

DRAFT- NOT COUNCIL POLICY

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

STATUTORY OBLIGATIONS/POWERS

- 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).

ISSUE IN 2013

- Nuisance, safety, use of public places.
- 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.
- 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, ensure safe public places and minimise nuisances.
- 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”.
- 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.

BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- 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.
- Serious offences are referred to police.

ISSUE IN 2018

- Public safety, obstruction and nuisance. No issues of offensive behaviour and damage.
- 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.

OUTCOME SOUGHT IN 2018

- 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.

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.

SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:

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.

OPTIONS

Option 1: Status quo – Retain bylaw	Option 2: (RECOMMENDED) Amend bylaw to improve certainty	Option 3: Revoke bylaw - Rely on existing legislation
<ul style="list-style-type: none"> Bylaw prohibits using a public place to wilfully obstruct, disturb or interfere with any other person in their use or enjoyment of that public place. Council responds to complaints. Police addresses serious offences. 	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> Bylaw clause deleted. Police use the Summary Offences Act 1981 to address offensive and disorderly behaviour, assault, intimidation, loitering and trespass.
Effectiveness and efficiency: <ul style="list-style-type: none"> ✓ Bylaw enables the issues to be addressed where they arise. ✗ Bylaw difficult to enforce. 	Effectiveness and efficiency: <ul style="list-style-type: none"> ✓ 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. 	Effectiveness and efficiency: <ul style="list-style-type: none"> ✗ Does not address obstruction, safety, nuisance and misuse unless obstruction on a public way. ✗ Police unlikely to prioritise enforcement.
Bill of Rights implications: <ul style="list-style-type: none"> ✓ 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: <ul style="list-style-type: none"> ✓ 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: <ul style="list-style-type: none"> - Criteria not applicable for non-bylaw option.
Fit for future: <ul style="list-style-type: none"> ✗ No. Bylaw is not clearly written leaving potential for inconsistent decisions in the future. 	Fit for future: <ul style="list-style-type: none"> ✓ Yes. Explanatory notes make Bylaw more certain for issues now and in the future. 	Fit for future: <ul style="list-style-type: none"> ✗ No. Legislation only addresses nuisance intending to intimidate and obstructions limited to public ways.
Māori impact/risk: <ul style="list-style-type: none"> No specific implications for Māori. 	Māori impact/risk: <ul style="list-style-type: none"> No specific implications for Māori. 	Māori impact/risk: <ul style="list-style-type: none"> No specific implications for Māori.

SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:

The Bylaw should be amended (Option 2) 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. 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
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 120, 126, 127, 177.
- Legislative requirements: Local Government Act 2002, s162, s163, s164-168, s171-174, s176, s178, s242(4)
- Health Act 1956, s66, s128.
- Public Safety and Nuisance Bylaw Review Colmar Brunton Findings Report 2017, pp 8.
- Attachment B Assessment of Public Safety and Nuisance Behaviours and Opportunities 2017, pp 8, 9.

DRAFT - NOT COUNCIL POLICY

BYLAW CLAUSE 6(1)(b) – Prohibits nuisance from excessive noise in a public place

STATUTORY OBLIGATIONS/POWERS

- 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).

ISSUE IN 2013

- Nuisance from the use of loud speakers, amplifiers and musical instruments.
- No specific data on the size of the issue in 2013.

OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To minimise nuisance and provide for appropriate behaviour in public places.
- 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.
- 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.
- To respond to complaints, council officers use the Resource Management Act 1991 (RMA) and the Bylaw depending on the circumstances.

ISSUE IN 2018

- Noise nuisance.
- 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.
- Other stakeholders identified the use of loud speakers on bicycles as being of concern.
- Street performances, such as busking, generated the most responses from the stakeholders.
- 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.
- Council receives few complaints about noise in public places. In contrast, council receives over 57,000 complaints per year about noise on private property.

OUTCOME SOUGHT IN 2018

- To minimise sound or noise nuisance in public places, including from playing of instruments, public address systems and amplified sound systems.

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)(k)].

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.

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 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 respond to noise complaints using bylaw and the Resource Management Act 1991.
- 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 responds to noise complaints using the Resource Management Act 1991.
- 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:

- ✓ Council uses Resource Management Act 1991 to respond to complaints and Trading and Events in Public Places Bylaw 2015 to regulate street performers.
- ✓ 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.
- Statement of Proposal - Review of Public Places / Safety and Nuisance Bylaws December 2012 pp 13, 50.
- 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

STATUTORY OBLIGATIONS/POWERS

- 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).

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

and a code of conduct (which have no enforcement powers), adherence to CAA rules, and the Bylaw. 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

Option 1: Status quo – Retain bylaw

- Bylaw prohibits use of any material or thing recklessly, or in an intimidating, dangerous, injurious or nuisance manner.
- Council responds to complaints using graduated compliance approach.
- Civil Aviation Authority (CAA) can respond to breaches of CAA rules.
- Privacy commissioner can address drone privacy issues.

Option 2: (RECOMMENDED) Amend bylaw for certainty

- Bylaw amended to address drone operation, and provide for the adoption of guidelines/code of conduct (where appropriate) in public places.
- Bylaw aims and implementation the same as Option 1.

Option 3: Revoke bylaw – Rely on existing legislation

- Bylaw clause deleted.
- Police can use powers under Summary Offences Act 1981 to address safety risks.
- Civil Aviation Authority (CAA) can respond to breaches of CAA rules.
- Privacy commissioner can address drone privacy issues.

Effectiveness and efficiency:

- ✗ Enforcement is difficult.
- ✗ Bylaw is unclear.

Effectiveness and efficiency:

- ✗ Enforcement is difficult.
- ✓ Bylaw more certain.
- ✓ Bylaw enables enforcement of guidelines/code of conduct.

Effectiveness and efficiency:

- ✗ Enforcement is difficult
- ✗ Damage, nuisance, and misuse of public places unaddressed.

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.

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.

Bill of Rights implications:

- Criteria not applicable for non-bylaw option.

Fit for future:

- ✗ Bylaw is unclear.

Fit for future:

- ✓ Bylaw more certain and explicitly addresses growing issue of drones in public places.

Fit for future:

- ✗ Regulatory gap for damage, nuisance, and misuse of public places.

Māori impact/risk:

- No specific implications for Māori.

Māori impact/risk:

- No specific implications for Māori.

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:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 12, 13.
- 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.caa.govt.nz
- Rules and guidelines for flying UAVs and drones, www.aucklandcouncil.govt.nz

DRAFT – NOT COUNCIL POLICY

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.

SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:

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

<p>Option 1: Status quo - Retain Bylaw</p> <ul style="list-style-type: none"> 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. Legacy bylaw clauses require barbed wire and electric fences to meet minimum standards or be approved by council. Council responds to complaints on a reactive basis. 	<p>Option 2: (Recommended) Amend bylaw to better reflect issues</p> <ul style="list-style-type: none"> 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. Legacy bylaw clauses deleted. Council responds to complaints on a reactive basis. 	<p>Option 3: Revoke Bylaw – Rely on existing regulations</p> <ul style="list-style-type: none"> Bylaw and legacy bylaws deleted. Council can use Local Government Act 2002 for fences involved in a criminal offence, are intimidating or intended to injure. Police use Summary Offences Act 1981 for fences causing safety issues. Council use Fencing Act 1978 for court - ordered removal of an encroaching fence. Council responds to complaints on a reactive basis.
<p>Effectiveness and efficiency:</p> <ul style="list-style-type: none"> ✓ 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. 	<p>Effectiveness and efficiency:</p> <ul style="list-style-type: none"> ✓ Enables Council enforcement, including powers to remove a fence and recover costs. ✓ Bylaw better reflects the issues. ✓ Removes inconsistent bylaws. 	<p>Effectiveness and efficiency:</p> <ul style="list-style-type: none"> ✗ 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.
<p>Bill of Rights implications:</p> <ul style="list-style-type: none"> ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act 1990. 	<p>Bill of Rights implications:</p> <ul style="list-style-type: none"> ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act 1990. 	<p>Bill of Rights implications:</p> <ul style="list-style-type: none"> - Criteria not applicable for non-bylaw option.
<p>Fit for future:</p> <ul style="list-style-type: none"> ✗ Bylaw does not clearly reflect the issues and legacy bylaw clauses create confusion. 	<p>Fit for future:</p> <ul style="list-style-type: none"> ✓ Bylaw better reflects the issues. 	<p>Fit for future:</p> <ul style="list-style-type: none"> ✗ Does not clearly reflect the issues, and limited scope for enforcement.
<p>Māori impact/risk:</p> <ul style="list-style-type: none"> ✓ No specific impacts for Māori. 	<p>Māori impact/risk:</p> <ul style="list-style-type: none"> ✓ No specific impacts for Māori. 	<p>Māori impact/risk:</p> <ul style="list-style-type: none"> ✓ 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:

- Statement of Proposal – Review of Public Places / Safety and Nuisance Bylaws December 2012 pp 50, 51.
- Public Safety and Nuisance Bylaw Review Findings Report 2017 pp 78, 79.
- Local Government Act 2002 s145, s146; Health Act 1956 s64, s65.

DRAFT- NOT COUNCIL POLICY

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.

Is the bylaw clearly written? ✗ No. It duplicates and conflicts provisions in the Psychoactive Substances Act 2013.

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

Bylaw fit 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.

SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:

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**Option 1: Status quo – Retain Bylaw**

- Bylaw prohibits people from using a public place to consume, inject or inhale or distribute or offer for sale any mind-altering substance.
- Bylaw not enforced. Complaints about immediate danger or harm are referred to the Police.

Option 2: (RECOMMENDED) Revoke Bylaw clause and rely on Psychoactive Substances Act 2013

- Delete Bylaw clause.
- Police use powers under Psychoactive Substances Act 2013 for possession, distribution or offering to sell all psychoactive substances in a public place.
- Police use Summary Offences Act 1981 to address offensive and disorderly behaviour, obstruction and intimidation.

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:

- ✗ No. Duplicates and conflicts with provisions in the Psychoactive Substances Act 2013.

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

DRAFT – NOT COUNCIL POLICY

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:
 - 456 incidents of nuisance begging activities occurred in March 2018, compared to 277 in March 2017.
 - 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.

BYLAW EVALUATION

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.

- Lifewise research shows that the begging community is not homogeneous. Long established “streeties” adhere to enforcement officers’ advice and take steps to educate new arrivals on street culture and expected behavioural norms. Research also shows people engaged in transient begging activities in the CBD are less likely to conform to the “street code” or the expectations of compliance staff. They are referred to as “weekend warriors” and can be unpredictable, chaotic and vulnerable. Young people are likely to appear in this group. Those in this group overwhelmingly struggle with serious addiction and mental health problems and face abusive or difficult home circumstances.

Bylaw clearly written? ✘ No. Bylaw lacks clarity because it can be perceived as prohibiting all forms of begging activities and does not define subjective terms such as “intimidation” or “nuisance”.

Public awareness of bylaw? ✔ Public awareness of the bylaw is likely to be high.

Bylaw fit for the future? ✘ No. Bylaw lacks clarity.

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 not the most appropriate way to address begging activities that intimidate or cause a nuisance now or in the future. Adequate regulatory and non-regulatory approaches exist to address the issue. The Bylaw is not the most appropriate form of bylaw because it is not clearly written.
 The current Bylaw does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act 1990.

OPTIONS

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.

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.

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:

- 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.

Effectiveness/Efficiency:

- Bylaw is a positive catalyst to use educational rapport with people who undertake begging activities to address nuisance behaviour.
- ✔ Bylaw includes “obstructions” and defines “nuisance” and “intimidation” missing from

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

<ul style="list-style-type: none"> ✗ Bylaw does not include “obstructions”. 	Option 1.	vulnerable people and instead focuses on the behaviour expected from every Aucklander.
<p>Bill of Rights implications:</p> <ul style="list-style-type: none"> ✓ Bylaw does not give rise to implications and is not inconsistent with New Zealand Bill of Rights Act 1990. 	<p>Bill of Rights implications:</p> <ul style="list-style-type: none"> ✓ Bylaw does not give rise to implications and is not inconsistent with New Zealand Bill of Rights Act 1990. 	<p>Bill of Rights implications:</p> <ul style="list-style-type: none"> - Criteria not applicable for non-bylaw option.
<p>Fit for future:</p> <ul style="list-style-type: none"> - Bylaw is a positive catalyst for a behavioural change from aggressive to passive begging activities but is not clearly written. 	<p>Fit for future:</p> <ul style="list-style-type: none"> - Bylaw is a positive catalyst for a behavioural change from aggressive to passive begging activities and is more clearly written. 	<p>Fit for future:</p> <ul style="list-style-type: none"> ✓ 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.
<p>Māori impact/risk:</p> <ul style="list-style-type: none"> ✗ Bylaw has potential impact on people who undertake begging activities, rough sleepers and homeless people who are more likely to be Māori. 	<p>Māori impact/risk:</p> <ul style="list-style-type: none"> ✗ Bylaw has potential impact on people who undertake begging activities, rough sleepers and homeless people who are more likely to be Māori. 	<p>Māori impact/risk:</p> <ul style="list-style-type: none"> - 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.
- Statement of Proposal - Review of Public Places / Safety and Nuisance Bylaws December 2012 pp 13, 50.
- Review Findings Report 2017 pp 22, 23, 26, 27, 28, 30, 31, 32, 33, 38, 41.
- Auckland Council Bylaw Review 2017 - Martin Jenkins, pp 6.
- Public Safety and Nuisance Review 2017 - Colmar Brunton, pp 1, 11.
- City Centre Public Amenities Project: A Case for Public Amenities as Critical Social and Cultural infrastructure 2018, pp 6, 7, 17.

DRAFT – NOT COUNCIL POLICY

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.

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.

OUTCOME SOUGHT IN 2018

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

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.

- The Unitary Plan is used for third party advertising (billboards), signs erected as part of a comprehensive development or redevelopment and those within a scheduled historic heritage place rather than smaller scale/site specific signage. However, it addresses amenity rather than safety and nuisance issues, and changes can take a long time to implement.

Bylaw effective / efficient? ✘ 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.

Bylaw clearly written? ✘ No. There are too many different issues captured in one clause.

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

Bylaw fit for the future? ✘ No. The Bylaw is not used; it duplicates existing regulations and 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.

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:

- ✘ Summary Offences Act 1981 used to address graffiti.
- ✘ Duplicates provisions in Signage Bylaw 2015.

Effectiveness and efficiency:

- ✓ Reflects current practice.
- ✓ Removes duplication/confusion between bylaws.

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:

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

Fit for future:

- ✘ The Bylaw is not used, duplicates existing regulations, and is not clearly written.

Fit for future:

- ✓ Enables enforcement action if required, removes unnecessary bylaw regulations.

Māori impact/risk:

- ✓ There are no specific impacts for Māori.

Māori impact/risk:

- ✓ 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:

- Statement of Proposal – Review of Public Places / Safety and Nuisance Bylaws December 2012 pp 12,18,31,51.
- Statement of Proposal – Signage Bylaw 2015 pp 31.
- Public Safety and Nuisance Bylaw Review Findings Report 2017 pp 15, 84, 85, 86, 90, 91, 92.

DRAFT - NOT COUNCIL POLICY

BYLAW CLAUSE 6(2)(b) – Prohibits fires in public places, except in an approved appliance, facility or site

STATUTORY OBLIGATIONS/POWERS

- 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.

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?

- ✓ 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.

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.

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

<p>Option 1: Status quo – Retain bylaw</p> <ul style="list-style-type: none"> 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) Bylaw aims to address safety, nuisance and misuse of public places issues. Complaints addressed using bylaw, Unitary Plan air quality provisions, FENZ, or Police. 	<p>Option 2: (RECOMMENDED) Amend bylaw for certainty and validity</p> <ul style="list-style-type: none"> 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. Bylaw aims and implementation same as Option 1. 	<p>Option 3: Revoke Bylaw - Rely on existing provisions</p> <ul style="list-style-type: none"> Bylaw clause deleted. Outdoor fires allowed provided they do not cause air quality or safety issues. Complaints addressed using Unitary Plan air quality provisions, FENZ, or Police.
<p>Effectiveness and efficiency:</p> <ul style="list-style-type: none"> ✓ Bylaw helps to manage the use of public places (e.g. regional parks). ✗ Bylaw lacks clarity. ✓ Bylaw regulates outdoor fires until FENZ regulations made (if any). 	<p>Effectiveness and efficiency:</p> <ul style="list-style-type: none"> ✓ Bylaw helps to manage the use of public places (e.g. regional parks). ✓ Bylaw clearer and worded to ensure no inconsistency with any future FENZ regulations. 	<p>Effectiveness and efficiency:</p> <ul style="list-style-type: none"> ✗ No provision regulating use of fires in public places, only effects of fires. ✗ Does not address nuisance and use of public places issues.
<p>Bill of Rights implications:</p> <ul style="list-style-type: none"> ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990. 	<p>Bill of Rights implications:</p> <ul style="list-style-type: none"> ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990. 	<p>Bill of Rights implications:</p> <ul style="list-style-type: none"> - Criteria not applicable for non-bylaw options.
<p>Fit for the future:</p> <ul style="list-style-type: none"> ✗ Bylaw lacks clarity. 	<p>Fit for the future:</p> <ul style="list-style-type: none"> ✓ Bylaw more certain and valid. 	<p>Fit for the future:</p> <ul style="list-style-type: none"> ✗ Does not address nuisance and use of public places issues.
<p>Māori impact/risk:</p> <ul style="list-style-type: none"> Approval can be sought to light a fire in a public place except in an appliance designed for outdoor cooking e.g. hangi. 	<p>Māori impact/risk:</p> <ul style="list-style-type: none"> Approval can be sought to light a fire in a public place except in an appliance designed for outdoor cooking e.g. hangi. 	<p>Māori impact/risk:</p> <ul style="list-style-type: none"> Traditional cooking fires allowed provided they do not cause air quality or safety issues.

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:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp. 13.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 94, 95, 96.
- 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.