into rural areas and don’t know they even have an OSWW system. Education is needed regarding change of use, i.e. holiday home becoming permanent, and how that effects system stress. Education design also needs to include foreign buyers.
A central database is needed (Upper Harbour, Franklin, Waiheke, Rodney): Having all Auckland OSWW systems in a central database is crucial for regulating, identifying problem areas and reaching out to owners with education and correspondence.

Cost Issues are a barrier for compliance (Great Barrier, Waiheke, Franklin): OSWW maintenance and management is a “crippling” cost and burden for some people. Some residents are hesitant to report their OSWW failures for fear they cannot afford remedying. Getting costs down for OSWW owners needs to be a focus. Reducing costs could be achieved by providing incentives for upgrading OSWW systems or allowing suitable alternative systems\(^6\). There needs to be long-term thinking, so owners don’t get double charged for having to install and manage an OSWW system and then be required to connect to reticulation when it arrives. Resource consents are expensive, specifically the water testing compliance aspect.

Need for greater enforcement (Franklin, Waiheke, Rodney): There is currently no sense of urgency to comply with the regulations for some owners. There is a need for council to focus on compliance and the power to enforce the standards already in place. However, a risk exists using heavy enforcement as the reticulated system fails as well.

More environmental monitoring (Waitakere, Franklin): More monitoring and testing is needed to understand the scale of contamination. Methods are needed to trace back to source pollution.

Miscellaneous themes: - Other themes included; creating incentives for owners to connect to local OSWW networks, having stricter rules for sensitive environments, making sure old systems are being captured, and providing an easy way to have pump outs extended beyond 3 years if low use.

Waiheke Local Board’s view that the Auckland Unitary Plan would replace the Waiheke Bylaw

Review of Waiheke Wastewater Bylaw, April 2014

Planning Policies and Bylaws reviewed the Waiheke OSWW bylaw in April 2014. The bylaw was reviewed after administrative staff requested a bylaw amendment requiring regular inspection of advanced systems (now a Unitary Plan rule). The Waiheke Local Board decided\(^7\) to:

- **“consider the development of a new bylaw dealing with the maintenance and inspection of existing domestic-type on-site wastewater treatment and disposal systems”**

- **support that the new bylaw should remain in place until suitable replacement Unitary Plan provisions become operative.”**

The Waiheke Local Board’s decision reaffirms how the legacy OSWW bylaws were only intended to remain in place until the Auckland Unitary Plan OSWW provisions became operative.

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\(^6\) Alternative systems to the traditional septic tank and disposal field include water free systems, vermicomposting, peat filtration and incineration.

\(^7\) Waiheke Local Board, Resolution number WHK/2014/112
5.3.3 Enforcement officer views

Key findings from interviews with enforcement officers

- Many OSWW owners think council is responsible for maintaining their systems; there needs to be increased awareness and education of the rules and regulations.

- Council responds only if there is already a problem. Relationships can be forged with pump out contractors to alert council to impending issues.

- The enforcement powers in the Acts are sufficient, and officers will normally utilise alternative methods, such as notices and warnings, before applying the full force of the law.

- The building consent process should include a cumulative look at who else has OSWW systems in the area and restrict landscaping of those with soakage fields.

To understand how the regulatory framework is practiced and enforced within council, officers from Resource Consents, Building Consents, and Licensing & Regulatory Compliance were interviewed from November to March 2018. The focus areas of these interviews included how the management process works, what issues exist, and what could be improved. The key themes are listed below with the full breakdown in Appendix 7.3.

Interviewees

- Resource Consents – Senior Specialist, Natural Resources and Specialist Input
- Resource Consents – Principal Specialist, Wastewater and Coastal Team
- Licensing & Regulatory Compliance – Senior Specialist, Targeted Initiatives
- Licensing & Regulatory Compliance – Team Leader, Environmental Health
- Licensing & Regulatory Compliance – Waiheke’s Compliance Monitoring Officer
- Building Consents – Building Surveyor, Field Surveying

Themes

Simplicity of OSWW rules is needed: Owners have confusion and a “very apparent lack of education” on responsibilities for managing OSWW system. The process and rules need simplifying, so they can be easily communicated to owners. The permitted activities in the Unitary Plan should be more black and white, especially regarding maintenance. Council receives a lot of questions relating to needing maintenance and pump out. There is an expectation that the council maintains all OSWW systems across Auckland.
The Auckland Unitary Plan is not easy to decipher for council officers as well. Wording of E5.6.2.2 is not helpful regarding what was considered a permitted activity without the need for a resource consent when the Unitary Plan became operative.

Some Aucklanders have chosen to install alternative systems, but it is not an easy process as the consenting process for alternative systems is quite convoluted.

**Council is only reactive:** A Unitary Plan breach is only triggered when an adverse effect happens. Overloaded systems often need a blatant failure before it’s identified as a problem.

**A temporary fix is not a solution:** When a complaint is made and investigated, sometimes the immediate nuisance is addressed (smell) but not the underlying problem (overuse).

**Relationship with pump out contractors is important:** Council sometimes get calls from service and maintenance providers reporting that some of their customers are no longer maintaining their systems and council should respond. However, council does not have the resources to address. There have been stronger proactive arrangements in the past where after pump outs, contractors would send a copy of the report to council. Where issues were noted with the tank, these would be recorded, and a letter sent out to the owner to advise them of the possible defect.

**Officers give warning first, enforce second:** Current officer preference is to negotiate with the landowner before using the force of law. Enforcement is not common due to the issue of increasing negative public perception and cost. It is costly for council to prosecute, and the perpetrator often can’t afford their own OSWW system let alone legal fees. Most often, warnings are provided for it to be fixed. If no compliance, abatement can be considered. Council needs to be prepared to enforce the notices and charge the customer. Compliance with notices is quite good as people have a self-interest in fixing the issue.

**Cumulative effect is an issue:** The OSWW building consent application is assessed in isolation. There is no neighbourhood or environmental scan completed to determine what impact a new system will face, and problems arise with the cumulative strain of soakage fields. Soakage fields can also be disrupted by minor landscaping which do not require a resource consent, such as recontouring or adding a retaining wall. This change becomes a problem when one or more property owners landscape and the cumulative impact inadvertently affects other’s soakage fields.

**There are issues with the Code Compliance Certificate:** There is no legal requirement for Code Compliance Certificate (CCC). In practice, two years after a building consent is granted, an internal decision is made whether to grant a CCC. If not granted, the homeowner would need to apply for one later. The CCC issue would generally arise only when the property is sold, and a Land Information Memorandum report is obtained. There is a gap in the Building Act 2004 as there are a lot of OSWW systems without a CCC, and there is no ability to test those systems where no CCC is issued. Officers assume this is a significant issue in rural areas.

**Warrant of Fitness scheme would have risk:** If council was involved with the certification process, consideration needs to be given to council’s increased liability and legal risk if there is a subsequent failure or issue. With more oversight and control comes more responsibility and liability.
Rules are needed for upgrading OSWW systems: there is currently no requirement in the legislation to upgrade OSWW systems.

Maintenance agreements not building consent law: Maintenance agreements are not legally required for obtaining a building consent. Council’s consent process asks for a maintenance agreement, but applicants can push back. And if they do enter one, there is nothing stopping them from cancelling right after. However, the Unitary Plan requires regular maintenance once operational.

Note: A bylaw cannot provide solutions to building consent issues.

A bylaw could not address problems regarding the cumulative effect of OSWW soakage fields or the Code Compliance Certificate as a bylaw cannot provide criteria additional or more restrictive than the existing building code. Changes would need to be made to council’s building consent process or to Auckland’s Building Code.

5.3.4 Waiheke’s Compliance Monitoring Officer interview

Key findings from Waiheke’s Compliance Monitoring Officer

- Building relationships with OSWW operators and maintenance providers is crucial to an effective maintenance reporting scheme. The bylaw assists, but it is not required for having records sent to council.

- Council messaging for requiring records needs to reflect it is in the owner’s interest to maintain their systems to avoid failure and subsequent costs.

Requiring OSWW users to send in their pump out records proactively to council is the main additional component the legacy bylaws provide over the Unitary Plan, Building Act 2004 and Health Act 1956. The legacy bylaws enable this power for Papakura and Waiheke, although Papakura does not utilise this feature.

To understand the benefits and issues of requiring proactive reporting, Waiheke’s Compliance Monitoring Officer in Licensing and Regulatory Compliance was interviewed in March 2018.

Themes

Proactive reporting works well: The reporting scheme on maintenance and pump out generally works well on Waiheke. Operators are also sending in advanced treatment systems maintenance although not required.

Most residents comply: Very few people do not comply with sending in records of pump out. A letter is sent out reminding people of their obligations and advises about the bylaw which generally gets good compliance. However, when people do not comply, no follow ups occur. Residents are
not always happy about this requirement, but they comply as it is in the owner’s interest to maintain or pump out their systems to avoid OSWW failure and subsequent costs.

More education is needed: Waiheke needs education for owners regarding OSWW management. New owners find out about septic systems with a Waiheke welcome pack.

Building relationships with OSWW service providers is crucial: There are only a few OSWW maintenance providers on the island, so it is easy to foster relationships. The Waiheke bylaw doesn’t require advanced treatment maintenance records to be sent to council, but the reporting occurs because of the relationships forged with the commercial operators. When doing inspections for failures, staff will work with the owners to help fix the issue instead of issuing fines as it’s more effective. Have only had to issue an abatement notice once in ten years.

Advanced systems are failing the most: Septic tanks are common on the island due to age of buildings. New dwellings can be large for their section leaving smaller area for a disposal field and at a higher use. Failings come most from advanced systems as they require more maintenance.

Note: Although most residents comply with the proactive reporting scheme on Waiheke, there are still issues with OSWW failure on Waiheke as seen by long-term hazards in Little Oneroa Lagoon.

5.3.5 Healthy Waters’ review of OSWW management

The Environment, Climate Change and Natural Heritage Committee\(^8\) commissioned the creation of a cross-council group in March 2016 to develop options for better management of privately-owned OSWW systems. The group was also tasked to compare costs and benefits and recommend a preferred solution to be ready for consideration during the 2018-2028 Long Term Plan process.

Healthy Waters has led this project group, and the current OSWW system bylaw review contributes. The proposed OSWW Long Term Plan for development of a regulatory framework set forth by Healthy Waters proposes the following from 2018-2023:

- enactment of regulation, including public consultation
- creation of a region-wide OSWW database
- establishment of a targeted rate or licensing administration
- set up of a certification scheme for maintenance contractors
- roll out of Guidance Document 06 (GD06) to update Technical Publication 58 (TP58)
- review and update education materials
- develop a monitoring programme for high risk areas as model validation.

After 2023, plans include a roll out of education initiatives, recruitment and training of additional compliance officers, and a monitoring programme.

Note: None of the activities identified in Healthy Water’s proposal above are dependant or a contingent to the council having a bylaw.

\(^8\) Environment, Climate Change and Natural Heritage Committee, Resolution Number ENV/2016/7
6 Statutory review findings and conclusion

The Local Government Act 2002 requires that the OSWW bylaws are reviewed by October 2020. The review must comply with statutory requirements under the Act by identifying if the bylaws are the most appropriate means for regulating OSWW systems.

In summary, the research and engagement contained in this report found the following.

The issues the bylaws set out to address are still problems

OSWW systems are failing across Auckland as seen from data showing unhealthy amounts of human sourced E. coli in Auckland’s recreational water in addition to call centre complaints of malfunctioning systems.

A bylaw is not the most appropriate means for addressing OSWW management

The findings show there is currently no regulatory gap for OSWW management which a bylaw could address. The legacy OSWW bylaws provide no extra regulations to those already available in the Auckland Unitary Plan, Resource Management Act 1991, Building Act 2004 and Health Act 1956.

Although the Waiheke and Papakura bylaws require users to send maintenance records to council, this can be achieved without a bylaw through effective communication with the community and relationship building. Council also can inspect the maintenance records on-site as stipulated in the Auckland Unitary Plan.

If a change to regulation was required, it would need to be achieved through a plan change of the Auckland Unitary Plan. The Auckland Unitary Plan was meant to replace the legacy OSWW bylaws as the guiding document for managing OSWW systems.

There are non-regulatory opportunities

Most of the issues identified through the regulatory gap analysis and engagement had more appropriate options to address the problem than a bylaw or law change such as:

- increasing the education of OSWW rules and regulations
- simplifying the OSWW regulations for communication
- increasing the understanding of the scale of OSWW system’s effect through a central database of OSWW systems and increased environmental monitoring
- providing cost incentives for users to upgrade and/or maintain systems
- undertaking proactive OSWW risk of failure identification through relationship building with OSWW service providers
7 Appendix

7.1 Estimate of OSWW location and scale

The 50,000-60,000 OSWW system estimate across Auckland came from analysing the two maps below. The first map shows Watercare’s wastewater network. With the assumption that those not on reticulation have an OSWW system, the lot density is overlaid on areas without reticulation in the second map to give an estimate of amount of OSWW systems.

Figure 2 - Watercare wastewater network
### 7.2 Local board views table

**Table 6 - Local Board Views**

<table>
<thead>
<tr>
<th>Board</th>
<th>Points</th>
</tr>
</thead>
</table>
| Rodney      | • **Education** - Unawareness around existing legislation and bylaws, there needs to be more education of what’s already in place. People move out into rural areas and don’t know they even have an OSWW system.  
• **Central database for OSWW systems**  
• **Change of use** – when someone applies for a new OSWW system or buys a new property, it should kick off investigation of what systems are already on the property. The new owners should be educated on OSWW systems as well.  
• **Enforcement issue**  
• **Incentives** – should be incentives to connect to local OSWW network |
| Great Barrier | • **Enough legislation** - There is already extensive legislation in the RMA/BA/HA, maybe even too much, and any additional bylaws would be over the top. The community would not appreciate council inspecting their maintenance records on-site. There are no additional powers needed than already set out in the existing legislation  
• **Education** – most residents unaware of the existing legislation  
• **Cost Issue** - OSWW maintenance and management is seen as a crippling cost and burden for the Great Barrier demographics. Residents hesitant to report their OSWW failures as fearful won’t be able to fix it. Needs to be focus on getting costs down for OSWW owners and allowing alternative systems or helping people upgrade their systems. |
| Waitakere   | • **Environmental Monitoring** – find a way to trace point source pollution  
• **Pump-out** – make sure pump-out contractors are reporting back issues they find. And make sure pump-outs are only occurring when needed instead of by the clock. Too frequent pump-outs can compromise effectiveness of low volume systems and less foot track needed as there is a risk of spreading Kauri dieback.  
• **Targeted rate** - concerned over value of targeted rate for pump-out as compared to using a private pump-out provider |
## Findings of the legacy on-site wastewater bylaws review

### Item 10

<table>
<thead>
<tr>
<th><strong>Waiheke</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Proposed water levy</strong> – concern the funds would be unfairly used on the inner city</td>
<td></td>
</tr>
<tr>
<td><strong>Stricter rules for sensitive environments</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Power of entry and inspection</strong> – make sure this power remains available as key to identifying pollution sources</td>
<td></td>
</tr>
<tr>
<td><strong>Simplicity</strong> – need a regulatory framework that is easy for people to access and highlights problems and how to deal with them</td>
<td></td>
</tr>
<tr>
<td><strong>Cost issue</strong> - need to consider unintended consequences and additional costs for Aucklanders. Outcomes thinking is required as opposed to outputs.</td>
<td></td>
</tr>
<tr>
<td><strong>Enforcement</strong> – focus on compliance and the power to enforce standards in place. There is currently no sense of urgency to comply.</td>
<td></td>
</tr>
<tr>
<td><strong>Central database for OSWW systems</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Better OSWW testing</strong> – currently there is a crudeness of testing. Mechanisms to improve quality of testing and determining failure cause are needed.</td>
<td></td>
</tr>
<tr>
<td><strong>Old systems are an issue</strong> – old concrete block septic tanks that have little maintenance on them. Little Oneroa has oldest houses.</td>
<td></td>
</tr>
<tr>
<td><strong>Change of use</strong> – Waiheke specifically has issues with change of use from holiday visitors and permanent accommodations.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Franklin</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pump-out frequency</strong> – three yearly pump-out timeframe not best measure, instead should be based on the system.</td>
<td></td>
</tr>
<tr>
<td><strong>Old systems</strong> - make sure regulations apply to old systems from the 30s and 40s as well</td>
<td></td>
</tr>
<tr>
<td><strong>Resource issue</strong> - it’s a big job for compliance officers to inspect and go to each system in rural areas.</td>
<td></td>
</tr>
<tr>
<td><strong>Central database for OSWW systems</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Incentives</strong> – how can we enable users to connect to shared system</td>
<td></td>
</tr>
<tr>
<td><strong>Cost</strong> – what is fair and equitable to get people to upgrade their systems. Don’t double charge people for forcing them to manage OSWW system and</td>
<td></td>
</tr>
</tbody>
</table>
then connect to reticulation when it arrives. Concern over resource consents being expensive, specifically the water testing compliance aspect.

- **Cumulative effects** – concern over multiple systems together
- **Environmental Monitoring** – more monitoring and testing needed, especially DNA testing
- **Enforcement** - would like to see council be careful about taking a heavy hand to enforcement given the reticulated system fails as well. Consider the practical effects of enforcement and what can actually be achieved going in heavy.

<table>
<thead>
<tr>
<th>Upper Harbour</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Education</strong> – including foreign buyers</td>
</tr>
<tr>
<td><strong>Central database for OSWW systems</strong></td>
</tr>
<tr>
<td><strong>No overregulation</strong> – those who maintain their systems properly shouldn’t be punished because of those who don’t. Big waste of council resource to try and maintain all OSWW systems, should just deal with problems.</td>
</tr>
<tr>
<td><strong>Intensification issue</strong> – paddocks have been divided for new subdivisions, cutting through septic lines</td>
</tr>
</tbody>
</table>
### 7.3 Council enforcement officer views table

<table>
<thead>
<tr>
<th>Dec 2017 RESOURCE CONSENTS – NATURAL RESOURCES AND SPECIALIST INPUT – SENIOR SPECIALIST</th>
<th>License and Regulatory Compliance – Senior Specialist</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Item 10</strong></td>
<td></td>
</tr>
</tbody>
</table>

#### Table 7 - Council enforcement officer views

- **No additional legislation needed** - Licensing and Compliance have all the tools. The Unitary Plan advises when an OSWW system is a permitted activity. When there is an adverse effect, can provide an abatement notice.

- **Simplicity needed** - The process and rules need simplicity so can be communicated to what owners must do. The permitted activities in the Unitary Plan should be more black and white, especially regarding maintenance.

- **Resource consents** – currently have a low number of OSWW systems which have resource consents, approx. 2,000. These are kept on record and are monitored and have requirements as part of their resource consent. A risk profile is allocated, and reporting is required on a frequency related to risk.

- **Process for Unitary Plan breach** – generally, permitted activities are low risk. They would need complaints to be made adverse effects before triggering the system:
  - A complaint is needed
    - Evidence that maintenance requirements are not being met. Unitary Plan E6.1.1(3) could be used as all very effects based.
    - If found to be a breach, would do a risk-based assessment on the effect on the environment, how long the breach has been occurring, the attitude of the owner/occupier in taking steps to remedy the breach
    - Most often, warnings would be provided for it to be fixed. If no compliance, abatement can be considered
    - If not fixed, can require a resource consent so it will be a complying activity. Advantage here is the monitoring built into resource consents and can hold people accountable. It is a mechanism to go out and check compliance with maintenance requirements.

- **Issues:**
  - When a complaint is made and investigated, the immediate nuisance is addressed (smell) but not the underlying problem (overuse)
### Item 10

- Overloaded systems often need a blatant failure with adverse effects to occur before it’s identified as a problem
- Unitary Plan wording of E5.6.2.2 is not helpful regarding what was considered a permitted activity with a resource consent when the Unitary Plan became operative
- There is no requirement in the RMA or other legislation to upgrade OSWW systems
- Council sometimes get calls from service and maintenance providers reporting that some of their customers are no longer maintaining their systems and council should do something. But council doesn’t have the resources to address.
- Council very reactive

**Warrant of fitness** - If council was involved with the certification process, need to consider council’s increased liability and legal risk if there is a subsequent failure or issue. With more oversight and control comes more responsibility and liability.

<table>
<thead>
<tr>
<th>Nov 2017</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Consents, Building Surveyor</td>
<td><strong>OSWW in bad situation</strong> – cannot make OSWW systems compliant under the current regime. The environmental standards are impossible to reach, there is an issue with creating site surveys and fields which comply with TP58 and OSWW systems are overused in the summertime months (e.g. Muriwai).</td>
</tr>
<tr>
<td></td>
<td><strong>Issues:</strong></td>
</tr>
<tr>
<td></td>
<td>o The building consent application is assessed in isolation (only the subject property or in rare circumstances of an encroachment, the subject properties will be assessed). There is no neighbourhood or environmental scan completed to determine what is happening in the area and whether that would impact on any system being put in.</td>
</tr>
<tr>
<td></td>
<td>o No legal requirement for Code Compliance Certificate. In practice, two years after a building consent is granted, an internal decision is made whether to grant a CCC. If not granted, the homeowner would need to apply for one later. A letter would be sent out to those people who fall into that category. The CCC issue would generally arise only when the property is sold, and a LIM report is obtained. There is also a gap in the Building Act that there are a lot of plants without a CCC and no ability to test those systems where no CCC is issued. It is assumed that this is a significant issue in rural areas.</td>
</tr>
</tbody>
</table>
o Even if CCC issued, problems can arise. Soakage fields can be disrupted by minor landscaping which don’t require a resource consent such as recontouring or adding a retaining wall. Can also be affected by cumulative effect where one or more property owners landscape inadvertently effecting other’s soakage fields.

o There is no legal requirement for a maintenance agreement to be entered to obtain a building consent. Council’s building consent process asks for a maintenance agreement, but applicants can push back on this. And then if they do enter one, there’s nothing stopping them from cancelling right after.

o If the system is not working or not functioning correctly and there have been no changes to it, it is still technically compliant with the Building Code. This situation is difficult. Estimates 90% of old systems not operating properly.

- **Pump-out contractors** - When pump-out contractors notice an issue and report to council, there is the ability under the Building Act to declare a building as insanitary on the basis that there are no working sanitary features/facilities. That is the strongest tool they have in the Building Act. It requires an insanitary building notice to be issued. If there is no compliance with the notice, the council can infringe straight away with a $2,000.00 fine or prosecute. The notice can also require emergency work is completed (minimum timeframe is 10 days). The argument is that the pipes are part of the building elements. No challenge has been raised to these notices yet, however this is untested.

- **Alternative OSWW systems** - Needs to be a better definition for OSWW systems. There are alternative waterless systems involving composting. Some Aucklanders have chosen to install these alternative systems, but it is not an easy process as the consenting process for alternative systems is quite convoluted

- **Enforcement** - Council needs to be prepared to enforce the notices – enforcement is not common due to the issue of public perception and cost – both cost to council and the issue of getting funds out of someone who cannot afford to pay for the system in the first place.

- **Customer queries on maintenance** - Receive a lot of questions relating to maintenance of the systems and those trying to get an early pump out. There is an expectation that the council maintains all OSWW systems. Often those complaints are dealt with quickly and they are told to get a private provider involved as the council does not provide maintenance.
<table>
<thead>
<tr>
<th>Licensing and regulatory compliance – environmental health – team leader</th>
</tr>
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<tbody>
<tr>
<td>Receive about two complaints a week, mostly about who is maintaining their system.</td>
</tr>
<tr>
<td>• <strong>Unitary Plan communication not effective</strong> - have found no change in enforcement since the Unitary Plan came into force</td>
</tr>
<tr>
<td>• <strong>Health Act 1956</strong> - When issues arise which require resolution by their team, e.g. causing nuisance with smell or foul water, they utilise the powers under the Health Act. most people will fix the issue once a nuisance notice has been served on them. Within the nuisance notice, they would have a reasonable timeframe to make the necessary repairs. If there has not been compliance, or if there is urgency, council can go in and arrange for it to be fixed, with the cost then charged to the customer/property owner. This does not happen often. In determining whether to go down the path of the council arranging for it to be fixed and on charging the customer, a risk assessment would be completed. This would include determining the level of contamination, whether there were vulnerable people at the site and the response from the property owner. They are reluctant to do a charging order and would prefer to negotiate with the landowner. While the negotiation process does involve a lot of work for them, it is the preference.</td>
</tr>
<tr>
<td>• <strong>Resource Management Act 1991</strong> – no RMA tools are used by this team to enforce or deal with issues or breaches</td>
</tr>
<tr>
<td>• <strong>Customer compliance</strong> - compliance with the notices is quite good as people have an interest in fixing the issue as it affects them personally. Where problems arise are with tenanted properties where the landlord is uncontactable, or not interested in fixing it.</td>
</tr>
<tr>
<td>• <strong>Pump-out contractors reporting</strong> - Previously, when the contractor completed pump outs, they would send a copy of the report to council. Where issues were noted with the tank, these would be recorded, and a letter sent out to the owner to advise them of the possible defect. This was sort of a proactive arrangement whereby it would act like an informal inspection taking place as part of the pump out scheme and repairs could be affected before there was a failure of the system.</td>
</tr>
<tr>
<td>• <strong>Issues:</strong></td>
</tr>
<tr>
<td>o Very apparent lack of education and confusion about responsibilities</td>
</tr>
<tr>
<td>o Locating systems on the properties can be difficult, especially old as-built plans being inaccurate or unavailable. Information is incomplete and inaccurate</td>
</tr>
<tr>
<td>o Issue with change of use and the system not coping. Especially in areas like Piha where there has been a change of the property from a bach to permanent residence.</td>
</tr>
</tbody>
</table>
7.4 OSWW bylaw provisions compared to Resource Management Act 1991, Building Act 2004 and Health Act 1956

Table 8 - Auckland City Council Bylaws: Bylaw No. 29 - Waiheke Wastewater 2008

<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>On-site disposal</strong></td>
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</tr>
<tr>
<td>29.1.1 All wastewater generated on an allotment shall be disposed of within the confines of that allotment unless otherwise approved by the Council and the Auckland Regional Council.</td>
<td>Health Act s39 requires all dwellings to have suitable appliances for the disposal of refuse water in a sanitary manner. Building Code G13.2(b) states if no sewer system available, an adequate system for the storage, treatment, and disposal of foul water must be provided in buildings in which sanitary appliances using water-borne waste disposal are installed.</td>
</tr>
<tr>
<td><strong>Building consent</strong></td>
<td></td>
</tr>
</tbody>
</table>
| 29.2.1 Owners of properties who wish to install a domestic wastewater treatment system on their properties shall apply for a building consent in terms of the Building Act 2004. | Building Act 40 (1) – A person must not carry out any building work except in accordance with a building consent. Building Act s49 - A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application. As part of building consent an on-site Wastewater Disposal Site Evaluation Investigation Checklist (known as the Appendix E form) must be completed and signed. Part of On-site Wastewater Systems Design and Management Manual (TP58). Appendix E includes:  
  - Performance of adjacent systems  
  - Estimated rainfall and seasonal variation |
| 29.2.2 A building consent application to install a domestic wastewater treatment system shall include such details as may be required by the council to assess its compliance with the Building Code, the requirements of the Auckland Regional Plan: Air, Land and Water, (ALWP) and the following: | |
| a. The procedures for the testing, commissioning, operation and maintenance of the system; | |
| b. The size and contours and intended use of the site; | |
| c. Soil conditions including permeability and stability; | |
| d. Vegetative cover; | |
| e. Ground water and surface water conditions; | |
| f. Location of existing and future buildings | |
(including water tanks), parking areas and driveways;
g. Access for maintenance of septic tanks and disposal areas;
h. The position of adjacent streams and waterways;
i. A soil profile test outlining the soil types encountered to a depth of 1.5 metres or groundwater depth by means of a suitably sized borehole or test pit.

The council may within the period prescribed by the Building Act require the owner to provide more information to determine whether or not the domestic wastewater treatment system will meet the requirements of the Building Code.

The Auckland Regional Plan: Air, Land and Water requires all domestic wastewater treatment systems to be designed, installed and operated in accordance with Auckland Regional Council’s Technical Publication 58 (TP 58): On-site Wastewater Systems: Design and Management Manual. Appendix E of TP58 contains an on-site wastewater disposal site evaluation investigation checklist. Council will also have regard to the requirements of this appendix when assessing building consent applications to install domestic wastewater treatment systems.

### Granting of consent

29.2.3 After considering an application for a building consent, the council shall grant the consent if it is satisfied on reasonable grounds that:

a. the provisions of the Building Code and
b. the permitted activity standards for domestic wastewater treatment systems in the ALWP,

would be met, if the work on the domestic wastewater treatment system was completed in accordance with the plans and specifications submitted with the application.

Building Act s49 - A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.
The council may accept producer statements from approved persons for the design and construction of domestic wastewater treatment systems.

Wastewater treatment systems that do not comply with the permitted activity status in the ALWP must be approved by the Auckland Regional Council before the can be installed. Once approved the installation of the system will still require a building consent from Auckland City Council.

### As-built plans

29.2.4 The council shall not provide a code compliance certificate for a domestic wastewater treatment system until the owner has provided the council with a copy of the as-built plans of the completed installation.

Building Act s92 - An owner must apply to a building consent authority for a code compliance certificate after all building work to be carried out under a building consent granted to that owner is completed.

Building Act s94 - A building consent authority must issue a code compliance certificate if it is satisfied, on reasonable grounds, —

a. that the building work complies with the building consent

### Drainlayer

29.3.1 The installation, alteration or repair of all domestic wastewater treatment systems involving septic tanks and underground pipelines shall be undertaken by a registered drainlayer.

Building Act s84 - All restricted building work must be carried out or supervised by a licensed building practitioner who is licensed to carry out or supervise the work.

Plumbers, Gasfitters, and Drainlayers Act 2006 s10 - A person must not do any drainlaying, or assist in doing any drainlaying, unless that person is authorised to do so under this section.

The following persons may do drainlaying, or assist in doing drainlaying, within the limits prescribed in regulations (if any):

a. a registered person who is authorised to do, or assist in doing, the work under a current practising licence; or
b. a person who is authorised to do, or assist in doing, the work under a provisional licence.

### Notifying Council

Building Act 40 (1) – A person must not carry
<table>
<thead>
<tr>
<th>Section</th>
<th>Text</th>
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<tbody>
<tr>
<td>29.3.2</td>
<td>All new domestic wastewater treatment systems and any alterations to existing systems shall be inspected by an authorised officer before being covered up.</td>
</tr>
<tr>
<td>Testing and commissioning</td>
<td>Building Act 40 (1) – A person must not carry out any building work except in accordance with a building consent.</td>
</tr>
<tr>
<td></td>
<td>Building Act s49 - A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.</td>
</tr>
<tr>
<td>Maintenance</td>
<td>Building Code G13.3.1 (2) – The plumbing system shall be constructed to provide reasonable access for maintenance and clearing blockages.</td>
</tr>
<tr>
<td></td>
<td>Building Code G13.3.2(d) – The drainage system shall be provided with reasonable access for maintenance and clearance blockages.</td>
</tr>
<tr>
<td></td>
<td>Building Code G13.3.4 – If no sewer is available, facilities for the storage, treatment and disposal of foul water must be constructed with adequate vehicle access for collection if required and permit easy cleaning and maintenance.</td>
</tr>
<tr>
<td>29.5.2</td>
<td>Domestic wastewater treatment systems shall be maintained and operated in such a manner to prevent any discharge of wastewater onto the surface of any land or into any water body.</td>
</tr>
<tr>
<td></td>
<td>Unitary Plan E5.4.1 permitted activities allow discharge of treated domestic type wastewater only.</td>
</tr>
<tr>
<td></td>
<td>Otherwise:</td>
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<tr>
<td></td>
<td>Resource Management Act s15 - No person may discharge any—</td>
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<tr>
<td></td>
<td>a. contaminant or water into water; or</td>
</tr>
<tr>
<td></td>
<td>b. contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant</td>
</tr>
</tbody>
</table>
### Pump out required

29.5.3 Except as otherwise provided in clause 29.5.5 all property owners on Waiheke Island whose property contains a septic tank or domestic wastewater treatment system that accumulates solids, shall have that septic tank or system pumped out to remove all settled solids at least once every 36 months. The property owner shall provide a copy of the receipt for having this work done to the Waiheke Service Centre of the Auckland City Council within 14 days of the tank being pumped out.

*Every person undertaking the removal of settled solids from domestic wastewater treatment systems and septic tanks shall comply with the provisions of section 54 (offensive trades) of the Health Act 1956.*

### Inspection after pump out

29.5.4 An authorised officer of the council may enter any property and inspect any septic tank or domestic wastewater treatment system that accumulates solids, to check the condition of the septic tank or the treatment system and to determine whether any recent removal of settled solids has occurred in a satisfactory manner.

### Up E5.6.1.(3)(c)(d) – primary/ septic tank(s)

and the land application disposal system are inspected no less frequently than every three years and where necessary the tank(s) are pumped out by a suitable qualified on-site waste water service provider when sludge and scum levels occupy 50 per cent of the tank volume and records of each maintenance action must be retained and made available on the site for inspection by the Council or their agents.

*Bylaw Gap – Unitary Plan does not require pump out receipt to be proactively sent in. But council could inspect maintenance receipt on-site.*

*Unitary Plan also does not state that it must be pumped out every 3 years, only when necessary when sludge and scum levels occupy 50 per cent of the tank.*

### Building Act s222 - An authorised officer is entitled, at all times during normal working hours or while building work is being carried out, -

- a. to inspect—
  - I. land on which building work is or is proposed to be carried out; and
  - II. building work that has been or is being carried out on or off the building site; and
  - III. any building;
- b. to enter premises for -
  - I. the purpose of inspecting the building; or
  - II. the purpose of determining whether the building is dangerous or insanitary

inspection means the taking of all reasonable steps—
- c. to enable a territorial authority to –
  - I. identify dangerous or insanitary
<table>
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<tr>
<th>Exemptions</th>
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<tbody>
<tr>
<td>29.5.5 Property owners may apply to the council for an exemption from the</td>
<td>Unitary Plan E5.6.1.(3)(c) – primary/ septic tank(s) and the land</td>
</tr>
<tr>
<td>requirement of clause 29.5.3. The council may require from the owner such</td>
<td>application disposal system are inspected no less frequently than</td>
</tr>
<tr>
<td>information as is necessary to determine whether or not to grant an exemption.</td>
<td>every three years and where necessary the tank(s) are pumped out by</td>
</tr>
<tr>
<td>In granting an exemption the council may set such conditions as it shall think fit.</td>
<td>a suitable qualified on-site waste water service provider when sludge</td>
</tr>
<tr>
<td>Dispensations may be granted for reasons such as the use of the facilities</td>
<td>and scum levels occupy 50 per cent of the tank volume.</td>
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<tr>
<td>are not used on a regular basis and the accumulation of solids is sufficiently low as to provide good operating capacity for periods exceeding three years.</td>
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<table>
<thead>
<tr>
<th>Investigation</th>
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<tbody>
<tr>
<td>29.6.1 An authorised officer may undertake such inspections and investigations as are reasonably necessary to establish the dimensions, location and condition of any domestic wastewater treatment system.</td>
<td>Unitary Plan E5.6.1.(3)(d) - records of each maintenance action must be retained and made available on the site for inspection by the Council or their agents.</td>
</tr>
<tr>
<td></td>
<td>Resource Management Act s332 - Any enforcement officer, specifically authorised in writing by any local authority or consent authority to do so, may at all reasonable times go on, into, under, or over any place or structure, except a dwellinghouse, for the purpose of inspection to determine whether or not—</td>
</tr>
<tr>
<td></td>
<td>a. this Act, any regulations, a rule of a plan, a resource consent, section 10 (certain existing uses protected); or section 10A (certain existing activities allowed), or section 20A (certain lawful existing activities allowed) is being complied with</td>
</tr>
<tr>
<td></td>
<td>Unitary Plan E5.6.1.(3)(d) - records of each maintenance action must be retained and made available on the site for inspection by the Council or their agents.</td>
</tr>
</tbody>
</table>
enforcement officer, specifically authorised in writing by any local authority or consent authority to do so, may at all reasonable times go on, into, under, or over any place or structure, except a dwellinghouse, for the purpose of inspection to determine whether or not—

b. this Act, any regulations, a rule of a plan, a resource consent, section 10 (certain existing uses protected), or section 10A (certain existing activities allowed), or section 20A (certain lawful existing activities allowed) is being complied with

Building Act s222 - An authorised officer is entitled, at all times during normal working hours or while building work is being carried out, -

c. to inspect—

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<tr>
<td>IV.</td>
<td>land on which building work is or is proposed to be carried out; and</td>
</tr>
<tr>
<td>V.</td>
<td>building work that has been or is being carried out on or off the building site; and</td>
</tr>
<tr>
<td>VI.</td>
<td>any building;</td>
</tr>
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</table>

d. to enter premises for -

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<tr>
<td>III.</td>
<td>the purpose of inspecting the building; or</td>
</tr>
<tr>
<td>IV.</td>
<td>the purpose of determining whether the building is dangerous or insanitary</td>
</tr>
</tbody>
</table>

*Inspection* means the taking of all reasonable steps—

a. to determine whether—

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<table>
<thead>
<tr>
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<tbody>
<tr>
<td>I.</td>
<td>building work is being carried out without a building consent; or</td>
</tr>
<tr>
<td>II.</td>
<td>building work is being carried out in accordance with a building consent; or</td>
</tr>
<tr>
<td>III.</td>
<td>a notice to fix has been complied with:</td>
</tr>
</tbody>
</table>

b. to enable a territorial authority to—

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<tbody>
<tr>
<td>I.</td>
<td>identify dangerous, earthquake-prone, or insanitary buildings within its district; and</td>
</tr>
<tr>
<td>II.</td>
<td>carry out its functions or duties in relation to those buildings:</td>
</tr>
</tbody>
</table>
Remedial work

29.6.2 Where the council considers that a domestic wastewater treatment system is
a. not operating in accordance with the Building Act or Building Code or the conditions of a building consent or the Auckland Regional Plan: Air, land and Water or is
b. not operating in a sanitary and efficient manner, or
c. it is likely to be contaminating a neighbouring property or a water source

then the council may require the owner to:
1. clean the system or pump out any settled solids in the system; or
2. repair or maintain the treatment system to meet the above requirements.

Building Act s124 - If a territorial authority is satisfied that a building in its district is a dangerous, affected, or insanitary building.

The territorial authority may do any or all of the following:

a. put up a hoarding or fence to prevent people from approaching the building nearer than is safe;
b. attach in a prominent place on, or adjacent to, the building a notice that warns people not to approach the building;
c. except in the case of an affected building, issue a notice that complies with section 125(1) requiring work to be carried out on the building to—
   I. reduce or remove the danger; or
   II. prevent the building from remaining insanitary;
d. issue a notice that complies with section 125(1A) restricting entry to the building for particular purposes or restricting entry to particular persons or groups of persons.

Building Act s220 - This section applies if—

a. a person is required, under this Act, by a building consent authority, territorial authority, or regional authority to carry out any building work on, or in connection with, any building; and
b. either—
   I. that person, after being given notice of the requirement, fails to commence to comply with the notice within the time stated in the notice or, if the time is not so stated, within a reasonable time; or
   II. that person, after a certificate from any officer of the territorial authority that the work is of an urgent nature is communicated to him or her, defaults for 24 hours from the time of that communication; and

c. that person does not immediately proceed with the work with all reasonable speed.
The territorial authority may apply to the District Court for an order authorising the territorial authority to carry out building work.

If a territorial authority carries out building work under the authority of an order made under subsection (2),—

a. the owner of the building is liable for the costs of the work; and

b. the territorial authority may recover those costs from the owner; and

c. the amount recoverable by the territorial authority becomes a charge on the land on which the work was carried out.

Resource Management Act s322 - An abatement notice may be served on any person by an enforcement officer—

a. requiring that person to cease, or prohibiting that person from commencing, anything done or to be done by or on behalf of that person that, in the opinion of the enforcement officer,—

  I. contravenes or is likely to contravene this Act, any regulations, a rule in a plan, or a resource consent; or

  II. is or is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment

Resource Management Act s323 - Subject to the rights of appeal in section 325, a person on whom an abatement notice is served shall—

a. comply with the notice within the period specified in the notice; and

b. unless the notice directs otherwise, pay all the costs and expenses of complying with the notice.
### Table 9 - North Shore City Bylaw 2000: Part 20 Wastewater

<table>
<thead>
<tr>
<th>Bylaw Stipulation</th>
<th>Matching stipulation in Resource Management Act, Building Act and Health Act</th>
</tr>
</thead>
</table>
| **Building Act and Local Government Act**  
20.1.2.1 Where this document provides for obligations or powers which are otherwise provided for in the Building Act 2004 or the Local Government Act 2002, then the provisions of those statutes shall prevail and shall be enforced by the Council in the way provided for in them. | LGA s152 – A council may not make a bylaw under this Act that purports to have the effect of requiring a building to achieve performance criteria additional to, or more restrictive than, those specified in the Building Act 2004 or the building code. |
| 20.1.2.2 Nothing in this document shall be read as abrogating from the Council’s powers under those statutes or indicating that compliance or enforcement action will not be taken under those statutes. | Same as above |
| 20.1.2.3 Council may exercise any discretion contrary to this document in such circumstances and on such occasions as may be appropriate. All dispensations will be given in writing. | Same as above |
| **On-site disposal**  
20.7.3.1 All wastewater generated on any allotment that is not serviced by Council’s public sewer network must be treated and be disposed of within the confines of that particular allotment or an easement for which rights for such disposal have been established. | Health Act s39 requires all dwellings to have suitable appliances for the disposal of refuse water in a sanitary manner.  
Building Code G13.2(b) states if no sewer system available, an adequate system for the storage, treatment, and disposal of foul water must be provided in buildings in which sanitary appliances using water-borne waste disposal are installed. |
| **Maintenance**  
20.7.3.2 Any onsite wastewater system shall be operated and maintained in accordance with the Auckland Regional Council’s current Technical Publication 58 (TP58) - Onsite Wastewater Systems: Design and Management Manual including, where applicable, the Operation and Maintenance Management Plan. | Unitary Plan E5.6.1.(3) – The wastewater treatment system must be maintained by a suitably qualified on-site wastewater service provider in accordance with Technical Publication 58 On-site Wastewater Systems: Design and Management Manual 2004 (TP58) recommendations, the manufacturer’s recommendations or the suitably qualified on-site wastewater service provider’s recommendations. |
### Breaches and remedies

20.7.3.3 Where there is evidence that an on-site wastewater system comprising a secondary treatment system is not being maintained under a suitable programmed maintenance contract, Council will require that a suitable contract is entered into and evidence provided for Council records within a twenty-eight day period of the date of such request in writing.

#### Breaches and remedies

20.7.3.4 Where there is evidence that an on-site wastewater system is causing adverse affects to neighbouring property and/or is operating well outside the typical effluent quality ranges set out in Table 7.1 of TP58, Council may

a. request, a report be provided within fourteen days of written advice of Council, from a suitable qualified person with recommendations to any needed actions to bring the system into acceptable effluent quality ranges
b. direct that recommended actions are constructed and commissioned under building consent where appropriate within twenty-eight days of such written direction or the date of issue of building consent, whichever is later
c. direct the use or partial use of reserve land application areas as defined in TP58.

<table>
<thead>
<tr>
<th>Breaches and remedies</th>
<th>Item 10</th>
</tr>
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<tbody>
<tr>
<td>20.7.3.3</td>
<td>Unitary Plan E5.6.1.(3)(b) – at a minimum the maintenance must ensure that the secondary/tertiary treatment plant and the land application disposal system is serviced six monthly by a suitably qualified on-site wastewater service provider.</td>
</tr>
<tr>
<td>Bylaw gap – Unitary Plan does not specify time requirement to remedy breached permitted standards.</td>
<td></td>
</tr>
<tr>
<td>Breaches and remedies</td>
<td>Unitary Plan E5.6.1.(1) – The wastewater discharge must not result in contamination of ground water at a point of extraction, any surface water, a streamwater drain, a neighbouring property, or cause a public health risk.</td>
</tr>
<tr>
<td>Building Act s123 - A building is insanitary for the purposes of this Act if the building</td>
<td></td>
</tr>
<tr>
<td>a. is offensive or likely to be injurious to health because—</td>
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</tr>
<tr>
<td>I. of how it is situated or constructed; or</td>
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</tr>
<tr>
<td>II. it is in a state of disrepair; or</td>
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</tr>
<tr>
<td>b. does not have a supply of potable water that is adequate for its intended use</td>
<td></td>
</tr>
<tr>
<td>Building Act s124 - If a territorial authority is satisfied that a building in its district is a dangerous, affected, or insanitary building. The territorial authority may do any or all of the following:</td>
<td></td>
</tr>
<tr>
<td>a. put up a hoarding or fence to prevent people from approaching the building nearer than is safe:</td>
<td></td>
</tr>
<tr>
<td>b. attach in a prominent place on, or adjacent to, the building a notice that warns people not to approach the building:</td>
<td></td>
</tr>
<tr>
<td>c. except in the case of an affected building, issue a notice that complies with section 125(1) requiring work to be carried out on the building to—</td>
<td></td>
</tr>
<tr>
<td>I. reduce or remove the danger; or</td>
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</tbody>
</table>
II. prevent the building from remaining insanitary:

d. issue a notice that complies with section 125(1A) restricting entry to the building for particular purposes or restricting entry to particular persons or groups of persons.

Building Act s125(1) A notice issued under section 124(2)(c) must—

a. be in writing; and

b. be fixed to the building in question; and

c. be given in the form of a copy to the persons listed in subsection (2); and

d. state the time within which the building work must be carried out, which must not be less than a period of 10 days after the notice is given or a period reasonably sufficient to obtain a building consent if one is required, whichever period is longer; and

e. state whether the owner of the building must obtain a building consent in order to carry out the work required by the notice.

Table 10 - Papakura District Council Wastewater Bylaws 2008

<table>
<thead>
<tr>
<th>Bylaw Stipulation</th>
<th>Matching stipulation in Resource Management Act, Building Act and Health Act</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>On-site disposal</strong></td>
<td></td>
</tr>
<tr>
<td>9.1 - All wastewater generated on an</td>
<td>Health Act s39 requires all dwellings to have suitable appliances for the</td>
</tr>
<tr>
<td>allotment shall be disposed of within the</td>
<td>disposal of refuse water in a sanitary manner.</td>
</tr>
<tr>
<td>confines of that allotment unless otherwise approved by the Council and the Auckland Regional Council.</td>
<td>Building Code G13.2(b) states if no sewer system available, an adequate system for the storage, treatment, and disposal of foul water must be provided in buildings in which sanitary appliances using water-borne waste disposal are installed.</td>
</tr>
</tbody>
</table>
### Building consent

10.1 - Owners of properties who wish to install a wastewater disposal facility on their property shall apply for a building consent in terms of the Building Act 2004.

10.2 - A building consent application to install a wastewater disposal facility shall include such details as may be required by the Council to assess its compliance with the Building Code including but not limited to:

- The procedures for the testing, commissioning, operation and maintenance of the facility
- The size and contours and intended use of the site;
- Soil conditions including permeability and stability;
- Vegetative cover;
- Ground water and surface water conditions;
- Location of existing and future buildings, parking areas and driveways;
- Access for maintenance of septic tanks and disposal areas;
- The position of adjacent streams and waterways;
- Porosity tests on soils of the site.

### Building Act 40 (1) – A person must not carry out any building work except in accordance with a building consent.

### Building Act s49 - A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.

As part of building consent an on-site Wastewater Disposal Site Evaluation Investigation Checklist (known as the Appendix E form) must be completed and signed. Part of On-site Wastewater Systems Design and Management Manual (TP58).

**Appendix E includes:**

- Performance of adjacent systems
- Estimated rainfall and seasonal variation
- Vegetation cover
- Slope shape
- Slope angle
- Surface water drainage characteristics
- Flooding potential
- Surface water separation
- Site clearances
- Site characteristics
- Site geology
- Subsoil investigation
- Assessment of environmental effects

10.3 - The Council may within the period prescribed by the Building Act (2004) require the owner to provide more information to determine whether or not the wastewater

### Building Act s49 - A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met
<table>
<thead>
<tr>
<th><strong>disposal system will meet the requirements of the Building Code.</strong></th>
<th><strong>if the building work were properly completed in accordance with the plans and specifications that accompanied the application.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>10.4 - After considering an application for a building consent, the Council shall grant the consent if it is satisfied on reasonable grounds that the provisions of the Building Code would be met if the work on the wastewater disposal system was completed in accordance with the plans and specifications submitted with the application.</strong></td>
<td><strong>Building Act s49 - A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.</strong></td>
</tr>
<tr>
<td><strong>TP58</strong></td>
<td><strong>Building Act s49 - A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.</strong></td>
</tr>
<tr>
<td><strong>10.5 - Foulwater disposal systems designed in accordance with Technical Publication No. 58, entitled “On-Site Disposal From Households and Institutions” (TP 58) as issued by ARC in 1989 including its latest amendments and issues shall be accepted by the Council as one acceptable solution to the requirements of the Building Code.</strong></td>
<td><strong>As part of building consent an on-site Wastewater Disposal Site Evaluation Investigation Checklist (known as the Appendix E form) must be completed and signed. Part of On-site Wastewater Systems Design and Management Manual (TP58).</strong></td>
</tr>
<tr>
<td><strong>Producer Statements</strong></td>
<td><strong>Building Act s49 - A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.</strong></td>
</tr>
<tr>
<td><strong>10.6 - The Council may accept producer statements from approved persons for the design and construction of foulwater disposal systems.</strong></td>
<td><strong>Building Act s92 - An owner must apply to a building consent authority for a code compliance certificate after all building work to be carried out under a building consent granted to that owner is completed.</strong></td>
</tr>
<tr>
<td><strong>10.7 - The Council shall not provide a Code Compliance Certificate for the drainage work until the owner has provided the Council with a copy of the as-built plans of the completed installation.</strong></td>
<td><strong>Building Act s94 - A building consent authority must issue a code compliance certificate if it is satisfied, on reasonable grounds,—</strong></td>
</tr>
<tr>
<td><strong>Drainlayer</strong></td>
<td><strong>Building Act s84 - All restricted building work</strong></td>
</tr>
<tr>
<td>46</td>
<td></td>
</tr>
</tbody>
</table>
| 11.1 - The installation, alteration or repair of all foulwater disposal systems involving septic tanks and underground pipelines shall be undertaken by a Registered Drainlayer. | must be carried out or supervised by a licensed building practitioner who is licensed to carry out or supervise the work. Plumber, Gasfitters, and Drainlayers Act 2006 s10 - A person must not do any drainlaying, or assist in doing any drainlaying, unless that person is authorised to do so under this section. The following persons may do drainlaying, or assist in doing drainlaying, within the limits prescribed in regulations (if any):
   c. a registered person who is authorised to do, or assist in doing, the work under a current practising licence; or
   d. a person who is authorised to do, or assist in doing, the work under a provisional licence. |
|---|---|
| **Inspection** | **Building Act 40 (1) – A person must not carry out any building work except in accordance with a building consent.**
   As part of consent - AC1231 – Onsite Wastewater Final Checklist requires inspection. Regulation 7 of Building Regulations has hence been revoked. |
| 11.2 - All foulwater disposal installations shall be inspected by a Council officer before being covered up. The owner or the person undertaking the installation of a foulwater disposal system shall give the Council the required notification as set out in Regulation 7 of the Building Regulations 1992. | **Testing and commission**
   12.1 - New foulwater disposal facilities shall be tested and commissioned according to any conditions that the Council may include in a building consent. **Building Act 40 (1) – A person must not carry out any building work except in accordance with a building consent.**
   Building Act s49 - A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application. |
| **Maintenance** | **Building Code G13.3.1 (2) – The plumbing system shall be constructed to provide reasonable access for maintenance and clearing blockages.**
   13.1 - The owner of any property which contains a foulwater disposal system shall ensure that at all times access is |
available:
   a. To the treatment plant or septic tank so that it can be easily opened for the purposes of cleaning, removal of settled solids and maintenance;
   b. To any disposal field or disposal system so that it can be maintained in good working order.

Building Code G13.3.2(d) – The drainage system shall be provided with reasonable access for maintenance and clearance blockages.

Building Code G13.3.4 – If no sewer is available, facilities for the storage, treatment and disposal of foul water must be constructed with adequate vehicle access for collection if required and permit easy cleaning and maintenance.

13.2 - Foulwater disposal systems shall be maintained and operated in such a manner to prevent any discharge of foulwater onto the surface of any land or into any water body.

Unitary Plan E5.4.1 permitted activities allow discharge of *treated* domestic type wastewater only.

Otherwise:

Resource Management Act s15 - No person may discharge any—
   c. contaminant or water into water; or
   d. contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water

Pump out

13.3 - Except as otherwise provided in Clause 13.6 all property owners whose property contains a septic tank shall have that tank pumped out to remove all settled solids at least once every 36 months. The property owner shall provide a copy of the receipt for having this work done to Papakura District Council within 14 days of the tank being pumped out.

Unitary Plan E5.6.1.(3)(c)(d) – primary/septic tank(s) and the land application disposal system are inspected no less frequently than every three years and where necessary the tank(s) are pumped out by a suitable qualified on-site waste water service provider when sludge and scum levels occupy 50 per cent of the tank volume and records of each maintenance action must be retained and made available on the site for inspection by the Council or their agents.

Bylaw Gap – Unitary Plan does not require pump out receipt to be proactively sent in. But council could inspect maintenance receipt on-site.

Unitary Plan also does not state that it...
13.4 - Every person undertaking the removal of settled solids from septic tanks shall comply with the provisions of Section 54 of the Health Act 1956.

Health Act s54 – Restrictions on carrying on offensive trade

Entry and inspection

13.5 - An authorised officer of the Council may enter any property and inspect any septic tank to check the condition of the tank and to determine whether it has been pumped out in a satisfactory manner.

Building Act s222 - An authorised officer is entitled, at all times during normal working hours or while building work is being carried out, -

d. to inspect—

VII. land on which building work is or is proposed to be carried out; and

VIII. building work that has been or is being carried out on or off the building site; and

IX. any building;

e. to enter premises for -

V. the purpose of inspecting the building; or

VI. the purpose of determining whether the building is dangerous or insanitary

inspection means the taking of all reasonable steps—

f. to enable a territorial authority to—

III. identify dangerous or insanitary buildings within its district; and

IV. carry out its functions or duties in relation to those buildings

Resource Management Act s332 - Any enforcement officer, specifically authorised in writing by any local authority or consent authority to do so, may at all reasonable times go on, into, under, or over any place or structure, except a dwellinghouse, for the purpose of inspection to determine whether or not—

e. this Act, any regulations, a rule of a plan, a resource consent, section 10 (certain existing uses protected), or section 10A (certain existing activities allowed), or section 20A (certain lawful existing activities allowed) is being complied with.
Unitary Plan E5.6.1.(3)(d) - records of each maintenance action must be retained and made available on the site for inspection by the Council or their agents.

13.6 - Property owners may apply to the Council for an exemption from the requirement of Clause 13.3. The Council may require from the owner such information as is necessary to determine whether or not to grant an exemption. In granting an exemption the Council may set such conditions as it shall think fit.

Unitary Plan E5.6.1.(3)(c) – primary/septic tank(s) and the land application disposal system are inspected no less frequently than every three years and where necessary the tank(s) are pumped out by a suitable qualified on-site waste water service provider when sludge and scum levels occupy 50 per cent of the tank volume.

13.7 - The owner of any property which contains a foulwater disposal system shall comply with all consent conditions.

Building Act 40 (1) – A person must not carry out any building work except in accordance with a building consent.

Investigation
14.1 - An authorised officer of the Council may undertake such inspections and investigations as are reasonably necessary to establish the dimensions, location and condition of any foulwater disposal installation.

Unitary Plan E5.6.1.(3)(d) - records of each maintenance action must be retained and made available on the site for inspection by the Council or their agents.

Resource Management Act s332 - Any enforcement officer, specifically authorised in writing by any local authority or consent authority to do so, may at all reasonable times go on, into, under, or over any place or structure, except a dwellinghouse, for the purpose of inspection to determine whether or not—

f. this Act, any regulations, a rule of a plan, a resource consent, section 10 (certain existing uses protected), or section 10A (certain existing activities allowed), or section 20A (certain lawful existing activities allowed) is being complied with

Building Act s222 - An authorised officer is entitled, at all times during normal working hours or while building work is being carried out, to—

g. to inspect—

X. land on which building work is or is proposed to be carried out; and
| XI.  | building work that has been or is being carried out on or off the building site; and |
| XII. | any building: |
| h.   | to enter premises for - |
| VII. | the purpose of inspecting the building; or |
| VIII. | the purpose of determining whether the building is dangerous or insanitary |

*Inspection* means the taking of all reasonable steps—

c. to determine whether—

| IV.  | building work is being carried out without a building consent; or |
| V.   | building work is being carried out in accordance with a building consent; or |
| VI.  | a notice to fix has been complied with: |

d. to enable a territorial authority to—

| III. | identify dangerous, earthquake-prone, or insanitary buildings within its district; and |
| IV.  | carry out its functions or duties in relation to those buildings: |

14.2 - Where a foulwater disposal installation is found to be in such a condition that the Council considers that it is unlikely to be operating in compliance with the requirements of the Building Code, or the conditions of a building consent, or in a sanitary and efficient manner, or it is likely to be contaminating a water source, then the Council may require the owner to:

a. Clean the septic tank or pump out any settled solids in the septic tank; or

b. Repair or maintain any treatment plant and make the necessary repairs to the foulwater disposal system to the satisfaction of the Council.

Resource Management Act s322 - An abatement notice may be served on any person by an enforcement officer—

b. requiring that person to cease, or prohibiting that person from commencing, anything done or to be done by or on behalf of that person that, in the opinion of the enforcement officer,—

III. contravenes or is likely to contravene this Act, any regulations, a rule in a plan, or a resource consent; or

IV. is or is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment

Building Act s124 - If a territorial authority is
### Breaches and Remedies

16.1 - In the event of a breach of statutory or legal obligations, the WWA (wastewater authority) may serve a defect notice on the customer advising its nature and the steps to be taken within a specified period, to remedy it. If, after the specified period, the customer has not remedied the breach, the WWA may charge a re-inspection fee.

If however the breach is such that public health, or safety considerations, or risk of consequential damage to WWA assets is such that delay would create unacceptable results, the WWA may take immediate action to rectify the defect, and recover all reasonable costs as set out in 16.2

16.2 - At any time after the specified period of 16.1 has elapsed, the WWA may carry out any remedial work required in order to make good the breach, and to recover from the person committing the breach all reasonable

<table>
<thead>
<tr>
<th>Satisfied that a building in its district is a dangerous, affected, or insanitary building. The territorial authority may do any or all of the following:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>a.</strong> put up a hoarding or fence to prevent people from approaching the building nearer than is safe:</td>
</tr>
<tr>
<td><strong>b.</strong> attach in a prominent place on, or adjacent to, the building a notice that warns people not to approach the building:</td>
</tr>
<tr>
<td><strong>c.</strong> except in the case of an affected building, issue a notice that complies with section 125(1) requiring work to be carried out on the building to—</td>
</tr>
<tr>
<td><strong>I.</strong> reduce or remove the danger; or</td>
</tr>
<tr>
<td><strong>II.</strong> prevent the building from remaining insanitary:</td>
</tr>
<tr>
<td><strong>d.</strong> issue a notice that complies with section 125(1A) restricting entry to the building for particular purposes or restricting entry to particular persons or groups of persons.</td>
</tr>
</tbody>
</table>

**Building Act s124** - If a territorial authority is satisfied that a building in its district is a dangerous, affected, or insanitary building. The territorial authority may do any or all of the following:

| **e.** put up a hoarding or fence to prevent people from approaching the building nearer than is safe: |
| **f.** attach in a prominent place on, or adjacent to, the building a notice that warns people not to approach the building: |
| **g.** except in the case of an affected building, issue a notice that complies with section 125(1) requiring work to be carried out on the building to— |
| **I.** reduce or remove the danger; or |
| **II.** prevent the building from remaining insanitary: |
| **h.** issue a notice that complies with section 125(1A) restricting entry to the building |

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<table>
<thead>
<tr>
<th>Regulatory Committee</th>
<th>10 May 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Findings of the legacy on-site wastewater bylaws review</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
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<tr>
<td>Attachment A</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Item 10</td>
<td></td>
</tr>
<tr>
<td>costs incurred in connection with the remedial work.</td>
<td>for particular purposes or restricting entry to particular persons or groups of persons.</td>
</tr>
<tr>
<td>Building Act s220 - This section applies if—</td>
<td></td>
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<tr>
<td>d. a person is required, under this Act, by a building consent authority, territorial authority, or regional authority to carry out any building work on, or in connection with, any building; and</td>
<td></td>
</tr>
<tr>
<td>e. either—</td>
<td></td>
</tr>
<tr>
<td>I. that person, after being given notice of the requirement, fails to commence to comply with the notice within the time stated in the notice or, if the time is not so stated, within a reasonable time; or</td>
<td></td>
</tr>
<tr>
<td>II. that person, after a certificate from any officer of the territorial authority that the work is of an urgent nature is communicated to him or her, defaults for 24 hours from the time of that communication; and</td>
<td></td>
</tr>
<tr>
<td>f. that person does not immediately proceed with the work with all reasonable speed.</td>
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</tr>
<tr>
<td>The territorial authority may apply to the District Court for an order authorising the territorial authority to carry out building work.</td>
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</tr>
<tr>
<td>If a territorial authority carries out building work under the authority of an order made under subsection (2),—</td>
<td></td>
</tr>
<tr>
<td>d. the owner of the building is liable for the costs of the work; and</td>
<td></td>
</tr>
<tr>
<td>e. the territorial authority may recover those costs from the owner; and</td>
<td></td>
</tr>
<tr>
<td>f. the amount recoverable by the territorial authority becomes a charge on the land on which the work was carried out.</td>
<td></td>
</tr>
<tr>
<td>Resource Management Act s322 - An abatement notice may be served on any person by an enforcement officer—</td>
<td></td>
</tr>
<tr>
<td>c. requiring that person to cease, or prohibiting that person from commencing, anything done or to be done by or on behalf of that person that,</td>
<td></td>
</tr>
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</table>
in the opinion of the enforcement officer,—

I. contravenes or is likely to contravene this Act, any regulations, a rule in a plan, or a resource consent; or

II. is or is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment

Resource Management Act s323 - Subject to the rights of appeal in section 325, a person on whom an abatement notice is served shall—

c. comply with the notice within the period specified in the notice; and

unless the notice directs otherwise, pay all the costs and expenses of complying with the notice.

---

**Table 11 - Rodney District Council General Bylaw 1998**

<table>
<thead>
<tr>
<th>Bylaw Stipulation</th>
<th>Matching stipulation in Resource Management Act, Building Act and Health Act</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>On-site disposal</strong></td>
<td></td>
</tr>
<tr>
<td>9.1 - All wastewater generated on any allotment not serviced by the Council’s wastewater network must be treated and disposed of within the confines of that allotment, or other land for which legal rights for such disposal have been obtained.</td>
<td>Health Act s39 requires all dwellings to have suitable appliances for the disposal of refuse water in a sanitary manner. Building Code G13.2(b) states if no sewer system available, an adequate system for the storage, treatment, and disposal of foul water must be provided in buildings in which sanitary appliances using water-borne waste disposal are installed.</td>
</tr>
<tr>
<td>9.2 - All on-site wastewater treatment and disposal systems must be operated and maintained in accordance with the manufacturers specifications and have suitable access for inspection, repair and where relevant, pumping out.</td>
<td>Unitary Plan E5.6.1.(3) – The wastewater treatment system must be maintained by a suitably qualified on-site wastewater service provider in accordance with Technical Publication 58 On-site Wastewater Systems: Design and Management Manual 2004 (TP58) recommendations, the manufacturer’s recommendations or the</td>
</tr>
</tbody>
</table>
suitably qualified on-site wastewater service provider’s recommendations.

Building Code G13.3.1 (2) – The plumbing system shall be constructed to provide reasonable access for maintenance and clearing blockages.

Building Code G13.3.2(d) – The drainage system shall be provided with reasonable access for maintenance and clearance blockages.

Building Code G13.3.4 – If no sewer is available, facilities for the storage, treatment and disposal of foul water must be constructed with adequate vehicle access for collection if required and permit easy cleaning and maintenance.

9.3 - The owner or occupier of an allotment utilising on-site a wastewater treatment or disposal system shall, within 10 working days of receipt of written request from an Authorised Officer provide the following information:
   d. the make and model of on-site treatment installed, if known; and
   e. a copy of any manufacturers maintenance and operation requirements and performance standards; and
   f. evidence, to the satisfaction of the officer, that an effective operation and maintenance programme for the system is in place.

Unitary Plan E5.6.1.(3)(d) - records of each maintenance action must be retained and made available on the site for inspection by the Council or their agents.

Bylaw Gap – Unitary Plan currently only requires maintenance records to be kept on-site for inspection.

Entry and inspection

9.4 - An Authorised Officer may enter an allotment, in accordance with the provisions of the Act to assess compliance with the on site wastewater treatment and disposal systems maintenance and operation requirements.

Building Act s222 - An authorised officer is entitled, at all times during normal working hours or while building work is being carried out, -

   g. to inspect—
      I. land on which building work is or is proposed to be carried out; and
      II. building work that has been or is being carried out on or off the
<table>
<thead>
<tr>
<th>Building site; and</th>
</tr>
</thead>
<tbody>
<tr>
<td>III. any building;</td>
</tr>
<tr>
<td>h. to enter premises for -</td>
</tr>
<tr>
<td>I. the purpose of inspecting the building; or</td>
</tr>
<tr>
<td>II. the purpose of determining whether the building is dangerous or insanitary</td>
</tr>
</tbody>
</table>

**Inspection** means the taking of all reasonable steps—

i. to enable a territorial authority to—

- identify dangerous or insanitary buildings within its district; and
- carry out its functions or duties in relation to those buildings

**Resource Management Act** s332 - Any enforcement officer, specifically authorised in writing by any local authority or consent authority to do so, may at all reasonable times go on, into, under, or over any place or structure, except a dwellinghouse, for the purpose of inspection to determine whether or not—

1. this Act, any regulations, a rule of a plan, a resource consent, section 10 (certain existing uses protected), or section 10A (certain existing activities allowed), or section 20A (certain lawful existing activities allowed) is being complied with

**Unitary Plan** E5.6.1.(3)(d) - records of each maintenance action must be retained and made available on the site for inspection by the Council or their agents.

---

**9.5 -** In the event that an onsite wastewater treatment and disposal system is not being operated or maintained correctly an Authorised Officer may serve written notice on the occupier to:

a. take appropriate remedial steps within a given time and at the occupier's cost in order to rectify adverse effects on public health or the environment; and/or

b. provide system maintenance records or performance data (pumpout records,

**Unitary Plan** E5.6.1.(1) – The wastewater discharge must not result in contamination of ground water at a point of extraction, any surface water, a stormwater drain, a neighbouring property, or cause a public health risk.

**Building Act** s123 - A building is insanitary for the purposes of this Act if the building

c. is offensive or likely to be injurious to health because—
flow records, discharge quality data) where there are actual or potential adverse effects on public health or the environment; and/or

c. provide Engineer's statements confirming to the satisfaction of the officer, satisfactory system upgrade and performance; and/or

d. provide installer certificates (PS4 statements) or that water safety devices remain in place where water reduction features are required as a basis for sizing of the wastewater system.

<table>
<thead>
<tr>
<th>Item 10</th>
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</thead>
<tbody>
<tr>
<td>I.</td>
<td>of how it is situated or constructed; or</td>
</tr>
<tr>
<td>II.</td>
<td>it is in a state of disrepair; or</td>
</tr>
<tr>
<td>d.</td>
<td>does not have a supply of potable water that is adequate for its intended use</td>
</tr>
</tbody>
</table>

Building Act s124 - If a territorial authority is satisfied that a building in its district is a dangerous, affected, or insanitary building. The territorial authority may do any or all of the following:

a. put up a hoarding or fence to prevent people from approaching the building nearer than is safe;

b. attach in a prominent place on, or adjacent to, the building a notice that warns people not to approach the building:

c. except in the case of an affected building, issue a notice that complies with section 125(1) requiring work to be carried out on the building to—
   I. reduce or remove the danger; or
   II. prevent the building from remaining insanitary;

d. issue a notice that complies with section 125(1A) restricting entry to the building for particular purposes or restricting entry to particular persons or groups of persons.

Building Act s125(1) A notice issued under section 124(2)(c) must—

a. be in writing; and

b. be fixed to the building in question; and

c. be given in the form of a copy to the persons listed in subsection (2); and

d. state the time within which the building work must be carried out, which must not be less than a period of 10 days after the notice is given or a period reasonably sufficient to obtain a building consent if one is required, whichever period is longer.
9.6 - For the avoidance of doubt the provisions of this Bylaw and in particular Section 9 applies to all on site wastewater disposal systems and includes those connected to the Matakana Sewerage Scheme which were subject to the provisions of Chapter 10 Matakana Sewerage Scheme Maintenance Bylaw (now revoked) as at the date of coming into effect of this Bylaw.

12.1 - Any offence or breach under Chapter 1 of the Rodney District Council General Bylaw 1998 applies to this Bylaw and, may be remedied by the Council under Section 8 of Chapter 1.

12.2 - Every person who fails to comply with the requirements of this Bylaw, commits an offence and is liable, on summary conviction, to a fine not exceeding $20,000 or as set out in Section 242 of the Act.

12.3 - The Council may apply to the District Court under section 162 of the Act for an injunction restraining the person from committing a breach of this Bylaw.

12.4 - Where it is suspected that any person has committed a breach of this Bylaw, that person shall, on the direction of an Authorised Officer, provide his/her full name, and address.
### Attachment B – Legislative review assessment

To complete a statutory bylaw review, council must “determine that a bylaw is the most appropriate way of addressing the perceived problem” (section 155 Local Government Act 2002).

If a bylaw has been deemed the most appropriate way of addressing the perceived problem, the local authority “must determine whether the bylaw is the most appropriate form of the bylaw and if it gives rise to any implications under the New Zealand Bill of Rights Act 1990” (section 155 Local Government Act 2002).

To verify if the legacy on-site wastewater bylaws comply with these standards, options of retaining or revoking the bylaws were assessed against the legislative review requirements.

**Table 1 - Retain or revoke options against legislative review requirements**

<table>
<thead>
<tr>
<th>OPTIONS</th>
<th>Option 1: Status quo (retain bylaws)</th>
<th>Option 2: (RECOMMENDED) Revoke bylaws and rely on existing legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are the bylaws the appropriate means?</td>
<td>× No, the bylaws were to be replaced by the Auckland Unitary Plan when operative.</td>
<td>Are the bylaws the appropriate means?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Not applicable (no bylaws)</td>
</tr>
<tr>
<td>Effectiveness/Efficiency:</td>
<td>× The legacy bylaws do not provide additional regulation to existing plans and legislation</td>
<td>Effectiveness/Efficiency:</td>
</tr>
<tr>
<td></td>
<td>× Better enforcement options are available in the Auckland Unitary Plan and legislation than the bylaws.</td>
<td>✓ Legislation provides greater enforcement than bylaws</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Simplifies council’s regulations.</td>
</tr>
<tr>
<td>Bill of Rights implications:</td>
<td>✓ Does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</td>
<td>Bill of Rights implications:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Not applicable.</td>
</tr>
<tr>
<td>Fit for future:</td>
<td>× Bylaw regulations are already currently redundant compared to Auckland Unitary Plan and legislation.</td>
<td>Fit for future:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ The Auckland Unitary Plan will be council’s guiding document to regulate on-site wastewater systems.</td>
</tr>
<tr>
<td>Māori impact:</td>
<td>✓ No specific implications for Māori.</td>
<td>Māori impact:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ No specific implications for Māori.</td>
</tr>
</tbody>
</table>
Te take mō te pūrongo / Purpose of the report
1. To determine the outcome of the statutory review and direct any changes to eight issues within the Auckland Council Public Safety and Nuisance Bylaw 2013 (Bylaw).

Whakarāpopototanga matua / Executive summary
2. To enable the Committee to determine the outcome of the statutory review and direct any changes to eight issues about nuisance in the Bylaw, staff have undertaken an assessment against regulatory criteria.

3. The Bylaw contains 49 issues. Committee decision making on these issues is being undertaken at business meetings from March to June 2018.

4. Staff recommend that the Committee direct staff as part of the statutory review of the Bylaw to include the following in a statement of proposal:
   - revoke public place clauses about noise nuisance, mind-altering substances, intimidating or nuisance begging, graffiti, posters, signs, or advertising devices
   - amend public place clauses about wilful obstruction, disturbance or interference, use of any material or thing, fences, and lighting fires.

5. Taking this approach will revoke bylaw clauses for issues better addressed in existing regulations. The remaining amended bylaw clauses will ensure effective and efficient management of the issues now and in the future.

6. The recommendations for all eight issues in this report could create public confusion and reduce compliance and effectiveness of Auckland Council and Auckland Transport public safety and nuisance bylaws. Staff will continue to work with Auckland Transport to mitigate this risk including clear public communications.

7. A statement of proposal will be prepared using the decisions covering all 49 issues for approval by the Committee and the Governing Body. Public consultation and hearings will follow, before the Governing Body makes a final decision.

Ngā tūtohunga / Recommendation/s
That the Regulatory Committee:

As required by section 160(1) of the Local Government Act 2002

a) determine that a bylaw is not the most appropriate way to address the following matters in public places:
   i) noise nuisance (clause 6(1)(b))
   ii) mind-altering substances (clause 6(1)(e))
   iii) intimidating or nuisance begging (clause 6(1)(f))
   iv) graffiti, posters, signs or advertising devices (clause 6(2)(a)).

b) determine that a bylaw is the most appropriate way to address the following matters in public places:
   i) wilful obstruction, disturbance or interference (clause 6(1)(a))
   ii) use of any material or thing (clause 6(1)(c))
   iii) fences (clause 6(1)(d))
   iv) lighting fires (clause 6(2)(b)).
c) determine that the Auckland Council Public Safety and Nuisance Bylaw 2013 does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.

d) determine that the Auckland Council Public Safety and Nuisance Bylaw 2013 is not the most appropriate form of bylaw.

**As provided for in section 160(3) of the Local Government Act 2002**

e) request a statement of proposal that amends the Auckland Council Public Safety and Nuisance Bylaw 2013 as detailed in Attachment A that:

i) revokes bylaw clauses about issues in (a)

ii) amends bylaw clauses about issues in (b)

iii) amends the general form of the bylaw as detailed in this report.

**Horopaki / Context**

**Need to determine Bylaw appropriateness and bill of rights implications**

8. Under section 158 of the Local Government Act 2002, a statutory review of the Auckland Council Public Safety and Nuisance Bylaw 2013, Te Ture ā-Rohe Marutau ā-Iwi me te Whakapōrea 2013 (the Bylaw) must be completed by 22 August 2018.

9. To complete the statutory review, Council must decide whether the Bylaw ¹⁰:

- is the most appropriate way of addressing the issues contained in the Bylaw
- is the most appropriate form of bylaw
- gives rise to implications under the New Zealand Bill of Rights Act 1990.

10. Following the outcome of the statutory review, the council can propose that the Bylaw be confirmed, amended, revoked, or replaced. ¹¹

**49 Bylaw issues being reported for direction on statutory review and changes to approach**

11. On 12 October 2017 the Committee considered the statutory review findings report titled ‘Public Safety and Nuisance Bylaw Review Findings Report 2017’. As instructed at this meeting staff are reporting on 49 Bylaw issues at committee meetings from March to June 2018 (refer Attachment C). The report for each meeting will seek a decision on the statutory review and the direction for any changes in the approach to issues presented.

12. Previous decisions on six issues were made in March 2018 (REG/2018/15) and nine issues in April 2018 (REG/2018/20).

**Tātaritanga me ngā tohutohu / Analysis and advice**

**Staff recommend: revoke five issues, amend three issues, and simplify language**

13. This report contains an assessment of the eight bylaw issues about nuisance using criteria contained in the Local Government Act 2002 (refer Table 1). The full assessment of each clause is contained in Attachment A.

14. The review process has identified opportunities to improve the general form of the Bylaw. The assessment in this report relates to drafting clauses to better reflect the issues and simplify the language for easier reading and understanding.

¹⁰ Section 160(1) and (2) Local Government Act 2002. This section can be viewed in Attachment B.

¹¹ Section 160(3) Local Government Act 2002. This section can be viewed in Attachment B.
### Table 1: Nuisance in public places - Summary of statutory review and any changes

<table>
<thead>
<tr>
<th>Bylaw issue</th>
<th>Recommended outcome of statutory review</th>
<th>Recommended direction for any changes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Bylaw appropriate to address issue?</td>
<td>Bylaw form appropriate?</td>
</tr>
<tr>
<td>Wilful obstruction, disturbance or interference</td>
<td>✓</td>
<td>×</td>
</tr>
<tr>
<td>Clause 6(1)(a)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Noise nuisance</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>Clause 6(1)(b)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Use of any material or thing</td>
<td>✓</td>
<td>×</td>
</tr>
<tr>
<td>Clause 6(1)(c)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fences</td>
<td>✓</td>
<td>×</td>
</tr>
<tr>
<td>Clause 6(1)(d)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mind-altering substances</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>Clause 6(1)(e)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intimidating or nuisance begging</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>Clause 6(1)(f)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Graffiti, posters, signs or advertising devices</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>Clause 2(a)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lighting fires</td>
<td>✓</td>
<td>×</td>
</tr>
<tr>
<td>Clause 2(b)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe / Local impacts and local board views

15. Staff held cluster workshops with local boards in March 2017. Local board members consider that all issues in the Bylaw remain a concern to varying degrees.

### Tauākī whakaaweawe Māori / Māori impact statement

16. Staff used culturally appropriate, collaborative engagement to identify the impact of public safety and nuisance behaviours on Māori.

17. Five hui were held with whānau, rangatahi and members from Te Kaha o te Rangatahi Trust, Te Kura Kaupapa Māori o ngā Maungarongo, Kootuitui Whānau, Papakura, Ngāti Whātua Ōrākei whanau and Ranui Action Project.

18. Māori expressed the following key views:
   - importance of child safety and a child-safe environment
   - better protect and enhance the environment
   - greater respect for Māori land and Tikanga Māori by authorities and the public.

19. Environmental controls for areas such as parks and beaches under the Bylaw are likely to have a greater impact on Māori because of the role of Māori as kaitiaki (guardians).

20. Māori are more likely to be represented amongst the begging community and Māori stakeholders were amongst those likely to be more sympathetic toward those who beg.
Ngā ritenga ā-pūtea / Financial implications
21. The cost of the bylaw review and implementation will be met within existing baselines.

Ngā raru tūpono / Risks
22. Auckland Transport has a similar public safety and nuisance bylaw for 15 issues that occur on the Auckland transport system. Auckland Transport has not yet started its bylaw review.
23. There is a risk of public confusion if different approaches are adopted to address similar issues that fall under either authority’s jurisdiction (including all eight issues in this report). This could create uncertainty, reduce compliance and Bylaw effectiveness.
24. This risk was identified at the beginning of the review process. Staff will continue to engage with Auckland Transport to mitigate this risk either through public communication or the Auckland Transport bylaw review.
25. Some stakeholders may be concerned that revoking bylaw clauses means that some issues are no longer addressed. Council can mitigate this through clear explanations about decisions and encouraging public questions and feedback.

Ngā koringa ā-muri / Next steps
26. Staff will seek Committee and Governing Body approval to a statement of proposal, amended bylaw and compliance approach. This will be followed by public consultation, hearings and final decision making by Governing Body.

Ngā tāpirihanga / Attachments

<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Key legislation</td>
<td>107</td>
</tr>
<tr>
<td>B</td>
<td>Statutory review and direction for any changes</td>
<td>109</td>
</tr>
<tr>
<td>C</td>
<td>Memo on timing and content of advice to Committee</td>
<td>127</td>
</tr>
</tbody>
</table>

Ngā kaihaina / Signatories

Authors
- Pania Elliot - Principal Policy Analyst
- Magda Findlik - Principal Policy Analyst
- Fereti Lualua - Policy Analyst
- Elizabeth Osborne - Policy Analyst

Authorisers
- Kataraina Maki - GM - Community & Social Policy
- Penny Pirrit - Director Regulatory Services
Attachment B: Relevant legislation for bylaw review

Local Government Act 2002

160 Procedure for and nature of review
(1) A local authority must review a bylaw to which section 158 or 159 applies by making the determinations required by section 155.
(2) For the purposes of subsection (1), section 155 applies with all necessary modifications.
(3) If, after the review, the local authority considers that the bylaw—
(a) should be amended, revoked, or revoked and replaced, it must act under section 156:
(b) should continue without amendment, it must—
   (i) consult on the proposal using the special consultative procedure if —
      (A) the bylaw concerns a matter identified in the local authority’s policy under section 76AA as being of significant interest to the public; or
      (B) the local authority considers that there is, or is likely to be, a significant impact on the public due to the proposed continuation of the bylaw; and
   (ii) in any other case, consult on the proposed continuation of the bylaw in a manner that gives effect to the requirements of section 82.
(4) For the purpose of the consultation required under subsection (3)(b), the local authority must make available—
(a) a copy of the bylaw to be continued; and
(b) the reasons for the proposal; and
(c) a report of any relevant determinations by the local authority under section 155.
(5) This section does not apply to any bylaw to which section 10AA of the Dog Control Act 1996 applies.

155 Determination whether bylaw made under this Act is appropriate
(1AA) This section applies to a bylaw only if it is made under this Act or the Maritime Transport Act 1994.
(1) A local authority must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem.
(2) If a local authority has determined that a bylaw is the most appropriate way of addressing the perceived problem, it must, before making the bylaw, determine whether the proposed bylaw—
(a) is the most appropriate form of bylaw; and
(b) gives rise to any implications under the New Zealand Bill of Rights Act 1990.
(3) No bylaw may be made which is inconsistent with the New Zealand Bill of Rights Act 1990, notwithstanding section 4 of that Act.
<table>
<thead>
<tr>
<th>Item 11</th>
</tr>
</thead>
</table>

**BYLAW CLAUSE 6(1)(a) – Do not obstruct, disturb or interfere with a person’s use or enjoyment of a public place**

<table>
<thead>
<tr>
<th>STATUTORY OBLIGATIONS/POWERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Council may make a bylaw about protecting people’s use or enjoyment of a public place to address public nuisance, health, safety, offensive behaviour, and use of public places under the Local Government Act 2002 (s145, s146) and Health Act 1956 (s64).</td>
</tr>
<tr>
<td><strong>ISSUE IN 2013</strong></td>
</tr>
<tr>
<td>• Nuisance, safety, use of public places.</td>
</tr>
<tr>
<td>• General anti-social or nuisance behaviour (such as littering, harassment, loitering or any activity) that unreasonably interferes with a person’s enjoyment of a public place.</td>
</tr>
<tr>
<td>• No further data available on scale or impact of the issue in 2013.</td>
</tr>
<tr>
<td><strong>OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013</strong></td>
</tr>
<tr>
<td>• To provide for appropriate behaviour in public places, ensure safe public places and minimise nuisances.</td>
</tr>
<tr>
<td>• Auckland Council and Auckland Transport made bylaws to prohibit using a public place to “wilfully obstruct, disturb or interfere with any other person in their use or enjoyment of that public place”.</td>
</tr>
<tr>
<td>• Powers to enforce bylaw include a court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage or power to request name and address. Penalties include a maximum $20,000 court fine or a maximum $500 court fine and a further $50 court fine per day for continuing offences.</td>
</tr>
<tr>
<td><strong>BYLAW IMPLEMENTATION SINCE 2013</strong></td>
</tr>
<tr>
<td>• Auckland Transport delegated enforcement of its bylaw to Auckland Council.</td>
</tr>
<tr>
<td>• Council proactively enforces Bylaw through the City Watch Programme which manage nuisance behaviours such as aggressive or nuisance begging activities, protesting that obstruct footpaths etc.</td>
</tr>
<tr>
<td>• Serious offences are referred to police.</td>
</tr>
<tr>
<td><strong>ISSUE IN 2018</strong></td>
</tr>
<tr>
<td>• Public safety, obstruction and nuisance. No issues of offensive behaviour and damage.</td>
</tr>
<tr>
<td>• 53 per cent of Aucklanders surveyed witnessed someone disturbing or interfering with others’ enjoyment of a public space. Of those surveyed, 96 per cent said they felt annoyed, frustrated, angry, fearful, or threatened.</td>
</tr>
<tr>
<td><strong>OUTCOME SOUGHT IN 2018</strong></td>
</tr>
<tr>
<td>• To ensure public safety and minimise obstruction and nuisance from people using a public place to wilfully obstruct, disturb or interfere with any other person in their use or enjoyment of that public place.</td>
</tr>
</tbody>
</table>

**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. Existing police legislation address higher levels of offending:
  - Police powers under the Summary Offences Act 1981 (s3, s4, s9, s21, s28) can address activities such as offensive and disorderly behaviour, assault, intimidation, loitering and trespass.
  - Police powers under the Summary Offences Act 1981 (s22) are limited to obstructions of a public way (not including parks for instance).

Bylaw effective / efficient?
- ✓ Bylaw is a “catch-all” for behaviours now and in the future that does not meet the threshold for police intervention, but nevertheless are a concern to Aucklanders.
- ✓ Police support this approach because it can be an early intervention tool for preventing low-level activities escalating into more serious offences.
- ✗ 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.

Bylaw clearly written? ✗ Bylaw unclear. Arguably open to interpretation. For instance, it could better explain how the Bylaw applies to specific issues, for instance, this clause is used to address begging activities that causes an obstruction because the Bylaw clause 6(1)(f) only refers to aggressive and nuisance begging activities.

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

Bylaw fit for the future? ✗ The issue is unlikely to change, but the Bylaw is not clearly written.

Any Bill of Rights implications? ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.
A bylaw is an appropriate way to address safety, obstruction and nuisance issues from people using a public place to wilfully obstruct, disturb or interfere with any other person in their use or enjoyment of that 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 and is not consistent with the New Zealand Bill of Rights Act 1990.

<table>
<thead>
<tr>
<th>OPTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Option 1: Status quo – Retain bylaw</strong></td>
</tr>
<tr>
<td>• Bylaw prohibits using a public place to willfully obstruct, disturb or interfere with any other person in their use or enjoyment of that public place.</td>
</tr>
<tr>
<td>• Council responds to complaints.</td>
</tr>
<tr>
<td>• Police addresses serious offences.</td>
</tr>
<tr>
<td><strong>Effectiveness and efficiency:</strong></td>
</tr>
<tr>
<td>✓ Bylaw enables the issues to be addressed where they arise.</td>
</tr>
<tr>
<td>× Bylaw difficult to enforce.</td>
</tr>
<tr>
<td><strong>Bill of Rights implications:</strong></td>
</tr>
<tr>
<td>✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.</td>
</tr>
<tr>
<td><strong>Fit for future:</strong></td>
</tr>
<tr>
<td>× No. Bylaw is not clearly written leaving potential for inconsistent decisions in the future.</td>
</tr>
<tr>
<td><strong>Māori impact/risk:</strong></td>
</tr>
<tr>
<td>• No specific implications for Māori.</td>
</tr>
</tbody>
</table>

| **Option 2: (RECOMMENDED) Amend bylaw to improve certainty** |
| • Bylaw same as Option 1. Explanatory notes added to better explain how the Bylaw applies to lower levels of offending and to specific issues as they arise. |
| • Council responds to complaints. |
| • Police addresses serious offences. |
| **Effectiveness and efficiency:** |
| ✓ Bylaw enables the issues to be addressed where they arise. |
| × Bylaw difficult to enforce. |
| ✓ Bylaw more certain. Explanatory notes can be added without formality to explain how the clause applies to new issues as they arise. |
| **Bill of Rights implications:** |
| ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990. |
| **Fit for future:** |
| ✓ Yes. Explanatory notes make Bylaw more certain for issues now and in the future. |
| **Māori impact/risk:** |
| • No specific implications for Māori. |

| **Option 3: Revoke bylaw - Rely on existing legislation** |
| • Bylaw clause deleted. |
| • Police use the Summary Offences Act 1981 to address offensive and disorderly behaviour, assault, intimidation, loitering and trespass. |
| **Effectiveness and efficiency:** |
| × Does not address obstruction, safety, nuisance and misuse unless obstruction on a public way. |
| × Police unlikely to prioritise enforcement. |
| **Bill of Rights implications:** |
| - Criteria not applicable for non-bylaw option. |
| **Fit for future:** |
| × No. Legislation only addresses nuisance intending to intimidate and obstructions limited to public ways. |

**SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**
The Bylaw should be amended (Option 2) to prohibit using a public place to willfully obstruct, disturb or interfere with any other person in their use or enjoyment of that public place. Taking this approach will better address issues associated with safety, obstruction and nuisance.

**References:**
- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 13, 50
- Legislative requirements: Local Government Act 2002, s162, s163, s164-168, s171-174, s176, s178, s242(4)
- Health Act 1956, s66, s128.
- Attachment B Assessment of Public Safety and Nuisance Behaviours and Opportunities 2017, pp 8, 9.
### BYLAW CLAUSE 6(1)(b) – Prohibits nuisance from excessive noise in a public place

<table>
<thead>
<tr>
<th>STATUTORY OBLIGATIONS/POWERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Council may make a bylaw about noise to address public nuisance, health, safety, offensive behaviour or use of public places under the Local Government Act 2002 (s145, s146) and Health Act 1956 (s29, s64).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ISSUE IN 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Nuisance from the use of loud speakers, amplifiers and musical instruments.</td>
</tr>
<tr>
<td>• No specific data on the size of the issue in 2013.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>• To minimise nuisance and provide for appropriate behaviour in public places.</td>
</tr>
<tr>
<td>• Auckland Council and Auckland Transport made bylaws to prohibit “nuisance through the use or playing of any instrument (musical or otherwise), any type of public address system or any type of amplified sound system, or from making any excessive sound or noise” in a public place.</td>
</tr>
<tr>
<td>• Powers to enforce bylaw include a court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage or power to request name and address.</td>
</tr>
<tr>
<td>• Penalties for bylaw breaches include a maximum $20,000 court fine or a maximum $500 court fine and a further $500 court fine per day for continuing offences.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>BYLAW IMPLEMENTATION SINCE 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Auckland Transport delegated enforcement of its bylaw to Auckland Council.</td>
</tr>
<tr>
<td>• To respond to complaints, council officers use the Resource Management Act 1991 (RMA) and the Bylaw depending on the circumstances.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ISSUE IN 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Noise nuisance.</td>
</tr>
<tr>
<td>• 52 per cent of Aucklanders surveyed experienced excessive noise from public address systems and instruments. Of those surveyed, 84 per cent considered announcements, speeches or music played over loud speakers a nuisance.</td>
</tr>
<tr>
<td>• Other stakeholders identified the use of loud speakers on bicycles as being of concern.</td>
</tr>
<tr>
<td>• Street performances, such as busking, generated the most responses from the stakeholders.</td>
</tr>
<tr>
<td>• The number of busking complaints increased from 56 in 2015 to 153 in 2016. Data does not specify whether the issue was related to noise.</td>
</tr>
<tr>
<td>• Council receives few complaints about noise in public places. In contrast, council receives over 57,000 complaints per year about noise on private property.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OUTCOME SOUGHT IN 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>• To minimise sound or noise nuisance in public places, including from playing of instruments, public address systems and amplified sound systems.</td>
</tr>
</tbody>
</table>

#### BYLAW EVALUATION

**Still a problem requiring a bylaw response?**
- ✔ Yes. There is still an issue that regulation can help address.
- ✗ There are feasible regulatory alternatives to a bylaw under the Resource Management Act 1991. This Act:
  - provides enforcement powers to investigate excessive noise emitted from any place, to require the noise to be reduced to a reasonable level (s327) and the right of entry to seize, remove, lock or seal any instrument, appliance or machine that is producing or contributing to the excessive noise (s328)
  - provides for $500 infringement notices as a penalty [s343C(3)].

**Bylaw effective / efficient?**
- ✗ No. Council officers rely on the Resource Management Act 1991 and the Bylaw depending on the circumstances. However public law confirmed that the Resource Management Act 1991 (s326-328) can apply to noise emitted from any place (is not limited to a private property).
- ✗ No. Noise associated with street performers already regulated in the Trading and Events in Public Places Bylaw 2015. Street performers require approval and must comply with conditions [cl 11(1)(b)].

**Bylaw clearly written?**
- ✗ No. Bylaw is too wordy. Terms such as “nuisance” and “excessive” are open to interpretation.

**Public aware of bylaw?**
- ✗ Awareness of the bylaw is likely to be low. There are no known public awareness initiatives.

**Bylaw fit for the future?**
- ✗ No. While the issue is unlikely to change the RMA can be used instead of the bylaw.
### SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:

A bylaw is not the most appropriate way to address sound or noise nuisance in public places, including from playing of instruments, public address systems, or amplified sound systems now and in the future. Adequate powers already exist under the Resource Management Act 1991 and Trading and Events in Public Places Bylaw. The Bylaw is not the most appropriate form of the bylaw because it is not clearly written.

The Bylaw does not give rise to any implications and is not inconsistent with the New Zealand Bill of Rights Act.

| OPTIONS |
|-------------------|---------------------------------|
| **Option 1: Status quo - Retain bylaw** |
| - Bylaw prohibits nuisance in public places from playing instruments, public address or amplified sound systems or from making any excessive sound or noise. |
| - Council continues to use the Trading and Events in Public Places Bylaw 2015 to regulate noise from street performances. |

| **Option 2: (RECOMMENDED) Revoke bylaw – Rely on existing regulations** |
| - Delete Bylaw clause. |
| - Council continues to use the Trading and Events in Public Places Bylaw 2015 to regulate noise from street performances. |

| Effectiveness and efficiency: |
| - Bylaw is unnecessary as the Resource Management Act 1991 and Trading and Events in Public Places Bylaw 2015 already have the necessary provisions. |

| Effectiveness and efficiency: |
| - Simplifies council’s regulations. |

| Bill of Rights implications: |
| - Bylaw does not give rise to implications and is not inconsistent with New Zealand Bill of Rights Act. |

| Bill of Rights implications: |
| - Criteria not applicable for non-bylaw option. |

| Fit for future: |
| - No Bylaw is not clearly written and is unnecessary. |

| Fit for future: |
| - Enables council to respond to complaints while simplifying council regulations. |

| Māori impact/risk: |
| - No specific impacts for Māori. |

| Māori impact/risk: |
| - No specific impacts for Māori. |

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

The Bylaw should be revoked (Option 2) and existing regulations used to address excessive noise nuisance from the use of public address systems, amplified sound systems, playing any instruments in a public place. Taking this approach will still enable council to respond to complaints while simplifying council regulations.

References:

- Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178.
- Health Act 1956 s66(2), s128.
- Public Safety and Nuisance Bylaw Review Findings Report 2017 pp 80, 81, 82.
**Draft – Not Council Policy**

**Bylaw Clause 6(1)(c) – Prohibits use of any material or thing recklessly or in a manner which may intimidate, be dangerous, be injurious to or cause a nuisance to any person**

<table>
<thead>
<tr>
<th>Statutory Obligations/Powers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council may make a bylaw about the use of any material or thing 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 Health Act 1956 (s64).</td>
</tr>
</tbody>
</table>

**Issue in 2013**

- Reckless use of vehicles, including skateboards and bicycles.
- Reduced levels of public safety and access to public places.
- There were two unmanned aircraft (drone) incidents in 2007; one in 2008, 2009, 2010, and 2011; three in 2012; and nine in 2013. No further data available on the scale or impact of this issue in 2013.

**Outcome Sought and Bylaw Response in 2013**

- To provide for appropriate behaviour in public places, ensure safe public places, and minimise nuisances.
- Auckland Council and Auckland Transport made bylaws to prohibit the “use of any material or thing (including a vehicle, bicycle, motorised scooter, model aircraft, skateboard, roller skates or roller blades, shopping trolley or similar object) recklessly or in a manner which may intimidate, be dangerous, be injurious to or cause a nuisance to any person” in a public place.
- Powers to enforce bylaw include a 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 addresses issues using a graduated enforcement approach.

**Issue in 2018**

- Public safety, nuisance and misuse of public places. There is no data for motorised scooters, roller skates/ blades, shopping trolleys, vehicles not a skateboard or bike, or model aircraft.

**Skateboarding:**

- Collision, high speed, congestion, aggressive behaviour, damage to public property, noise, reduced amenity.
- There were 55 skateboarding complaints in 2016.
- 50 per cent of Aucklanders surveyed witnessed or experienced skateboarding in a way that may harm others. Of those surveyed, 91 per cent felt annoyed, frustrated, angry, fearful, or threatened.

**Bike riding:**

- Intimidating behaviour from riding on one wheel towards pedestrians and cars, and damage from wheeling off and on cars an issue in southern local board areas. However, no complaints received in 2015 or 2016.

**Drones:**

- Council received no complaints of drones on council land in 2015, and 11 from Oct 2016 - February 2018.
- Western and Northern Park Rangers and a small number of local boards identified drones as a growing issue.
- The Civil Aviation Authority (CAA) address issues about drones flown over properties without consent or near aircraft. The CAA report 27 incidents in 2014 and 53 incidents in 2015 to end of June.

**Outcome Sought in 2018**

- To ensure public safety and minimise nuisance and misuse of public places from reckless or intimidating, dangerous, injurious or nuisance use of any material or thing.

**Bylaw Evaluation**

Still an issue requiring a bylaw response? ✔ Yes. Still issues that regulation can help address.

- **Skateboarding and bike riding:** ✔ No feasible regulatory alternatives. Police powers under Summary Offences Act 1981 (s13) limited to public safety - doing anything, with anything under a person’s control likely to endanger safety with reckless disregard for the safety of others.
- **Drones:** ✔ No feasible regulatory alternatives. Civil Aviation Authority (CAA) powers under Civil Aviation Act 1990 require consent of individuals and property owners (including Auckland Council for parks) to be flown over by drones, and other operational requirements (part 101), and for operators of higher risk drone operations to be CAA-certified (part 102). Auckland Council addresses consent and reckless, dangerous, intimidating, or nuisance use of drones in public places. Council gives consent for drone operation in most council-owned public places subject to guidelines.
There are few complaints about code breaches. Code breaches are recorded as Bylaw breaches, or complainants are directed to other organisations e.g. CAA.

**Bylaw effective/efficient?**
- ✓ Bylaw addresses bike riding/skateboarding issues using a graduated compliance approach.
- ✗ Enforcement difficult. E.g. for drones in public places, it is difficult to identify offenders and drone flight time is limited. However, this is a problem for all NZ drone regulations.
- ✗ Bylaw does not enable the Auckland Council guidelines and code of conduct to be enforceable documents.

**Bylaw clearly written?** ✗ No. Bylaw wording is unclear and does not include reference to drones.

**Public aware of bylaw?** ✗ Likely to be low.

**Bylaw fit for the future?** ✗ No. Bylaw is not clearly written.

**Any Bill of Rights implications?** ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act 1990.

**SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**
A bylaw is the most appropriate way to address use of any material or thing recklessly or in a manner which may intimidate, be dangerous, be injurious to or cause a nuisance to any person in a public place. The Bylaw is not the most appropriate form of bylaw because it is unclear and does not explicitly address drone operation in public places or enforce the Auckland Council guidelines and code of conduct. The Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.

**OPTIONS**

<table>
<thead>
<tr>
<th>Option 1: Status quo – Retain bylaw</th>
<th>Option 2: (RECOMMENDED) Amend bylaw for certainty</th>
<th>Option 3: Revoke bylaw – Rely on existing legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Bylaw prohibits use of any material or thing recklessly, or in an intimidating, dangerous, injurious or nuisance manner.</td>
<td>• Bylaw amended to address drone operation, and provide for the adoption of guidelines/code of conduct (where appropriate) in public places.</td>
<td>• Bylaw clause deleted.</td>
</tr>
<tr>
<td>• Council responds to complaints using graduated compliance approach.</td>
<td>• Bylaw aims and implementation the same as Option 1.</td>
<td>• Police can use powers under Summary Offences Act 1981 to address safety risks.</td>
</tr>
<tr>
<td>• Civil Aviation Authority (CAA) can respond to breaches of CAA rules.</td>
<td></td>
<td>• Civil Aviation Authority (CAA) can respond to breaches of CAA rules.</td>
</tr>
<tr>
<td>• Privacy commissioner can address drone privacy issues.</td>
<td></td>
<td>• Privacy commissioner can address drone privacy issues.</td>
</tr>
</tbody>
</table>

**Effectiveness and efficiency:**
- ✗ Enforcement is difficult.
- ✓ Bylaw is clear.

**Bill of Rights implications:**
- ✓ Bylaw does not give rise to any unjustified regulations and is not inconsistent with the New Zealand Bill of Rights Act 1990.

**Fit for future:**
- ✗ Bylaw is unclear.

**Māori impact/risk:**
- • No specific implications for Māori.

**SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**
The Bylaw should be amended (Option 2) to improve clarity and address drone operation in public places. Taking this approach continues to enable council to respond to complaints with greater certainty.

**References:**
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 72, 73, 75.
- Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242(4); Health Act 1956 s66, s128.
- RPAS, UAV, UAS, Drones and Model Aircraft: www.ca.govt.nz
- Rules and guidelines for flying UAVs and drones, www.aucklandcouncil.govt.nz
BYLAW CLAUSE 6(1)(d) – Prohibits a fence in a public place that may cause an injury or nuisance to any person
LEGACY BYLAW CLAUSE 12.1 and 15.2(b) fences to meet minimum standards or be approved by council.

STATUTORY OBLIGATIONS/POWERS

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

ISSUE IN 2013

- Public safety, nuisance, use of public places.
- Public safety due to potential injury, from poorly erected or maintained barbed wire, electrified or spiked fences on property adjacent to a public place.

OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To prevent injury, nuisance and misuse of public places from dangerous fencing.
- Auckland Council and Auckland Transport:
  - Made bylaws to prohibit using a public place to “install or maintain a fence (including a razor-wire and electric fence) in a manner that may cause an injury or nuisance” to people.
  - Confirmed two legacy bylaws of former Papakura District Council and Waitakere City Council. Both legacy bylaws require barbed wire and electric fences to meet minimum standards or be approved by council.
- Powers to enforce bylaw include a 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 officers reactively respond to complaints.

ISSUE IN 2018

- The nature of the problem remains the same as in 2013. Complaints have been rare over the past four years.
- Eight per cent of Aucklanders surveyed had witnessed nuisance or dangerous fencing. Of those surveyed, 91 per cent said they would be annoyed, frustrated or angry, fearful or threatened.
- Inconsistency between the Bylaw (effects based) and two legacy bylaws (imposes minimum standards).

OUTCOME SOUGHT IN 2018

- To ensure public safety and minimise nuisance and misuse of public places from fences.

BYLAW EVALUATION

Still a problem requiring a bylaw response?

- Yes. There is still a low frequency problem that regulation can help address.
- There are no feasible regulatory alternatives to a bylaw:
  - Council powers under the Local Government Act 2002 (s215-223) to issue removal orders is limited to where offences are committed and the fence is used to either conceal these, or to injure or intimidate.
  - Council powers under the Auckland Transport bylaw are limited to fences on the boundary between private property and a road on the Auckland Transport System. It does not include parks.
  - Council powers under the Building Act 2004 are limited to safety of construction.
  - Council powers under the Fencing Act 1978 enable removal but are limited to encroachment of fences onto adjoining land, via a court order.
  - Police powers under the Summary Offences Act 1981 (s13) prohibits any thing likely to cause injury with reckless disregard for safety. However, this issue would be a low priority for police.

Bylaw effective / efficient?

- Yes. Most complaints resolved through a conversation with the owner using the Bylaw.
- The bylaw provides for removal powers and cost recovery under the Local Government Act 2002 (s163).
- Inconsistent provisions between the Bylaw and legacy bylaws cause confusion.

Bylaw clearly written? ☑ No. Bylaw does not clearly reflect the issue which relates to the use of public places for private fences and the risks to safety and nuisance in public places from fences on or adjacent to public places. The Bylaw refers only to fences that cause safety or nuisance issues on public places.

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

Bylaw fit for the future? ☑ No. Does not clearly reflect the issues. Inconsistent legacy clauses create confusion.

Any Bill of Rights implications? ☑ Bylaw does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act 1990.
A bylaw remains the most appropriate way to address public safety, nuisance, and the misuse of public places from fencing on or adjacent to public places. The Bylaw is not the most appropriate form of the bylaw because it does not clearly reflect the issues and the inconsistent legacy bylaw clauses create confusion. The Bylaw does not give rise to any implications and is not inconsistent with the New Zealand Bill of Rights 1990.

### OPTIONS

<table>
<thead>
<tr>
<th>Option 1: Status quo - Retain Bylaw</th>
<th>Option 2: (Recommended) Amend bylaw to better reflect issues</th>
<th>Option 3: Revoke Bylaw – Rely on existing regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Bylaw prohibits use of a public place for installing or maintaining a fence (including a razor-wire and electric fence) in a manner that may cause an injury or nuisance to any person.</td>
<td>• Bylaw to prohibit use of public place for fences between private and public land unless approved, and to address the risks to safety and nuisance in public places from fences on or adjacent to public places.</td>
<td>• Bylaw and legacy bylaws deleted.</td>
</tr>
<tr>
<td>• Legacy bylaw clauses require barbed wire and electric fences to meet minimum standards or be approved by council.</td>
<td>• Legacy bylaw clauses deleted.</td>
<td>• Council can use Local Government Act 2002 for fences involved in a criminal offence, are intimidating or intended to injure.</td>
</tr>
<tr>
<td>• Council responds to complaints on a reactive basis.</td>
<td>• Council responds to complaints on a reactive basis.</td>
<td>• Police use Summary Offences Act 1981 for fences causing safety issues.</td>
</tr>
</tbody>
</table>

#### Effectiveness and efficiency:

- ✓ Enables Council enforcement, including powers to remove a fence and recover costs.
- × Bylaw does not clearly reflect the issues.
- × Inconsistency between Bylaw and legacy bylaws creates confusion.

#### Effectiveness and efficiency:

- ✓ Enables Council enforcement, including powers to remove a fence and recover costs.
- ✓ Bylaw better reflects the issues.
- ✓ Removes inconsistent bylaws.

#### Effectiveness and efficiency:

- × Local Government Act 2002 cannot be used unless the fence is involved in a criminal offence or fence is intended to intimidate or injure.
- × Powers of removal under Fencing Act 1978 are costly and time consuming.
- × Police unlikely to prioritise enforcement under Summary Offences Act 1981.

#### Bill of Rights implications:

- ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act 1990.

#### Bill of Rights implications:

- ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act 1990.

#### Bill of Rights implications:

- - Criteria not applicable for non-bylaw option.

#### Fit for future:

- × Bylaw does not clearly reflect the issues and legacy bylaw clauses create confusion.

#### Fit for future:

- ✓ Bylaw better reflects the issues.

#### Fit for future:

- × Does not clearly reflect the issues, and limited scope for enforcement.

#### Māori impact/risk:

- ✓ No specific impacts for Māori.

#### Māori impact/risk:

- ✓ No specific impacts for Māori.

#### Māori impact/risk:

- ✓ No specific impacts for Māori.

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

The Bylaw should be amended (Option 2) to address the use of public place for fences between private and public land, the risks to safety and nuisance in public places from fences on or adjacent to public places, and to revoke legacy bylaws about fencing. Taking this approach will better reflect the issues while simplifying council regulations.

### References:

- • Local Government Act 2002 s145, s146; Health Act 1956 s64, s65.
Bylaw Clause: 6(1)(e): Offence to consume, inject, inhale, distribute, sell any mind-altering substance in public

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

Issues in 2013
- Poor perception of public safety, nuisance and potential health implications from the use and distribution of mind-altering substances in public places.
- No further data available on scale or impact of the issue in 2013.

Outcome Sought and Bylaw Response in 2013
- To provide for appropriate behaviour in public places that are safe and to minimise nuisances.
- Auckland Council and Auckland Transport made bylaws to prohibit people from using a public place to “consume, inject or inhale, distribute or offer for sale any mind-altering substance”.
- Powers to enforce a bylaw includes a 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 do not use or enforce the bylaw due to Health and Safety implications. If the complaint is about immediate danger or harm it would be referred to the Police by the Call Centre.

Issues in 2018
- Public safety and nuisance.
- While the number of complaints to the council is low, the quantitative survey found 34 per cent of respondents had witnessed or experienced people using mind-altering substances in a public place.
- Of those surveyed, 88 per cent felt either annoyed, frustrated, angry, fearful or threatened.

Outcome Sought in 2018
- To ensure public safety and to minimise nuisance from people using a public place to consume, inject or inhale or distribute or offer for sale any mind-altering substance.

Bylaw Evaluation

Is there still a problem requiring a bylaw response?
✓ There is still a problem that regulation can help address.
✗ There are feasible regulatory alternatives to the bylaw:
  - police can use the Psychoactive Substances Act 2013 (s70(1), 71(1)) to address distribution, sale and possession of all psychoactive substances and most mind-altering substances. Arguably this could include glue sniffing and solvent abuse.
    ▪ section 70(1), distribution of unapproved products, carries an imprisonment term not exceeding two years.
    ▪ section 71(1), possession of unapproved substances, includes a fine not exceeding $500.
  - Misuse of Drugs Act 1975 deals with the use, possession, cultivation or trafficking of illegal drugs. The Act classifies drugs into three classes based on their projected risk of serious harm.
  - police can use the Summary Offences Act 1981 (s3, s4, s22, s21) to address negative behaviours associated with mind altering substances such as offensive and disorderly behaviour, obstructions and intimidation.

Is the bylaw effective / efficient?
✗ Council officers do not use or enforce the bylaw due to Health and Safety implications.
✗ If the complaint is about immediate danger or harm it is referred to Police.
✗ Bylaw difficult to enforce. People using mind-altering substances often refuse to cooperate with staff.
✗ Bylaw ineffective for addressing complex social issues.
✗ Bylaw potentially conflicts with the Psychoactive Substances Act 2013. This act can allow for approved psychoactive substances, whereas the Bylaw bans all mind-altering substances in public places.


Public Awareness of the bylaw? ✓ Likely to be low. There are no known public awareness initiatives.

Bylaw for future?
✗ No. Mind-altering substances are better dealt with under the Psychoactive Substances Act 2013.

Any Bill of Rights implications? ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.
A bylaw is not the most appropriate way to address people using a public place to consume any mind-altering substance now or in the future. Adequate police powers already exist under the Psychoactive Substances Act 2013 and Summary Offences Act 1981. The Bylaw is not the most appropriate form of bylaw because it overlaps and potentially conflicts with provisions under the Psychoactive Substances Act 2013. The Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.

### OPTIONS

<table>
<thead>
<tr>
<th>Option 1: Status quo – Retain Bylaw</th>
<th>Option 2: (RECOMMENDED) Revoke Bylaw clause and rely on Psychoactive Substances Act 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Bylaw prohibits people from using a public place to consume, inject or inhale or distribute or offer for sale any mind-altering substance.</td>
<td>• Delete Bylaw clause.</td>
</tr>
<tr>
<td>• Bylaw not enforced. Complaints about immediate danger or harm are referred to the Police.</td>
<td>• Police use powers under Psychoactive Substances Act 2013 for possession, distribution or offering to sell all psychoactive substances in a public place.</td>
</tr>
<tr>
<td></td>
<td>• Police use Summary Offences Act 1981 to address offensive and disorderly behaviour, obstruction and intimidation.</td>
</tr>
</tbody>
</table>

### Effectiveness and efficiency:
- ✗ Bylaw not enforced due to Health and Safety implications. If the complaint is about immediate danger or harm, it is referred to Police.
- ✗ Bylaw duplicates and conflicts with provisions in the Psychoactive Substances Act 2013.

### Effectiveness and efficiency:
- ✓ Removes unenforced, duplicate and potentially repugnant bylaw regulation.
- ✓ Police better placed to investigate mind-altering substance use and behaviours.

### Fit for future:

### Fit for future:
- ✓ All psychoactive substances are covered under the Psychoactive Substances Act 2013 with enforcement powers given to the police.

### Bill of Rights implications:
- ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.

### Bill of Rights implications:
- ✓ Criteria not applicable for non-bylaw option.

### Māori Impact:
- • There are no specific implications for Māori.

### Māori Impact:
- • There are no specific implications for Māori.

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

The Bylaw clause should be revoked (Option 2), and existing police legislation used to address mind-altering substances and associated negative behaviours. Taking this approach will reflect current practice and simplify council regulations.

### References:
- • Attachment B Assessment of Public Safety and Nuisance Behaviours and Opportunities 2017, pp 19
- • Martin Jenkins report pp 12, 13
- • Local Government Act, 2002 s162, s163, s164-168, s171-174, s176, s178, s242(4)
- • Health Act 1956, s66, s128
Review of the Public Safety and Nuisance Bylaw 2013

DRAFT – NOT COUNCIL POLICY

Attachment B

Regulatory Committee
10 May 2018

BYLAW CLAUSE 6(1)(f) – Prohibits begging activity that intimidates or causes a nuisance

STATUTORY OBLIGATIONS/POWERS

• Council may make a bylaw about begging activities to address public nuisance, health, safety, offensive behaviour or use of public places under the Local Government Act 2002 (s145, s146) and Health Act 1956 (s29, s64).

ISSUES IN 2013

• Nuisance, intimidation, poor perception of public safety and the use of public places.
• There was no data available on the scale or impact of the issue in 2013.

OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

• To ensure public safety, minimise nuisance and provide for appropriate behaviour in public places.
• The intent of the bylaw was not to ban begging activities but to address nuisance behaviour associated with it.
• Both Auckland Council and Auckland Transport made bylaws to prohibit a person from using a public place to “beg in a manner that may intimidate or cause nuisance to any person”.
• Powers to enforce bylaw include a court injunction, removal of works, seizure of property, cost recovery, or power to request name and address. Court penalties for bylaw breaches include a maximum fine of $20,000 or a maximum fine of $500 and a further fine of $50 per day for continuing offences.

BYLAW IMPLEMENTATION SINCE 2013

• Auckland Transport delegated enforcement of its bylaw to Auckland Council.
• Council’s response to begging activities involves a mix of both non-regulatory and regulatory measures.
• Council proactively enforces the bylaws through the City Watch Programme. Council officers and security contractors patrol the CBD for up to four times a day, taking a largely non-regulatory approach with a focus on educational rapport to manage nuisance behaviour.
• Where people undertake begging activities in breach of the bylaw, patrol officers apply a graduated compliance approach. This includes education and advice on how to seek help from support organisations, verbal warnings, written warnings, seizure of signs, developing relationships with private businesses (including supporting businesses to obtain trespass notices), referrals to the New Beginnings Court and prosecution.
• Council has pursued 14 prosecutions against aggressive and intimidating begging activities. In most of these cases defendants were convicted and discharged without penalty due to their lack of means to pay a fine.

ISSUES IN 2018

• Nuisance, obstruction and safety.
• Qualitative research identifies begging activity as a key issue of concern to Aucklanders.
• Begging activities are found across the city, not just the CBD. It mainly occurs on paths and other public ways (most likely part of the Auckland Transport System).
• The number of people who undertake begging activities in the CBD has increased but complaints to council have decreased:
  o 456 incidents of nuisance begging activities occurred in March 2018, compared to 277 in March 2017.
  o 147 general complaints about begging activities were made in 2017 compared to 276 in 2016.
• City Watch and enforcement officers highlight a behavioural change from aggressive to passive begging activities.
• Quantitative research concludes that begging activity is one of more polarising issues.
• A survey shows that 87 per cent of Aucklanders directly witnessed someone who undertakes begging activity for money in public places. When confronted by aggressive begging activities, 95 per cent express fear, frustration and annoyance, compared to 86 per cent who have the same feelings with respect to night time begging activities.
• Over half of survey respondents consider passive and unobtrusive begging activities as nuisance behaviour. Obtrusive behaviour (blocking people from walking past), assertive behaviour (asking for money), and physical presence (standing rather than sitting) all increase the likelihood of begging activities being perceived as nuisance.
• Overall, 21 per cent of Aucklanders feel those who undertake begging activities deserve sympathy, 39 per cent are neutral, 38 per cent disagree. Māori, Pasifika, young people and women are most sympathetic towards those who are engaged in begging activities.
• Nearly two-thirds of Aucklanders (64 per cent) recognise begging activities as a complex, and not easily resolved issue. 48 per cent believe Auckland Council should do more to help those who undertake begging activities.
• Compliance and City Watch officers have a database of 450 people who undertake begging activities and roughly sleep in the CBD.

OUTCOME SOUGHT NOW (2018)

• To minimise nuisance, obstruction and safety issues associated with begging activities.
Is there still a problem requiring a bylaw response:

✔ Yes. There is an issue that regulation can help address.

✗ There are feasible regulatory alternatives in the Auckland Transport Public Safety and Nuisance Bylaw 2013. Begging activities mainly occur on paths and other public ways which are generally part of the Auckland Transport System. Where aggressive and nuisance begging activities affect traffic (including pedestrians), it is the Auckland Transport bylaw, not the Auckland Council bylaw that applies.

✗ There are feasible regulatory alternatives to a bylaw under the Summary Offences Act 1981. This Act can address (albeit at a higher threshold to those in the Bylaw):
  - disorderly behaviour in a public place (s3). Penalties include a maximum three-month prison term or a $2,000 court fine.
  - offensive behaviour or language in a public place (s4). The penalty is a maximum $500 court fine.
  - obstructions in a public place likely to cause injury, not nuisance (s12). Penalties include a maximum three-month prison term or maximum $2,000 court fine.
  - intimidation of any person in any public place including stopping, confronting or accosting (s21). Penalties include a maximum three-month prison term or a $2,000 court fine.
  - obstructions in a public way (unreasonably impedes normal passage) including every road, street, path, mall, arcade, or other way over which the public has the right to pass and repass (s22). The penalty is a maximum $1,000 court fine.

- There are several non-regulatory initiatives in place to address aggressive and nuisance begging activities:
  - City Watch officers have developed a rapport with many members of the street community and encourage them not to obstruct the pavements or undertake begging activities in an intimidating or threatening way.
  - Te Kooti o Timatanga Hou (The Court of New Beginnings) provides non-adversarial, inter-agency help to people who undertake begging activities and offers alternatives to jail. Individuals however need to opt into this service.
  - Lifewise, Auckland City Mission and James Liston House provide a range of support to people who undertake begging activities and sleep rough, for example, through the Housing First initiative.
  - Community Empowerment staff investigate initiatives - providing shower facilities and lockers for storage of belongings, establishing the Big Issue newspaper, public education encouraging public not to give money to people who undertake begging activities, and the impact begging activities and rough sleeping on council facilities (e.g. libraries).

Bylaw effective / efficient?

✗ No. While the bylaw is used to identify people who undertake begging activities, it is the advice, education and constructive engagement by the regular City Patrol and enforcement officers that are most effective in changing behaviour from aggressive to passive begging activities. A bylaw is not required for engagement. The Bylaw appears to have been a positive catalyst to increasing the number of patrols which has increased opportunities for encounters and the building of a rapport.

✗ Bylaw clause 6(1)(a) already addresses the issue in a broader sense without the need to reference those who undertake begging activities.

✗ Begging activities that causes nuisance occur mainly on public footpaths which are an Auckland Transport responsibility.

✗ Bylaw is difficult to enforce when dealing with people who are aggressive, have mental health and addiction issues, and can create safety risks for officers. In 2016, an officer was chased by a rough sleeper wielding a knife.

✔ The bylaw is supported by Police as it aligns with their “prevention first” approach and avoids the application of more punitive measures.

✗ Bylaw is not a sufficient deterrent to people who undertake begging activities in an intimidating or aggressive manner. Written warnings or prosecutions are often ineffective, costly, time-consuming and don’t address the underlying issues.

✗ Bylaw does not include obstructions which are easier for officers to regulate than nuisance and intimidation.

✗ Stakeholders express frustration at ineffectiveness of the bylaw and the level of official action taken against those who undertake begging activities. This reflects a lack of understanding of the limited powers of staff under the bylaw.

✗ In line with the key findings of the review, bylaws are not effective at addressing complex social issues:
  - Social research views begging activities as a manifestation of deeply ingrained social problems such as addiction, mental illness, inter-generational poverty, lack of education, homelessness and unemployment. People who undertake begging activities are more likely to come from abusive and unstable homes, experience prison incarceration and are among the most vulnerable in the city.
  - Research by Groot and Hodgetts views begging activities as a coping mechanism, a form of a radical commerce.
Regulatory Committee
10 May 2018

Review of the Public Safety and Nuisance Bylaw 2013

Option 1: Status quo – Retain bylaw
- Bylaw prohibits begging activity that intimidates or causes a nuisance.
- Council and City Watch patrol use educational rapport with people who undertake begging activities to address nuisance behaviour.
- Council relies on the Auckland Transport bylaw to respond to complaints about nuisance, intimidation and obstruction on the Auckland Transport System that are traffic-related.
- Council responds to complaints not on the Auckland Transport System or that are not traffic related using a graduated enforcement approach.
- Police use powers under the Summary Offences Act 1981 to address more serious obstructions, intimidation, disorderly and offensive behaviour or language.
- Council uses long-term, non-regulatory strategies to address the underlying causes of begging activity.

Effectiveness/Efficiency:
- Bylaw is a positive catalyst to use educational rapport with people who undertake begging activities to address nuisance behaviour.
- Bylaw is not clearly written and leaves terms such as “nuisance” and “intimidation” open for interpretation.

Option 2: Amend bylaw to better reflect problem and improve certainty
- Bylaw to include “obstructions”, in addition to begging activities that intimidates or causes a nuisance.
- Certainty improved with clearer definitions of “intimidation”, “nuisance”, “obstruction”.
- Implementation the same as Option 1.

Effectiveness/Efficiency:
- Bylaw is a positive catalyst to use educational rapport with people who undertake begging activities to address nuisance behaviour.

Option 3: (RECOMMENDED) Revoke bylaw – Rely on existing regulatory and non-regulatory methods
- Delete Bylaw clause.
- Implementation the same as Option 1, except that council responds to complaints not on the Auckland Transport System or that are not traffic related using general Bylaw clause 6(1)(a).

Effectiveness/Efficiency:
- General Bylaw clause 6(1)(a) and Auckland Transport Bylaw are a positive catalyst to increasing educational rapport with people who undertake begging activities to address nuisance behaviour.
- Council regulations simplified.
- Bylaw avoids specific reference to...
<table>
<thead>
<tr>
<th>Regulatory Committee</th>
<th>10 May 2018</th>
</tr>
</thead>
</table>

### Review of the Public Safety and Nuisance Bylaw 2013

#### Attachment B

**Item 11**

**Bill of Rights implications:**
- Bylaw does not give rise to implications and is not inconsistent with New Zealand Bill of Rights Act 1990.

**Bill of Rights implications:**
- Bylaw does not give rise to implications and is not inconsistent with New Zealand Bill of Rights Act 1990.

**Bill of Rights implications:**
- Criteria not applicable for non-bylaw option.

**Fit for future:**
- Bylaw is a positive catalyst for a behavioural change from aggressive to passive begging activities but is not clearly written.

**Fit for future:**
- Bylaw is a positive catalyst for a behavioural change from aggressive to passive begging activities and is more clearly written.

**Fit for future:**
- General Bylaw clause 6(1)(a) and Auckland Transport Bylaw continue to be a positive catalyst for change from aggressive to passive begging activities.
- Council regulations simplified and focussed on behaviour expected from every Aucklander.

**Māori impact/risk:**
- Bylaw has potential impact on people who undertake begging activities, rough sleepers and homeless people who are more likely to be Māori.

**Māori impact/risk:**
- Bylaw has potential impact on people who undertake begging activities, rough sleepers and homeless people who are more likely to be Māori.

**Māori impact/risk:**
- Regulation has potential impact on people who undertake begging activities, rough sleepers and homeless people who are more likely to be Māori.

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

The Bylaw clause should be revoked (Option 3) because adequate regulatory and non-regulatory approaches already exist to address the issue, and the Bylaw is not clearly written. Taking this approach will continue to enable council to respond to complaints while simplifying council regulations that focus on behaviour expected from every Aucklander.

**References:**
- Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178.
- Health Act 1956 s66(2), s128.
- Public Safety and Nuisance Bylaw 2013, pp 7.
- Public Safety and Nuisance Review 2017 - Colmar Brunton, pp 1, 11.
### Item 11

**Regulatory Committee**

10 May 2018

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### BYLAW CLAUSE 6(2)(a) – Prohibits graffiti, posters, signs or advertising on council property unless approved

**STATUTORY OBLIGATIONS/POWERS**

- Council may make a bylaw about graffiti, posters, signs or advertising devices in public places to address public nuisance, health, safety, offensive behaviour or use of public places under the Local Government Act 2002 (s145, s146) and Health Act 1956 (s64, s65).

---

**ISSUE IN 2013**

- Nuisance, safety, damage, use of public places.
- Defacing of public property impacting perceptions of public safety and the use of public places.
- For the 2011/2012 year the cost of damage was $1.4m including vandalism.

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**OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013**

- To ensure public safety, use of public places, minimise nuisance and damage in public places from graffiti, bill sticking, posters, signs or advertising devices.
- Auckland Council and Auckland Transport made bylaws to prohibit “displaying or fixing any graffiti, posters, signs or advertising devices on any property” under their control unless approved.
- Powers to enforce the Bylaw include a 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.
- The Bylaw is not used to address graffiti. Council’s Vandalism Prevention Advisors remove graffiti and gather evidence to identify offenders and help police prosecution using the Summary Offences Act 1981 (s11A).
- Council responds reactively to complaints related to signs, posters and advertising devices.
- The Signage Bylaw 2015 is used to address most signage complaints.

---

**ISSUE IN 2018**

- Public safety, damage, safety, nuisance and use of public places.
- Displaying or affixing of graffiti, posters, signs or advertising devices to the council property without approval.
- 69 per cent of Aucklanders surveyed had seen graffiti in public places in the last 12 months. Of those surveyed, 89 per cent perceived graffiti as a safety or nuisance issue.
- Council received no complaints about fly-posters in 2015-2016. However, fly-posters are evident in the central business district, Karangahape Road and Symonds Street.
- 36 per cent of Aucklanders surveyed had seen fly-posting in the last 12 months. Of those surveyed, 64 per cent considered unauthorised fly-posting a nuisance to varying degrees.
- Council received 3,446 sign-related complaints in 2016.

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**OUTCOME SOUGHT IN 2018**

- To ensure public safety and minimise damage, nuisance and misuse of public places from graffiti, posters, signs or advertising devices.

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**BYLAW EVALUATION**

**Still a problem requiring a bylaw response?**

- **Yes.** There is still an issue that regulation can help address.
- **×** There are feasible regulatory alternatives:
  - Posters, signs and advertising devices are regulated under the Signage Bylaw 2015. All signs must either comply with specified requirements, or be approved by the council. E.g. posters are allowed on poster board sites, poster bollards or the inside of windows. In all other instances, council approval is required.
  - Police powers under the Summary Offences Act 1981 (s11A) addresses graffiti, vandalism, tagging or defacing any property. Penalties include a maximum three-month prison term or a $2,000 court fine. In conjunction with Vandalism Prevention Team’s efforts to remove graffiti and gather evidence for police prosecutions. There has been a nine per cent decrease in graffiti incidents and 23 per cent reduction in graffiti eradication requests in 2013-2017.
  - Other less feasible alternatives to the Bylaw include:
    - Police powers under the Summary Offences Act 1981 (s33) for affixing “any placard, banner, poster, or other material ... to any structure, or to or from any tree” without the consent of the owner or occupier. Penalties include a fine of up to $200. However, this is not a high priority for police.
### Regulatory Committee
10 May 2018

**Review of the Public Safety and Nuisance Bylaw 2013**

<table>
<thead>
<tr>
<th>Bylaw effective / efficient?</th>
<th>No. Bylaw is not used. The Summary Offences Act 1981 is used to regulate graffiti, and the Signage Bylaw 2015 is used to regulate signage and posters.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bylaw clearly written?</td>
<td>No. There are too many different issues captured in one clause.</td>
</tr>
<tr>
<td>Public aware of bylaw?</td>
<td>Likely to be low. There are no known public awareness initiatives.</td>
</tr>
<tr>
<td>Bylaw fit for the future?</td>
<td>No. The Bylaw is not used; it duplicates existing regulations and is not clearly written.</td>
</tr>
<tr>
<td>Any Bill of Rights implications?</td>
<td>Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.</td>
</tr>
</tbody>
</table>

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

A bylaw is not the most appropriate way to address graffiti on council property. Adequate powers already exist under the Summary Offences Act 1981.

A bylaw is the most appropriate way to address issues related to posters, signs or advertising devices on council property. 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 and is not inconsistent with the New Zealand Bill of Rights Act 1990.

### OPTIONS

#### Option 1: Status quo - Retain bylaw
- Bylaw prohibits unauthorised graffiti, posters, signs or advertising devices on council property.
- Vandalism Prevention Advisors remove graffiti and gather evidence to help Police prosecution of offenders under the Summary Offences Act 1981.
- Council responds reactively to complaints related to signs, posters and advertising devices using the Signage Bylaw 2015.

#### Option 2: (Recommended) Revoke bylaw – Rely on existing regulations
- Bylaw clause deleted.
- Rely on Summary Offences Act 1981 for graffiti and Signage Bylaw 2015 for posters, signs and advertising devices.
- Implementation the same as Option 1 (as per current practice).

### Effectiveness and efficiency:

#### Option 1:
- Summary Offences Act 1981 used to address graffiti.
- Duplicates provisions in Signage Bylaw 2015.

#### Option 2:
- Reflects current practice.
- Removes duplication/confusion between bylaws.

### Bill of Rights implications:

#### Option 1:
- Bylaw does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act 1990.

#### Option 2:
- Does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act 1990.

### Fit for future:

#### Option 1:
- The Bylaw is not used, duplicates existing regulations, and is not clearly written.

#### Option 2:
- Enables enforcement action if required, removes unnecessary bylaw regulations.

### Māori impact/risk:

#### Option 1:
- There are no specific impacts for Māori.

#### Option 2:
- There are no specific impacts for Māori.

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

The Bylaw should be revoked (Option 2) and existing regulations used to address graffiti, posters, signs or advertising devices. Taking this approach will continue to enable council to respond to complaints while streamlining regulations.

### References:

## Regulatory Committee
10 May 2018

**DRAFT - NOT COUNCIL POLICY**

<table>
<thead>
<tr>
<th>BYLAW CLAUSE 6(2)(b) – Prohibits fires in public places, except in an approved appliance, facility or site</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>STATUTORY OBLIGATIONS/POWERS</strong></td>
</tr>
<tr>
<td>• Council may make a bylaw about lighting fires in public places to address public nuisance, health, safety, offensive behaviour or use of public places under the Local Government Act 2002 (s145, s146), and Health Act 1956 (s64). Any bylaw must not be inconsistent with the Fire and Emergency New Zealand Act 2017.</td>
</tr>
</tbody>
</table>

### ISSUE IN 2013
- No data available on scale or impact of the issue in 2013.

### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013
- To provide for appropriate behaviour in public places, ensure safe public places and minimise nuisance.
- Auckland Council and Auckland Transport made bylaws to prohibit the use of a public place to “light a fire (except in an appliance designed for outdoor cooking, subject to any restriction imposed by the council on the lighting of fires)” except at a facility or site specifically provided, or with the prior written approval of council.
- Powers to enforce bylaw include a 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.
- In regional parks, rangers use bylaw to respond to fires they witness, and call Fire and Emergency New Zealand (FENZ) or Police if fires persist.
- In other cases, FENZ respond to complaints of dangerous fires, or council contractors respond within 30 minutes to complaints to council pollution hotline using a graduated compliance approach under the Unitary Plan.

### ISSUE IN 2018
- Public safety, damage, nuisance, and use of public places.
- Inherent danger of outdoor fires in public places for many stakeholders. Danger of beach bonfires for local boards due to risk of burnt furniture, and feet from inadequately smothered embers.
- News articles in 2017 note public safety, property damage, and loss of amenity from suspicious fires at Piha.
- Incident and complaint numbers are low. Fires occur rarely in local parks. Council received 16 complaints in 2016 regarding outdoor fires. Council complaints data does not differentiate between fires in public or private places.
- 16 per cent of Aucklanders surveyed had seen or experienced an outdoor fire in a public place in the last 12 months. Of those surveyed, 88 per cent felt annoyed, frustrated, angry, fearful, or threatened at the lighting of a fire in a public place without a permit.

### OUTCOME SOUGHT IN 2018
- To ensure public safety, and minimise damage, nuisance, and misuse of public places from fires in 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, in particular in relation to managing the use of parks:
  - FENZ under the Fire and Emergency New Zealand Act 2017 (s52) can prohibit fire in open air, but no regulations have been made.
  - Council enforcement of Unitary Plan relates to air quality provisions - not safety, damage, nuisance or use of public place issues. E.g. fireworks are permitted (A127), cooking and heating outdoors is allowed (A124).
  - Police powers under Summary Offences Act 1981 (s13) can address any thing endangering safety under a person’s control with reckless disregard for the safety of others. However, this does not address lower level damage or nuisance issues, or the use of public places.
  - The Outdoor Fire Safety Bylaw 2014, Reserves Act 1977 and Forest and Rural Fires Act 1977 (s20-21, 23) are too limited in scope to address all issues. E.g. The Outdoor Fire Safety Bylaw 2014 does not address fire restrictions in public open space zones and has no provisions for cooking in public open space zones.

**Bylaw effective / efficient?**
- Yes. Bylaw is useful. Regional parks rangers make offenders put out fires.
- Bylaw supports implementation of Regional Parks Management Plan 2010 which limits open fires (including portable cookers) to designated areas to minimise public safety risks and damage.
- Unitary plan provisions are also used, but only the bylaw prohibits the behaviour.

**Bylaw clearly written?** × No. Uncertainty about what “appliance designed for outdoor cooking” means. Does it include low risk options (e.g. gas cookers) or restrict high risk fuels (e.g. wood, solid fuel)?

**Public aware of bylaw?** ✓ Varies. There are ‘no fire’ signs in regional parks. Typically no signs in local parks.

**Bylaw fit for the future?** × No. Bylaw is useful but lacks clarity.
**SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**
A bylaw is the most appropriate way to address lighting a fire in a public place. The Bylaw is not the most appropriate form of bylaw because it is unclear what some terms mean. The current Bylaw does not give rise to any implications and is not inconsistent with the Bill of Rights Act 1990.

**OPTIONS**

<table>
<thead>
<tr>
<th>Option 1: Status quo – Retain bylaw</th>
<th>Option 2: (RECOMMENDED) Amend bylaw for certainty and validity</th>
<th>Option 3: Revoke Bylaw - Rely on existing provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Bylaw prohibits fires in public places (except in an appliance designed for outdoor cooking, at a facility or site specifically provided, or with the council approval)</td>
<td>• Bylaw in Option 1 amended to be easier to read, to include definition of “appliance designed for outdoor cooking”, and to ensure it is not inconsistent with any future rules under Fire and Emergency New Zealand Act 2017.</td>
<td>• Bylaw clause deleted.</td>
</tr>
<tr>
<td>• Bylaw aims to address safety, nuisance and misuse of public places issues.</td>
<td>• Bylaw aims and implementation same as Option 1.</td>
<td>• Outdoor fires allowed provided they do not cause air quality or safety issues.</td>
</tr>
<tr>
<td>• Complaints addressed using bylaw, Unitary Plan air quality provisions, FENZ, or Police.</td>
<td></td>
<td>• Complaints addressed using Unitary Plan air quality provisions, FENZ, or Police.</td>
</tr>
</tbody>
</table>

**Effectiveness and efficiency:**

<table>
<thead>
<tr>
<th>Effectiveness and efficiency:</th>
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<th>Effectiveness and efficiency:</th>
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</thead>
<tbody>
<tr>
<td>✓ Bylaw helps to manage the use of public places (e.g. regional parks).</td>
<td>✓ Bylaw helps to manage the use of public places (e.g. regional parks).</td>
<td>✗ No provision regulating use of fires in public places, only effects of fires.</td>
</tr>
<tr>
<td>✗ Bylaw lacks clarity.</td>
<td>✓ Bylaw clearer and worded to ensure no inconsistency with any future FENZ regulations.</td>
<td>✗ Does not address nuisance and use of public places issues.</td>
</tr>
</tbody>
</table>

**Bill of Rights implications:**

<table>
<thead>
<tr>
<th>Bill of Rights implications:</th>
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<th>Bill of Rights implications:</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.</td>
<td>✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.</td>
<td>Criteria not applicable for non-bylaw options.</td>
</tr>
<tr>
<td>✗ Bylaw lacks clarity.</td>
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</table>

**Fit for the future:**

<table>
<thead>
<tr>
<th>Fit for the future:</th>
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<th>Fit for the future:</th>
</tr>
</thead>
<tbody>
<tr>
<td>✗ Bylaw lacks clarity.</td>
<td>✓ Bylaw more certain and valid.</td>
<td>✗ Does not address nuisance and use of public places issues.</td>
</tr>
</tbody>
</table>

**Māori impact/risk:**

<table>
<thead>
<tr>
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<th>Māori impact/risk:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Approval can be sought to light a fire in a public place except in an appliance designed for outdoor cooking e.g. hangi.</td>
<td>• Approval can be sought to light a fire in a public place except in an appliance designed for outdoor cooking e.g. hangi.</td>
<td>• Traditional cooking fires allowed provided they do not cause air quality or safety issues.</td>
</tr>
</tbody>
</table>

**SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**
Bylaw should be amended (Option 2) for certainty and to ensure it is not inconsistent with any future rules under the Fire and Emergency New Zealand Act 2017. Taking this approach will continue to enable council to manage the use of fires in public places.

**References:**
- Attachment B Assessment of Public Safety and Nuisance Behaviours and Opportunities 2017, pp. 25.
- Firebug sparks emotional rollercoaster of feelings for Piha residents ..., NZ Herald, 8 May, 2017
- Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242 (4); Health Act 1956 s66, s128.
Memo

15 February 2018

To: Chair and members of the Regulatory Committee

From: Kataraina Maki – GM, Community and Social Policy

Subject: Public Safety and Nuisance Bylaw review – Schedule of reports to Regulatory Committee May – June 2018

Purpose

1. To outline when topics within the Public Safety and Nuisance Bylaw 2013 (the Bylaw) review will be reported to the Regulatory Committee.

Background

2. The review of the Bylaw must be completed by the statutory deadline of August 2018. The reporting schedule sets out a process to meet this deadline.

3. Elected members at the Regulatory Committee Workshop on 8 February 2018 indicated that the review should be divided into parts and reported to consecutive Regulatory Committee meetings. This is to ensure elected members can adequately consider the 49 topics contained in the Bylaw.

Reporting Schedule

4. The below table lists when each topic that will be reported to the Regulatory Committee.

5. Each report will contain an assessment of each clause that meets statutory review requirements (including appropriateness of bylaw, bylaw form and bill of rights issues). It will also include recommendations on the next steps (e.g. whether the Bylaw clause should be confirmed, amended or revoked).

<table>
<thead>
<tr>
<th>Regulatory Committee Meeting</th>
<th>General Topic Category (examples)</th>
<th>Number of topics</th>
</tr>
</thead>
<tbody>
<tr>
<td>March</td>
<td>Street naming, building/property numbering, car window washing, fireworks, lifesaving equipment, storage of goods</td>
<td>6</td>
</tr>
<tr>
<td>April</td>
<td>Damage and obstructions (including damaging, removing, interfering with council property)</td>
<td>12</td>
</tr>
<tr>
<td>May</td>
<td>Nuisance / Safety behaviour (including begging, skateboarding, PA systems, lighting fires, graffiti)</td>
<td>11</td>
</tr>
<tr>
<td>June</td>
<td>Parks and beaches (including set netting, use of weapons, killing animals, cars on beaches)</td>
<td>20</td>
</tr>
</tbody>
</table>

Next Steps

6. From June staff will prepare a Statement of Proposal to implement the decisions of the Regulatory Committee to confirm, amend, or revoke the Bylaw.

7. The Statement of Proposal will be reported to the Regulatory Committee to recommend to the Governing Body for the purposes of public consultation, and appoint a panel. The panel will consider public views and make a recommendation to the Governing Body.

8. This process is anticipated to start in August 2018 and be completed by March 2019.
Te take mō te pūrongo / Purpose of the report
1. To provide an update to the committee of all resource consent appeals lodged with the Environment court (Attachment A)
2. To note the progress on the forward work programme (Attachment B)
3. To provide a public record of memos, workshops or briefing papers that have been distributed for the Committee’s information since 12 April 2018.

Whakarāpopototanga matua / Executive summary
4. This is a regular information-only report which aims to provide public visibility of information circulated to committee members via memo or other means, where no decisions are required.
5. The workshop papers and any previous documents can be found on the Auckland Council website at the following link: [http://infocouncil.aucklandcouncil.govt.nz/](http://infocouncil.aucklandcouncil.govt.nz/)
   - at the top of the page, select meeting “Regulatory Committee” from the drop-down tab and click ‘View’;
   - under ‘Attachments’, select either HTML or PDF version of the document entitled ‘Extra Attachments’
6. The following paper was circulated to members:
   - 16 April 2018 – memo re: Annual Review of Regulatory Committee Policy
   - 9 April 2018 – update re: the legal challenges facing the Auckland Council Provisional Local Alcohol Policy.

Ngā tūtohunga / Recommendation/s
That the Regulatory Committee:

a) receive the information report

Ngā tāpirihanga / Attachments

<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Region-wide appeals report and register</td>
<td>131</td>
</tr>
<tr>
<td>B</td>
<td>Regulatory Committee - Forward Work Programme</td>
<td>145</td>
</tr>
<tr>
<td>C</td>
<td>Workshop - Review on Dog Management Bylaw 2012 (Under Separate Cover)</td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>Annual Review of Regulatory Committee Policy (Under Separate Cover)</td>
<td></td>
</tr>
<tr>
<td>E</td>
<td>Update on legal challenges facing the Auckland Council Provisional Local Alcohol Policy (Under Separate Cover)</td>
<td></td>
</tr>
</tbody>
</table>

Ngā kaihaina / Signatories

<table>
<thead>
<tr>
<th>Author</th>
<th>Maea Petherick - Senior Governance Advisor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authoriser</td>
<td>Penny Pirrit - Director Regulatory Services</td>
</tr>
</tbody>
</table>
Resource Consent Appeals: Status Report 10 May 2018

File No.: 

Purpose
1. To provide an update of all current resource consent appeals lodged with the Environment Court.

Executive summary
2. This report provides a summary of current resource consent appeals to which the Auckland Council is a party. It updates our report of 29 March 2018 to the Regulatory Committee.

3. If committee members have detailed questions concerning specific appeals, it would be helpful if they could raise them prior to the meeting with Robert Andrews (phone: 353-9254) or email: robert.andrews@aucklandcouncil.govt.nz) in the first instance.

Recommendation/s
That the Regulatory Committee:


Comments
4. As at 27 April 2018, there are 23 resource consent appeals to which Auckland Council is a party. These are grouped by Local Board Area geographically from north to south as set out in Attachment A. Changes since the last report and new appeals received are shown in bold italic text.

5. The principal specialist planners - resource consents, continue to resolve these appeals expeditiously. In the period since preparing the previous status report, there have been three new appeals.

6. Two appeals from submitters relate to the resource consent application by Auckland Transport for the AMENTI Stage 2A project that were heard at the same time as the associated Notice of Requirement. The consents relate to a new busway and bridge crossing the Tamaki River. The main area of contention for the appellants is around the impact on the Panmure Marina and a failure to consider alternative alignment options for the bridge.

7. A further appeal from the applicant relates to the conditions imposed on the consent for a 125,000m³ cleanfill at 782 Haruru Road, Wainui.

8. Council has also received a favourable cost award of $27,358.54 in regards to the Pierau appeal. The Court had previously up-held the refusal of consent for large music festivals on a rural property in south Te Arai.

Consideration
Local board views and implications
9. Not applicable.

Māori impact statement
10. The decision requested of the Regulatory Committee is to receive this progress report rather than to decide each appeal.
11. The Resource Management Act 1991 includes a number of matters under Part 2, which relate to the relationship of Tangata Whenua to the management of air, land and water resources. Maori values associated with the land, air and freshwater bodies of the Auckland Region are based on whakapapa and stem from the long social, economic and cultural associations and experiences with such taonga.

Implementation

12. Environment Court appeal hearings can generate significant costs in terms of commissioning legal counsel and expert witnesses and informal mediation and negotiation processes seek to limit these costs. Although it can have budget implications, it is important that Auckland Council, when necessary, ensure that resource consents maintain appropriate environmental outcomes and remain consistent with the statutory plan policy framework through the appeal process.

Attachments

<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Current Resource Consent Appeals as at 27 April 2018</td>
<td></td>
</tr>
</tbody>
</table>

Signatories

<table>
<thead>
<tr>
<th>Authors</th>
<th>Robert Andrews - Resolutions Team Manager</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authorisers</td>
<td>Ian Smallburn - General Manager Resource Consents</td>
</tr>
<tr>
<td></td>
<td>Penny Pirrit - Director Regulatory Services</td>
</tr>
</tbody>
</table>

Resource Consent Appeals: Status Report 14 September 2017
### RODNEY – Local Board Area (3 APPEALS)

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Information Items</th>
</tr>
</thead>
<tbody>
<tr>
<td>InfoTech Accountants Ltd</td>
<td>Env-2018-AKL-000**</td>
</tr>
<tr>
<td></td>
<td>Council-BUN60066984, LUC60066985 and DIS60066986</td>
</tr>
</tbody>
</table>

**Item 12**

**Appellant:** InfoTech Accountants Ltd  
**References:** Env-2018-AKL-000**  
**Site address:** 782 Haruru Road, Wainui.  
**Other parties:** None  
**Description:** To establish and operate a two staged cleanfill up to a maximum of 125,000m3 of imported fill and undertake associated earthworks and site works. The two cleanfill sites will total 2.9ha comprising Area A of 1.3ha and Area B of approximately 1.6ha.  
**Iwi comments:** No cultural values assessments prepared  
**Status:** Consent was limited notified and granted. The applicant has appealed some conditions of the consent.

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Information Items</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albert Road Investments Limited</td>
<td>Env-2017-AKL-00075</td>
</tr>
<tr>
<td></td>
<td>Council–SUB60069647</td>
</tr>
</tbody>
</table>
|                         | Site address: 102 Hudson Road, Warkworth.  
**Other parties:** None  
**Description:** Appeal by the applicant against council’s decision to refuse to allow subdivision of a 2800m2 lot around the existing dwelling on site from the balanced land of 1.315ha at 102 Hudson Road, Warkworth.  
**Iwi comments:** No cultural values assessments prepared with the application that was processed on a non-notified basis.  
**Status:** Court has issued an evidence timetable: appellant evidence 1 September, council evidence 6 October, and appellant rebuttal evidence 27 October. Two days of hearing time reserved for either week of 27 November or 4 December 2017. Evidence preparation occurring under above timetable is now complete and the matter has been set for hearing on the week starting 19 February 2018. *The appeal proceeded to a 2 day hearing 19-20th February 2018. Decision has been reserved.*  

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Information Items</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kumeu Property Limited</td>
<td>Env-2017-AKL-044</td>
</tr>
<tr>
<td></td>
<td>Council–L68001, REG68001, REG68002, REG68003 &amp; REG68004</td>
</tr>
</tbody>
</table>
|                         | Site address: 455 Taupaki Road, Taupaki  
**Other parties:** Jennifer Mein, AF Soljan Family Trust, CM Soljan Family Trust and Soljans Estate Winery, MG Brajkovich Family Trust and Kumeu River Wines Limited, Kumeu-Huapai Residents & Ratepayers Association Inc., and Frances A Vuksich.  
**Description:** Appeal by an applicant against council’s decision to refuse consent to establish and operate an aged care facility with on-site servicing, with 102 hospital beds  

*Region-wide Appeals Register 12 April 2018*
and 157 assisted living beds at 455 Taupaki Road, Taupaki.

<table>
<thead>
<tr>
<th>Item 12</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Iwi comments</strong></td>
</tr>
<tr>
<td><strong>Status</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Matakan Coast Trail Trust</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>References</strong></td>
<td>ENV-2017-AKL-020</td>
</tr>
<tr>
<td>Council – SLC86696, REG66698 &amp; REG66699</td>
<td></td>
</tr>
<tr>
<td><strong>Site address</strong></td>
<td>Multiple sites located in and around Moir Hill Road, Ahuroa.</td>
</tr>
<tr>
<td><strong>Other parties</strong></td>
<td>None.</td>
</tr>
<tr>
<td><strong>Description</strong></td>
<td>Appeal by a submitter against the council’s decision to grant consent to a 207-lot rural-residential subdivision and rehabilitation (including revegetation and weed and pest management) of approximately 1,375 ha of the 1,508 ha site with associated vegetation clearance, earthworks, streamworks, stormwater discharge and wastewater disposal. Appeal specifically relates to the lack of a condition requiring a walking and cycle path to be provided through the site.</td>
</tr>
<tr>
<td><strong>Iwi comments</strong></td>
<td>CIA provided by Ngati Manuhiwi. Applicant to work with Ngati Manuhiwi to develop an iwi liaison framework to enable their recommendations to be considered during the detailed design process and during physical works on site.</td>
</tr>
<tr>
<td><strong>Status</strong></td>
<td>Applicant does not wish to participate in mediation. Joint memorandum filed with the Court with proposed timetable for a hearing; extended by two weeks with appellant evidence 16 June, applicant and council evidence 30 June, appellant reply evidence 14 July. Court hearing held 7 to 11 August 2017. The Court released an interim decision on 1 September that determines that a connecting walking and cycling trail between Dorset and Watson Roads should be provided. Parties will need to agree conditions on how this is to be achieved and attended court assisted conferencing on 6th November 2017. Still in the process of agreeing the cycleway condition however the appeal is otherwise finalised.</td>
</tr>
</tbody>
</table>

Region-wide Appeals Register 12 April 2018
### Hibiscus and Bays - Local Board Area (2 APPEALS)

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Andrew Hegman</th>
<th>Received</th>
<th>20 March 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2018-AKL-000049 Council – LUC60309866</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>7B Gulf View Rd, Murrays Bay, North Shore</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>Appeal by the applicant against council’s decision to refuse consent for a garage within the front yard.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>Not applicable.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>Appeal has just been lodged with the Court but no directions have been given.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Auckland Council (Community Facilities)</th>
<th>Received</th>
<th>22 December 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2017-AKL-00075 Council – SUB60069647</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>Orewa Beach Esplanade Reserve, between Kohu Street and Marine View</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>Four 274 parties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>Appeal by the applicant against council’s decision to refuse consent to the construction of a seawall, walkway and accessory access structures at the Orewa Beach Esplanade Reserve, between Kohu Street and Marine View.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>Cultural values assessments were prepared by Ngati Manuhiri and Ngai Tai Kī Tamaki that confirmed conditional support for the application. The environment is highly modified and accidental discovery protocols are sought. The application was publically notified and no submissions from Iwi were submitted.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>Court has heard from the parties and issued a minute on 22 February 2018 setting down the matter for a pre-hearing on jurisdiction over the right to appeal and determining that amicus curiae should be appointed. Affidavits have been request these have been prepared for the pre-hearing set for 9 April 2018. <strong>The pre hearing proceeded as scheduled and direction from the Court is yet to be received.</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### UPPER HARBOUR - Local Board Area (1 APPEALS)

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Scanlon, New Kiwis Limited &amp; The Swim Centre Limited v Auckland Council</th>
<th>Received</th>
<th>27 January 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2017-AKL-009 Council – SUB60032697</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>364, 378, 382, 404 Upper Harbour Drive &amp; 128 Albany Highway, Greenhithe</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>None.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>Appeal by submitters against the granting of subdivision consent for 44 residential lots.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>Ngati Whatua Orakei Iwi Authority – Neutral. Main reasons for concern were discharge of stormwater, removal of trees, and earthworks. Recommended cultural monitoring by NIWO, use of Accidental Discovery Protocol, and cultural heritage induction for all contractors involved.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Region-wide Appeals Register 12 April 2018*
**Item 12**

<table>
<thead>
<tr>
<th>Status</th>
<th>Appeal reported to the Regulatory Committee on 12 April 2017. Mediation held 20 April 2017 and 25 May 2017, where the parties could not reach agreement regarding access design, landscaping and other matters. In a court report of 29 September 2017 the applicant and appellant have asked for more time to develop revised plans and resolutions to outstanding issues. <strong>The Court has set a date for a pre-hearing conference on 10 May 2018.</strong></th>
</tr>
</thead>
</table>

**HENDERSON-MASSEY – Local Board Area (1 APPEAL)**

<table>
<thead>
<tr>
<th>Appellants</th>
<th>New Zealand Retail Property Group Limited</th>
<th>Received</th>
<th>17 August 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV–2017-AKL-000120</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>79-85 Fred Taylor Drive, Westgate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>Holy Resurrection Russian Orthodox Church (Applicant for associated land use consent); Auckland Transport</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>Appeal against conditions of resource consent LUC600619881 and subdivision consent SUB60039017 requiring that the consent holder shall upgrade the frontage of the site (berm/footpath). The consent allows for a 2-lot subdivision creating a 7,000m² site for a church.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>None.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td><strong>Mediation held 4 October 2017. The appellant is considering whether to proceed to a court hearing.</strong></td>
<td></td>
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</tr>
</tbody>
</table>

**ALBERT-EDEN – Local Board Area (3 APPEALS)**

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Sai 1 Trust v Auckland Council</th>
<th>Received</th>
<th>16 February 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2018-AKL-000011 Council – LUC60310360</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>325 Mount Albert Road, Mount Roskill</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>Appeal against a decision on a s357 objection to the rejection of a resource consent for processing under s88 of the RMA. The application that was rejected was for the construction of an extension to an existing building to provide an additional unit on the site.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>As the application was not accepted for processing no assessment of iwi issues has been undertaken. In the initial s88 check for completeness of the application no requirement for a Cultural Impact Assessment or iwi or Treaty matters have been raised.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>Appeal lodged on 16 February 2018. <strong>Waiting for the Environment Court to advise on a mediation date.</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Appellant</th>
<th>View West Limited v Auckland Council</th>
<th>Received</th>
<th>29 September 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site address</td>
<td>31 Esplanade Road, Mount Eden</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>Appeal against a hearing commissioner’s decision to refuse resource consent for the demolition of the St James Church Hall, a Category B</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Region-wide Appeals Register 12 April 2018
Historic Heritage building, located at 31 Esplanade Road, Mt Eden. The hall was constructed in the 1880’s and is currently subject to a Dangerous Building Notice which has seen it fenced off and unused for the past five years. It sits beside the Category B St James Church that has consent to be re-purposed into four residential apartments.

**Iwi comments**

The application did not trigger any requirement for a Cultural Impact Assessment, attract submissions from Iwi or raise Treaty issues.

**Status**

Court directions received on 24 October 2017. The Court requires a response by 7 November as to whether parties agree to mediation. Mediation attended Wednesday, 14th February 2018. **Parties agreed a timeline for an alternative proposal to be developed that would see the building retained and re-used.**

---

**PUKETAPAPA – Local Board Area (1 APPEAL)**

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Jayashree Limited v Auckland Council</th>
<th>Received</th>
<th>7 December 2017</th>
</tr>
</thead>
</table>

**References**

ENV-2017-AKL-000181
Council – R/LUC/2016/2243, LUC60114213

**Site address**

34 White Swan Road, Mount Roskill

**Description**

Appeal against a decision on a s357 objection to the rejection of a resource consent for processing under s88 of the RMA. The application that was rejected was for the legalisation of four units on the site.

**Iwi comments**

As the application was not accepted for processing no assessment of Iwi issues has been undertaken. In the initial s88 check for completeness of the application no requirement for a Cultural Impact Assessment or Iwi or Treaty matters have been raised.

**Status**

Court directions received on 11 December 2017. The Court has joined this appeal with other existing Environment Court proceedings for this site and another site owned by the applicant (i.e. ENV-2017-AKL-000133 building consent abatement notice appeal to cease the use of the property (34 White Swan Road, Mount Roskill) as a boarding house and ENV-2017-AKL-00079 an application for a declaration regarding the use of a dwelling at 37A Hayr Road, Three Kings). A reporting date on progress has been set for 28 February 2018. **Waiting for the Environment Court to advise on a mediation date.**

---

**WAIHEKE – Local Board Area (3 APPEALS)**

<table>
<thead>
<tr>
<th>Appellants</th>
<th>Cable Bay Wines Ltd v Auckland Council</th>
<th>Received</th>
<th>2 February 2018</th>
</tr>
</thead>
</table>

**References**

ENV-2017-AKL-000010
Council – LUC60127798

**Site address**

12 Nick Johnston Drive, Waiheke Island

**Applicant**

Cable Bay Wines Limited

**Other parties**

Stephen & Suzanne Edwards, Julie Loranger & Lindsay Niemann, Michael & Christine Poland.

**Description**

Cable Bay appeal Council’s decision to refuse retrospective consent relating to the unlawful establishment and use of an additional dining area known as ‘The Verandah’. The principal issues in contention relate to the scale and intensity of

*Region-wide Appeals Register 12 April 2018*
the activity and the general amenity / noise effects associated with the use of the structure.

Iwi comments
The application was limited-notified to neighbours. No iwi group indicated a need for a cultural impact assessment. The Hearing Commissioners considered the application in accordance with the requirements of the RMA 1991 and in particular Part 2 of the RMA.

Status
The Environment Court has directed court-assisted mediation after the expiry of the section 274 period which is 15 March 2018. Council is to file and serve a reporting memorandum by 4 May 2018. Three s274 parties have joined. Awaiting confirmation of Environment Court mediation date – will likely be in the week beginning 9 April 2018. Mediation will involve both the consent appeal and the enforcement order application. **The mediation scheduled for 27 April was abandoned. Awaiting further directions from the Court to confirm whether another mediation date is to be scheduled and whether the enforcement order application will be set down for hearing independent of the consent appeal.**

<table>
<thead>
<tr>
<th>Appellants</th>
<th>1. Walden v Auckland Council</th>
<th>Received</th>
<th>9 June 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2. SKP Incorporated v Auckland Council</td>
<td>Received</td>
<td>9 June 2017</td>
</tr>
</tbody>
</table>

**References**
- ENV-2017-AKL-000076
- ENV-2017-AKL-000077

**Site address**
Donald Bruce Road, Kennedy Point, Waiheke Island

**Applicant**
Kennedy Point Boatharbour Limited

**Other parties**
Over 30 parties have joined the appeal under section 274 of the RMA.

**Description**
Two separate appeals opposing the construction, maintenance and use of a 186 berth marina within the coastal marine area adjacent to Kennedy Point. The marina includes floating attenuators for wave protection and floating pontoons for car parking, office and a public/café building. The council hearing canvased a large range of issues and potential effects including landscape, traffic and transport, ecology.

**Iwi comments**
The applicant consulted with iwi, including Ngati Paoa Trust and Ngai Tai ki Tamaki Tribal Trust. A cultural values assessment was provided by Ngati Paoa and a cultural impact assessment from Ngai Tai ki Tamaki. Iwi sought to have input into conditions but no submissions were lodged by iwi. The independent hearing commissioners had regard to all the information before them and considered the application in accordance with the relevant statutory requirements and in particular Part 2 of the RMA 1991.

**Status**
The Environment Court has set down the appeals for a court-assisted mediation on 4 and 7 August 2017. Mediation on 4 and 7 August 2017 has now been completed. Mediation narrowed down some issues but did not resolve all the issues for the appellants and all the section 274 parties. A timetable for exchange of evidence, caucusing of expert witnesses and Environment Court hearing date has been confirmed. All evidence and witness caucusing is complete with the hearing set for the week of 28 February 2018. Hearing commenced on Monday 26 February 2018. **Hearing completed. Waiting for Environment Court’s decision.**
<table>
<thead>
<tr>
<th>Appellant</th>
<th>Received</th>
<th>19 March 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Panmure Bridge Marina Ltd and Barry Scott Family Trust</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**References**

- ENV-2018-AKL 0000048
- Council – LUC60123881, LUC60289131, DIS6008373, CST60082989, DIS60083720 and DIS60277558, WAT60152193

**Site address**

- AMETI

**Applicant**

- Auckland Transport

**Description**

Appeal by submitters relating to the resource consent application by Auckland Transport for the AMENITI Stage 2A project, that were heard at the same time as the associated Notice of Requirement. The consents relate to a new busway and bridge crossing the Tamaki River. The main area of contention for the appellants is around the impact on Panmure Marina and a failure to consider alternative alignment options for the bridge.

**Iwi comments**

The application included a Cultural Values Assessment by the Ngāti Paoa Iwi Trust which contained a number of recommendations. Ngāti Paoa also submitted on the proposal. AT commissioned an Independent Assessment of Effects on Māori Heritage following the submission period, taking into account the points raised in the submission, along with other submissions that identified potential cultural effects.

**Status**

New appeal that is part a number of appeals against the grant of resource consents and the confirmation of the Notice of Requirement by AT. Parties are in discussion in regards to seeking a mediation date with the Court.

---

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Received</th>
<th>19 March 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Maharg Investments Limited &amp; DG Law Limited</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**References**

- ENV-2018-AKL 0000054
- Council – LUC60123881, LUC60289131, DIS6008373, CST60082989, DIS60083720 and DIS60277558, WAT60152193

**Site address**

- AMETI

**Applicant**

- Auckland Transport

**Description**

Appeal by submitters relating to the resource consent application by Auckland Transport for the AMENITI Stage 2A project that were heard at the same time as the associated Notice of Requirement. The consents relate to a new busway and bridge crossing the Tamaki River. The main area of contention for the appellants is around the impact on Panmure Marina and a failure to consider alternative alignment options for the bridge.

**Iwi comments**

The application included a Cultural Values Assessment by the Ngāti Paoa Iwi Trust which contained a number of recommendations. Ngāti Paoa also submitted on the proposal. AT commissioned an Independent Assessment of Effects on Māori Heritage following the submission period, taking into account the points raised in the submission, along with other submissions that identified potential cultural effects.

**Status**

New appeal that is part a number of appeals against the grant of resource consents and the confirmation of the Notice of Requirement by AT. Parties are in discussion in regards to seeking a mediation date with the Court.

*Region-wide Appeals Register 12 April 2018*
### OTARA-PAPATOETO - Local Board Area (1 APPEAL)

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Lion – Beer, Spirits &amp; Wine (NZ) Limited</th>
<th>Received</th>
<th>24 July 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2017-AKL 000106</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Council – 50566</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>79 Ormiston Road</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicant</td>
<td>Ormiston Centre Limited</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>Appeal by a submitter to the grant of land use and subdivision consent to establish a mix of commercial activities including a supermarket, department store and offices. The site is zoned Business – Light industrial under the AUP-OP in which the activities are a non-complying.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>The application was publicly notified and there were no submissions by Iwi. No Iwi group indicated a need for a cultural impact assessment. The Hearing Commissioners considered the application in accordance with the requirements of the RMA 1991 and in particular Part 2 of the RMA.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>New appeal with the parties yet to receive any directions from the Court. Negotiations continuing between appellant and consent holder. Next reporting date 13 April 2018. <strong>Appeal withdrawn 20 April 2018. Matter closed.</strong></td>
<td></td>
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</tr>
</tbody>
</table>

### FRANKLIN – Local Board Area (6 APPEALS)

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Fulton Hogan Limited</th>
<th>Received</th>
<th>15 March 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2018-AKL 0000046</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Council – 53124, 53125, 53126</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>546 McNicol Road Clevedon</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicant</td>
<td>Fulton Hogan Limited</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>Auckland Transport and Clevedon Conversations - 274 parties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>Appeal by the applicant relates to two conditions of consent imposed on the grant of consent to expand its quarry at 546 McNicol Road Clevedon. Condition 23 relates to a restriction that prevents quarry truck movements to and from Clevedon Quarry after 12 pm (noon) on Saturday. Condition 19 (b) and (c) are references in the review condition regarding adverse truck noise along McNicol Road (south of Tourist Road) and Tourist Road.</td>
<td></td>
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</tr>
<tr>
<td>Iwi comments</td>
<td>There were no cultural value assessments submitted or later submissions from Iwi following public notification.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>Parties are in discussion in regards to seeking a mediation date with the Court in early May. <strong>Mediation has been set for the 21 and 22 May 2018.</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Clevedon Protection Society 2017 Incorporated</th>
<th>Received</th>
<th>15 March 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2018-AKL 0000044</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Council – Council – 53124, 53125, 53126</td>
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<tr>
<td>Site address</td>
<td>546 McNicol Road Clevedon</td>
<td></td>
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<tr>
<td>Applicant</td>
<td>Fulton Hogan Limited</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>Auckland Transport and Clevedon Conversations - 274 parties</td>
<td></td>
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</tbody>
</table>

Region-wide Appeals Register 12 April 2018
### Item 12

**Description**
Appeal by a submitter to particular conditions imposed on the consent for the application by Fulton Hogan to expand the size of its Clevedon Quarry and increased activity to an annual production of approximately 3 million tonnes per year. The conditions relate to the Community liaison Group, monitoring and review, truck management, numbers, speed and road parking and safety, operation hours and noise, stream ecology and discharge to air.

**Iwi comments**
There were no cultural value assessments submitted or later submissions from Iwi following public notification.

**Status**
Parties are in discussion in regards to seeking a mediation date with the Court in early May. *Mediation has been set for the 21 and 22 May 2018.*

<table>
<thead>
<tr>
<th><strong>Appellant</strong></th>
<th>Manukau Harbour Restoration Society Inc</th>
<th><strong>Received</strong></th>
<th>17 January 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>References</strong></td>
<td>ENV-2018-AKL 000002</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Council – R/REG/2016/2749 and R/REG/2016/2751</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Site address</strong></td>
<td>Waiuku</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Applicant</strong></td>
<td>Watercare Services Limited</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Description</strong></td>
<td>Appeal by a submitter to the grant of regional permits to discharge wastewater into the Waiuku Estuary and Manukau Harbour. One s274 party has joined (Gary Whynborn).</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Iwi comments</strong></td>
<td>The application was publicly notified and submissions were received from Ngati Te Ata and Ngati Tamaoho Trust. Ngati Te Ata provided its full support to the Project and the applications. Ngati Tamaoho Trust asked that the application be declined but also proposed conditions should consent be granted</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Status</strong></td>
<td>Parties have met to discuss concerns/questions with the conditions. <em>Court assisted mediation has occurred and a further date set for 3 May 2018.</em></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Appellant</strong></th>
<th>Giles and Third</th>
<th><strong>Received</strong></th>
<th>16 August 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>References</strong></td>
<td>ENV-2017-AKL-000118</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Council – SUB60300057 (MC53131)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Site address</strong></td>
<td>340 Clevedon Kawakawa Bay Road</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Applicant</strong></td>
<td>Dianne Giles and Lynette Colleen Third</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Description</strong></td>
<td>Appeal against a decision refusing consent to subdivide a rural site to create two lots. Consent refused on a non-notified basis</td>
<td></td>
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</tr>
<tr>
<td><strong>Iwi comments</strong></td>
<td>The application was non-notified. No iwi group indicated a need for a cultural impact assessment. The delegated decision maker considered the application in accordance with the requirements of the RMA 1991 and in particular Part 2 of the RMA.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Status</strong></td>
<td>Appeal on hold to allow applicant to see if reasons for refusal can be addressed. Currently exploring design options to see if policy matters can be addressed. Next court report date on 23 February 2018. An amended proposal has been submitted by the applicant for consideration by Council as to whether it addresses the reasons for refusal. The next reporting date is 31 March. Consent order docs are being prepared as the revised proposal now addresses the reasons for refusal. <em>Awaiting signed and sealed consent order docs from the Court.</em></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Region-wide Appeals Register 12 April 2018*
### Item 12

**Appellant** | Pine Harbour Holdings Limited | **Received** | 2 February 2017  
---|---|---|---  
**References** | ENV-2017-AKL-010  
Council – 48758  
**Site address** | 96 Karaka Road, Beachlands  
**Applicant** | Pine Harbour Holdings Limited  
**Description** | Appeal against several conditions of the council decision to grant subdivision and landuse consent to create 27 lots and 27 dwellings.  
**Iwi comments** | The application was publicly notified and there were no submissions by iwi. Ngai Tai Ki Tamaki advised during the processing of the proposal that they were happy for the development to proceed based on their longstanding relationship with the applicant. No iwi group indicated a need for a cultural impact assessment. The Hearing Commissioners considered the application in accordance with the requirements of the RMA 1991 and in particular Part 2 of the RMA.  
**Status** | Appeal reported to the Regulatory Committee under urgency on 1 March 2017 as the Court had directed a reporting date of 1 March 2017 to identify whether mediation is appropriate and/or agree a hearing timetable. Mediation set down and held on 19 April. Parties will be reporting back to the Court on a monthly basis. Evidence exchange has commenced with a hearing likely in the new year. Hearing has been postponed as there is a possibility of settlement due to the imminent commencement of works on the adjacent property which would address the conditions in contention. **Consent order docs have been circulated to parties.**

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**Appellant** | Ahuareka Trustees (No. 2) Ltd | **Received** | 19 November 2015  
---|---|---|---  
**References** | ENV-2015-AKL-000147  
Council – 42081  
**Site address** | 650-680 Whitford Maraeatai Road, Whitford  
**Other parties** | Whitford Residents and Ratepayers Association  
**Description** | Appeal against Council’s decision to refuse consent to establish a hamlet of 186 households and ancillary buildings, a country pub and restaurant, retail and commercial units and carpark in the Whitford Rural B zone.  
**Iwi comments** | No iwi submissions  
**Status** | Appeal reported to the Committee in December 2015. Mediation held 11 February 2016. Appeal reported to the Regulatory Committee on 1 December 2016. Evidence exchange occurred in February/March 2017 although no hearing date set. Judicial teleconference held 30 March. Rebuttal evidence due 28 April with hearing possible in July. Court hearing proceeded within the week 3 July 2017, with the applicants reply to be filed in writing and subsequently the Court’s decision. Awaiting Court decision. Decision of the Court received 15 December 2017 – appeal declined. Significant policy-based decision supporting provisions of AUP (OP). Court costs being sought, otherwise appeal matters complete. The Environment Court decision since appealed by the appellant to the High Court on 26 January 2018. A case management conference is scheduled for 6 March. **High Court hearing set down for 3 July.**

*Region-wide Appeals Register 12 April 2018*
<table>
<thead>
<tr>
<th>#</th>
<th>Area of work</th>
<th>Reason for work</th>
<th>Regulatory Committee role (decision or direction)</th>
<th>Budget/ Funding</th>
<th>Expected timeframes Highlight financial year quarter and state month if known</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Alcohol Licensing</td>
<td>Report on the revenue received and the costs incurred for the alcohol licensing process – required by regulation 19 of the Sale and Supply of Alcohol (Fees) Regulations 2013.</td>
<td>Note that the majority of alcohol licensing costs were recovered from the existing default licensing fees regime for the twelve months to July 2017. Confirm continuance of the default licensing fees regime after a suitable period of time has elapsed following the implementation of the Local Alcohol Policy.</td>
<td>Within current baselines.</td>
<td>Q4  Q1  Q2  Q3</td>
</tr>
<tr>
<td></td>
<td>Animal Management</td>
<td>Report on Animal Management activities for the year ending June 2018 as required by s10a of the Dog Control Act 1996</td>
<td>Note that the Animal Management Annual Report is required under Section 15A of the Dog Control Act 1996 and staff will provide the 2017/18 report to the Secretary of Local Government</td>
<td>Within current baselines.</td>
<td>Q4  Q1  Q2 (Nov)  Q3</td>
</tr>
<tr>
<td></td>
<td>Earthquake Prone, Dangerous &amp; Insanitary Buildings Policy 2011-2016 Review</td>
<td>2011 - Auckland Council was required under s131 of the Building Act 2004 to adopt a policy on earthquake prone, dangerous and insanitary buildings</td>
<td></td>
<td></td>
<td>Q2 (Nov)</td>
</tr>
<tr>
<td></td>
<td>Freedom camping</td>
<td>Explore the need for and options for regulating freedom camping in Auckland</td>
<td>• Receive options report following the completion of the research and pilot. (July 2017)</td>
<td>Review is within current baselines.</td>
<td>Q4  Q1 (Aug)  Q2  Q3</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• If a regulatory response is required then the committee will:</td>
<td>Funding proposals will be required for any recommendations that require capital or operational upgrades.</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>- Recommend statement of proposal to Governing Body.</td>
<td></td>
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<tr>
<td></td>
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<td></td>
<td>- Establish the hearings panel for deliberations on submissions.</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>- Recommend final draft of bylaw to governing body for adoption.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Public Safety and Nuisance Bylaw</td>
<td>Legislative requirement to review bylaw within 5 years. Committee resolution to “commence the review”</td>
<td>• Receive report following the completion of the bylaw review. (Dec ‘17 – Feb ‘18)</td>
<td>Within current baselines.</td>
<td>Q4  Q1 (Mar18)  Q2  Q3 (Mar18)</td>
</tr>
</tbody>
</table>

Edited 1 May 2018
<table>
<thead>
<tr>
<th>Item 12</th>
<th>Attachment B</th>
<th>Regulatory Committee Summary of Information Items - 10 May 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulatory Committee</td>
<td>10 May 2018</td>
<td></td>
</tr>
<tr>
<td><strong>Attachment B</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Item 12</strong></td>
<td></td>
<td></td>
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<tr>
<td></td>
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</tr>
<tr>
<td>Review of the Public Safety and Nuisance Bylaw 2013 at an early date.</td>
<td></td>
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</tr>
<tr>
<td><em>Recommend statement of proposal to Governing Body. (Q2 or Q3 – FY18)</em></td>
<td>Q4</td>
<td>Q1</td>
</tr>
<tr>
<td><em>Establish the hearings panel for deliberations on submissions. (Q2 or Q3 – FY18)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Recommend final draft of bylaw to governing body for adoption. (Q4 – FY18)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Report was considered on 12 Oct. the item was deferred REG2017/94</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Workshop held on 8 February 2018 time to consider each of the issues covered in the bylaw in more detail</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>A report on the outcome of statutory review and the direction of any changes to six issues was considered on 8 March 2018 REG2018/15</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Progress to date:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>A report on the outcome of statutory review and the direction of any changes to nine issues was considered on 12 April 2018 REG2019/33</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Public notification is required for bylaw reviews even if no change to the bylaw is recommended. Length of time required to draft the statement of proposal will depend on the scope of amendments requested following the review findings.</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dog management Bylaw and Policy on Dogs.</td>
<td>Legislative requirement to review the bylaw and policy after five years.</td>
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<tr>
<td></td>
<td></td>
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</tr>
<tr>
<td><em>Receive report following the completion of the bylaw review. (November 2017)</em></td>
<td>Q4</td>
<td>Q1</td>
</tr>
<tr>
<td><em>Recommend statement of proposal to Governing Body.</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Establish the hearings panel for deliberations on submissions.</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Recommend final draft of bylaw to governing body for adoption.</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Progress to date:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Workshop held April 2018 – to seek informal guidance on a few potentially contentious issues related to dog management.</em></td>
<td></td>
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</tr>
<tr>
<td><em>Public notification is required for bylaw reviews even if no change to the bylaw is recommended.</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health and Hygiene Bylaw</td>
<td>Legislative requirement to review the bylaw and policy after five years.</td>
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<tr>
<td>Workshop on potential option in Feb or Mar 18 (tbc)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Progress to date:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Findings of the Health and Hygiene Bylaw 2013 statutory review are due to April 2018 REG2018/33</em></td>
<td></td>
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<tr>
<td><strong>Edited 1 May 2018</strong></td>
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<tr>
<td>Item 12</td>
<td>Regulatory Committee Summary of Information Items - 10 May 2018</td>
<td></td>
</tr>
<tr>
<td>-------------------------------</td>
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<td></td>
</tr>
<tr>
<td>Solid Waste Bylaw review</td>
<td>Legislative requirement to review the bylaw and policy after five years.</td>
<td>Decision on timing and scope of the review. (December 2017)</td>
</tr>
<tr>
<td>Boarding Houses Inspection</td>
<td>Update on the Auckland proactive boarding houses inspections programme. Increase inspections from one to a minimum of three per year.</td>
<td>For information An update on the initiative was provided at the 15 June meeting item 12 resolution REG/2017/61 item 12 update on boarding house inspections item 11 Next two proactive inspections will be conducted with Ministry of Business, Innovation and Employments in August and October 2017 November agenda report was deferred to the February meeting.</td>
</tr>
<tr>
<td>Resource Consents Appeal Update</td>
<td>To provide oversight of the appeals received to resource consent decisions.</td>
<td>Information purposes Monthly updates - Memo</td>
</tr>
<tr>
<td>The Regulatory Committee Policy Reporting on and monitoring of commissioner appointments</td>
<td></td>
<td>Information purposes Memo monthly</td>
</tr>
<tr>
<td>The Regulatory Committee Policy Annual review of commissioner pool</td>
<td></td>
<td>Decision: review RMA commissioner pool Memo annually</td>
</tr>
<tr>
<td>The Regulatory Services Directorate Report on:</td>
<td></td>
<td>For information only: 6 monthly update</td>
</tr>
<tr>
<td></td>
<td>progress implementing the Food Act 2014 insights into the performance, opportunities and risk of the Resources Consents Dept progress implementing the Regulatory Compliance programme update of Building control activity</td>
<td></td>
</tr>
</tbody>
</table>

Edited 1 May 2018