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

Date: Thursday, 11 July 2019  
Time: 9.30am  
Meeting Room: Room 1, Level 26  
Venue: 135 Albert St  
Auckland

Komiti Whakahaere ā-Ture / Regulatory Committee  
OPEN AGENDA

MEMBERSHIP

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

(Quorum 5 members)  
Ex-officio  
Mayor Hon Phil Goff, CNZM, JP

Andrew Gray  
Governance Advisor

8 July 2019

Contact Telephone: 021583018  
Email andrew.gray@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

**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
At the close of the agenda no apologies had 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, 13 June 2019, 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."
Te take mō te pūrongo

Purpose of the report

1. To hear and determine an objection to the Construction of a Public Stormwater line through 133 & 135 Coronation Road, Hillcrest and 7 Nicholson Place, Hillcrest.

Whakarāpopototanga matua

Executive summary

2. Stormwater from the existing single dwelling located on 129 & 131 Coronation Road discharges to ground and does not comply with Council’s Stormwater Code of Practice as it does not connect to public reticulation available within the immediate vicinity.

3. The owner of 129 – 131 Coronation Road Hillcrest, John McFetridge and Suzanne Sanders, propose to subdivide and develop the site located at 129 to 131 Coronation Road Hillcrest. The property does not currently have a discharge connection to the council public stormwater system. J McFetridge & S Sanders propose a connecting extension from an existing public Council manhole located within 7 Nicholson Place (Lot 16 DP51770) via a new line across 133 & 135 Coronation Road and 7 Nicholson Place to serve their property.

4. MSC Consulting Group Ltd., consultants for J McFetridge & S Sanders, have considered a number of options to service the site. The proposal to connect from the existing stormwater manhole within 7 Nicholson Place is considered to be the only practical route by both the owner’s and Council’s engineers.

5. J McFetridge & S Sanders have obtained approval from M & E Davies owners of 133 Coronation Road (Lot 4 DP50501) and ER & LLD Johnson owners of 135 Coronation Road (Lot 135 DP50501).

6. J McFetridge & S Sanders have not been able to obtain consents from Jingsong (Teresa) Tang and Chun Jin the owners of 7 Nicholson Place. John & Suzanne McFetridge have requested council to exercise its power under section 460 of the Local Government Act 1974 (“the Act”) to enable the work to be carried out. Council has since served Notice under the Act on these neighbours.

7. Craig Horwood of MSC Consulting has extensively consulted with Jingsong (Teresa) Tang and Chun Jin the owners of 7 Nicholson Place without gaining approval.

8. Council has met and consulted with Jingsong (Teresa) Tang and Chun Jin and explained the engineering benefits of the proposed reticulation without facilitating approval.

9. Dave Serjeant an independent Commissioner has also been engaged to mediate with Jingsong (Teresa) Tang and Chun Jin without gaining approval. The mediators report is included with this report. (Attachment D)

10. Section 460 of the Act provides a right to be heard by a committee of Council. The Committee must hear the objection and decide whether or not to endorse the works.
Recommendation/s

That the Regulatory Committee:

a) hear and determine the objections by the owners of 7 Nicholson Place Hillcrest, pursuant to section 460 of the Local Government Act 1974; and

b) subject to the hearing of the objection, resolve under section 460(1) of the Local Government Act 1974 that the proposed stormwater connection route across 133 & 135 Coronation Road and 7 Nicholson Place to service 129 – 131 Coronation Road, is the only practical route as shown on MSC Consulting engineers drawings no. 38481 sheet C100 revision A.

Horopaki Context

11. The owners of 129 – 131 Coronation Road Hillcrest are John McFetridge and Suzanne Sanders (“the Applicant”). The Applicant has applied under section 460 of the Act for the council to determine, that the proposed installation of a stormwater pipe from an existing Council manhole within 7 Nicholson Place across 133 and 135 Coronation Road is the only practical route and available connection to serve 129 – 131 Coronation Road Hillcrest.

12. A locational aerial of the relevant properties and plans of the precise route from the existing is shown in the MSC Consulting engineers drawings no. 38481 sheet C100 revision C, are contained in Attachment B.

13. The Applicant’s consultant MSC Consulting Group have undertaken a stormwater network analysis to confirm downstream capacity to receive the stormwater discharge from the proposed development as presented in Attachment C.

14. The Applicant lodged an Engineering Approval application (reference ENG60304410) on 18 July 2017 to undertake the work to install the wastewater line. This has since been approved on 14 August 2017 and provided as Attachment A. While approval was obtained from the property owners of 133 & 135 Coronation Road, no consent was obtained from the owners (Teresa) Jingsong Tang and Chun Jin the owners of 7 Nicholson Place.

15. The ‘Applicant’ and its consultants have consulted with the property’s owners (Teresa) Jingsong Tang and Chun Jin in writing and by phone over a period of 18 months to date in order to obtain their consent to undertake the work. A copy of relevant pertinent communication demonstrates that both (Teresa) Jingsong Tang and Chun Jin have been fully informed of the extent of works and this is provided as Attachment E. The written communication has been sent to the address listed for the respective owners as well as email communication. The ‘Applicant’ has not been able to obtain consent.

16. The Council’s senior development engineer has also consulted with these landowners on numerous occasions over the past eighteen months and has not been able to facilitate approval. Attachment D also confirms the attempts by Mr Dave Serjeant, council’s independent facilitator engaged to seek a resolution. However, these attempts were also unsuccessful. Under report of 27 November 2018 the facilitator proposes that the matter be set down for a hearing.

17. The Council is satisfied that the owners (‘Applicant’) of 129 - 131 Coronation Road, have met its expectations of seeking all endeavors to obtain an agreement to install the stormwater line. Under letter of 28 February 2019 Council formally notified Jingsong (Teresa) Tang (7 Nicholson Place) of the intention to construct the stormwater line under section 460 of the Act. Attachment F contains this notice to the addresses recorded for these owners.
18. The approved stormwater reticulation provides for stormwater connections for 133 and 135 Coronation Road which is a significant improvement on the current situation as these sites currently discharge onto 7 Nicholson Place the property of (Teresa) Jingsong Tang and Chun Jin. Attachment B provides an overview outline of the proposed upgrade works.

19. Craig Horwood (MSC Consultant chartered professional engineer) has continued to communicate with (Teresa) Jingsong Tang and Chun Jin following notification of 28 February 2019 without gaining consent for these works as provided in Attachment E. Irrespective of this the matter needs to be determined by council as the written approvals have not been obtained. Notice of this hearing has been provided to (Teresa) Jingsong Tang and Chun Jin and they retain the right to be heard.

Tātaritanga me ngā tohutohu

Analysis and advice

20. Currently the sites at 129 to 131, 133 & 135 Coronation Road discharge to ground and 133 & 135 Coronation Road discharge onto 7 Nicholson Place via underground drain coils as per photos included with Attachment E.

21. The proposed stormwater discharge connection will provide for discharge connections from 133 & 135 Coronation Road and provide a significant improvement of stormwater management in the immediate vicinity of the surrounding sites.

22. The existing stormwater manhole within 7 Nicholson Place and the associated downstream reticulation has the capacity to receive discharge from the proposed development.

23. The existing manhole is to be upgraded to current standards thereby further improving the current conditions.

24. The Craig Horwood (Chartered Professional Engineer) of MSC Consultants “Stormwater Networks Capacity Analysis” report dated 27 September 2018 reference 38481C sets out the design consideration for the required stormwater reticulation Attachment C.

25. The only other possible option was to connect to public reticulation via a manhole within 137 Coronation Road. This was not considered given the existing manhole with 7 Nicholson Place was not to current engineering standards and the location of two manhole within close proximity is not sound practice.

26. MSC Consulting and council’s engineer therefore consider that the connection to the manhole within 7 Nicholson Place to be the only practical route. A methodology has been presented as the least intrusive for the stormwater connection.

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera

Council group impacts and views

27. Within the framework of the Regulatory Committee’s Terms of Reference from the Governing Body, the Regulatory Committee has the responsibility for “hearing and determining applications for private drainage works on private land under the Local Government Act 1974. This delegation cannot be sub-delegated”. Copy of Section 460 of the 1974 Act is provided as Attachment F.

28. At the hearing, both the applicant and the objectors can present their evidence in support of their positions. After hearing all the evidence and the relevant information, the Regulatory Committee then has to make a decision. There is no right of appeal of the decision of the Regulatory Committee.
Local impacts and local board views

29. The Local Board is not advised of service connection requests under the Act. Further, the determination of this objection requires no consultation beyond the owners Chun Jin and (Teresa) Jingsong Tang of 7 Nicholson Place.

Māori impact statement

30. Under section 460 of the Act, Iwi are not considered a relevant affected party unless they are land owners through which a proposed drain is to be aligned. Council staff are not aware of any matters pertinent to the site that may be of interest to Māori. There are no sites or places of significance to Mana Whenua recorded in the Unitary plan for the site, along the route or nearby.

Financial implications

31. All costs for this process and hearing are to be met by the owners of 129 – 131 Coronation Road Hillcrest.

Risks and mitigations

32. The proposed reticulation will significantly improve the upstream stormwater management and impact on downstream properties as reported by the objecting party.

Next steps

33. The installation of the public stormwater reticulation will be undertaken by Council upon the Hearing approval of the proposed works.

Attachments

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Signatories

Author: Andrew Gray - Governance Advisor
Authoriser: Craig Hobbs – Director Regulatory Services
ATTACHMENT A
14th August 2017

S Saumsore & J McFetridge Partnership
MSC Consulting Group Ltd
P O Box 33426
Takapuna
AUCKLAND 0740

Attention: Craig Horwood

Dear Craig

ENGINEERING APPROVAL – ENG60304410 for public stormwater extension and connection at 129–131 Coronation Road Hillcrest

This Engineering Approval is limited to the public stormwater extension works. The application for Engineering Approval has been reviewed and appears to generally meet the engineering standards of Council. On that basis (refer also 1.2.2) engineering works may proceed in accordance with the approved annotated MSC drawings no: 38481 sheets no. C100 revision A inclusive and the following conditions:


1.1 Prior to commencing work you must obtain any other consents required to be issued under the Resource Management Act 1991 or Building Act 2004, which relate to the works approved by this Engineering Approval. The issue of this Engineering Approval shall not of itself relieve the principal and/ or holder of this Engineering Approval of any duty or responsibility under any other Act relating to or affecting the proposed works.

Works also requiring a Building Consent will include retaining walls, private drainage, and buildings exceeding 10m² in area.

1.2 Standards, Certificate & Site Inspections

1.2.1 Comply with:
- Infrastructure Design Standards Issue 10 (‘IDS’) – January 2009
- Development Engineering As-built requirements Version 1.2 (‘DEAR’) – September 2012
- Quality Assurance Manual (‘QAM’) Version 1.0 – April 2012
- Land Development and Subdivision Infrastructure NZS 4404:2010
- Auckland Council Code of Practice for Land Development and Subdivision (CoP):
  - Section 2 Earthworks and Geotechnical Requirements – September 2013
  - (Section 3) Auckland Transport Code of Practice 2013 (ATCOP) – September 2013
  - Chapter 4 – Stormwater Version 2 – November 2016
  - Sections 5 & 6 Water and Wastewater Code of Practice for Land Development and Subdivision Version 1.5 – May 2015

And noting also the principles of IDS 1.6.1

Refer 3.2 in respect of ATCOP. IDS Section 4 still has application for kerb discharges & Op & Mice manuals.

The CoP has precedence over IDS sections 2 – 6 unless advised in writing to the contrary. IDS Section 1 still applies.

1.2.2 If requested in writing, provide a design certificate in the form of Schedule 1A of NZS 4404 for all or any part of the works.

On completion of engineering works, provide a “Statement of Certification: Engineering Approval” and a “Schedule of Vested Assets” and, where applicable, a Schedule of Abandoned Assets. It is important that the works in all their details meet or exceed the standards of Council and Council rely on the Statement of Certification in that respect. Where there has been correspondence allowing an agreed variation to the standards for any particular item of work, the Statement of Certification
should be tagged accordingly. Council reserve the right not to rely on a Statement of Certification and require further audit and/or remediation and on satisfactory completion a replacement Statement of Certification.

1.2.3 Attend site to ensure that all works are constructed in accordance with the approved drawings and amendments thereto; QAM guidelines, the Construction Quality Plan and the IPENZ construction monitoring service level nominated therein, and sound engineering practice. To ensure that outcomes implicit in QAM protocols are achieved, you must, as the certifying consultant, hold authority to direct and control the contractor constructing the approved works. Council may therefore require evidence that you have authority to act as Engineer to the contract as defined in NZS3610, or that equivalent authority is held or will be held.

1.2.4 In regard to records of Works in Progress, digital images shall be made and included in the completion documentation as required by 9.1 in the Quality Assurance Manual. Please note image requirements associated with stormwater ponds. Images shall be dated and the JPEG file name shall indicate the claimage or lot or other suitable asset identification.

1.3 No lime rock or cement stripings may be incorporated in any of the approved engineering works.

1.4 All earthworks activity on the subject site shall comply with the New Zealand Standard 6803:1999 for Acoustics – Construction Noise at all times.

1.5 Any damage to existing roadways that is caused by the importing of materials or machinery or any other mechanism due to the action of the owner’s representatives onto or off the site shall be repaired at all costs to the owner.

1.6 ADVICE NOTE: In regard to compliance with The Health and Safety in Employment Act 1992, The Construction Act and other appropriate legislation, hazard elimination and isolation procedures shall be in place for the construction period. Particular care shall be taken to ensure that all silt ponds, or other hazardous areas or works are adequately fenced and signposted, warning the public of the potential hazard.

1.7 Any works or access requirements which will affect adjacent neighbouring properties, including Council owned properties i.e. parks, reserves and accessways shall have the owners written consent before works commence. The landowner approval of J Tang & C Jin of 7 Nicholson Place (Lot 16 DP 51776) remains outstanding.

1.8 Bonding Arrangements. The General Lot Performance Bond is non-specific and may be used by Council to complete any outstanding or maintenance works. Council Officers in conjunction with the Consultant will re-inspect the Subdivision at the end of the Maintenance Period, to identify any outstanding items.

1.9 Submit as-built plans in accordance with the Auckland Council DEAR for stormwater retubulation. One set of A3 size prints is required as part of the QAM documentation. These plans are also to be exported as DWG or DXF format and emailed to the responsible Development Engineer. A pdf file is also required.

Note that As Built for every new or altered lot connection ("Point of Supply" in Watercare terminology) shall be shown.

Provide a preliminary status print of the As Built drawings at the time of the As Built inspection. The plan must include lot numbers and manhole nomenclature. Confirmation is to be provided by the Land Surveyor that the retubulation suits any related drainage easements.

As Built information for stormwater quality ponds, pump stations and pressure reducing valves shall include an Operation & Maintenance Manual. If part of a subdivisional work, that manual shall include a copy of the approved survey plan which shows the lot on which the device is sited. The draft manual shall be sent to the attention of the Subdivision Engineer.

This office will be responsible for forwarding As Built information and manuals concerning wastewater or water supply services to Watercare Services Ltd.

1.10 Notwithstanding that variations from the approved drawings may be necessary as site requirements become clearer, variations will not be permitted without prior liaison with and approval by, the Council.
1.11 Inspections
1.11.1 Please contact a Subdivision Engineer (SE) or Development Engineer (DE), Takapuna Service Centre so that suitable arrangements can be made for inspections required by the QAM documentation.

You would be advised in writing of any reviewed protocols that may apply in respect of the Watercare (WSL) assets or assets which are the responsibility of Auckland Transport. All WSL forms are available at their website www.watercare.co.nz

In respect of the pre-construction meeting checklist, please also note that WSL forms Pre-construction meeting wastewater system and Pre-construction meeting water system forms must be emailed to inspections@water.co.nz ahead of the preconstruction meeting.

1.11.2 At the pre-construction meeting, and throughout the construction period, the Developer’s Representative and/or the Contractor shall have, on site, copies of the following documents:

- The approved Engineering Plans, Specifications and this Approval Letter, together with any approved Amended Plans and the relevant Approval Letter(s);
- The site specific Health and Safety Plan;
- The Signed Consent(s) to Enter;
- The relevant Resource or Subdivision Consent (and all conditions attached thereto);
- Copies of all Auckland Council Consents necessary for the works;

1.11.3 Unless you advise of different arrangements, which are not objected to by the DE, your office must make the risk assessment and authorise any entry into manholes by council staff. OSH and Council recognise AS/NZS 2865:2001 “Safe working in a confined space” as the recommended document for establishing good systems and practices.

ADVICE NOTE: It is recommended the contractor and/or Consultant Engineer acting for the Consent Holders, to have received NZQA recognised training for safe working in confined spaces.

Any reference to Development Engineer (DE) also means Subdivision Engineer. Council may periodically raise invoices to recover costs.

Complete and submit QAM documentation prior to the application for ‘Engineering Approval Completion Certificate’. If further data and/or field test results are deemed necessary, so that the Council is able to ascertain that all subdivision works have been completed to the appropriate standards and specification, and in accordance with sound engineering practice, these requirements will be advised in writing.

Advice Note: In the case of staged project works which require an asset to be commissioned well ahead of the balance of the project, a Statement of Certification: Engineering Approval and DEAR compliant As Built records must be provided at the time of commissioning.

2. Geotechnical

2.1 Erosion and Sediment Control, Dust, Mulching

Maintain erosion and sediment control structures regularly during the course of the works.

Any proposals for additional works or new works for areas not already addressed by any approved Erosion and Sediment Control Plan, should be submitted to the Development Engineer for consideration and written approval.

Appropriate measures to control any potential dust nuisance shall be initiated and maintained throughout the course of the construction works. Council reserves the right to stop works in periods of high winds. No burning of any vegetation shall be permitted. Close neighbours shall be informed when mulching is to be undertaken and mulching applicators must take account of wind in determining methodologies and whether mulching activity should be halted until more suitable weather conditions are available.

3. Stormwater Management

3.1 Stormwater Management devices are not included under this Engineering Approval and design shall be presented to Council for review and approval at the Building Consent application stage.
3.2 Connections to live stormwater reticulations shall only be by a Registered Drainer/Contractor acquainted and experienced with the current standards of Auckland Council for public stormwater systems. The Drainer must contact the DE to inspect the proposed connection at least two days of the expected date of connection to any existing reticulation.

3.3 Manhole throats shall be painted blue. Covers shall not be painted.

3.4 CCTV Inspections
Prior to testing of the completed services, lines shall be flushed out. Debris shall not be flushed into any existing downstream reticulation. CCTV inspection shall then be arranged for all new stormwater pipes, any leads outside the served lot, whether public or private. The work will be at the consent holder's cost. Any remedial works that may arise will be the responsibility of the Consent Holder.

The Consultant acting for the consent holder is to sign the final CCTV logs, confirming that the CCTV video has been viewed and the pipeline meets the standards of Council, and forward the DVD and logs to the Development Engineer.

3.5 Any concrete pipelines should be constructed and supervised by personnel who have attended a "Concrete Pipelaying Programme of The Concrete Pipe Assoc. of Australasia". Stormwater connections from outside the lots shall be appropriately sized X class concrete or uPVC (AS/NZS 1280 1990) (SN16 minimum) classification, taken a minimum 1000mm inside the boundary of the lots. Note that Wyes, not Louden Junctions are used for connections to the local public stormwater line. The minimum diameter of a lot connection is 100mm. Endcaps shall be painted blue.

3.6 Provide safety fences at cutfall and similar structures with vertical drops exceeding 1m. Provide safety chains where manhole outlets are 600mm or greater. Where supported by a risk assessment, safety grills shall be installed under covers.

3.7 Any stormwater reticulation which are approved on the annotated plans as "private drain" or "common private drain" will require as easement for the construction and maintenance and replacement of the drains by the landowners jointly or severally responsible.

4. Engineering Approval Lapse Date
This engineering approval lapses two years after the date of this letter, unless works are substantially complete at that time. Council reserves the right to then require design reappraisal in respect of all outstanding works and submission of revised proposals for approval of Council, in terms of the then current Auckland Council Engineering Standards.

Yours sincerely

Cedric Daniel
SENIOR DEVELOPMENT SUBDIVISION ENGINEER

Attachments:
1. Approved Drawings
3. Neighbour approvals
   • 133 Coronation Road – M & E Davies
   • 135 Coronation Road – ER & LL Johnson
Objection to the Construction of a Public Stormwater line through 133 & 135 Coronation Road, Hillcrest and 7 Nicholson Place, Hillcrest

Attachment A

Item 8

Page 20
Objection to the Construction of a Public Stormwater line through 133 & 135 Coronation Road, Hillcrest and 7 Nicholson Place, Hillcrest

Regulatory Committee
11 July 2019

Attachment A

<table>
<thead>
<tr>
<th>Part A (To be completed by applicant)</th>
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<tr>
<td>Applicant(s) Name (Removed for anonymity)</td>
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<tr>
<td>Address of proposed activity</td>
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<tr>
<td>Brief description of proposed activity</td>
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<tr>
<td>Plans references (including Title, Author and date)</td>
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<tr>
<td>Resource Consent(s) being sought (Describe area(s) of non-compliance)</td>
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<tr>
<th>Part B (To be completed by Person(s) and/or Organisation(s) Providing Written Approval)</th>
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<td>First name (in print)</td>
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<tr>
<td>Last name (in print)</td>
</tr>
<tr>
<td>Address of affected property</td>
</tr>
<tr>
<td>Phone</td>
</tr>
</tbody>
</table>
Attachment A

Item 8

Page 2 of 3
Written approval of affected persons

PART A (to be completed by applicant)

Application(s) has/have been made on behalf of the applicant(s) to Auckland Council to propose the construction of a stormwater line through 133 & 135 Coronation Road, Hillcrest and 7 Nicholson Place, Hillcrest.

Brief description of proposed activity:

To lay new stormwater line from rear of 133 Coronation Rd through 133 Coronation Rd and into a rain manifold at 135 Coronation Rd and then connect to existing manifold at rear of 7 Nicholson Place.

Plan reference (including Title, Author and date):

See attached proposed drainage layout plan prepared by MSC Consulting Group Ltd 38481/2 1600 A.

Transcend Convention(s) being sought (describe area(s) of non-compliance):

Engineering Approval for new stormwater line + connection as per attached MSC plan.

PART B (to be completed by Persons and/or Organisations providing written approval)

Full name (in print):

Evel Ralph Johnson

Linda Lillian DeKal Johnson

Address of affected property:

135 Coronation Rd, Hillcrest

Postcode: 0627

Phone: 04 443 6367

Page 1 of 2
Regulatory Committee
11 July 2019

Attachment A

Item 8

Page 2 of 2
Objection to the Construction of a Public Stormwater line through 133 & 135 Coronation Road, Hillcrest and 7 Nicholson Place, Hillcrest
Proposed Stormwater reticulation & manhole upgrade

Site plan showing proposed reticulation providing additional stormwater connections for 133 & 135 Coronation Road. 133 & 135 Coronation Road currently discharge onto 7 Nicholson Place as per photos below.

Proposed Stormwater manhole upgrade
Item 8

Existing stormwater manhole

Discharge from 133 & 135 Coronation Road

Stormwater discharge from 133 & 135 Coronation Road
Council GIS Screen View of Site
27 September 2018

John McFetridge
John.mcfetridge@xtra.co.nz

Dear John,

129-131 Coronation Rd, Hillcrest
Stormwater Network Capacity Analysis

MSC Consulting Group Ltd (MSC) has been engaged to undertake a network capacity analysis for the public stormwater network downstream of the proposed development at 129-131 Coronation Road, Hillcrest to determine the effects of the proposed development with respect to 1) the capacity of the existing SW reticulation and 2) the future development of 7 Nicholson Place.

Introduction

There is an intention to develop 129-131 Coronation Road. The property does not have a connection to the existing public SW system. The intention is to construct a new SW system from the property along the back of 133, 135 and then connect into the existing public SW MH located on the boundary of 7 Nicholson Place.

Engineering Plan Approval (EPA) has been granted by Auckland council for the proposed works. The EPA ENG60304410 is attached under Appendix A.

Contributing Catchment Analysis

Note: The SW analysis is based on the maximum allowable impervious limit of 60% for each individual lot / individual property address allowed under the relevant Auckland Unitary Plan Operative in part zoning rules.

The Auckland Council GIS ("Geomaps") shows a 225mm diameter stormwater located in 137 Coronation Road. This pipe captures stormwater runoff from the road reserve (area approximately 970sqm). The 225mm diameter pipe then continues to run along the northern boundary of 7 Nicholson Place, with connections from 137 Coronation Road (Lot Area: 675sqm), 7 Nicholson Place (Lot Area: 774sqm) and 5 Nicholson Place (Lot Area: 873sqm), before travelling under Nicholson Place.

The total catchment area from the above individual areas is 3,090 sqm. The catchment flow analysis, by the Rational Method, for the above contributing catchment area of 3,090sqm has a flow rate of 55 litres per second (l/s) for the 10yr ARI storm event.

The additional contributing catchment area (under the EPA approval) to the 225mm diameter pipe entering at the SWMH on the boundary of 7 Nicholson Place is 135 Coronation Road (Lot Area 675sqm), 133 Coronation Road (Lot Area 675sqm), 129-131 Coronation Road (Lot Area 1350sqm) is 2,700 sqm. The flow rate is 50 litres per second (l/s) for the 10yr ARI storm event.

Refer to the Contributing Catchment details attached under Appendix B.
Stormwater Calculations

The 225mm diameter pipe that runs under Nicholson Place has been assessed to have a pipe gradient of 15% (or approximately 1 in 6). Using the Colebrook-White equation this pipe at 15% has a capacity of 177 l/s.

The 225mm diameter pipe that runs along the northern boundary of 7 Nicholson Place has a pipe gradient greater than that of the pipe that runs under Nicholson Place so its capacity will be in excess of 177 l/s.

Our calculations show that the existing 225mm diameter pipe has sufficient capacity to accommodate the existing and proposed connections to the reticulation i.e. calculated capacity pipe 177 l/sec, total calculated flow for existing and proposed contributing catchments 105 l/sec.

Refer to the Stormwater Calculations attached under Appendix C.

Conclusions

- The total catchment area from the above individual areas is 3,090 m² which has a flow rate of 55 l/s for the 10yr ARI storm event.
- The additional contributing catchment area is 2,700 m² which has a flow rate of 50 l/s for the 10yr ARI storm event.
- Greater than that of the pipe that runs under Nicholson Place so its capacity will be in excess of 177 l/s.
- The existing 225mm diameter pipe has sufficient capacity to accommodate the existing and proposed connections to the reticulation i.e. pipe capacity 177 l/sec, total calculated flow 105 l/sec.

Please contact us should you require any further information

Yours faithfully

MSC CONSULTING GROUP LTD

Craig Horwood

Director / Civil Manager

Attachments:
Appendix A – Engineering Plan Approval - ENG60304410
Appendix B - Stormwater Catchment Areas / Extents
Appendix C - Stormwater Calculations
Appendix A – Engineering Plan Approval - ENG60304410
14th August 2017

S Saunders & J McFetridge Partnership
MSC Consulting Group Ltd
P O Box 33426
Takapuna
AUCKLAND 0740

Attention: Craig Horwood

Dear Craig

ENGINEERING APPROVAL – ENG60304410 for public stormwater extension and connection at 129 – 131 Coronation Road Hillcrest

This Engineering Approval is limited to the public stormwater extension works. The application for Engineering Approval has been reviewed and appears to generally meet the engineering standards of Council. On that basis (refer also 1.2.2) engineering works may proceed in accordance with the approved annotated MSC drawings no: 38481 sheets no: C100 revision A inclusive and the following conditions:


1.1 Prior to commencing work you must obtain any other consents required to be issued under the Resource Management Act 1991 or Building Act 2004, which relate to the works approved by this Engineering Approval. The issue of this Engineering Approval shall not of itself relieve the principal and/or holder of this Engineering Approval of any duty or responsibility under any other Act relating to or affecting the proposed works.

Works also requiring a Building Consent will include retaining walls, private drainage, and buildings exceeding 10m² in area.

1.2 Standards, Certificates & Site Inspections

1.2.1 Comply with:

Infrastructure Design Standards issue 10 ("IDS")

- Planting and Lawn Works Specification issued by Parks, Sports and Recreation (North) Auckland Council Version 8
- Development Engineering As-built requirements Version 1.2 (DEAR)
- Quality Assurance Manual ("QAM") Version 1.0
- Land Development and Subdivision Infrastructure
- Auckland Council Code of Practice for Land Development and Subdivision (CoP):
  - Section 2 Earthworks and Geotechnical Requirements (Section 3) Auckland Transport Code of Practice 2013 (ATCOP)
  - Chapter 4 – Stormwater Version 2
  - Sections 5 & 6 Water and Wastewater Code of Practice for Land Development and Subdivision Version 1.5

And noting also the principles of IDS 1.6.1

Refer 3.2 in respect of ATCOP. IDS Section 4 still has application for kerb discharges & Op & Mtc manuals.

The CoP has precedence over IDS sections 2 – 6 unless advised in writing to the contrary. IDS Section 1 still applies.

1.2.2 If requested in writing, provide a design certificate in the form of Schedule 1A of NZS 4404 for all or any part of the works.

On completion of engineering works, provide a "Statement of Certification Engineering Approval" and a "Schedule of Abandoned Assets" and, where applicable, a Schedule of Abandoned Assets. It is important that the works in all their details meet or exceed the standards of Council and Council rely on the Statement of Certification in that respect. Where there has been correspondence allowing an agreed variation to the standards for any particular item of work, the Statement of Certification...
should be tagged accordingly. Council reserve the right not to rely on a Statement of Certification and require further audit and/or remediation and on satisfactory completion a replacement Statement of Certification.

1.2.3 Attend site to ensure that all works are constructed in accordance with the approved drawings and amendments thereto; QAM guidelines, the Construction Quality Plan and the IPENZ construction monitoring service level nominated therein, and sound engineering practice.

To ensure that outcomes implicit in QAM protocols are achieved, you must, as the certifying consultant, hold authority to direct and control the contractor constructing the approved works. Council may therefore require evidence that you have authority to act as Engineer to the contract as defined in NZS9910, or that equivalent authority is held or will be held.

1.2.4 In regard to records of Works in Progress, digital images shall be made and included in the completion documentation as required by 9.1 in the Quality Assurance Manual. Please note image requirements associated with stormwater ponds. Images shall be dated and the JPEG file name shall indicate the chainage or lot or other suitable asset identification.

1.3 No lime rock or cement stripings may be incorporated in any of the approved engineering works.

1.4 All earthworks activity on the subject site shall comply with the New Zealand Standard 6803:1996 for Acoustics – Construction Noise at all times.

1.5 Any damage to existing roadways that is caused by the importing of materials or machinery or any other mechanism due to the action of the owner's representatives onto or off the site shall be repaired at all costs to the owner.

1.6 ADVICE NOTE: In regard to compliance with The Health and Safety in Employment Act 1992, The Construction Act and other appropriate legislation, hazard elimination and isolation procedures shall be in place for the construction period. Particular care shall be taken to ensure that all silt ponds, or other hazardous areas or works are adequately fenced and signposted, warning the public of the potential hazard.

1.7 Any works or access requirements which will affect adjacent neighbouring properties, including Council owned properties i.e. parks, reserves and accessways, shall have the owners written consent, before works commence. The landowner approval of J Tang & C Jin of 7 Nicholson Place (Lot 16 DP 51777) remains outstanding.

1.8 Bonding Arrangements. The General Lot Performance Bond is non-specific and may be used by Council to complete any outstanding or maintenance works. Council Officers in conjunction with the Consultant will re-inspect the Subdivision at the end of the Maintenance Period, to identify any outstanding items.

1.9 Submit as-built plans in accordance with the Auckland Council DEAR for stormwater reticulation. One set of A3 size prints is required as part of the QAM documentation. These plans are also to be exported as DWG or DXF format and emailed to the responsible Development Engineer. A pdf file is also required.

Note that As Built for every new or altered lot connection ("Point of Supply") in Watercare terminology shall be shown. Provide a preliminary status print of the As Built drawings at the time of the As Built Inspection. The plan must include lot numbers and manhole nomenclature. Confirmation is to be provided by the Land Surveyor that the reticulation suits any related drainage easements.

As Built information for stormwater quality ponds, pump stations and pressure reducing valves shall include an Operation & Maintenance Manual. If part of a subdividal work, that manual shall include a copy of the approved survey plan which shows the lot on which the device is sited. The draft manual shall be sent to the attention of the Subdivision Engineer.

This office will be responsible for forwarding As Built information and manuals concerning wastewater or water supply services to Watercare Services Ltd.

1.10 Notwithstanding that variations from the approved drawings may be necessary as site requirements become clearer, variations will not be permitted without prior liaison with and approval by the Council.
1.11 Inspections
1.11.1 Please contact a Subdivision Engineer (SE) or Development Engineer (DE), Takapuna Service Centre so that suitable arrangements can be made for inspections required by the QAM documentation.

You would be advised in writing of any reviewed protocols that may apply in respect of the Watercare (WSL) assets or assets which are the responsibility of Auckland Transport. All WSL forms are available at their website www.watercare.co.nz.

In respect of the pre-construction meeting check list, please also note that WSL forms Pre-construction meeting wastewater system and Pre-construction meeting water system forms must be emailed to inspections@watercare.co.nz ahead of the preconstruction meeting.

1.11.2 At the pre-construction meeting, and throughout the construction period, the Developer’s Representative and/or the Contractor shall have, on site, copies of the following documents:

- The approved Engineering Plans, Specifications and the Approval Letter, together with any approved Amended Plans and the relevant Approval Letter(s);
- The site specific Health and Safety Plan;
- The Signed Consent(s) to Enter;
- The relevant Resource or Subdivision Consent (and all conditions attached thereto);
- Copies of all Auckland Council Consents necessary for the works;

1.11.3 Unless you advise of different arrangements, which are not objected to by the DE, your office must make the risk assessment and authorise any entry into manholes by council staff. OSH and Council recognise AS/NZS 2868:2001 “Safe working in a confined space” as the recommended document for establishing good systems and practices.

ADVICE NOTE: It is recommended the contractor and/or Consultant Engineer acting for the Consent Holder, to have received NZQA recognised training for safe working in confined spaces. Any reference to Development Engineer (DE) also means Subdivision Engineer Council may periodically raise invoices to recover costs.

Complete and submit QAM documentation prior to the application for “Engineering Approval Completion Certificate”. If further data and/or field test results are deemed necessary, so that the Council is able to ascertain that all subdivision works have been completed to the appropriate standards and specification, and in accordance with sound engineering practice, these requirements will be advised in writing.

Advice Note: in the case of staged project works which require an asset to be commissioned well ahead of the balance of the project, a Statement of Certification: Engineering Approval and DEAR compliant. As built records must be provided at the time of commissioning.

2. Geotechnical

2.1 Erosion and Sediment Control, Dust, Mulching

Maintain erosion and sediment control structures regularly during the course of the works.

Any proposals for additional works or new works for areas not already addressed by any approved Erosion and Sediment Control Plan, should be submitted to the Development Engineer for consideration and written approval.

Appropriate measures to control any potential dust nuisance shall be initiated and maintained throughout the course of the construction works. Council reserves the right to stop works in periods of high winds. No burning of any vegetation shall be permitted. Close neighbours shall be informed when mulching is to be undertaken and mulching applicators must take account of wind in determining methodologies and whether mulching activity should be halted until more suitable weather conditions are available.

3. Stormwater Management

3.1 Stormwater Management devices are not included under this Engineering Approval and design shall be presented to Council for review and approval at the Building Consent application stage.
3.2 Connections to live stormwater reticulations shall only be by a Registered Drainlayer/Contractor acquainted and experienced with the current standards of Auckland Council for public stormwater systems. The Drainlayer must contact the DE to inspect the proposed connection at least two days of the expected date of connection to any existing reticulation.

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Yours sincerely

Cedric Daniel
SENIOR DEVELOPMENT SUBDIVISION ENGINEER

Attachments:
1. Approved Drawings
3. Neighbour approvals
   * 133 Coronation Road – M & E Davies
   * 135 Coronation Road – ER & LLD Johnson
Item 8

Attachment C
Objection to the Construction of a Public Stormwater line through 133 & 135 Coronation Road, Hillcrest and 7 Nicholson Place, Hillcrest

### Part A (to be completed by applicant)

**Applicant(s) Name:** John McEntire & Suzanne Saunders  
**Address of proposed activity:** 129-131 Coronation Rd, Hillcrest  
**Brief description of proposed activity:** Lay new stormwater line from rear of 129 Coronation Rd through 133 Coronation Rd and into a new manhole at 135 Coronation Rd, then connect to existing manhole at rear of 7 Nicholson Rd.

**Plan references (including Title, Author and Date):** See attached Proposed Drainage Layout Plan prepared by MSC Consulting Group Ltd 38481 C100 A

**Resource Comment(s) being sought (Describe nature of non-compliance):** Engineering approval for new stormwater line and connection as per attached MSC plan.

### Part B (to be completed by persons受影响的 and/or organisations providing written approval)

**Full name:** Elaine Davies  
**Address of affected property:** 135 Coronation Rd, Hillcrest  
**Phone:** 09 314 35804
Objection to the Construction of a Public Stormwater line through 133 & 135 Coronation Road, Hillcrest and 7 Nicholson Place, Hillcrest
Objection to the Construction of a Public Stormwater line through 133 & 135 Coronation Road, Hillcrest and 7 Nicholson Place, Hillcrest
### Attachment C

#### Item 8

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<td><strong>Other relevant information (including title, author and date)</strong></td>
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<td><strong>Details of compliance (describe area(s) of non-compliance)</strong></td>
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| **PART B (to be completed by Persons and/or Organisations Providing Written Approval)** |
| **Full name (in joint names)** | Earl Ralph Johnson |
| **Position** |  |
| **Address of affected property** | 135 Coronation Rd, Hillcrest |
| **Phone** | 09 443 6367 |
Regulatory Committee
11 July 2019

Objection to the Construction of a Public Stormwater line through 133 & 135 Coronation Road, Hillcrest and 7 Nicholson Place, Hillcrest

Attachment C
Item 8

I am the Owner(s)/Occupier(s) of the property.

I have authority to sign on behalf of all the other Owner(s)/Occupier(s) (if any) of the property.

Please note the approval of all the legal owners and the occupier(s) of the affected property will be necessary.

1. If there are any details of the proposal and plans to which you are going written approval.
2. If we have signed with legal agreements, then they need to accompany this form.
3. If we understand that by giving written approval, the Council when considering the application cannot take account of any consent or potential effects of the activity on any other property.

Further, we understood that by any time before the determination of the application, you may give notice in writing to the Council that the approval is withdrawn.

Note: You should only sign below if you fully understand the proposal. If you require the Resource Consent Process to be explained you can contact the Customer Service Team at the Council who can provide you with information.

Signed:

Date: 24 May 2017

Signed:

Date:

Privacy Information:

The information you have provided in this Item is required so that your application can be processed under the RMA, as that statute can be affected by the Council. The information will be stored on a public register, held by the Council. The details may also be made available to the public on the Council's website. These details can be collected to inform the general public and community groups about all consent which have been issued through the Council. If you would like to request access to, or correction of your data, please contact the Council.
Objection to the Construction of a Public Stormwater line through 133 & 135 Coronation Road, Hillcrest and 7 Nicholson Place, Hillcrest
Objection to the Construction of a Public Stormwater line through 133 & 135 Coronation Road, Hillcrest and 7 Nicholson Place, Hillcrest
Appendix C – Stormwater Calculations
### STORMWATER PIPE FLOW CALCULATION

27/09/2018

**Project:** 129-131 Coronation Road, Hillcrest

**By:** TVJ  
**Reference No.:** 8681

**Assumptions:**
- 10% for roof areas
- 5% for paved areas
- 2% for permeable areas
- Design rainfall: 150.8 mm/hr to reflect MPEDs V3 10% AEP (1/10)
- AUP Obj Zone: Residential - Mixed Housing Suburban Zone

#### SW Catchment - Existing

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<th>C No.</th>
<th>Int (mm/hr)</th>
<th>G = 2.8E-3A</th>
<th>Max Flow (Pre-Dev) (L/Sec)</th>
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<td>0.30</td>
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<td>0.0405</td>
<td>0.85</td>
<td>100.8</td>
<td>11.08</td>
<td>Road pavement area estimated using AC CS95</td>
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(49.75% impervious coverage for residential lots)

#### SW Catchment - Future - Based on the Auckland Unitary Plan Operative in Part maximum Impervious limit of 60%

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<th>Area (ha)</th>
<th>C No.</th>
<th>Int (mm/hr)</th>
<th>G = 2.8E-3A</th>
<th>Max Flow (Post-Dev) (L/Sec)</th>
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<td>40.86</td>
<td>#129-131, #733, &amp; #730 Coronation Rd (Inflow)</td>
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<tr>
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<td>100.8</td>
<td>9.08</td>
<td>#129-131, #733, &amp; #730 Coronation Rd (Inflow)</td>
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Max Flow (Post-Dev) (L/Sec) 49.84

Total Max Flow (L/Sec) 104.49

#### Existing 225mm dia. SW Pipe

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<th>Pipe size (mm)</th>
<th>Grade (in.)</th>
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<td>1.5</td>
<td>225</td>
<td>6.57</td>
<td>15.0</td>
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**VELOCITY (m/sec)** 4.46

**CAPACITY (Q = VA)** 177.31  
*i.e. Pipe capacity is ok.*
Regulatory Committee
11 July 2019

IN THE MATTER of the Local Government Act 1974

IN THE MATTER of the proposal to construct a private drain within 7 Nicholson Place, Glenfield

STATEMENT BY DAVID FREDERICK SERJEANT
27 November 2018
1. INTRODUCTION

1.1 My name is David Serjeant. I am a Town Planner and Director of Merestone Limited, an independent planning and resource management consultancy. I hold the qualifications of Bachelor of Town Planning from Auckland University (1979) and Master in Business Studies (Economics) from Massey University (1985). I am a full member of the New Zealand Planning Institute. I am also an MFE accredited Independent Hearings Commissioner.

1.2 In early August 2018 I was appointed by Auckland Council (Council) to facilitate negotiations relating to the construction of a private drain within 7 Nicholson Place, Glenfield to provide for the upgrading of the stormwater network serving other properties in the catchment. These negotiations have not resulted in an agreement between the parties and consequently the matter requires determination by Council pursuant to section 460 of the Local Government Act 1974 (LGA).

2. PROPOSAL AND BACKGROUND

2.1 At the time of my appointment I was provided with details of the proposal. This included the following:


(ii) A Supplementary Engineering Approval ENG60304410 granted by Auckland Council on 29 March 2018.

(iii) Documents detailing the record of communications with the land owners of 7 Nicholson Place and 137 Coronation Road.

(iv) Plans of the existing local stormwater network.

2.2 From the plans at (iv) it is evident that the existing local network has a catchment consisting of approximately 970m² of Coronation Road road reserve, 137 Coronation Road, and 5 and 7 Nicholson Place. This is a catchment with a total area of approximately 3090m². The proposal would add stormwater from 129-131, 133 and 135 Coronation Road, an additional catchment of 2700m².

2.3 The applicant’s are the S Saunders & J McFetridge Partnership, owners of 129-131 Coronation Road. In order to facilitate further development of that property the stormwater network requires upgrading. The proposal is for a new 200mm pipe to
be laid across the rear boundaries of 133 and 135 Coronation Road and then to connect into the existing local stormwater network. This connection could either take place within 7 Nicholson Place or 137 Coronation Road. The Engineering Approvals referred to at (i) and (ii) above provide respectively for these connections.

2.4 The connection to 7 Nicholson Place (as per (i) above) requires a new manhole within 135 Coronation Road from which a short length of pipe would be laid to an existing manhole situated approximately 1m inside the rear boundary of 7 Nicholson Place. The connection to 137 Coronation Road (as per (ii) above) requires the new pipe to extend approximately 1m into the side boundary of 137 Coronation Road at which point it would connect to a new manhole on the existing line coming down from Coronation Road.

2.5 As the engineering approvals demonstrate that Council have determined that the stormwater design is the best practicable option for the proposal, I accept that they are equally acceptable in terms of section 460(1) of the LGA.

2.6 The owners of 133 and 135 Coronation Road have provided written approval to the proposal.

2.7 On the basis of the first approval, the applicant and the Council attempted unsuccessfully to obtain approval from the owners of 7 Nicholson Place (J Tang and C Jin as represented by Theresa Tang). Ms Tang expressed concerns about the capacity of the existing system and the effects of stormwater flows on the future development of their property (email 22 September 2017).

2.8 The focus then shifted to a connection at 137 Coronation Road. On the basis of verbal approval, the Supplementary Engineering Approval was prepared and processed Council (as per (ii) above). Unfortunately, some time in late May 2018 a written note was delivered to the applicants from the owners of 137 Coronation Road withdrawing that approval on the basis of the significant disturbance to his vegetable garden (evident from aerial photos) with the installation of a new manhole. The owner pointed out that an existing connection point was located just over the boundary within 7 Nicholson Place.

2.9 Since that time efforts to gain written approval have focussed on 7 Nicholson Place.

3. COMMUNICATIONS SINCE AUGUST 2018

3.1 Since my engagement in August 2018 I have had the following communications with Ms Tang:
(i) On 27 August I spoke to Ms Tang by phone and introduced myself and my facilitator role in the process. I sought to have an on-site meeting with her to gain a greater understanding of how the stormwater connection might affect her property and what her concerns were. Her response was that she did not want a meeting. She explained to me the concerns she had expressed the previous year about system capacity and effects on her ability to develop her property.

(ii) This phone call was followed up by email, which resulted in a response from Ms Tang detailing her concerns about capacity. In summary, Ms Tang could not accept that a new 200mm pipe with associated stormwater flows could be added into the existing 225mm system without overflows being generated at the manhole on her property.

(iii) In response to her query, the Council (Mr Daniel) provided Ms Tang with a letter confirming that the existing and future development was required to be consistent with Auckland Council Code of Practice for Land Development and Subdivision Chapter 4 – Stormwater November 2015 and the Auckland Council Stormwater Bylaw 2015 (September 7 2018).

(iv) A stormwater capacity analysis prepared by the applicant was also provided demonstrating that the system has the capacity to cope with the existing and proposed flows for the design 10 year ARI storm event. In particular, the 225mm pipe flowing out of the subject manhole on 7 Nicholson Place would still be at approximately 60% capacity during that event (105 litres/sec compared with 177 litres/sec) (4 October 2018).

(v) On 15 October 2018 I again offered to meet with Ms Tang to discuss the report and her concerns (email). Ms Tang replied that she had not read the report and declined a meeting. I understand that Mr Daniel had also sought a meeting with Ms Tang more than once during this period.

(vi) On 25 October Ms Tang responded by email. She raised concerns about two matters. Firstly, she sought a guarantee of no overflows during storm events greater than the 10 year ARI design storm event. Secondly, and related to potential overflows in such events, the poor condition of the existing manhole on her property. Ms Tang included photos of the manhole.

(vii) The Council agreed by email of 1 November 2018 that it would upgrade the manhole on her property as part of the works. Further by email of 5 November
2018 the Council advised that the matter would be proceeding to a hearing pursuant to section 460 of the LGA.

(viii) By email of 5 November 2018 Ms Tang also raised the issue of overland flows being intercepted and by email of 7 November 2018 whether Council would be paying for all such improvements and whether the applicants would “pay a reasonable and sufficient compensation for our risk”.

4. ASSESSMENT AND CONCLUSION

4.1 This matter has been very protracted, first commencing in mid 2017, and running over most of the intervening period. I have successfully conducted several of these matters in the role of an independent facilitator/negotiator. An important first step has always been to have a site meeting with the party from whom agreement is being sought. In my view, this process has been frustrated by the unwillingness of Ms Tang to meet on site, or elsewhere. Site meetings are very useful to be familiar with the physical situation as aerial photography is always limited. A case in point here is the condition of the existing manhole. A site meeting would have identified the condition of the manhole and this matter could have been resolved at an early stage.

4.2 The actual extent of the works within the subject property is important matter in considering best practicable option. In this case, a very small length (~ 2m) of new pipe is necessary, involving minimal works and disruption to the subject property. These works would be conducted from across the boundary at 135 Coronation Road and not involve entry via the 7 Nicholson Place frontage.

4.3 What could potentially involve works entering from the 7 Nicholson Place frontage is the replacement of the manhole, although this has yet to be confirmed. I note that the new manhole within 135 Coronation Road will need to be brought along the route of the new line and it is possible that the replacement manhole could travel the same route.

4.4 In any event, construction must be managed to minimise adverse effects and all such works are subject to restoration conditions for affected properties.

4.5 In relation to the standard of the upgrade proposed I consider that the applicant and Council are not required to design for a storm event in excess of the specified 10 year ARI design storm event. Further, the level of disruption related to the new pipe within the subject property is very much at the lower end of effects and in my view these
effects are mitigated through the replacement of the existing manhole and overland flow management.

4.6 In conclusion, I consider that the upgrading of the new network as proposed, together with the replacement of the existing manhole on 7 Nicholson Place and improved interception of overland flow of the catchment immediately above 7 Nicholson Place will both provide appropriately for further development and result in an overall improvement to stormwater management within the local catchment.

4.7 Consequently, I support a resolution of the Council pursuant to section 460(1) of the LGA to enable this project.

David Serjeant
27 November 2018
From: Cedric Daniel  
Sent: Thursday, 28 September 2017 8:33 AM  
To: teresatangnz@gmail.com  
Subject: Stormwater Works at 129-131 Coronation Road

Hello Teresa

Stormwater Works at 129-131 Coronation Road

Craig Horwood has requested that I communicate with you regarding proposed stormwater works at the above referenced property.

I confirm that I verify that information provided by Craig Horwood of MSC Consulting is correct and can be relied upon as the works are required to comply with Council standards and confirmation of capacity has been assessed to comply with Council’s Stormwater Code of Practice.

Please feel free to contact me in this regard as per contact details below.

Regards

Cedric Daniel | Senior Development Engineer  
Natural Resources and Specialist Input  
Resource Consents  
Ph 09 484 8256 | Extn (43) 8256 | Mobile 021 658 039  
Auckland Council, Level 1, 1 The Strand, Takapuna
From: Cedric Daniel  
Sent: Monday, 2 October 2017 7:55 AM  
To: 'TERESA TANG' <teresatangnz@gmail.com>  
Cc: craig.h@msc.co.nz  
Subject: Stormwater Works at 129-131 Coronation Road

Hello Teresa

Stormwater Works at 129-131 Coronation Road

Without any details of your proposed development I cannot provide definitive statement of compliance or approval other than the following.

The system proposed will be public reticulation and any proposed development of your site will be permitted to connect to this reticulation subject to the same criteria set for the proposed works at 129 – 131 Coronation Road.

The Auckland Council Stormwater Code of Practice provides the guidelines and criteria for any proposed works and I attach the latest version for your referral.

This email is a formal stamen but I am prepared to provide a statement of this nature on a formal letterhead if that is what you require

Regards

Cedric Daniel | Senior Development Engineer  
Natural Resources and Specialist Input  
Resource Consents  
Ph 09 484 8256 | Extn (43) 8256 | Mobile 021 658 039  
Auckland Council, Level 1, 1 The Strand, Takapuna
From: Cedric Daniel  
Sent: Friday, 19 January 2018 8:51 AM  
To: "TERESA TANG"<teresatangnz@gmail.com>  
Subject: Stormwater Works at 129-131 Coronation Road  
Importance: High

Hello Teresa

Stormwater Works at 129-131 Coronation Road

I would like to meet with you to discuss these proposed works and will send a meeting invitation via separate email and request that you either confirm attendance or propose alternate time options that suit you.

I am proposing meeting at Council offices at 1 The Strand Takapuna so that I can extract any documentation information you may request that is available.

Could you please respond to my meeting request in this regard.

Please advise a suitable telephone number that I can call you on.

My contact details as per details below.

Kind regards

Cedric Daniel  |  Senior Development Engineer  
Natural Resources and Specialist Input  
Resource Consents  
Ph 09 484 8256  |  Extn (43) 8256  |  Mobile 021 658 039  
Auckland Council, Level 1, 1 The Strand, Takapuna

From: Cedric Daniel  
Sent: Friday, 7 September 2018 7:11 AM  
To: teresatangnz@gmail.com  
Cc: Dave Serjeant <dave@merestone.co.nz>  
Subject: 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Hello Teresa

129 - 131 Coronation Road Hillcrest - Stormwater Connection

Attached please find a copy of a letter posted to you this morning regarding the proposed stormwater connection.
I have copied this letter to Dave Serjeant who has been engaged as an independent mediator.
Please confirm receipt of this letter?

Your faithfully

Cedric Daniel  
Senior Development Engineer  
Regulatory Engineering  
Ph 09 484 8256  |  Extn (43) 8256  |  Mobile 021 658 039  
Auckland Council, Level 1, 1 The Strand, Takapuna
7 September 2018

Teresa Tang
7 Nicholson Place
Hillcrest
AUCKLAND 0727

Attention: Teresa Tang

Dear Teresa,

129-131 Coronation Road, Hillcrest: Stormwater Connection

I am writing to you in relation to the proposal to connect a pipe taking stormwater from 129-131 Coronation Road through 133 and 135 Coronation Road connecting to the stormwater manhole within your property at 7 Nicholson Place.

I understand that you continue to have concerns about the potential for adverse stormwater effects, and more generally the connection of this pipe within your property, on the future enjoyment and development of your property.

Mr David Serjeant, the planning consultant and independent mediator, that Council has engaged to work with the applicant and you on this matter has requested that I formally set out the rules and regulations that control stormwater discharges in Auckland.

Stormwater is controlled by the Auckland Unitary Plan, the Auckland Council Code of Practice for Land Development and Subdivision Chapter 4 – Stormwater November 2015 (Code of Practice), and the Auckland Council Stormwater Bylaw 2015.

For existing and future development of land at Coronation Road, the principle control is found within the Code of Practice. The Code of Practice addresses the piping of stormwater from impermeable areas within development to the public network. This would apply to all existing and future development at 129 – 131, 133, 135 and 137 Coronation Road.

Increased stormwater from these properties would be anticipated to flow to the public system within the cul-de-sac in Nicholson Place. Your concern about how this might affect your property at 7 Nicholson Place is relevant in this respect.

The Code of Practice has specific requirements about the development standards for pipework and the capacity of the stormwater infrastructure taking into account future requirements. In relation to increased impermeable areas (roof areas or driveways) within the above properties, the Auckland Unitary Plan has maximum permeable area standards (in this case 40% of the site area). A resource consent is required to exceed this limit. In circumstances where the additional stormwater flows are in excess of the system capacity, the developer is required to attenuate (i.e. store and slow down) the flow of water during high rainfall events by way of on-site storage.

Notwithstanding the Auckland Unitary Plan rules, the Code of Practice also has requirements in relation to on-site mitigation of stormwater. In circumstances where the existing system capacity was insufficient, the Code of Practice requires an on-site mitigation device to be installed. All such devices are subject to specific design and approval by the Council.

The development of the above property does not have any limiting effect on the development of your property in relation to stormwater drainage. Should you wish to develop your own property in
the future, the same rules will apply in relation to maximum permeable area and the requirement to mitigate stormwater flows.

As has been advised before, the works connecting the proposed stormwater line into the manhole situated close to the northern boundary of your property will largely be undertaken from 135 Coronation Road. Any disruption to your property would be minor and remediated immediately at the end of the works.

Whilst we confirm our appreciation for your concerns you are assured that the works will be undertaken to public standards and vested in Council with Council being responsible for future ongoing maintenance of the line.

I have copied this letter to Mr Serjeant by email. Could you please contact him at your earliest convenience as to your position on the request for the pipeline connection or any ongoing concerns.

Should you wish to contact me directly my details are as follows:
Mobile: 021 638 039,
or email: cedric.daniel@aucklandcouncil.govt.nz

Yours sincerely

Cedric Daniel
SENIOR DEVELOPMENT ENGINEER
REGULATORY ENGINEERING

cc DAVE SERJEANT
From: TERESA TANG <teresatangnz@gmail.com>
Sent: Tuesday, 11 September 2018 8:43 PM
To: Cedric Daniel <Cedric.Daniel@aucklandcouncil.govt.nz>
Cc: dave@merestone.co.nz; teresatangnz@gmail.com
Subject: Re: 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Dear Cedric,

Thanks for your email and your posted letter. But you have not answered my query.

As I have mentioned in my previous emails with Craig, and Dave and you, the stormwater flow Ex. pipe of the manhole on my northern boundary is 225mm, it has already been connected in a identical size-225mm pipe from 137 Coronation Road, which is carrying the stormwater from the impermeable areas from Coronation road and goes to the manhole directly without any mitigation.
If add an additional 200mm size pipe from 129-131 Coronation road, the designed inflow is 1.79 times greater than the outflow, and the stormwater will overflow from the manhole to my property during high rainfall events. That will be a disaster, and I would not want to see it happened.

Since none of you have answered the above query, I assume you have no answer. Under this circumstance, I will not waste any more of my time discussing this, as I cannot agree to it.

Thanks & Regards

Teresa
From: Cedric Daniel
Sent: Thursday, 4 October 2018 7:19 AM
To: TERESA TANG <teresatangnz@gmail.com>
Cc: dave@merestone.co.nz; Cedric.Daniel@auburncouncil.govt.nz; John McFetridge (john.elly.mcFetridge@xtra.co.nz) <john.elly.mcFetridge@xtra.co.nz>
Subject: ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Hello Teresa

ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Further to your email of Tuesday, 11 September 2018 8:43 PM and to address your concerns and query regarding the capacity of the system to receive additional discharge connection from the proposed development at 129 – 131 Coronation Road Council has requested that the applicant provide a stormwater capacity report by a chartered professional engineer.


The report confirms that the Public Stormwater Reticulation System has more than adequate capacity to receive the additional discharge from the proposed development.

This report therefore confirms that your concerns have been addressed and I request that you meet with Dave Serjeant the mediator that has been appointed to facilitate obtaining your approval for this necessary connection for the proposed development.

Please feel free to contact me to clarify any matters and I am available to meet with you to discuss the process going forward.

Regards

Cedric Daniel
Senior Development Engineer
Regulatory Engineering
Ph 09 484 8256 | Extn (43) 8256 | Mobile 021 658 039
Auckland Council, Level 1, 1 The Strand, Takapuna
Hello Teresa

129 Coronation Road Hillcrest - Stormwater Capacity Concerns

Meeting to discuss your concerns regarding the proposed stormwater connection across your property.

Please confirm or propose alternate time options.

I wish to discuss your concerns and explain the process going forward.

I would like to encourage you to meet to explain the proposed works and the process option going forward.

I understand that Dave Serjeant has been finding it difficult to contact you in this regard

Regards

Cedric Daniel
Senior Development Engineer
Regulatory Engineering
Ph 09 484 8256 | Extn (43) 8256 | Mobile 021 658 039
Auckland Council, Level 1, 1 The Strand, Takapuna
129 Coronation Road Hillcrest - Stormwater Capacity Concerns

I have sent a Meeting Invitation via separate email to discuss your concerns regarding the proposed stormwater connection across your property.

Attached is a copy of that invitation to meet on Thursday 1 November 2018 at 10:00am at Council offices in Room 4 at 1 The Strand Takapuna

Please confirm your attendance or propose alternate time options.

I wish to discuss your concerns and explain the process going forward.

I would like to encourage you to meet to explain the proposed works and the process option going forward.

I understand that Dave Serjeant has been finding it difficult to contact you in this regard.

Please acknowledge receipt of this email?

Regards

Cedric Daniel
Senior Development Engineer
Regulatory Engineering
Ph 09 484 8256  |  Extn (43) 8256  | Mobile 021 658 039
Auckland Council, Level 1, 1 The Strand, Takapuna
Dear Cedric,

Sorry, please find attached photos for the manhole.

Thanks & Regards

Teresa

On Thu, Oct 25, 2018 at 10:04 PM TERESA TANG <teresatangnz@gmail.com> wrote:

Dear Cedric,

Thanks for your email and attachment. Sorry for the late reply.

Currently, the pipes connected in and out of the manhole are the same size (225mm), if you add in the additional 200mm size pipe which will contribute stormwater for 2700m² catchment area based on your calculation, what would happen if it is in extreme weather for 20, 50 or even 100 years? You may not know, but this manhole is not a standard one, it is uncovered (please see photos attached). Can you guarantee that the stormwater will not overflow from this manhole, even in extreme weather for 20, 50 or even 100 years? Based on the current manhole’s status, I cannot agree to add it.

Thanks & Regards

Teresa
From: Cedric Daniel On Behalf Of RES NTH The Strand Ground Meeting Room 4 (Seats 10)
Sent: Thursday, 1 November 2018 6:53 AM
To: Cedric Daniel; 'TERESA TANG'; 'teresatang@gmail.com'
Subject: 129 Coronation Road Hillcrest - Stormwater Capacity Report
When: Thursday, 1 November 2018 10:00 AM-11:00 AM (UTC+12:00) Auckland, Wellington.
Where: Room 4 at 1 The Strand Takapuna

Hello Teresa

129 Coronation Road Hillcrest - Stormwater Capacity Concerns

Meeting to discuss your concerns regarding the proposed stormwater connection across your property.

Please confirm or propose alternate time options.

I wish to discuss your concerns and explain the process going forward.

I would like to encourage you to meet to explain the proposed works and the process option going forward.

I understand that Dave Serjeant has been finding it difficult to contact you in this regard

Regards

Cedric Daniel
Senior Development Engineer
Regulatory Engineering
Ph 09 484 8256 | Extn (43) 8256 | Mobile 021 658 039
Auckland Council, Level 1, 1 The Strand, Takapuna
From: Cedric Daniel  
Sent: Thursday, 1 November 2018 8:33 AM  
To: TERESA TANG <teresatangnz@gmail.com>; ‘teresatang@gmail.com’ <teresatang@gmail.com>  
Cc: Craig Hornwood <craig.h@msc.co.nz>; John McFetridge (john.elly.mcfetridge@xtra.co.nz)  
<joh.elly.mcfetridge@xtra.co.nz>; Dave Serjeant <dave@merestone.co.nz>  
Subject: ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Hello Teresa

ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Thank you for your email and we confirm that we fully understand your concerns.

Confirming that I have invited you to meet at Council offices this morning at 10:00 am (Thursday 1 November 2018) but after repeated emails have not yet received a response from you.

There is some clarification that needs to be given in order to dispel any misunderstandings as follows:

1. Council’s pipe network is only designed for a 1 in 10 year event. Any larger stormwater event will result in an overflow and properties downstream will experience flow, if any, resulting from this overflow regardless. The MSC stormwater report confirms the public system has the required capacity to receive the discharge from this proposed development. Furthermore this site is not subject to SMAF 1 or 2 controls under the Unitary Plan and RMA requirements.
2. The proposed drainage system would be an improvement to the existing situation because it provides some measure of storage.
3. Regarding your concerns about the open manhole, Council will ensure that the proposal to connect will include an upgrade of the manhole (including lid), which would mean the manhole will no longer be open, which is another safety improvement from your perspective.

I will be sending another meeting invitation to provide you the opportunity to come and discuss the matter should you require further clarification.

Regards

Cedric Daniel  
Senior Development Engineer  
Regulatory Engineering  
Ph 09 484 8256 | Ext (43) 8256 | Mobile 021 658 039  
Auckland Council, Level 1, 1 The Strand, Takapuna
From: TERESA TANG <teresatangnz@gmail.com>
Sent: Thursday, 1 November 2018 10:05 PM
To: Cedric Daniel <Cedric.Daniel@aucklandcouncil.govt.nz>
Subject: Re: ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Dear Cedric,

Thanks for your email, at this stage, I prefer contact by emails instead of meeting.

1. You have mentioned that "Any larger stormwater event will result in an overflow and properties downstream will experience flow, if any, resulting from this overflow regardless", I cannot agree with it, because currently, the pipes connected in and out of the manhole are the same size (225mm), and the manhole is a storage that would buffer the stormwater, so there would hardly be an overflow. However if an additional pipe is added it would break the balance and would cause an overflow.
2. You have also mentioned that the "Council will ensure that the proposal to connect will include an upgrade of the manhole (including lid)", could you please provide more details, like the standard of the upgraded manhole or some photos, etc.?
3. Could you please also provide more details about the drainage system improvement?

Appreciate your understanding!

Thanks & Regards

Teresa
From: Cedric Daniel  
Sent: Friday, 2 November 2018 8:30 AM  
To: teresatang@gmail.com; TERESA TANG <teresatangnz@gmail.com>; Craig Horwood <craigh@msc.co.nz>; John McFetridge <john.ely.mcchetridge@xtra.co.nz>; Dave Serjeant <dave@merestone.co.nz>  
Cc:  
Subject: ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Hello Teresa

ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Thank you for your memo but regret that you do not wish to meet with Council to clarify all your matters of concern.

We respond to your to your memo in bold blue below:

Thanks for your email, at this stage, I prefer contact by emails instead of meeting.

1. You have mentioned that “Any larger stormwater event will result in an overflow and properties downstream will experience flow, if any, resulting from this overflow regardless”. I cannot agree with it, because currently, the pipes connected in and out of the manhole are the same size (225mm), and the manhole is a storage that would buffer the stormwater, so there would hardly be an overflow. However if an additional pipe is added it would break the balance and would cause an overflow. **This is not the case as the MSC engineering report (by a chartered professional engineer who is an expert in his field) confirms that the public SW network we are proposing to connect to has capacity for the existing and design SW flows.**

2. You have also mentioned that the “Council will ensure that the proposal to connect will include an upgrade of the manhole (including lid)”. could you please provide more details, like the standard of the upgraded manhole or some photos, etc.? **Attached are typical ACC details of Manholes**

3. Could you please also provide more details about the drainage system improvement? The upstream properties currently do not discharge to the public networks and therefore downstream properties would be subject to overflow from these upstream properties. With the construction of the proposed SW reticulation this will eliminate the surface runoff currently being experienced on the downslope properties in rain events up to the design storm event of 1 in 10 years. (Refer attached). **The email declaration from MSC consultants Friday, 2 November 2018 7:41 AM (copied below) confirms the improvement.**

Trust this provides the necessary information to dispel your concerns.

Could you please attend the meeting I have proposed for Tuesday 6 November 2018 at 12:00pm so that I can explain the process going forward.

Regards

Cedric Daniel  
Senior Development Engineer  
Regulatory Engineering  
Ph 09 484 8256 | Extn (43) 8256 | Mobile 021 658 039  
Auckland Council, Level 1, 1 The Strand, Takapuna
From: TERESA TANG <teresatangnz@gmail.com>
Sent: Thursday, 1 November 2018 10:14 PM
To: RES NTH The Strand Ground Meeting Room 4 (Seats 10) <hogrndmeeting4@auckland.govt.nz>
Cc: teresatang@gmail.com; Cedric Daniel <Cedric.Daniel@aucklandcouncil.govt.nz>; Hock Lee <Hock.Lee@aucklandcouncil.govt.nz>
Subject: Re: 129 Coronation Road Hillcrest - Stormwater Capacity Concerns

Thanks for that. I will not attend any meeting at this stage.

Thanks & Regards

Teresa

On Thu, Nov 1, 2018 at 10:36 AM RES NTH The Strand Ground Meeting Room 4 (Seats 10) <hogrndmeeting4@auckland.govt.nz> wrote:

Hello Teresa

129 Coronation Road Hillcrest - Stormwater Capacity Concerns

Meeting to discuss your concerns regarding the proposed stormwater connection across your property.

I would like to encourage you to meet to clarify your concerns and explain the process forward

Regards

Cedric Daniel
Senior Development Engineer
Regulatory Engineering
Ph 09 484 8256 | Extn (43) 8256 | Mobile 021 658 039
Auckland Council, Level 1, 1 The Strand, Takapuna
From: TERESA TANG <teresatangnz@gmail.com>
Sent: Sunday, 4 November 2018 9:00 PM
To: Cedric Daniel <Cedric.Daniel@aucklandcouncil.govt.nz>
Subject: Re: ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Dear Cedric,

Thanks for your email. Please find my reply below:

1. The MSC engineering report is based on a 1 in 10 years event. But as the global weather changes, 1 in 10 years (or even rarer, like 20, 50, or even 100 years) events are more likely to happen. If the additional pipe is added, that will put our property at a risk of SW overflow. If the stormwater overflows in extreme weather, does the Auckland Council, MSC or anyone have any pre-plan to solve this?

2. There are two types of manholes, one is for less than 1.0m depth, another is for up to 4.0m depth. Can you please tell me which one will this manhole be upgraded to?

And I will not attend any meeting at this stage.

Thanks again for your understanding!

Thanks & Regards

Teresa
From: Cedric Daniel  
Sent: Monday, 5 November 2018 7:59 AM  
To: TERESA TANG <teresatangnz@gmail.com>  
Cc: Hock Lee <Hock.Lee@aucklandcouncil.govt.nz>; John McFetridge <john.eelly.mcFetridge@xtra.co.nz>  
     <john.eelly.mcFetridge@xtra.co.nz>; Craig Horwood <craig.h@msc.co.nz>; Dave Serjeant  
     <dave@merestone.co.nz>  
Subject: ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Hello Teresa

ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Thank you for your memo and we respond as follows;

MSC Consultants confirm as follows:

The MSC engineering report is based on a 1 in 10 years event. But as the global weather changes, 1 in 10 years (or even rarer, like 20, 50, or even 100 years) events are more likely to happen. If the additional pipe is added, that will put our property at a risk of SW overflow. If the stormwater overflows in extreme weather, does the Auckland Council, MSC or anyone have any pre-plan to solve this?

Response:

1. The calculations within the report allow for global warming for a 1 in 10 year event
2. Overflows are an anticipated event for any rain event in excess of a 1 in 10 year storm.

There are two types of manholes, one is for less than 1.0m depth, another is for up to 4.0m depth. Can you please tell me which one will this manhole be upgraded to?

Response:

The construction is essentially the same for a 1m up to a 4 meter depth manhole and the manhole size proposed is 1050mm in diameter

We consider that we have appropriately and adequately answered your queries and regret that you have persisted in declining to meet with Council to discuss and clarify matters.

We accordingly notify you that Council propose to proceed to a hearing under section 460 of the LGA 2002 and you will be formally advised when proceedings have been confirmed.

Please feel free to contact me to arrange a meeting should you reconsider your approach in this regard.

Regards

Cedric Daniel  
Senior Development Engineer  
Regulatory Engineering  
Ph 09 484 8256 | Ext (43) 8256 | Mobile 021 658 039  
Auckland Council, Level 1, 1 The Strand, Takapuna
From: TERESA TANG <teresatangnz@gmail.com>
Sent: Monday, 5 November 2018 11:02 PM
To: Cedric Daniel <Cedric.Daniel@aucklandcouncil.govt.nz>
Subject: Re: ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Dear Cedric,

Thanks for your email.

We have another query, there is a drainage flowing to this manhole which carries the stormwater from upstream properties including 129, 131 Coronation Road, 9 Nicholson Place and part of the stormwater from the roof of my house. Please find attached photos. If this manhole is upgraded, will the drainage mentioned above still be flowing to this manhole?

Currently, I am still in the stage of asking question and if all of my questions have clear answers, I will consider a meeting.

Thanks & Regards
From: Cedric Daniel  
Sent: Tuesday, 6 November 2018 8:26 AM  
To: TERESA TANG <teresatangnz@gmail.com>  
Cc: Hock Lee <Hock.Lee@aucklandcouncil.govt.nz>; Craig Horwood <craig.h@msc.co.nz>; John McFetridge (john.elly.mc fetridge@xtra.co.nz) <john.elly.mc fetridge@xtra.co.nz>; Dave Serjeant <dave@merestone.co.nz>  
Subject: ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Hello Teresa

ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Thank you for your memo and we respond as follows:

The stormwater reticulation proposed will markedly reduce the overland flow from the upstream properties from Coronation Road (129 to 135) to the drain as the reticulation will capture the runoff from the roofs.

A catchpit could be installed to collect the flows from the drain. The catchpit can be connected to the proposed manhole. This would be quite an improvement over what exists now.

Confirming that Council intends to proceed to a hearing under section 460 of the LGA 2002 and you will be formally advised when proceedings have been confirmed.

We record that you have declined to meet as scheduled for 11:00am this morning

Please feel free to contact me to arrange a meeting should you reconsider your approach in this regard

Regards

Cedric Daniel  
Senior Development Engineer  
Regulatory Engineering  
Ph 09 484 8256 | Ext. (43) 8256 | Mobile 021 658 039  
Auckland Council, Level 1, 1 The Strand, Takapuna
From: TERESA TANG <teresatangnz@gmail.com>
Sent: Wednesday, 7 November 2018 10:31 PM
To: Cedric Daniel <Cedric.Daniel@aucklandcouncil.govt.nz>
Subject: Re: ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Dear Cedric,

Just want to ask, will the Auckland Council pay for all of these improvements, the new catchpit collecting the flows from the drain, and the manhole upgrading?

As the Council’s pipe network and the MSC engineering report are only designed for a 1 in 10 year event. Our property is therefore at risk in the long term.

So, if the owner of 129-131 Coronation Road would pay a reasonable and sufficient compensation for our risk and some other effects to my yard, I will agree to sign.

Thanks & Regards

Teresa
Hello Teresa

ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Council’s response to your memo as follows

You will not incur costs for these works.

To facilitate your approval we will be requesting that the applicant include the installation of the additional cesspit with these works.

These works improve the current stormwater management in the area and in fact consequently reduces the long term risk to your site.

The matter of compensation is a private matter between property owners that excludes Council. These works is expected to improve the impact on your property and will not negatively impact on your current ongoing risk.

Trust this answers your queries.

Regards

Cedric Daniel
Senior Development Engineer
Regulatory Engineering
Ph 09 484 8256 | Ext (43) 8256 | Mobile 021 658 039
Auckland Council, Level 1, 1 The Strand, Takapuna
From: Craig Horwood <craig.h@msc.co.nz>
Sent: Friday, 9 November 2018 2:42 PM
To: TERESA TANG <teresatangnz@gmail.com>
Cc: John Mcettridge <john.elly.mcfetridge@xtra.co.nz>; Alex Cumming <alex.cumming@aucklandcouncil.govt.nz>; Dave Serjeant <dave@merestone.co.nz>; Cedric Daniel <Cedric.Daniel@aucklandcouncil.govt.nz>
Subject: ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection - Owners Approval

Hi Teresa,

MSC are the Consulting Engineers assisting with the proposed SW design for the proposed works upslope of your property.

Further to the email communications below we can confirm on, behalf of our client, that:

1) The existing SWMH on the boundary of your property will be removed, due to its condition,

2) A new SWMH, in accordance with Auckland Council standards, will be constructed,

3) All connections will made to and from the manhole, including the proposed new SW connection to service the proposed works,

4) Levelling of any disturbed surfaces with topsoil and sowing of grass seed,

at no cost to yourself.

It is proposed that the solid cast iron lid of the manhole will be replaced with a slotted cast iron lid, again as per Auckland Council standards, so that the flows from the drain, etc can enter the manhole.

If this is not possible, due to site levels, a field catchpit will be installed and connected to the new SWMH to facilitate drainage of the drain. This work will be at no cost to yourself.

As per the comment in the email below ex. Council the proposed works improve the current stormwater management in the area and in fact consequently reduces the long term risk to your site.

On this basis we believe the costs that are being incurred by our client in undertaking the above works are fair and reasonable and no further compensation or any additional works other than those described above is warranted.

On the basis or your email of 7 November and the above commitment by our client we have attached an affected parties form for you to complete and a plan for you to sign and return to us.

We request that these be completed and returned to us by 5.00pm Monday 12 November 2018.

As always we are prepared to answer any questions either by phone or by way of a meeting onsite.

Regards

Craig Horwood
Director
Civil Manager
M: 021 510 673 DDI: 09 496 5884
craig.h@msc.co.nz
From: TERESA TANG <teresatangnz@gmail.com>
Sent: Sunday, 11 November 2018 10:27 PM
To: Cedric Daniel <Cedric.Daniel@aucklandcouncil.govt.nz>
Subject: Re: ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Dear Cedric,

Thanks for your reply. Hope you had a lovely weekend.

If I attend a meeting, will you provide a statement on a formal Auckland Council’s letterhead which I had requested that the stormwater works will not affect our future development?

Will the owner of 129-131 Coronation Road also attend the meeting? Then we can discuss with him at the same time?

Thanks & Regards

Teresa
Objection to the Construction of a Public Stormwater line through 133 & 135 Coronation Road, Hillcrest and 7 Nicholson Place, Hillcrest

---

From: Cedric Daniel  
Sent: Monday, 12 November 2018 7:42 AM  
To: TERESA TANG <teresatangnz@gmail.com>  
Cc: Craig Horwood <craig.h@msc.co.nz>; John McFetridge <john.eily.mc fetridge@xtra.co.nz>; Hock Lee <Hock.Lee@aucklandcouncil.govt.nz>; Dave Serjeant <dave@merestone.co.nz>  
Subject: ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Hello Teresa

ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Council’s role is independent of the parties and we serve to facilitate understanding and agreement between the parties.

We have explained the engineering matters you have raised and do not provide the statements you have requested as a guarantee for a matter between private parties.

We note that the applicant’s consultant has once again submitted a request for your approval including details of how your concerns have been addressed. (copy of communication attached)

We request that you consider this request and respond directly to Craig Horwood of MSC Consulting in this regard.

We are willing to hold a joint meeting with all parties at Council offices to assist with this matter should wish to meet.

Regards

Cedric Daniel  
Senior Development Engineer  
Regulatory Engineering  
Ph 09 484 8256 | Extn (43) 8256 | Mobile 021 658 039  
Auckland Council, Level 1, 1 The Strand, Takapuna

---

From: TERESA TANG <teresatangnz@gmail.com>  
Sent: Monday, 12 November 2018 9:40 PM  
To: Cedric Daniel <Cedric.Daniel@aucklandcouncil.govt.nz>; John.eily.mc f etridge@xtra.co.nz; Alex Cumming <Alex.Cumming@aucklandcouncil.govt.nz>; dave@merestone.co.nz  
Subject: Fwd: ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection - Owners Approval

Dear Cedric,

Please find my email below I replied to Craig last night.

Thanks & Regards

Teresa
Dear Craig,

Thanks for your email and I responded to you as follows:

Firstly, I do not understand why you are requesting us to sign the form and return it to you by 5.00pm Monday 12 November 2018, as we are still in a situation where we find problems, solutions, and negotiate. This aggressive attitude is not conducive to the negotiation of the matter and can only make it more complicated, which is not helpful towards the settlement of your client’s affairs.

Secondly, the stormwater system in our property is safe and sound. But if your client's pipe is added, it's going to upset the balance of the current system, so improving and upgrading the system is naturally your client or the Auckland Council's responsibility. Not only will we not benefit from this work, but we will also be exposed to the risk of overflow that we would not otherwise have had, not to mention the constant expected for disaster hanging over our lives.

Thirdly, the unrepairable damage to our property during the construction will not only include our lawn but also on our driveway, hedges, and trees, etc. caused by the construction machinery. We will not accept the postponing of negotiations regarding compensations until after the event, so full and reasonable advance compensation is necessary.

According to Cedric's email that Council will ensure that the proposal to connect will include an upgrade of the manhole (including lid), a catchpit could be installed to collect the flows from the drain. The catchpit can be connected to the proposed manhole. And also include the installation of the additional cesspit with these works.

Why do you have a different plan?

Can you please confirm what you do and provide the design drawings of the upgraded manhole and also the catchpit?

Thanks & Regards

Teresa
From: John and Elly McFetridge <john.elly.mcfetridge@xtra.co.nz>
Sent: Monday, 19 November 2018 8:52 AM
To: 'TERESA TANG' <teresatangnz@gmail.com>; Cedric Daniel <Cedric.Daniel@aucklandcouncil.govt.nz>
Cc: craig.h@msc.co.nz; Hock Lee <Hock.Lee@aucklandcouncil.govt.nz>
Subject: RE: ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Hi,

At Teresa's request, I met with her and her husband at their house last Saturday afternoon. Unfortunately, but somewhat surprisingly, no agreement was reached as she continues to maintain that the Council stormwater system is under designed and does not allow for 50 & 100 year events, engineers and Councils make mistakes and that she wants a letter of guarantee from Council that she will be able to develop her property in the future.

I explained that she is free to put her concerns to the Council at the hearing date. Please now allocate a hearing date as soon as possible.

Regards,

John McFetridge
Hi,

Thanks for your emails.

For the meeting with John on Saturday afternoon, he had misunderstood what I said, I meant that the Council's stormwater system is designed for a 1 in 10 year event, and the same as MSC's report. But due to the weather changed in recent years, the storm event excess of 10 year is more often to be seen, so the overflows are anticipated, which will put our property in a risk.

I also requested the compensation, but unfortunately, he had refused it. He said that the most works can be done in 135Coronation Road, and they will not go through my driveway. Can you please tell me how can you remove the existing manhole and install a new one in my front yard?

As for the engineering drawing of the updated manhole which Craig sent this evening, I found that is Auckland Council's standard manhole drawing, and what I want to see is the specific design drawing for this manhole. Craig mentioned that the depth will be the same as the existing SW structure, but, do you guys know the diameter and capacity of the existing one? I request the capacity will be bigger than the existing one, and it will be a sealed lid, not a slotted lid. Please also send me the specific design drawings for the new added catchpit and an additional cesspit.

And can you please also send me the section 460 of the LGA 2002?

I request all the above-mentioned information sent to me before you arrange a hearing, I need time to read them.

According to MSC's design, there will be a new manhole installed in 135 Coronation Road, I suggest that you can install this new manhole in 137 Coronation Road instead of in 135 Coronation Road, and connect to the existing stormwater pipe which is from Coronation road connected to the manhole in my property.

Thanks & Regards

Teresa
From: Cedric Daniel  
Sent: Tuesday, 20 November 2018 7:52 AM  
To: TERESA TANG <teresatangnz@gmail.com>  
Cc: Dave Serjeant <dave@merestone.co.nz>; Craig Horwood <craig.h@msc.co.nz>; John McFetridge (john.elly.mcFetridge@xtra.co.nz) <john.elly.mcFetridge@xtra.co.nz>  
Subject: ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Hello Teresa

ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Thank you for your memo record that your concerns are noted and have been recorded.

I respond to pertinent matters as follows:

1. For the meeting with John on Saturday afternoon, he had misunderstood what I said, I meant that the Council’s stormwater system is designed for a 1 in 10 year event, and the same as MSC’s report. But due to the weather changed in recent years, the storm event excess of 10 year is more often to be seen, so the overflows are anticipated, which will put our property in a risk.
   Response  
   Your concerns have been addressed in the MSC engineering report by a chartered professional engineer who is an expert in his field

2. I also requested the compensation, but unfortunately, he had refused it. He said that the most works can be done in 135 Coronation Road, and they will not go through my driveway.
   Response  
   Compensation between parties is a private civil matter

3. Can you please tell me how can you remove the existing manhole and install a new one in my front yard?
   Response  
   That is a matter that the applicant’s consultant (MSC) will need to explain to you

4. As for the engineering drawing of the updated manhole which Craig sent this evening, I found that is Auckland Council’s standard manhole drawing, and what I want to see is the specific design drawing for this manhole. Craig mentioned that the depth will be the same as the existing SW structure, but, do you guys know the diameter and capacity of the existing one? I request the capacity will be bigger than the existing one, and it will be a sealed lid, not a slotted lid. Please also send me the specific design drawings for the new added catchpit and an additional cesspit.
   Response  
   All works will be required to comply with Council standards and the Stormwater Code of Practice

5. And can you please also send me the section 460 of the LGA 2002?
   Response  
   Attached please find a copy of the .section 460 of the LGA 2002

6. According to MSC’s design, there will be a new manhole installed in 135 Coronation Road. I suggest that you can install this new manhole in 137 Coronation Road instead of in 135 Coronation Road, and connect to the existing stormwater pipe which is from Coronation road connected to the manhole in my property.
Response
Craig Horwood of MSC can provide you with the necessary explanation for the engineering solution proposed.

Please advise if you wish to meet with me to explain the process forward

Regards

Cedric Daniel
Senior Development Engineer
Regulatory Engineering
Ph 09 484 8256 | Extn (43) 8256 | Mobile 021 658 039
Auckland Council, Level 1, 1 The Strand, Takapuna
From: John and Elly McFetridge <john.elly.mcfetridge@xtra.co.nz>
Sent: Tuesday, 20 November 2018 11:01 AM
To: TERESA TANG <teresatangnz@gmail.com>; craig.h@msc.co.nz; Cedric Daniel <Cedric.Daniel@aucklandcouncil.govt.nz>
Cc: dave@merestone.co.nz; Hock Lee <Hock.Lee@aucklandcouncil.govt.nz>
Subject: RE: Proposed Development 129-131 Coronation Road - Proposed SWMH Details

Hi

I refer to Teresa’s email of 19 November.

I did not misunderstand – Teresa wants a system designed in excess of the 10 year period and used the words “20, 50 and even 100 year events”. Like every other resident in the area the system is designed as per the current Council requirements. Teresa will have the same as everyone else and it will still be the same after our works are done so there is no increase in current risk.

We are not paying any compensation because she is suffering no loss. We are actually improving the current situation by picking up the run off from higher ground. The work is not being done in her front yard – in fact it is hard up a rear boundary well out of sight.

We can do the work from the rear of 135 Coronation Road so do not need to come up her driveway. Therefore no compensation will be payable on that account either. I have explained to her that we will use a small digger and will need to come across the boundary from 135 onto her property (obviously that’s why we need her consent). We will need to remove a couple of small hedge trees which are directly beside the existing manhole in her property and will replant new ones and reinstates any lawn with new topsoil and grass seed.

Prior to Teresa’s email last night she was sent an email explaining that the dimensions of the new manhole in her section will be 1050mm diameter and approx. 1.2m deep.

This together with the standard design drawings, is sufficient. Teresa as far as I know is not a professional qualified engineer but is seeking to dictate the design by requesting that the capacity be bigger than the existing one and wanting specific design drawings for this manhole, catch pit and cess pit. This is unrealistic and not in accordance with usual practice given that it has been designed by our engineers and approved by Council engineers. Furthermore, our engineer says that an allowance in design has already been made for increased precipitation and the new manhole with its riser will provide increased capacity.

After Teresa initially refused consent, the retired owner at 137 Coronation Rd was approached. A new manhole in his property would have necessitated digging up his garden which he regularly tends and he could not see the necessity for it when there was a manhole already just over the fence. Therefore it was decided to revert to Teresa’s property as the first and preferred option because that manhole is hard against a rear boundary, out of sight under some hedge trees and in an area of unused lawn and doesn’t interfere in any way with the amenity value or the use of her property at 7 Nicholson Place.

To advance this matter please issue a hearing date before Council.

Regards

John McFetridge
Dear Cedric,

Thanks for your email and the copy of the section 460 of the LGA 2002. I will find a time to read it.

Thanks & Regards

Teresa

From: TERESA TANG <teresatangnz@gmail.com>
Sent: Tuesday, 20 November 2018 11:17 PM
To: John.elly.mcfetridge@xtra.co.nz; craig.h@msc.co.nz; Cedric.Daniel@aucklandcouncil.govt.nz
Cc: dave@merestone.co.nz; Hock.Lee@aucklandcouncil.govt.nz
Subject: Re: Proposed Development 129-131 Coronation Road - Proposed SWMH Details

Hi,

Why I said John has misunderstood because my concern is due to the weather changed in recent years, the storm event excess of 10 year is more often to be seen, if added the new pipe, the overflows are anticipated, which will put our property in a risk.

The existing manhole is like a hexagon, the width is approx 100cm, length is approx 200cm, depth is approx 98cm. This is designed for the in and out for 225mm pipes. The new manhole designed to replace is 1050mm diameter and approx. 1.2m deep. The approx capacity is obviously much less than the existing one. Can someone explain why after adding a 200mm pipe while the capacity of the new manhole is smaller than the existing one? The existing manhole should be designed by a professional engineer.

The hedge trees on that side are tens of meters long and have been planted here for decades, they are not small trees. If removed a couple of them and replanted new ones, that will look very ugly.

Thanks & Regards

Teresa
From: TERESA TANG <teresatangnz@gmail.com>
Sent: Wednesday, 21 November 2018 11:14 PM
To: Cedric Daniel <Cedric.Daniel@aucklandcouncil.govt.nz>
Subject: Re: ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Dear Cedric,

Could you please arrange a meeting with you to explain the process? But I had already bought the tickets in June to visit my families in China. I will leave NZ on 23rd Nov and will back on 9th Dec. Could you please arrange the meeting date so that it is after I come back to NZ? Please let me know the date in advance as I wish you can arrange it on my day off, many thanks.

Thanks & Regards

Teresa
From: Cedric Daniel On Behalf Of RES NTH The Strand Ground Meeting Room 4 (Seats 10)
Sent: Friday, 23 November 2018 8:51 AM
To: Cedric Daniel; TERESA TANG
Subject: ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection
When: Monday, 17 December 2018 11:00 AM-11:30 AM (UTC+12:00) Auckland, Wellington.
Where: Room 4 at 1 The Strand Takapuna

Hello Teresa

ENG60304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Meeting as requested to discuss the process going forward.

Please confirm?

Regards

Cedric Daniel
Senior Development Engineer
Regulatory Engineering
Ph 09 484 8256 | Extn (43) 8256 | Mobile 021 658 039
Auckland Council, Level 1, 1 The Strand, Takapuna
From: TERESA TANG <teresatangnz@gmail.com>
Sent: Friday, 21 December 2018 11:20 AM
To: Cedric Daniel <Cedric.Daniel@aucklandcouncil.govt.nz>
Subject: Re: EN060304410 at 129 - 131 Coronation Road Hillcrest - Stormwater Connection

Dear Cedric,

It was nice meeting you on 17th Dec. Thank you very much for your time and your suggestions. We agree with you to have a new manhole with a grid lid.

We will contact Craig to discuss like connecting the existing pipes in the upper properties (which we had shown the photo) into the new manhole in 135 Coronation, the replanting & reinstatement of the hedge trees, and try to make an agreement with them.

Yesterday when it was raining, my husband had looked at the drain and the manhole. He noticed that there are flowing in the drain from upper properties but there is no water coming from the pipe connected from the Coronation Road, none of the water from the pipe, which should be collecting stormwater from the Coronation Road. And the same situation had happened last month when it was raining. Could you please help find someone to check it and tell us is there anything wrong with the pipe? Many thanks.

Thanks & Regards

Teresa

From: TERESA TANG <teresatangnz@gmail.com>
Sent: Sunday, 23 December 2018 9:35 PM
To: Craig Honwood <craig.h@sc.co.nz>
Cc: Cedric Daniel <Cedric.Daniel@aucklandcouncil.govt.nz>
Subject: Re: Proposed Development 129-131 Coronation Road - Proposed SWMH Details

Dear Craig,

We had a meeting with Cedric this Monday, and he suggested us to discuss something with to make an agreement, like connecting the existing pipes in the upper properties (please find attached photo-#165414) into the new manhole in 135 Coronation, and the reinstatement of the hedge trees.

Please let me know if you want to have an on-site visit, many thanks.

Wishing you a Merry Christmas and a Happy New Year!

Thanks & Regards

Teresa
From: Cedric Daniel  
Sent: Thursday, 28 February 2019 7:40 AM  
To: ‘TERESA TANG’<teresatangnz@gmail.com>; ‘teresatang@gmail.com’<teresatang@gmail.com>  
Subject: Hearing Notification 28 February 2019  

Hello Teresa  

Hearing Notification - Public Stormwater connection for 129 – 131 Coronation Road
Hillcrest  

Confirming notification that Council intends to proceed under section 460 of the Local
Government Act 1974 (ACT) to install public stormwater connection.  

Attached is a copy of the letter notification posted to you this morning.  

Please confirm receipt?  

Your sincerely  

Cedric Daniel  
Senior Development Engineer  
Regulatory Engineering  
Ph 09 484 8256  | Extn (43) 8256  | Mobile 021 658 039  
Auckland Council, Level 1, 1 The Strand, Takapuna
NOTICE OF INTENTION TO CONSTRUCT A PUBLIC STORMWATER DRAIN ON PRIVATE LAND UNDER SECTION 460 OF THE LOCAL GOVERNMENT ACT 1974

28 February 2019

Jingsong Tang and Chun Jin
7 Nicholson Place
Hillcrest
AUCKLAND

Attention: Teresa Tang

Dear Teresa

PROPOSED PUBLIC STORMWATER DRAINAGE AT 129 -131 Coronation Road Hillcrest

Auckland Council has received an application under section 460 of the Local Government Act 1974 (Act) to install a public stormwater connection line into the manhole located with 7 Nicholson Place (Lot 16 DPS1770).

The council is contacting you as the registered owner of that property to inform you of the proposed works and confirm whether you consent to the works.

A copy of sections 460 and 461 of the Act are attached for your information.

The drain will service a proposed development at 129 – 131 Coronation Road Hillcrest. The work will involve installing a new 200mm PE line into an upgraded manhole located within close proximity of your boundary at 7 Nicholson Place. Any disturbance within your property will be reinstated to a similar standard.

The proposed works are shown on the accompanying plan (of which two copies are enclosed) and works will be undertaken under direction of MSC Consulting Group. The proposed line and connection is required to service 129 – 131 Coronation Road Hillcrest and is the only practical route available.

Council appointed Dave Serjeant an independent hearing commissioner as an independent mediator to facilitate your approval of this connection, but the mediator advises that he has not been able to achieve a resolution.

I have met with you to discuss these works and would be happy to meet with you to discuss the proposal and any questions or concerns you might have about the works or the section 460 process.

Should you wish to confirm your consent to the proposed drainage works on your property, please sign and return one of the copies of the attached “MSC Consulting Group” drawing 36481 sheet C100 revision C.

If consent is refused or otherwise not provided by 28 March 2019, in accordance with section 460(2) of the Act, the Council will schedule the matter for hearing by its Hearing Committee. You will be given reasonable notice of the day, time and place of the hearing so as to enable you to attend.

In the event you require further information, please contact Cedric Daniel, Senior Development Engineer, Auckland Council, Level 1, 1 The Strand, Takapuna, Auckland, Ph. 09 484 8256, mobile 021 658039, email: cedric.daniel@aucklandcouncil.govt.nz.

Yours sincerely

Cedric Daniel
SENIOR DEVELOPMENT SUBDIVISION ENGINEER
REGULATORY ENGINEERING
Dear Cedric,

Thanks for your email, but I am still waiting for the letter you posted to me.

After the meeting with you on 17th Dec., we had sent you an email on 21st Dec mentioned that there is no stormwater coming from the pipe which connected from the Coronation road in the raining day. And we had emailed Craig (MSC Consulting Group Ltd) on 23rd Dec. to discuss with the connecting the existing pipes in the upper properties (please find attached photo-#165414) into the new manhole in 135 Coronation road and reinstatement of the hedge trees, we had also copied you the email. But unfortunately, I have not received any reply from you and Craig.

In your email dated 28th Feb, you have requested me to sign the approval form. The prerequisites for me to sign the approval form are: the owner or MSC, they provide a detailed plan for the hedge reinstatement for us to approve, and they will connect the existing pipes in 135 Coronation road (please find attached photo-#165414) into their new manhole, as those pipes were flowing to the drain in my property. Now there will be a new manhole installed in 135 Coronation road, those pipes should be connected to the new manhole after this work.

Thanks & Regards

Teresa
Dear Cedric,

I trust this email finds you well.

Reference to my email to you of March 3rd, there are 2 outstanding matters. I require:
1) I want to ensure that water coming from the open pipes shown in the attached photograph#165414 will be re-directed to the new manhole in 135 Coronation Road.
2) A detailed plan for my hedge tree reinstatement.

Please feel free to contact me if you have any queries.

I’d like to hear from you within 2 or 3 days.

Thanks & Regards

Teresa
From: Cedric Daniel  
Sent: Tuesday, 12 March 2019 5:50 AM  
To: TERESA TANG <teresatangmz@gmail.com>  
Subject: R Hearing Notification 28 February 2019  

Hello Teresa  

R Hearing Notification 28 February 2019  

The scope of your request relates to matters that involve private parties and are outside the scope of what Council may direct. I believe these are matters that have already been discussed between the parties and I understand that there may be ongoing contact between the parties following the hearing notice issued to you. Please feel free to contact the landowner and/or their consultant in this regard. Regards  

Cedric Daniel  
Senior Development Engineer  
Regulatory Engineering  
Ph 09 484 8256 | Extn (43) 8256 | Mobile 021 658 039  
Auckland Council, Level 1, 1 The Strand, Takapuna  

From: Craig Horwood  
Sent: Wednesday, 20 March 2019 3:34 PM  
To: TERESA TANG <teresatangmz@gmail.com>  
Cc: john.elly.mcfetridge@vec.co.nz  
Subject: RE: Proposed Development 129-131 Coronation Road - Proposed SWMH Details  

Hi Teresa,  

We respond, on behalf of our client, to your email of 23rd December and the 2x matters you have raised.  

1. A field catchpit (450mm x 450mm x 450mm) will be installed on the boundary of your property and the 3x novacoils as per the attached photo will be re-laid over a short section and connected into the catchpit. A 200mm dia. uPVC SW line will be laid to connect the catchpit to the proposed SWMH. The reason for the field catchpit is that draincoils cannot be connected directly to a manhole. This work will be completed to Auckland Council standards. This work will be completed at no cost to yourselves.  

2. A new hedge will be planted over the section of hedge that is removed to facilitate the SW works. Plants will be sourced to try to replicate the size of the exiting hedge in the first instance but they will not obviously be as big in trunk size as the existing. It is expected that a width of 2 meters will be required to install the drainage line and manhole so 2-3 plants may need to be replaced. This work and well as the reinstatement works in the immediate vicinity of the SW structures will be completed at no cost to yourselves.  

We trust this answers your questions.  

Regards  

Craig Horwood  
Director  
Civil Manager  
M: 021 510 673 DDI: 09 486 5884  
craig.h@msc.co.nz
From: Craig Horwood
Sent: Thursday, 21 March 2019 7:17 AM
To: TERESA TANG <teresatangnz@gmail.com>
Cc: john.elly.mcfetridge@xtra.co.nz
Subject: RE: Proposed Development 129-131 Coronation Road - Proposed SWMH Details

Teresa,

Please find attached a plan with sketch details added – the plan shows the proposed field catchpit (to pick up the 3x existing draincoils) and the connection from the catchpit to the new manhole in your property (to replace the existing non-compliant / substandard structure).

Re your email ...
The proposed manhole is the new manhole in your property.

The roots will be removed as well as the hedge trees.

The need for the open drain will be greatly reduced with the installation of the SW drainage and the connection of the draincoils to the catchpit. The level of the catchpit grate can be such that this will take a lot of the any remaining flow from the top side of your property. Note if the catchpit is installed the grated lid on the manhole will be a solid lid.

The drain will be reshaped in the vicinity of the work so it continues to operate as before the work.

Regards
Craig Horwood
Director
Civil Manager
M: 021 510 673 DDI: 09 486 5884
craig.h@msc.co.nz
From: Craig Horwood  
Sent: Tuesday, 26 March 2019 7:00 AM  
To: TERESA TANG <teresatangoz@gmail.com>  
Cc: John McFetridge <john.elly.mcfetridge@xtra.co.nz> <john.elly.mcfetridge@xtra.co.nz>  
Subject: FW: Proposed Development 129-131 Coronation Road - Proposed SWMH Details

Teresa,

As previously communicated our clients offer is to construct a catchpit within your property (at no cost to you) as that is where the draincoils currently end / discharge.

Please be advised that if there is no signed Affected Parties Agreement from you by 5.00pm 29 April 2019 the offer to construct, at no cost to you, a catchpit, the connection of the draincoils to the catchpit, the connection of the catchpit to the new manhole is withdrawn and our client will be proceeding to the hearing with the intent to construct only the new manhole to replace the existing substandard manhole in your property in accordance with the Engineering Approval issued by Auckland Council.

Regards

Craig Horwood  
Director  
Civil Manager  
M: 021 510 673 DDI: 09 486 5884  
craig.h@msc.co.nz

---

From: Craig Horwood  
Sent: Tuesday, 26 March 2019 9:18 AM  
To: TERESA TANG <teresatangoz@gmail.com>  
Cc: John McFetridge <john.elly.mcfetridge@xtra.co.nz> <john.elly.mcfetridge@xtra.co.nz>  
Subject: RE: Proposed Development 129-131 Coronation Road - Proposed SWMH Details

Apologies Teresa the date in the email below is incorrect.

The date should read ...... 5.00pm Friday 29 March 2019.

Regards

Craig Horwood  
Director  
Civil Manager  
M: 021 510 673 DDI: 09 486 5884  
craig.h@msc.co.nz
Hi Cedric,

Thanks for your email.

I have emailed Craig of MSC, the consultant of the owner of 129-131 Coronation Road and also copied John the owner, regarding those 2 outstanding matters, I required:

1) I hope they can install the sump/catchpit in 135 Coronation Road and re-direct those drain coils to it, then connect this sump/catchpit to the newly install manhole in 135 Coronation Road. Unfortunately, Craig replied to me that their client is not willing to do it.

2) A detailed plan for my hedge tree reinstatement. Craig only gave me a brief reply, not a detailed plan.

Based on their response above, we could not sign the approval form.

As we know the owner of 129-131 Coronation Road will build 4 units in their section without a tank on-site mitigation. The manhole in our property, the out pipe size is the only 225mm, it has already connected an open drain from our property and a 225mm size pipe from Coronation Road and adding this new 225mm pipe. Both, MSC's report and the Council's pipe design are only based on a 1 in 10-year event, with global warming, the extreme weather is a more frequent occurrence now, the 1 in 10-year is a lower standard, and according to your email on 5th November 2018 that “Overflows are an anticipated event for any rain event in excess of a 1 in 10-year storm”. If those 3 drain coils can be sorted in 135 Coronation Road, then we are going to re-connect the flow from the top side of our property to this manhole in the future, so we can abandon this open drain changing this manhole to a real sealed one to minimize the overflow risk from this manhole in our property.

Then, could you please tell me after adding the new pipe in the manhole, if something happens in the future, like overflow, it will be whose responsibility to solve the problem and who will pay for the cost? Will Auckland Council bear the rectification costs?
And, could you please also tell me how much will the hearing cost be and who will pay for it?

Please feel free to let me know if you have any queries.

Thanks & Regards

Teresa
460 Construction of private drains through adjoining premises

(1) Where, in the opinion of the council, the only practical route of any new private drain is through 1 or more adjoining premises, and any owner or owners of any of those premises will not consent to its construction, the council may, pursuant to a resolution in that behalf, of which notice shall be given to the owner or owners withholding his or their consent as aforesaid, enter upon his or their premises and execute, provide, and do all or any of the works, materials, and things which the council considers necessary, in order that the drain shall be laid in an efficient manner.

(2) Before passing a resolution under subsection (1), the council shall give to every owner refusing his consent an opportunity to be heard before a committee of the council.

(3) The cost incurred by the council in carrying out the said work, including the payment of compensation for injurious affection to any premises through which the drain is laid, shall be payable by the council in the first instance, and may be recovered by it from the owner of the land to be served by the private drain; and section 465 shall apply with respect to the amount so recoverable as if it were an advance made by the council under section 463.

(4) If agreement cannot be reached between the council and any claimant for any such injurious affection, the matter shall be determined as if the work were a public work and the claim were a claim for injurious affection in respect thereof under the Public Works Act 1981.

Compare: 1954 No 76 ss 226; 1956 No 64 s 253

Section 460: inserted, on 1 April 1980, by section 2 of the Local Government Amendment Act 1979 (1979 No 59).


461 Further provisions with respect to private drains

(1) Where any private drain constructed with the consent of the owners of all the lands affected or constructed by the council pursuant to section 460 passes through or serves separately-
Schedule 12

Conditions of constructing or undertaking works on private land without the owner's consent

1 For the purposes of section 181(3)(b), the requirements are as follows:

(a) a description of the works, accompanied by a plan (in the case of any works to be constructed), showing how they affect any land or building, must be deposited for public inspection at a place within the district in which the works are to be undertaken:

(b) the territorial authority must give notice in writing of the intention to construct the works (referring to a plan and description of the works and where the plan and description can be viewed)—

(i) to the occupier of the land or building unless there is no occupier or, after all reasonable steps have been taken, the occupier cannot be found; and

(ii) to the owner if known:

(c) however, if there is a change of occupier, it is not necessary to give notice to any subsequent occupier before the work is done:

(d) if, within 1 month after the notice is given, the occupier or owner serves on the territorial authority a written objection to the proposed works, the territorial authority must—

(i) appoint a day for hearing the objection; and

(ii) give to the objector reasonable notice of the day, time, and place of hearing so as to enable the objector to attend the hearing:

(e) the territorial authority must hold a meeting on the day appointed, and may, after hearing any person making any objection, if present, determine—

(i) to abandon the works proposed; or

(ii) to proceed with the works proposed, with or without any alterations that the territorial authority thinks fit.
2 A person who is aggrieved by a determination of the territorial authority under clause 1(e) to proceed with the works proposed (with or without alterations) may appeal to a District Court against the determination within 14 days after the date of the determination.

3 Pending the decision of the court on the appeal, the territorial authority must not proceed with the works.

4 On the hearing of the appeal, the court, whose decision is final, may confirm or amend or set aside the determination of the territorial authority.
Regulatory Committee  
11 July 2019  

Attachment F

Item 8

Schedule 12
Local Government Act 2002
2002 No 84

s 181(3)(b)

1 Conditions of constructing or undertaking works on private land without the owner’s consent

For the purposes of section 181(3)(b), the requirements are as follows:

(a) a description of the works, accompanied by a plan (in the case of any works to be constructed), showing how they affect any land or building, must be deposited for public inspection at a place within the district in which the works are to be undertaken:

(b) the territorial authority must give notice in writing of the intention to construct the works (referring to a plan and description of the works and where the plan and description can be viewed)—

   (i) to the occupier of the land or building unless there is no occupier or, after all reasonable steps have been taken, the occupier cannot be found; and

   (ii) to the owner if known:

(c) however, if there is a change of occupier, it is not necessary to give notice to any subsequent occupier before the work is done:

(d) if, within 1 month after the notice is given, the occupier or owner serves on the territorial authority a written objection to the proposed works, the territorial authority must—

   (i) appoint a day for hearing the objection; and

   (ii) give to the objector reasonable notice of the day, time, and place of hearing so as to enable the objector to attend the hearing:

(e) the territorial authority must hold a meeting on the day appointed, and may, after hearing any person making any objection, if present, determine—

   (i) to abandon the works proposed; or

   (ii) to proceed with the works proposed, with or without any alterations that the territorial authority thinks fit.

2 A person who is aggrieved by a determination of the territorial authority under clause 1(e) to proceed with the works
Local Government Act 2002 Schedule 12

2002 No 84

proposed (with or without alterations) may appeal to a District Court against the determination within 14 days after the date of the determination.

3 Pending the decision of the Court on the appeal, the territorial authority must not proceed with the works.

4 On the hearing of the appeal, the Court, whose decision is final, may confirm or amend or set aside the determination of the territorial authority.
Objection to installation of a stormwater pipe at 119, 119A and 119B New Windsor Road, New Windsor

File No.: CP2019/12023

Te take mō te pūrongo
Purpose of the report
1. To hear and determine an objection to proposed stormwater works at 119, 119A and 119B New Windsor Road, New Windsor, pursuant to section 181 of the Local Government Act 2002.

Whakarāpopototanga matua
Executive summary
1. A developer - Rising Sun Investments Ltd - is constructing three new lots at 121 New Windsor Terrace. These must be connected to the existing public stormwater network.

2. To make this connection, a stormwater pipe needs to be run through the driveway of three private properties – 119, 119A and 119B New Windsor Road (see Figure 1 in Attachment A). This will connect to the existing public stormwater line located within the driveway of 119 New Windsor Road and form part of the public stormwater network managed by the council.

3. To progress these works, Auckland Council has served section 181 notices to the owners of 119, 119A and 119B New Windsor Road. The owner of 119A New Windsor Road has formally objected to the proposed stormwater pipe on behalf of themselves, 119 and 119B New Windsor Road (see Attachment B).

4. Healthy Waters has short-listed three options for installing this pipe as they were the most practicable alignments (see Figure 3 in Attachment A). The options analysis determined that:
   - the pipe route through the driveways of 119, 119A and 119B is the most logical and direct to reach the connection point
   - the work is located within the properties’ driveways and will not affect any structures
   - the construction methodology of directionally drilling down the boundary of 119 New Windsor Road does not require property access and will result in minimal disruption
   - an alternative option to connect to the south west line within New Windsor Road would avoid the objectors’ properties but is not feasible nor practical due to the site’s topography. This would require pumping water uphill in contravention of Auckland Council’s Stormwater Code of Practice.
   - another option to run the pipe along the southern boundary of the property was also discarded as this would interfere with the wastewater network and potentially impact the foundations of neighbouring properties
   - the work has been designed in accordance with Auckland Council standards and its installation will result in a public benefit to the wider stormwater network.

5. Completing the works should take approximately seven days and create minimal disruption.

6. The developer has made various attempts to negotiate access with the landowner since April 2018 and has been unable to reach an agreement (see Attachment C). The landowner has objected on the grounds that the drilling could cause the driveway to collapse due to the alleged unstable nature of the soil. Engineers engaged by the council dispute this assertion and confirm the works will be delivered in a manner that eliminates the risk of land collapse.

7. For these reasons, staff recommend that the Regulatory Committee hear the landowner’s objection and then endorse the proposed stormwater works.
Ngā tūtohunga

Recommendations

That the Regulatory Committee:

a) hear and determine the objections by the owners of 119, 119A and 119B New Windsor Road according to clause 1(e) of Schedule 12 of the Local Government Act 2002, and

b) determine to proceed with construction of the pipeline at 119, 119A and 119B New Windsor Road (as shown in Attachment A to the agenda report) according to clause 1(e) of Schedule 12 of the Local Government Act 2002.

Horopaki

Context

8. A developer – Rising Sun Investments Ltd - has been granted resource consent by Auckland Council to build three new lots at 121 New Windsor Road.

9. To complete this development, and comply with the council’s engineering approval plan, the developer must connect their subdivision to the existing stormwater network located within 119 New Windsor Road.

10. The new pipe will need to run along the length of the driveway shared by the owners of 119, 119A and 119B New Windsor Road in order to make this connection.

11. Installing stormwater infrastructure for this subdivision will also provide infrastructure for surrounding properties to connect to the stormwater network if they are developed in future.

Tātaritanga me ngā tohutohu

Analysis and advice

Analysis of alignments for the project

12. Auckland Council through its Healthy Waters department manages Auckland’s public stormwater infrastructure and improvements to waterways.

13. To identify the best option to connect this development to the public stormwater system, Healthy Waters has analysed three alternative alignments for the connecting pipe (see Figure 3 in Attachment A).

14. These options were:

- Option one: Install a public stormwater pipe from 121 New Windsor Road under the driveway and along the northern boundary of 119, 119A and 119B New Windsor Road to connect into the existing stormwater network (preferred option).

- Option two: Install a public stormwater pipe running uphill to connect to an existing line north east of 121 New Windsor Road.

- Option three: Install a public stormwater pipe from 121 New Windsor Road along the southern boundary of 119A and 119B New Windsor Road and discharge to the open channel in 119 New Windsor Road.

15. The status quo (i.e. not providing a connection from the apartment block to the public stormwater system) was not analysed. This would be in breach of the council’s own requirements for new developments and of the developer’s resource consent.
16. The three options were analysed against relevant criteria for additions to the public stormwater network, as shown below in Table 1. Criteria were weighted for significance and included:

- the number of property owners who would be impacted
- the level of disruption property owners would experience from works
- interference with existing services in the area, such as wastewater pipes
- route of the connection to the existing stormwater network.

Table 1. Analysis of alignment options against various criteria

<table>
<thead>
<tr>
<th></th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
<th>Significance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affected property owners</td>
<td>3</td>
<td>0</td>
<td>3</td>
<td>Low</td>
</tr>
<tr>
<td>Interference with existing services</td>
<td>Minor</td>
<td>Minor</td>
<td>Medium</td>
<td>Medium</td>
</tr>
<tr>
<td>Disruption to property owners</td>
<td>Minor</td>
<td>No impact</td>
<td>Medium</td>
<td>Medium</td>
</tr>
<tr>
<td>Cost</td>
<td>$$</td>
<td>$$$</td>
<td>$$$$</td>
<td>Low</td>
</tr>
<tr>
<td>Route to existing stormwater network</td>
<td>Most direct</td>
<td>Not feasible</td>
<td>Less direct</td>
<td>Medium</td>
</tr>
</tbody>
</table>

Key
- Most positive
- Moderately positive
- Moderately negative
- Most negative

17. The cost was also considered but was of less significance, as it will be borne by the developer, rather than the council.

18. As Table 1 shows, although option two scored better in terms of disruption to property owners, it was discarded, as it is not feasible as an option due to the topography of the site (see Figure 2 in Attachment A).

19. To connect to the existing stormwater line north of 121 New Windsor Road would only be achievable through pumping the stormwater uphill. Pumping in this manner is not supported by Auckland Council as to do so increases the risk of flooding, requires on-going maintenance and contravenes Auckland Council’s Stormwater Code of Practice.

20. Option three was discarded, as it:

- interferes with the existing wastewater line in the boundary of 119A
- would affect the foundations of 119A and 119B as the pipe would be in the zone of influence of these dwellings
- would require an outfall to the open channel. This would create significant extra cost and would require additional consent.

**Recommended option: Direct alignment to 119 New Windsor Road**

21. Option 1 was identified as the best option because of the following:

- the pipe route is the most logical and direct to reach the connection point;
- the location of the work is located within the driveways of the properties therefore will not affect any structures
Item 9

- the construction methodology of directionally drilling the stormwater line down the boundary of 119 New Windsor will require property access but will result in minimal disruption as opposed to an open trenching methodology of construction.
- the pipe network has been designed to cater for the 10% annual exceedance probability (the probability of a flood event occurring in any year) including allowance for climate change.
- the work has been designed in accordance with Auckland Council standards and its installation will result in a public benefit to the wider stormwater network of the development.
- it will allow the site to be developed which contributes to Auckland’s growth and need for housing.

Negotiations with the landowners

22. The developer first contacted the landowners in April 2018. Attachment C details the number of attempted meetings and correspondence sent by the developer to the owners of 119, 119A and 119B New Windsor Road to try to resolve the issue of access.

23. The owner of 119A New Windsor Road has been leading the negotiations for access on behalf of 119 and 119B and up until May 2019, he was the owner of both 119A and 119B New Windsor Road.

24. The new owner of 119B New Windsor Road has full knowledge of what is being proposed, having attended a meeting with the developer and Fraser Thomas Consultants about the project on 10 May 2019 (see more details below in paragraph 30).

25. By February 2019 it became clear to the developer that the owners were not interested in reaching an agreement. The developer then approached Auckland Council and requested that it provide facilitation services.

26. In March 2019 Fraser Thomas Consultants, who carries out negotiations for property access on behalf of Auckland Council, made various attempts to reach an agreement between the developer and the property owners.

27. By April 2019 staff decided that progress towards an agreement was not being made. On 17 April 2019 the Council issued a letter indicating that it would seek access to 119, 119A and 119B New Windsor Road pursuant to section 181 of the Local Government Act to build a stormwater pipe to connect to the public stormwater network.

28. That letter described the works and how it would affect the property owner. In accordance with the provisions of Schedule 12 of the Local Government Act the owners were given one calendar month to lodge an objection.

29. On 10 May 2019 a meeting was arranged between the developer and the owners of 119, 119A and 119B. Engineers from both parties attended along with the Council’s engineer and Fraser Thomas Consultants.

30. Despite in-depth discussions about the drilling process and measures to limit the slumping, the owners would not commit to approving a right of entry for construction. At the end of that meeting the Council requested that the owner formally object to the section 181 notice issued by the Council and detail their concerns in writing.

31. The time period for submitting an objection passed. Since the Council had received no response, staff began obtaining quotes to carry out the works. While staff were doing this, the owners formally submitted an objection on 11 June 2019 (see Attachment B).
Grounds for objection

32. The owners have lodged an objection to the works on the grounds that the drilling works would cause the driveway to collapse due the alleged unstable nature of the soil.

33. This claim is disputed by the developer on the grounds that:
   - geotechnical testing of the soils immediately adjacent to the access way would be carried out
   - the proposed stormwater line is outside the zone of influence for the new dwelling foundations
   - any drilling operations would be required to use bentonite clay to encase the trench walls, prior to backcutting and pulling through the new pipe
   - immediately upon completion of the placement of pipe within the directionally drilled hole a concrete slurry would be introduced to completely fill the gap between the pipe and the drill hole. The set concrete and the pipe would then form a solid ‘plug,’ thereby removing the risk of collapse of material.
   - the proposed methodology has engineering approval, is standard practice for this type of drainage work and will be delivered appropriately by qualified professionals.

34. Auckland Council’s Healthy Waters engineers agree with the developer’s findings.

35. The owner was also concerned that the developer would not be around in the future were the driveway to collapse. This concern is mitigated by the fact that the drain will vest in the council as a public asset which the council is responsible to maintain and repair.

Costs associated with the project

36. All costs associated with the works are to be paid for by the developer. This includes the council’s time and costs to facilitate an agreement with the landowner and to carry out the works pursuant to section 181 of the Local Government Act.

37. If an objection is not sustained, objectors may appeal to the District Court. If they are successful, the Court may make a costs award in favour of the winning party (that is against the council).

38. In cases where there is injurious affection payable then Council will be responsible for covering a claimant's reasonable costs. If not able to be agreed between the parties, this will become a matter for the Land Valuation Tribunal.

Ngā whakaawaewe me ngā tirohanga a te rōpū Kaunihera

Council group impacts and views

39. Watercare has been consulted and has approved the engineering plan approval for the development as identified in option one only. There is an existing wastewater line running through the property so the connection does not require any third-party property agreement.

Ngā whakaawaewe ā-rohe me ngā tirohanga a te poari ā-rohe

Local impacts and local board views

40. The Whau Local Board has not been consulted on the decisions recommended in this report since the stormwater pipe will be delivered on private land.

41. This project has not been publicly notified as it is unlikely to have an adverse effect on the environment or people.

42. The decisions recommended in this report will have a positive effect on the surrounding neighbours, as installing this stormwater pipe will enable them to develop their land.
Objection to installation of a stormwater pipe at 119, 119A and 119B New Windsor Road, New Windsor

Item 9

Tauākī whakaaweawe Māori

Māori impact statement

43. The developer has not consulted with mana whenua with respect to the proposed stormwater connection. The developer is not seeking to discharge into the local stream network, but rather to connect to the public stormwater network. This means the impact on local waterways is likely to be minor.

44. As part of reviewing the resource consent for this development, the final receiving point for the stormwater flow will have been considered by the council’s regulatory body.

45. Ensuring that the developer has the ability to connect to the public stormwater network will lead to a well-functioning stormwater management system, reducing the impact of the development on water quality. This is a desired outcome for mana whenua in their role as kaitiaki of Auckland’s waterways.

Ngā ritenga ā-pūtea

Financial implications

46. If the committee endorses the construction of the pipe, all costs associated with the works shall be paid for by the developer. This includes all costs the council has incurred in facilitating a voluntary agreement between the developer and the owners of 119, 119A and 119B New Windsor Road and appointing engineers to advise on the viability of the works.

47. If the committee endorses construction of the stormwater pipe, the objecting property owner could appeal this decision to the District Court.

48. The Council will be responsible for any proven injurious affection to private land pursuant to section 181(6) of the Local Government Act 2002, and the Public Works Act 1981. The proposed pipeline does not involve the taking of any land.

49. Any damage to the objector’s property will also be made good by the council as part of the reinstatement works, so a claim for injurious affection on these grounds is unlikely.

50. A claim of injurious affection where no land is taken can be pursued independently of the section 181 process, so it need not prevent a Council resolution. If an amount cannot be agreed between the parties, the landowner can make a claim to the Land Valuation Tribunal.

51. If the committee does not endorse installation of the pipe, the developer has to find a less optimal solution, this could create the following cost implications for Auckland Council:

- costs associated with a poorly functioning stormwater management system including possible channel overflows from illegal discharges;
- monitoring and managing parallel stormwater systems created by property owners who are unable to connect to Auckland Council’s stormwater system.
Ngā raru tūpono me ngā whakamaurutanga

Risks and mitigations

52. Staff have undertaken a systematic assessment of risks arising from the project. Key risks relating to proceeding with the pipe and mitigations are shown in Table 2 below.

Table 2. Risks and mitigations arising from determination of the objection

<table>
<thead>
<tr>
<th>Risk</th>
<th>Likelihood and consequence</th>
<th>Mitigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal risk – Objector argues that this is in fact a private pipe and</td>
<td>Likelihood: Low</td>
<td>Once constructed the pipeline will be vested in the Council and form part of the public stormwater system which the Council is responsible for ensuring access to and maintaining. It is being built to Council's standards for public stormwater infrastructure and will serve a wider catchment as the area develops further.</td>
</tr>
<tr>
<td>Auckland Council ought to use section 460 of the Local Government Act</td>
<td>Consequence: Medium</td>
<td></td>
</tr>
<tr>
<td>Financial risk – If the landowner appeals the Regulatory Committee's</td>
<td>Likelihood: Low</td>
<td>It seems unlikely that the landowner would appeal where they have received assurances from qualified engineers that the works are technically sound, are in accordance with approval engineering plans and can be carried out in a manner which limits damage to their property.</td>
</tr>
<tr>
<td>decision, the Council may become liable for the cost of defending a</td>
<td>Consequence: Medium</td>
<td></td>
</tr>
<tr>
<td>District Court case. The landowner could also seek injurious  affection (if evidenced) through the Land Valuation Tribunal should a figure not be agreed.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Infrastructure risk - Low quality assets being vested to the Council</td>
<td>Likelihood: Low</td>
<td>This risk will only arise if the committee determines that the pipe should not be constructed. The recommended decision mitigates this risk.</td>
</tr>
<tr>
<td></td>
<td>Consequence: Medium</td>
<td></td>
</tr>
</tbody>
</table>

Ngā koringa ā-muri

Next steps

53. If the objection is not upheld and construction of the pipe is endorsed then council staff will use their powers under the Local Government Act to deliver the stormwater works.

54. The objector has up to 14 days to lodge a further appeal to the District Court. If this occurs then the council's legal team will support this process.
Objection to installation of a stormwater pipe at 119, 119A and 119B New Windsor Road, New Windsor

Ngā tāpirihanga
Attachments

<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Maps showing site, existing stormwater network and options for connection</td>
<td>117</td>
</tr>
<tr>
<td>B</td>
<td>Letter of objection to works from property owner</td>
<td>119</td>
</tr>
<tr>
<td>C</td>
<td>Record of correspondence with property owner</td>
<td>121</td>
</tr>
</tbody>
</table>

Ngā kaihaina
Signatories

| Authors | Leigh Steckler – Senior Healthy Waters Specialist  
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Alex Cumming – Senior Solicitor</td>
</tr>
</tbody>
</table>
| Authorisers | Craig McIlroy – General Manager Healthy Waters  
|           | Craig Hobbs – Director Regulatory Services       |
Attachment A – Site Plans and Options

The proposed connection from 121 New Windsor Road is to connect to the existing stormwater line within the driveway of 119 New Windsor Road. The proposed stormwater line will cross under the driveways of both 119A and 119B New Windsor Road.

Figure 1: Map of the site and proposed works

Key

- Developer’s property 121 New Windsor Road
- Proposed stormwater pipe
- Existing stormwater network
Figure 2 below shows the fall of the site is to the west and the arrows show the direction of runoff/flow from the development.

**Figure 2 - Map showing the topography of the site and direction of run-off flow**

As shown in Figure 3 below, three pipe alignments were considered for the purpose of serving the developer’s property at 121 New Windsor Road.

**Figure 3 - Pipe alignment options**
11th June 2019

Murray Discombe

Fraser Thomas

Dear Murray,

Thanks for the letter, unfortunately due to our other commitments have not been able to this objection. Anyways at the in prompt 2 meeting that I was called out without any notice, I did raise some objections and I stand by them. Now your proposal is to drill through underneath my driveway in front of my house to run the storm water pipe. I highly object that as the soil underneath driveway is highly unstable and while constructing the driveway we have encountered that and there. We have spent our life savings building our house and driven piles underneath the house to hold the house. I do not agree that there will be drilling done near my house and underneath the driveway.

While construction every pile drilled collapsed and therefore it is highly likely that the drilling will cause it to collapse posing danger to my family living in the house. The house is built by the bank and drilling underneath the driveway into the bank of open drain is very risky.

119 New Windsor owners did drill underneath to put services through and the driveway collapsed and we had re-do the driveway and it costs time, money and also it is only access to our house and if it is blocked then we won’t have access to our house.

I do object this work carried out in my land, 119B New Windsor had been sold to another owner earlier this year. You might have to contact that owner to work on his property as well.

Also 119 New Windsor road owners object this as well as they are planning development in their land in the future and this hinder development in their land. I think pushing this notice to get things through will not work.

Regards,

Arunesh
<table>
<thead>
<tr>
<th>Date</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>12-Apr-18</td>
<td>Developer's consultant contacted the owner of 119A New Windsor Road asking for consent</td>
</tr>
<tr>
<td>19-Apr-18</td>
<td>Owner of 119A New Windsor Drive indicated by email that they would not give consent</td>
</tr>
<tr>
<td>17-Aug-18</td>
<td>Developer contacted owner of 119A New Windsor Road via email with proposed options</td>
</tr>
<tr>
<td>30-Aug-18</td>
<td>Developer contacted the owner of 119 via email with plans and neighbours' consent form</td>
</tr>
<tr>
<td>12-Feb-19</td>
<td>Developer engaged Auckland Council to carry out a section 181 process</td>
</tr>
<tr>
<td>20-Mar-19</td>
<td>Letter 1 was sent to all property owners from Council indicating intention to seek access via 181</td>
</tr>
<tr>
<td>2-Apr-19</td>
<td>Follow up email was sent by Council to the property of 119 New Windsor Road</td>
</tr>
<tr>
<td>11-Apr-19</td>
<td>Letter 2 was sent to all property owners by Council indicating intention to proceed with 181</td>
</tr>
<tr>
<td>15-Apr-19</td>
<td>Response via email was received by owner of 119A &amp; B New Windsor Road</td>
</tr>
<tr>
<td>10-May-19</td>
<td>Meeting between owner of 119A and 119B, developer and Fraser Thomas</td>
</tr>
<tr>
<td>11-Jun-19</td>
<td>Letter 3 was sent out by Council indicating works will progress via section 181</td>
</tr>
<tr>
<td>11-Jun-19</td>
<td>Formal objection received from owner of 119A New Windsor Road</td>
</tr>
</tbody>
</table>

Objection to installation of a stormwater pipe at 119, 119A and 119B New Windsor Road, New Windsor
Review of Food Safety Bylaw 2013, options and proposed future direction

File No.: CP2019/11277

Te take mō te pūrongo

Purpose of the report

1. To determine the outcome of the review of the Tāmaki Makaurau Whakapai Kai 2013, Auckland Council Food Safety Bylaw 2013 (Bylaw) and decide whether to propose to make a new bylaw.

Whakarāpopototanga matua

Executive summary

2. To enable the Regulatory Committee to complete the review of the Bylaw and decide whether to propose a new bylaw, staff have prepared a findings and options report.

3. Key findings are that the risk of foodborne illness from the sale of food still exists and a bylaw for the display of food grades can raise public awareness and incentivise businesses.

4. Staff recommend that option one (improve Bylaw) to require most food businesses to display a food grade is the most favourable option because:
   - the current Bylaw and food grading scheme have support from the public, operators, health experts and environmental health officers as they can incentivise better food safety practices
   - most food businesses that serve the public are currently required to display a food grade (6,711 or 70 per cent) even if they have a lower grade
   - it raises public awareness of food safety standards and enables them to make an informed decision about where to purchase food
   - has less compliance costs for business and council than option two and avoids the risk of inconsistency with the Food Act 2014
   - can provide greater incentive for food businesses to improve food safety standards than options three and four, which have no requirement to display a food grade
   - fills a regulatory gap in the absence of a national food grading scheme.

5. Option two (extend Bylaw) would require 81 per cent of all food businesses that serve food to the public to display a food grade. The key trade-off is it would increase compliance costs for food businesses not registered and verified by council and may be inconsistent with the Food Act. Further engagement with food businesses and the Ministry for Primary Industries would be required before adopting this option.

6. Staff recommend the committee makes the necessary determinations to commence the statutory process to make a new bylaw for option one (improve Bylaw). This includes recommending the Governing Body adopt the statement of proposal in Attachment A.

7. There may be public concern that the proposed new bylaw does not cover all Auckland food businesses. The statement of proposal will explain the reasons for the proposal so the public can provide informed feedback.

8. If the committee and Governing Body approve the recommendations, public consultation on the proposal is scheduled for late 2019 or early 2020. A panel will consider any feedback, deliberate and make recommendations to the Governing Body. A final decision on any new bylaw will be made by May 2020.
Ngā tūtohunga

Recommendation/s

That the Regulatory Committee:

a) determine that a bylaw is the most appropriate way to help protect public health from foodborne illness as detailed in Attachment B of the agenda report.

b) agree that option one (improve Bylaw) as detailed in Attachment C of the agenda report is the preferred option to help protect public health from foodborne illness.

c) recommend the Governing Body adopt the Food Safety Information Bylaw Statement of Proposal in Attachment A of the agenda report for public consultation and confirm that the proposed new bylaw:

   i) is the most appropriate way to help protect public health from foodborne illness

   ii) is the most appropriate form of bylaw

   iii) does not give rise to any implications and is not inconsistent with the New Zealand Bill of Rights Act 1990

   iv) is not inconsistent with the Food Act 2014.

d) recommend the Governing Body forward to local boards and the Independent Māori Statutory Board:

   i) the statement of proposal in Attachment A of the agenda report for their views

   ii) this agenda report and attachments for their information.

e) delegate authority to the chairperson of the relevant committee following the 2019 local body elections to:

   i) appoint a chair and two panel members selected from the Governing Body and the Independent Māori Statutory Board to attend ‘Have Your Say’ events as appropriate and to deliberate and make recommendations to the Governing Body on public feedback to the proposal in (c)

   ii) make replacement appointments to the panel if a panel member is unavailable.

f) delegate authority through the Chief Executive to a manager responsible for bylaws:

   i) to appoint staff to receive public feedback at ‘Have Your Say’ events

   ii) to make any amendments to the proposal in (c) to correct errors, omissions or to reflect decisions made by the Regulatory Committee or the Governing Body.

Horopaki

Context

The Food Safety Bylaw requires businesses to display a food grade

9. The Tāmaki Makaurau Whakapai Kai 2013, Auckland Council Food Safety Bylaw 2013 (Bylaw) was adopted by the Auckland Council Governing Body on 23 May 2013 (GB/2013/48).¹ A copy of the Bylaw is contained in Attachment A.

10. The Bylaw requires most food businesses that serve the public and are registered and verified by council, to display a food safety grade certificate (food grade).

¹ Bylaw made under section 145 of the Local Government Act 2002 and section 64 of the Health Act 1956.
11. The Bylaw complements the Food Act 2014 (Food Act) and is aligned to the Auckland Plan 2050 outcomes to improve health and wellbeing and ensure regulatory mechanisms support business.

Food grades are issued independently from the Bylaw

12. Food grades are issued as part of the council’s “Eatsafe Auckland” food grading scheme. Council’s Environmental Health Unit developed the scheme as an operational initiative that is independent of the Bylaw (separate) and can be changed at any time.

13. Food grades are based on the outcome of verification or inspection under the Food Act. The Environmental Health Unit undertake verification and inspection under the Food Act to ensure food businesses are selling safe food.

The Bylaw has changed significantly with the introduction of the Food Act

14. When the Bylaw was first adopted in 2013, the Food Hygiene Regulations 1974 (with some exemptions) required all food businesses in Auckland to register with council. The Bylaw required most businesses that served the public to display a food grade, and had clauses about unhygienic food premises, training, food stalls and mobile premises.

15. The introduction of the Food Act resulted in significant changes, in particular:
   - food businesses are now required to comply with different risk-based measures
   - food businesses can now register with council or the Ministry for Primary industries (MPI), depending on whether they are in Auckland or have stores in other regions
   - third-party verifiers can now verify certain food businesses
   - Bylaw clauses inconsistent with the Food Act were removed in February 2016 (GB/2016/8)
   - transitional Bylaw clauses for food training, food stalls and mobile shops expired in February 2019.

16. Table 1 provides an overview of regulation of food businesses in Auckland.

17. Currently, the Food Act does not require the display of any information to the public (for example a food grade) that identifies the food business as selling safe food.

18. MPI is authorised to make regulations to introduce a national food safety grading scheme, which could include display requirements. Currently however, there is no scheme and it is uncertain whether such a scheme will be developed.

Table 1: Overview of regulation of food businesses that serve the public in Auckland

<table>
<thead>
<tr>
<th>Display rule</th>
<th>Risk based measures</th>
<th>Sites registered by council (MPI)</th>
<th>Sites verified by Council (Third Party)</th>
<th>Percentage of food businesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not graded</td>
<td>Custom Food Control Plan and Template (s40) Food Control Plan (high risk) • food chains, supermarkets</td>
<td>0 (431) 0 (83)</td>
<td>0 (431) 0 (83)</td>
<td>4% 1%</td>
</tr>
<tr>
<td>Display required</td>
<td>Template (s39) Food Control Plan (high risk) • restaurants, cafés, takeaways</td>
<td>6712 (567)</td>
<td>6712 (567)</td>
<td>76%</td>
</tr>
</tbody>
</table>
Display rule | Risk based measures                                                                 | Sites registered by council (MPI) | Sites verified by Council (Third Party) | Percentage of food businesses |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>National Programme 3 (medium risk)</td>
<td>• dairies and service stations that reheat food</td>
<td>1434 (114)</td>
<td>1238 (310)</td>
<td>16%</td>
</tr>
<tr>
<td>National Programme 2 (low risk)</td>
<td>• early childhood centres, sale of chilled and frozen foods except packaged ice cream</td>
<td>106 (44)</td>
<td>60 (90)</td>
<td>2%</td>
</tr>
<tr>
<td>National Programme 1 (lower risk)</td>
<td>• coffee carts, packaged ice creams and shelf stable products</td>
<td>123 (3)</td>
<td>98 (28)</td>
<td>1%</td>
</tr>
</tbody>
</table>

Note: This table excludes sites that do not serve food to the public, for example manufacturers or producers.

The Bylaw expires in 2020 and must meet certain statutory requirements if still needed

19. The Bylaw will expire on 23 May 2020. If a new bylaw is needed council must determine that the new bylaw meets legislative criteria and decide whether to adopt the new bylaw following public feedback. Alternatively, council can propose to allow the current Bylaw to expire following public feedback.

Staff prepared a findings and options report to determine whether a bylaw is still needed

20. To assist the committee in deciding whether the Bylaw is still needed:

- staff engaged with a range of stakeholders and carried out research in mid-2019 to prepare a findings report on the review of the Bylaw (Attachment B)
- staff then prepared an options report (Attachment C) that responds to the findings.

Tātaritanga me ngā tohutohu

Analysis and advice

Foodborne illness from food businesses is still an issue in Auckland

21. There is still a risk of foodborne illness from businesses selling food to the public:

- food or beverages can become contaminated due to improper food storage, preparation or cooking
- foodborne illnesses can cause gastroenteritis and, in some cases, long-term health problems such as kidney failure
- children, the elderly, pregnant women and people with immunodeficiencies such as diabetes are more vulnerable

---


4 Section 156 via section 82 of the Local Government Act 2002 (council in its discretion elects to use the special consultative procedure for decision to allow a bylaw to expire as if it were a decision to revoke a bylaw).
• in 2017 there was at least an estimated 3,634 notifiable illness incidents (excluding norovirus) in Auckland (estimated 18,747 in New Zealand), most of which were foodborne
• there were 2,188 Auckland Council requests for service about food safety concerns with food businesses (1 July 2017 to 30 April 2019)
• the risk of foodborne illnesses is anticipated to increase with the public eating a wider range of foods and more raw fruits and vegetables, new food handling and preparation practices, and more on-line food businesses and markets.

The Food Act provides an effective and efficient means to ensure food safety

22. The Food Act established a national registration and verification framework to ensure food businesses sell safe food. This is supported by powers and penalties that are higher than those available under a Bylaw and includes infringement fines.

The Bylaw has wide support but its effectiveness is uncertain

23. The public display of a food grade is intended to raise public awareness and incentivise food businesses, and is widely supported by operators and the public. However, it is uncertain whether food grading reduces foodborne illness. Table 2 summarises the reasons for and against food grading contained in the findings report (Attachment B).

Table 2: Reasons for and against Bylaw and food grading

<table>
<thead>
<tr>
<th>Reasons for Bylaw and food grading</th>
<th>Reasons against Bylaw and food grading</th>
</tr>
</thead>
<tbody>
<tr>
<td>compliance with Bylaw requirement to display a food grade by those businesses required to do so, is high</td>
<td>recent international studies are undecided about whether food grading reduces foodborne illness and some suggest grades can be misleading for the public</td>
</tr>
<tr>
<td>strong support for the Bylaw requirement and food grading:</td>
<td>most territorial authorities in New Zealand do not have a food grade bylaw</td>
</tr>
<tr>
<td>local boards, environmental health officers, health experts and industry organisations in support</td>
<td></td>
</tr>
<tr>
<td>health experts and environmental health officers consider it can raise public awareness and incentivise improved food safety</td>
<td></td>
</tr>
<tr>
<td>85 per cent of businesses support display of food grades</td>
<td></td>
</tr>
<tr>
<td>fills a regulatory gap in the absence of a national grading scheme</td>
<td>some comparable international jurisdictions do not require a food grade to be displayed</td>
</tr>
<tr>
<td>70 per cent of all high-risk food businesses that serve the public (cafes, restaurants, takeaways) currently required to display a food grade</td>
<td>there is public confusion because not all food businesses are required to display a food grade</td>
</tr>
<tr>
<td>other comparable international jurisdictions have food grading.</td>
<td>statutory penalties are not used to enforce the Bylaw.</td>
</tr>
</tbody>
</table>
Regulatory Committee
11 July 2019

Improvements to the Bylaw have been identified

24. If a new bylaw is made, it could improve on the current Bylaw by:
   • clearly stating which food businesses are required to display a food grade
   • clarifying where food grades should be displayed at physical and online sites.

Statutory options include making a new bylaw or allowing the bylaw to expire

25. Staff identified the following options to achieve the outcome sought:
   • option one: (improve Bylaw) new bylaw requiring most food businesses that serve the public and are registered and verified by council to display a food grade
   • option two: (extend Bylaw) new bylaw requiring most food businesses that serve the public regardless of registration or verification agency to display a food grade
   • option three: (no bylaw) allow the Bylaw to expire but continue food grading
   • option four: (no bylaw or grading) allow the Bylaw to expire and cease food grading.

26. An option to require National Programme food businesses to display a food grade was considered but not assessed further because they regulate lower risk businesses.

27. Staff assessed each option against assessment criteria. They reflect the core objective to improve and maintain business food safety standards to decrease the risk of foodborne illness, while ensuring compliance costs are reasonable and consistent with the Food Act. The criteria also reflect council’s statutory duties under the Local Government Act 2002.\(^5\)

28. Table 3 provides a summary of the full assessment contained in Attachment A.

<table>
<thead>
<tr>
<th></th>
<th>Effectiveness at improving and maintaining business food safety standards to decrease the risk of foodborne illness</th>
<th>Reasonableness of compliance costs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Option one: improve Bylaw (Recommended)</strong></td>
<td>✓ ✓</td>
<td></td>
</tr>
<tr>
<td><strong>Option two: extend Bylaw</strong></td>
<td>✓ ✓ ✓</td>
<td></td>
</tr>
<tr>
<td><strong>Option three: no bylaw</strong></td>
<td>✓ ✓</td>
<td></td>
</tr>
<tr>
<td><strong>Option four: no bylaw or grading</strong></td>
<td>✓ ✓ ✓</td>
<td></td>
</tr>
</tbody>
</table>

Key: “✓” and “✗” reflect the impact of the option against each criterion relative to other options.

Improving the current Bylaw (option one) is the most favourable option

29. Option one (improve Bylaw) scores most favourably against the assessment criteria. Staff recommend this option because:
   • the current Bylaw and food grading scheme have strong public and operator support
   • the current Bylaw and food grading scheme have support from health experts and environmental health officers as they can incentivise better food safety practices
   • most food businesses that serve the public are currently required to display a food grade (6,711 or 70 per cent)
   • it requires food businesses to display a food grade even if it is a lower grade
   • it raises public awareness of food safety standards and enables them to make an informed decision about where to purchase food

\(^5\) Local Government Act 2002, sections 3, 10, 14 and 155.
it has less compliance costs for business and council than option two and avoids the risk of inconsistency with the Food Act

• it can provide greater incentives for food businesses to improve food safety standards than options three and four which have no requirement to display

• it fills a regulatory gap in the absence of a national food grading scheme.

30. Option two (extend Bylaw) would require 81 per cent of all food businesses that serve food to the public to display a food grade. The key trade-off is it would increase compliance costs for food businesses not registered and verified by council and may be inconsistent with the Food Act. Further engagement with food businesses and the Ministry for Primary Industries would be required before adopting this option.

Staff have prepared a statement of proposal in line with statutory requirements

31. Staff have drafted a statement of proposal to implement option one (improve Bylaw) in Attachment A in accordance with statutory requirements and best practice drafting guidelines. Table 4 shows the main proposals.

32. Staff consider the proposed new bylaw does not give rise to any implications and is not inconsistent with the New Zealand Bill of Rights Act 1990 and would not be inconsistent with the Food Act.

Table 4: Summary of major proposals in the proposed new bylaw

<table>
<thead>
<tr>
<th>Major proposals</th>
<th>Reasons for proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>• require operators of food businesses to clearly display a valid food safety information certificate if they – o operate under a template food control plan o serve the public o are registered and verified by council.</td>
<td>• better protects public health from foodborne illness • continues to require most food businesses that serve the public (estimated 6,711 or 70 per cent) to display a food safety information certificate, for example most Auckland only based cafes, restaurants, bars and takeaways • incentivises most food businesses that serve the public to achieve high food safety standards • empowers the public to make informed decisions about where they purchase food</td>
</tr>
<tr>
<td>• require food safety information certificates to be displayed in specified locations depending on whether the food business has a physical and/or online site.</td>
<td>• requires food safety information to be displayed in locations that are visible to the public at stores, market stalls, food trucks and online prior to entering a premises or making a purchase • rules are clearer and easier to understand.</td>
</tr>
</tbody>
</table>

Staff recommend the committee commence the public feedback process

33. Staff recommend the committee makes the necessary determinations to delegate authority to the chairperson of the relevant committee following the 2019 local body elections to appoint a chair and two panel members selected from the Governing Body and the Independent Māori Statutory Board.

34. The panel attends ‘Have Your Say’ events as appropriate, deliberates and makes recommendations to the Governing Body on public feedback to the statement of proposal.

35. It is also recommended that staff be delegated authority to receive public feedback at ‘Have Your Say’ events as appropriate or in case a panel member cannot attend.
Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera

Council group impacts and views

36. The Bylaw impacts the operation of the Environmental Health Unit. Input was sought through face-to-face meetings and a workshop. Council units are aware of the impacts of possible changes to the Bylaw and their implementation role.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe

Local impacts and local board views

37. Local board member views were sought as part of the Bylaw review. Generally, local board members support the current Bylaw and food grading scheme.

38. Members were concerned about public confusion. For example, not all Auckland food businesses that serve the public are required to display a food grade and display requirements for market stalls and mobile shops are unclear.

39. The proposal addresses local board member concerns by clarifying display requirements. The proposal does not extend the display requirement (option two) because further investigation would be required to ensure this would not be inconsistent with the Food Act.

40. Local boards will have an opportunity to consider feedback from residents in their local board area prior to an opportunity to provide input to the panel in early 2020.

Tauākī whakaaweawe Māori

Māori impact statement

41. Kai is significant for Māori as it is embedded in the tikanga of manaakitanga and there is specific tikanga around its preparation and consumption. The sharing of kai with manuhiri is an essential part of marae tikanga.

42. Marae are exempt from verification under the Food Act where kai is prepared for customary purposes (for example, at a tangi).

43. Marae committees that responded to staff requests for feedback support food grading for businesses that sell food to the public. The proposal supports this view by continuing to require most food businesses to display a food grade.

Ngā ritenga ā-pūtea

Financial implications

44. Public consultation and implementation costs will be met within existing budgets.

Ngā raru tūpono me ngā whakaurutanga

Risks and mitigations

45. If the committee approves the recommendations, there may be public concern that the proposed new bylaw does not cover all Auckland food businesses.

46. The statement of proposal will explain the reasons for the proposal so the public can provide informed feedback. For example, an extension of the requirement to display a food grade to more food businesses may be inconsistent with the Food Act.
Ngā koringa ā-muri

Next steps

47. If the committee and Governing Body approve the recommendations, public consultation on the proposal will follow. Public consultation is currently scheduled for late 2019 or early 2020. ‘Have Your Say’ events will take place during the public consultation period.

48. The panel will consider any feedback during a publicly notified deliberation meeting that the public can observe. The panel will make its recommendations to the Governing Body. The Governing Body will decide whether to accept the panel recommendations and officially make a new bylaw by May 2020.

Ngā tāpirihanga
Attachments

<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Food Safety Information Bylaw Statement of Proposal</td>
<td>133</td>
</tr>
<tr>
<td>B</td>
<td>Food Safety Bylaw 2013: Findings Report 2019</td>
<td>177</td>
</tr>
<tr>
<td>C</td>
<td>Food Safety Bylaw 2013: Options Report</td>
<td>243</td>
</tr>
</tbody>
</table>

Ngā kaihaina
Signatories

<table>
<thead>
<tr>
<th>Authors</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Julia Harker - Policy Analyst</td>
<td></td>
</tr>
<tr>
<td>Elizabeth Osborne - Policy Analyst</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Authorisers</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Kataraina Maki – General Manager - Community &amp; Social Policy</td>
<td></td>
</tr>
<tr>
<td>Craig Hobbs – Director Regulatory Services</td>
<td></td>
</tr>
</tbody>
</table>
Looking after the health of Aucklanders

Reducing the risk of foodborne illness

display of food safety information certificates

Statement of Proposal to make a new Auckland Council Food Safety Information Bylaw 2020. Public consultation takes place from [date] to [date].
Have your say

Looking after the health of Aucklanders

Every day Aucklanders choose to purchase food from a wide range of food businesses such as cafés, restaurants, takeaways, caterers and supermarkets.

Consumption of contaminated food and beverages purchased at a food business may result in foodborne illnesses such as campylobacteriosis, listeriosis, yersiniosis and salmonellosis.

Food and beverages can become contaminated due to improper storage, preparation or cooking, mixing raw meat with uncooked fruit and vegetables, food prepared by people infected with a virus or from contaminated water.

How Auckland Council keeps you safe

Alongside the Ministry for Primary Industries, we help administer the Food Act 2014 which ensures food businesses sell safe and suitable food.

We also require most food businesses that serve the public (for example, most Auckland-only cafés, restaurants, bars and takeaways) to display a food safety grade certificate (food grade) to:

- incentivise businesses to achieve high food safety standards
- empower you to make informed decisions about where you purchase food.

To make sure we are consistent with the Food Act, council only gives food grades to businesses that we register and verify.

The current rules are in the Tāmaki Makaurau Whakapai Kai 2013, Auckland Council Food Safety Bylaw 2013.

Improving food grade display rules

We recently checked how the rules are working and identified improvements. We propose a new bylaw that:

- requires most Auckland-only food businesses that serve the public (for example cafés, restaurants, bars and takeaways) to display a food grade. Specifically, this means Auckland food businesses that operate under a Template Food Control Plan, serve the public, and are registered and verified by council
- requires the food grade to be displayed until it expires or a new certificate is issued (whichever occurs first)
- requires the food grade to be displayed in specified locations visible to the public, depending on whether it is a physical and/or online site.

We want to know what you think

Starting on [date] through to [date], we want you to tell us what you think about the proposed new Auckland Council Food Safety Information Bylaw 2020. Visit [www.aucklandcouncil.govt.nz/have-your-say](http://www.aucklandcouncil.govt.nz/have-your-say) for more information, give your feedback and find out where you can drop in to a 'have your say' event.
2 What is the Bylaw

The Tamaki Makaurau Whakapai Kai 2013, Auckland Council Food Safety Bylaw 2013 was made on 23 May 2013.

The purpose of the Bylaw is to protect public health by requiring most Auckland-only food businesses (for example Auckland-only cafés, restaurants, bars and takeaways) to display a food grade at the main entrance to the premises.

Specifically, this means food businesses in Auckland that operate under a Template Food Control Plan and are registered and verified by council.

Food Safety Bylaw 2013 framework

<table>
<thead>
<tr>
<th>FOOD SAFETY BYLAW 2013 FRAMEWORK</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Food grade display location</strong></td>
</tr>
<tr>
<td>• conspicuous</td>
</tr>
<tr>
<td>• at principal entrance of premises</td>
</tr>
<tr>
<td>• in full and unobscured view</td>
</tr>
<tr>
<td><strong>Regrading</strong></td>
</tr>
<tr>
<td>• regrading applications in certain circumstances</td>
</tr>
<tr>
<td><strong>Food grade display relocation</strong></td>
</tr>
<tr>
<td>• council may require relocation to more visible place</td>
</tr>
<tr>
<td><strong>Certificate ownership</strong></td>
</tr>
<tr>
<td>• remains property of council</td>
</tr>
<tr>
<td>• may be removed by council if standard falls below grade</td>
</tr>
<tr>
<td><strong>Exemptions</strong></td>
</tr>
<tr>
<td>• food businesses not required to be registered by the council under the former Food Hygiene Regulations 1974</td>
</tr>
<tr>
<td>• exempt food businesses may choose to waive the exemption.</td>
</tr>
</tbody>
</table>
3 What council proposes to change

Improving food grade display rules

We recently checked how the rules are working and identified improvements.

Council is proposing to better reduce the risk of foodborne illness by making a new Food Safety Information Bylaw 2020.

The major proposals are to:

<table>
<thead>
<tr>
<th>Major proposals</th>
<th>Reasons for proposals</th>
</tr>
</thead>
<tbody>
<tr>
<td>• require operators of food businesses to clearly display a valid food safety</td>
<td>• better protects public health from foodborne illness</td>
</tr>
<tr>
<td>information certificate if they –</td>
<td>• continues to require most food businesses that serve the public (estimated 6,711 or 70 per cent) to display a food safety information certificate, for example most Auckland-only based cafes, restaurants, bars and takeaways</td>
</tr>
<tr>
<td>○ operate under a template food control plan</td>
<td>• incentivises most food businesses that serve the public to achieve high food safety standards</td>
</tr>
<tr>
<td>○ serve the public</td>
<td>• empowers the public to make informed decisions about where they purchase food</td>
</tr>
<tr>
<td>○ are registered and verified by council.</td>
<td>• requires food safety information to be displayed in locations that are visible to the public at stores, market stalls, food trucks and online prior to entering a premises or making a purchase</td>
</tr>
<tr>
<td>• require food safety information certificates to be displayed in specified</td>
<td>• rules are clearer and easier to understand.</td>
</tr>
<tr>
<td>locations depending on whether the food business has a physical or online</td>
<td></td>
</tr>
<tr>
<td>site.</td>
<td></td>
</tr>
</tbody>
</table>

If you want to know more, Appendix A shows what the proposed new food safety information bylaw would look like. Appendix B provides a copy of the existing Food Safety Bylaw 2013. Appendix C provides a summary of the differences between the existing and proposed bylaw.
4 How we implement the Bylaw

Council uses a Voluntary, Assisted, Directed and Enforced (VADE) graduated response to bylaw complaints. This means that the response is based on the individual circumstances of the case including the seriousness of the harm and attitude to compliance.

We respond to lower risk issues in the first instance with education, advice and informal warnings. If this doesn't work, council may issue formal warnings. For serious or ongoing bylaw breaches, council may prosecute offenders. Penalties could include a fine of up to $20,000.

**Voluntary, Assisted, Directed and Enforced (VADE) approach to compliance**

If someone breaches the rules

Council responds to complaints as soon as possible depending on the nature of the issues.
5 How we got here

Decisions leading to the proposed changes

The Local Government Act 2002 requires council to review its bylaws to determine whether they are effective, efficient and still necessary. The Bylaw must not be inconsistent with the Food Act 2014 or the New Zealand Bill of Rights Act 1990.

The existing Food Safety Bylaw 2013 is due to expire on 23 May 2020. Auckland Council reviewed the existing bylaw, reported its findings and considered the options in July 2019.

Bylaw review and approval process

This statement of proposal was approved for public consultation by the Governing Body in July 2019 to commence the process to make a new Food Safety Information Bylaw 2020.

Go to: www.aucklandcouncil.govt.nz/have-your-say for copies of the above decisions including a summary of options considered.

---

1 Food Act 2014, section 446.
6 We want your input

You have an opportunity to tell us your views.

We would like to know what you think about the proposed new food safety information bylaw.

Give us your feedback

Starting on **2020** through to **2020**, we are asking for feedback on the proposed new Auckland Council Food Safety Information Bylaw 2020.

You can give your feedback:

- in person at one of our ‘Have your say’ events – visit our website for details
- online at our website [www.aucklandcouncil.govt.nz/have-your-say](http://www.aucklandcouncil.govt.nz/have-your-say)

Visit [www.aucklandcouncil.govt.nz/have-your-say](http://www.aucklandcouncil.govt.nz/have-your-say) for more information.

*Online services are available at our libraries.*

*Your name and feedback will be available to the public in our reports and online. All other personal details will remain private.*
Appendix A: Proposed new Auckland Council Food Safety Information Bylaw 2020
Whakapai kai 2020
Food Safety Information Bylaw 2020

(as at # month 2020)

made by the Governing Body of Auckland Council

in resolution GB/2020/##

on # month 2020

Bylaw made under section 145 of the Local Government Act 2002 and section 64 of the Health Act 1956.
Summary

This summary is not part of the Bylaw but explains the general effects.

The purpose of this Bylaw is to protect public health by requiring operators of certain food businesses to display a valid food safety information certificate (clause 6).

This means all food businesses in Auckland who operate using a Template Food Control Plan registered and verified by council under the Food Act 2014. For example, Auckland-only restaurants, cafés and takeaways.

The certificate (more commonly known as a ‘food grade’) must be displayed for specified durations and in specified locations. This must be in a way that is clearly visible to the public before they enter the premises or decide to make a purchase in person or online (clause 7).

Other parts of this Bylaw assist with its administration by –

- stating the name of this Bylaw, when it comes into force and where it applies (clauses 1, 2 and 3)
- stating the purpose of this Bylaw and defining terms (clauses 4 and 5)
- referencing council’s powers to enforce this Bylaw and seek up to $20,000 in penalties (Part 3).

About Auckland Council’s food grading scheme

Food safety information certificates (or food grades) are issued through council’s EatSafe Auckland food grading scheme, currently –

- food grades are based on the outcome of verification or inspection of food businesses under the Food Act 2014
- food grades range from A to E where council verification officers issue A to C grades (pass) and council food safety officers issue D and E grades (fail)
- all food businesses who are required in this Bylaw to display a food grade are automatically issued a grade at no additional cost
- other food businesses (for example Auckland-only dares and superettes) registered and verified by council can choose to receive a food grade and whether to display it at no additional cost
- lower pass grades can be reassessed within an agreed timeframe by the verifier
- fail grades can only be reassessed by appealing to council about the action taken under the Food Act 2014 which resulted in a lower food grade.

The scheme does not form part of the Bylaw or the registration, verification and inspection processes under the Food Act 2014 and may be changed at any time.
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<tr>
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**Part 1**

Preliminary provisions

| 4 Purpose | 4 |
| 5 Interpretation | 4 |

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Display of food safety information certificates

| 6 Certain food businesses must display a food safety information certificate | 5 |
| 7 Food safety information certificates must be displayed for specified durations and in specified locations | 6 |
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**Part 3**

Enforcement powers, offences and penalties

| 9 Council can use statutory powers and other methods to enforce this Bylaw | 7 |
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**Part 4**

Savings and transitional provisions

| 11 Existing inquiries to be completed under the Food Safety Bylaw 2013 | 7 |
1 Title
(1) This Bylaw is the Whakapai kai 2013, Food Safety Information Bylaw 2020.

2 Commencement
(1) This Bylaw comes into force on 23 May 2020.

3 Application
(1) This Bylaw applies to Auckland.

Part 1
Preliminary provisions

4 Purpose
(1) The purpose of this Bylaw is to protect public health by requiring operators of certain food businesses to publicly display a food safety information certificate to –
    (a) incentivise food businesses to achieve high food safety standards
    (b) raise public awareness to enable people to make informed decisions about where to purchase food.

5 Interpretation
(1) In this Bylaw, unless the context otherwise requires, –

Auckland has the meaning given by section 4(1) of the Local Government (Auckland Council) Act 2009.

Related information
The Local Government (Auckland Council) Act 2009 enabled the Local Government Commission to determine Auckland’s boundaries in a map titled LGC-Ak-R1. The boundaries were formally adopted by Order in Council on 15 March 2010, and came into effect on 1 November 2010.

Council, for the purposes of this Bylaw, means the Governing Body of the Auckland Council or any person delegated or authorised to act on its behalf.

Related information
Council’s Environmental Health Unit has delegated authority to administer and enforce this Bylaw as at June 2019.

Registered means the process of registration under the Food Act 2014.

Valid food safety information certificate means an unexpired certificate issued by council and used by the food business to which it was issued.

Verified means the process of verification under the Food Act 2014.
(2) A term or expression defined in the Food Act 2014 and used in this Bylaw has the same meaning as it has in that Act, unless defined differently in this Bylaw.

(3) Related information does not form part of this Bylaw and may be inserted, changed or removed without any formality.

(4) The Interpretation Act 1999 applies to this Bylaw.

Part 2
Display of food safety information certificates

6 Certain food businesses must display a food safety information certificate

(1) The operator of a food business must display a valid food safety information certificate in a manner specified in clause 7 if that business –

(a) operates under a Template Food Control Plan in the Food Act 2014;

(b) directly serves the public; and

(c) is registered and verified by council.

Related information about food businesses subject to this Bylaw
The Food Act 2014 establishes a regulatory framework in which

- high-risk food businesses that operate only in Auckland (for example Auckland-only restaurants, bars, cafes and takeaways) must register and be verified by council
- high-risk food businesses with stores both in Auckland and other locations in New Zealand (for example fast food and supermarket chains) can register with the Ministry of Primary Industries and be verified by third-party verifiers (instead of council)
- medium to low risk food businesses must be registered and verified (for example bread bakeries, coffee carts and dairies or superettes)
- exempt and lower risk food businesses have a general responsibility to provide safe and suitable food (for example fundrasiers, customary food at marae and farm gate sales)

This Bylaw applies to all high-risk food businesses that operate in Auckland-only and any food chains that choose to register and be verified by council. This Bylaw does not apply to:

- high-risk food businesses that are not registered and verified by council because council does not hold the information necessary to administer the Eatsafe Auckland food grading scheme
- medium or lower risk food businesses due to their lower risk to public health.
7 Food safety information certificates must be displayed for specified durations and in specified locations

(1) The operator of a food business specified in clause 6(1) must display a valid food safety information certificate —
   
   (a) no later than the first business open day after the business receives the certificate, until the date the certificate expires or a new certificate is issued, whichever occurs first; and
   
   (b) in one or more locations as specified in the below table; or
   
   (c) in any other location directed by council.

<table>
<thead>
<tr>
<th>Food business site type</th>
<th>Food safety information certificate display location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any physical site¹ —</td>
<td>The certificate must be displayed in a manner that is clearly visible to the public (in order of preference) —</td>
</tr>
<tr>
<td>(i) used in connection with the food business;</td>
<td>(i) on all doors used by the public and clearly visible in the direction of entry; or if this is not possible</td>
</tr>
<tr>
<td>(ii) at which food is sold directly to the public; and</td>
<td>(ii) on windows adjacent to doors in (i) and clearly visible in the direction of entry; or if this is not possible</td>
</tr>
<tr>
<td>(iii) that operate under the same Food Control Plan.</td>
<td>(iii) at the main counter; or if this is not possible</td>
</tr>
<tr>
<td>Any online site² —</td>
<td>An image of the certificate must be clearly visible on the food business homepage or similar landing page or screen.</td>
</tr>
<tr>
<td>(i) related to the food business; and</td>
<td></td>
</tr>
<tr>
<td>(ii) that the business has control over.</td>
<td></td>
</tr>
</tbody>
</table>

¹ For example any building, structure or similar site, food truck, food stall, including restaurant, café, takeaway.
² For example a website, app, social media or similar medium.

(2) The operator of the food business may copy a valid food safety information certificate for the purposes of complying with clause 7(1)(b).

8 Food safety information certificates remain the property of council

(1) Food safety information certificates, including any copies, remain the property of council.

(2) The operator of a food business must not display an invalid food safety information certificate.
Part 3
Enforcement powers, offences and penalties

9 Council can use statutory powers and other methods to enforce this Bylaw

(1) Council may use its powers under the Local Government Act 2002 and Health Act 1956 or its powers as a service provider to enforce this Bylaw.

Related information about powers
- Relevant enforcement powers under the Local Government Act 2002 (as reprinted on 1 July 2018) include court injunction (section 162), powers of search and seizure (sections 164, 165, 166, 167, 168), powers of entry (sections 171, 172, 173), and power to request name and address (section 178).
- Relevant enforcement powers under the Health Act 1956 (as reprinted on 2 March 2018) include court orders (section 33) and powers of entry and inspection (section 128).
- Council can also use other methods to encourage compliance, for example providing advice, information or warnings.

10 A person can be penalised for not complying with this Bylaw

(1) A person who fails to comply with Part 2 of this Bylaw commits an offence and is liable to a penalty under the Local Government Act 2002 or the Health Act 1956.

Related information about penalties
A person who is convicted of an offence against a bylaw is liable to a fine not exceeding $20,000 under section 242 of the Local Government Act 2002 (as reprinted on 1 July 2018) or a fine not exceeding $500 and a further $50 per day for a continuing offence under section 66 of the Health Act 1956 (as reprinted on 2 March 2018).

Part 4
Savings and transitional provisions

11 Existing inquiries to be completed under the Food Safety Bylaw 2013

(1) Any compliance or enforcement action by council under the Whakapai kai 2013, Auckland Council Food Safety Bylaw 2013 that was not completed before the date this Bylaw commences, will continue to be actioned under that bylaw as if it were still in force and as if this Bylaw had not been made.
## Related information, Bylaw history

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>01 November 2010</td>
<td>Made legacy bylaws about food safety† (Section 63 Local Government (Auckland Transitional Provisions) Act 2010)</td>
</tr>
<tr>
<td>01 November 2010</td>
<td>Commencement of legacy bylaws about food safety (Section 63 Local Government (Auckland Transitional Provisions) Act 2010)</td>
</tr>
<tr>
<td>14 December 2012</td>
<td>Review of legacy bylaws about food safety completed (REG2012/8)</td>
</tr>
<tr>
<td>20 December 2012</td>
<td>Proposal to make new bylaw about food safety and to revoke legacy bylaws (GB/2012/177)</td>
</tr>
<tr>
<td>23 May 2013</td>
<td>Made the Auckland Council Food Safety Bylaw 2013 (GB/2013/48)</td>
</tr>
<tr>
<td>25 June 2013</td>
<td>Public notice of making of the Auckland Council Food Safety Bylaw 2013 and revocation of legacy bylaws</td>
</tr>
<tr>
<td>01 July 2013</td>
<td>Commencement of Auckland Council Food Safety Bylaw 2013 and revocation of legacy bylaws (GB/2013/48)</td>
</tr>
<tr>
<td>18 February 2016</td>
<td>Amendment to Auckland Council Food Safety Bylaw 2013 (GB/2016/8)</td>
</tr>
<tr>
<td>01 March 2016</td>
<td>Commencement of amendment to Auckland Council Food Safety Bylaw 2013 (GB/2016/8)</td>
</tr>
<tr>
<td>11 July 2019</td>
<td>Review of Auckland Council Food Safety Bylaw 2013 completed (REG2019/###)</td>
</tr>
<tr>
<td>25 July 2019</td>
<td>Proposal to make a new bylaw about food safety (GB/2019/###)</td>
</tr>
<tr>
<td>[TBC]</td>
<td>Made the Auckland Council Food Safety Information Bylaw 2020 (GB/2019/###)</td>
</tr>
<tr>
<td>[TBC]</td>
<td>Public notice of making of the Auckland Council Food Safety Information Bylaw 2020</td>
</tr>
</tbody>
</table>

† Legacy bylaws made: Auckland City Council Food Premises Bylaw 2008, Auckland City Council Food Stalls Bylaw 2008, Franklin District Council Food Hygiene Bylaw 2010, Manukau City Council Food Hygiene and Food Handlers Training Bylaw 2008 (chapter 8), North Shore City Council Food Safety Bylaw 2000 (part 17), Rodney District Council Food Premises Bylaw 1998 (chapter 24) and Waitakere City Council Food Safety Bylaw 2005.
Appendix B: Existing Food Safety Bylaw 2013

Last updated
28 February 2019
Food Safety Bylaw 2013

Auckland Council

Food Safety Bylaw 2013
Whakapai kai 2013
(as at 28 February 2019)

Made by Governing Body of Auckland Council
Resolution in Council
23 May 2013

(amended by minute GB/2016/8 with effect from 1 March 2016)

Pursuant to the Local Government Act 2002 and the Health Act 1956, the Governing Body of Auckland Council makes the following bylaw.
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### Part 1

**Preliminary provisions**

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<td>Interpretation</td>
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### Part 2

**Grading of food businesses registered pursuant to the Food Act 2014**

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### Part 3

**Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974**

[Expired]

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<td>Food stalls and mobile food shops</td>
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### Part 4

**Enforcement, offences and penalties**

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<td>11</td>
<td>Offences and penalties</td>
<td>9</td>
</tr>
</tbody>
</table>
1 Title

(1) This bylaw is the Food Safety Bylaw 2013.

2 Commencement

(1) This bylaw comes into force on 1 July 2013.

Explanatory notes:

Clauses 4, 5, 7, 8, 10, 11, 12 amended and Clauses 6, 9, 13, Schedules 1 and 2 have been revoked for consistency with the Food Act 2014 and the Food Regulations 2015 by minute GB/2016/8, in force on 01 March 2016.

Clause 5 and Part 3 amended to reflect expiry of Part 3 on 28 February 2019.

3 Application

(1) This bylaw applies to Auckland.

Part 1

Preliminary provisions

4 Purpose

(1) The purpose of this bylaw is to promote and protect public health by -

(a) requiring food businesses registered with the council that operate subject to a Food Control Plan to display a food safety grade certificate for public information;

(b) [consequential editorial deletion]

Explanatory note: clause 4(1)(b) removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

5 Interpretation

(1) In this bylaw, unless the context otherwise requires, -

Approved basic food hygiene course [consequential editorial deletion]

Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

Auckland has the meaning given by the Local Government (Auckland Council) Act 2009.

Explanatory note: As at 22 September 2009, the definition in Section 4(1) of the Local Government (Auckland Council) Act 2009 states: “Auckland means the area within the boundaries determined by the Local Government Commission under Section 33(1) (as that determination is given effect to by Order in Council under Section 35(1))”.

Certificate of registration [consequential editorial deletion]

Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

Council means the Governing Body of the Auckland Council or any person delegated to act on its behalf.
Food has the meaning given by the Food Act 2014.

Explanatory note: As at 1 June 2014, Section 9 of the Food Act 2014 includes the following definition: “food means anything that is used, capable of being used, or represented as being for use, for human consumption (whether raw, prepared, or partly prepared)”.

Food business has the meaning given by the Food Act 2014.

Explanatory note: As at 1 June 2014, the definition in Section 10 of the Food Act 2014 states: “food business means -
(a) a business, activity, or undertaking that trades in food (whether in whole or in part); and
(b) includes a business, activity, or undertaking that—
   (i) sells food on the internet; or
   (ii) is declared by the Governor-General, by Order in Council made under Section 393, to be a food business for the purposes of this Act; but
(c) does not include a business, activity, or undertaking—
   (i) merely because it carries on a business other than trading in food and, in the course of doing so, acts as an intermediary between persons who trade in food by providing, for reward, a place (including mobile premises) or services (for example, an internet service provider or an auction site on the internet); or
   (ii) that is declared by the Governor-General, by Order in Council made under Section 393, not to be a food business for the purposes of this Act”.

Food Control Plan has the meaning given by the Food Act 2014.

Explanatory note: As at 1 June 2014, the definition in Section 36 of the Food Act 2014 states: “food control plan is a plan designed for a particular food business to identify, control, manage, and eliminate or minimise hazards or other relevant factors for the purpose of achieving safe and suitable food, taking into account—
(a) each type of food that the food business trades in; and
(b) each type of process or operation that is applied to the food; and
(c) each place in which the food business trades in food.

As at 1 June 2014, the definition in Section 414 of the Food Act 2014 states: “deemed food control plan means a registered food safety programme that is deemed to be a registered food control plan”.

As at 7 December 2015, the definition in Section 3 of the Food Regulations 2015 states: “template food control plan means a registered food control plan that is based on an official template or model”.

Food handler [consequential editorial deletion]

Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

Food premises [consequential editorial deletion]

Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

Food stall or mobile food shop [consequential editorial deletion]

Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.
Grade and Grading means the allocated grade resulting from an inspection of the food premises or assessment of a food business’ compliance with their Food Control Plan by the council according to the grading system determined by the council from time to time.

Explanatory note: For further information on the Auckland Council Food Safety Grading System refer to Section 7 of Additional Information to the Food Safety Bylaw 2013 – Guidelines to the Auckland Council Food Grading System.

Marae has the meaning given by the Food Act 2014.

Explanatory note: As at 1 June 2014, the definition in Section 8 of the Food Act 2014 states: “marae includes the area of land on which all buildings such as wharenui (meeting house), wharekai (dining room), ablution blocks, and any other associated buildings are situated”.

Occupier [consequential editorial deletion]

Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

Operator of a food business has the meaning given by the Food Act 2014.

Explanatory note: As at 1 June 2014, the definition in Section 8 of the Food Act 2014 states: “operator of a food business means the owner or other person in control of the business”.

Operator of a Food Control Plan has the meaning given by the Food Act 2014.

Explanatory note: As at 1 June 2014, the definition in Section 8 of the Food Act 2014 states: “operator of a food control plan or operator of a registered food control plan means—
(a) if the plan applies to only one food business, the operator of the food business; or
(b) if the plan applies to more than one food business, the person responsible for the plan”.

Operator verification has the meaning given by the Food Act 2014 and the Food Regulations 2015.

Explanatory note: As at 1 June 2014, the definition in Section 8 of the Food Act 2014 states: “operator verification means a process to ensure that internal practices, procedures, and activities comply with the applicable requirements of this Act”. As at 7 December 2015, in Section 32 of the Food Regulations 2015, the process for operator verification includes regular checks of:
(a) places of food business, facilities, and equipment; and
(b) staff and visitors; and
(c) practices, procedures, and activities”.

Place of food business has the meaning given by the Food Regulations 2015.

Explanatory note: As at 7 December 2015, the definition in Section 3 of the Food Regulations 2015 states: “place of food business means a place where a food business does either or both of the following:
(a) produces food
(b) processes and handles food; and
(c) that is covered by a food control plan or subject to a national programme”.
Processing and handling has the meaning given by the Food Act 2014.

Explanatory note: As at 1 June 2014, the definition in Section 11 of the Food Act 2014 states: “processing and handling in relation to food for sale, includes any one or more of the following:

(a) preparing the food
(b) manufacturing the food
(c) packing the food
(d) labelling the food
(e) transporting the food
(f) storing the food
(g) displaying the food
(h) serving the food”.

Readily perishable food [consequential editorial deletion]

Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

Safety and suitability has the meaning given by the Food Act 2014.

Explanatory note: As at 1 June 2014, the definition in Section 12 of the Food Act 2014 provides that: “safety” means a condition in which food, in terms of its intended use, is unlikely to cause or lead to illness or injury to human life or public health. “Suitability” means that the composition, labelling, identification, and condition of the food are appropriate in terms of its intended use; but does not include matters of quality or presentation of the food that relate to a purely commercial decision by the person trading in the food. Food is unsuitable if it—

(a) is in a condition that is offensive;
(b) is damaged, deteriorated, or perished to the extent of affecting its reasonable intended use;
(c) contains, or has attached to it or enclosed with it, any damaged, deteriorated, perished, or contaminated substance to the extent of affecting its reasonable intended use;
(d) contains a biological or chemical agent, or other substance, that is foreign to the nature of the food and the presence of which would be unexpected and unreasonable in food prepared or packed for sale in accordance with good trade practice;
(e) has packaging that is damaged, deteriorated, perished, or contaminated to the extent of affecting the food’s reasonable intended use.

Food is not unsafe or unsuitable merely because—

(a) any part of the community objects to it on moral, ethical, cultural, spiritual, or religious grounds; or
(b) any person objects to it because of personal preference; or
(c) its consumption of inappropriate quantities may damage a person’s health; or
(d) its presence or consumption is unhealthy for any person who has an allergy or other personal health condition”.

Page 6 of 13
Sale has the meaning given by the Food Act 2014.

Explanatory note: As at 1 June 2014, the definition in Section 13 of the Food Act 2014 states: "sale means—
(a) selling food for processing and handling or for human consumption; and
(b) includes reselling food for processing and handling or for human consumption; and
(c) includes the following activities relating to food for human consumption,
   (i) offering food for sale or attempting to sell food, or receiving or having food in
       possession for sale, or exposing food for sale, or sending or delivering food for sale,
       or causing or permitting food to be sold, offered for sale, or exposed for sale;
   (ii) bartering food;
   (iii) supplying food, together with any accommodation, service, or entertainment, as part
         of an inclusive charge;
   (iv) supplying food in exchange for payment or in relation to which payment is to be made
         in a shop, hotel, or restaurant, at a stall, in or on a craft or vehicle, or in any other
         place;
   (v) supplying food to an employee or other person in accordance with an employment
       agreement or an agreement for services;
   (vi) for the purpose of advertisement or to promote any trade or business, giving away
       food or, whether or not on payment of money, offering food as a prize or reward to the
       public;
   (vii) exporting food;
   (viii) every other method of disposition of food for valuable consideration; but
   (d) does not include—
   (i) exchanging food for food or other goods or services as part of a personal relationship
       between individuals that is not commercial in nature; or
   (ii) supplying food together with accommodation to a person residing at a private dwelling
       or farm in exchange for services or labour by the person; or
   (iii) supplying drinking water by network reticulation to the point of supply of any dwelling
       or commercial premises."

(2) A term or expression that is defined in the Food Act 2014 and Food Regulations 2015 and is used in
this bylaw but not defined by this bylaw, has the meaning given by the legislation.

Explanatory note: consequential editorial amendment to clause 5(2) to remove reference to Food
Hygiene Regulations 1974 for ease of reading because it relates to expired Part 3.

(3) Any explanatory notes and attachments are for information purposes only, but do not form part of
this bylaw, and may be made, amended, revoked or replaced by the council at any time.

(4) The Interpretation Act 1999 applies to this bylaw.
Part 2

Grading of food businesses registered pursuant to the Food Act 2014

6 Display of food safety grade certificates

(1) The council will assess the following food businesses that operate subject to a deemed or template Food Control Plan registered with the council to provide a grading for those businesses:
   (a) the food retail sector where food businesses prepare or manufacture and sell food, and
   (b) the food service sectors specified in Schedule 1 of the Food Act 2014.

(2) The current food safety grade certificate issued by the council must be conspicuously displayed at the principal entrance to the place of food business in full and un-obscured view. The council may require an alternative display position in situations where the council deems it necessary to ensure that the grading certificate can be seen before a person enters the place of food business.

(3) The current food safety grade certificate issued by the council must be displayed at every site where food is sold directly to the public, including food stalls and mobile shops.

(4) Applications for re-grading must be made in writing and subject to the prescribed fee.

(5) The grading certificate will remain the property of the council and may be withdrawn and removed by the council if the performance of the food business falls below the grading standard prescribed by the council.

(6) Clauses 6(1) to 6(5) do not apply to any food business:
   (c) that was operating prior to 1 March 2016, and that was not required to be registered by the council pursuant to the Food Hygiene Regulations 1974; or
   (d) that is established from 1 March 2016, and that would not have been required to be registered by the council pursuant to the Food Hygiene Regulations 1974 had it been operating prior to 1 March 2016.

Explanatory note: The Food Act 2014 introduces regulatory requirements for food sectors that were not subject to registration under the Food Hygiene Regulations 1974, such as businesses that sell food from mobile, school tuckshops and work canteenertas. The grading requirements of this bylaw are not intended to apply to those businesses that would not have been subject to grading under the bylaw prior to 1 March 2016.

(7) Notwithstanding Clause 6(6), the operator of any food business that would otherwise be exempt from grading may notify the council in writing that the food business elects to waive the exemption, in which case Clauses 6(1) to 6(5) will apply to that food business.

Explanatory note: For further information on the Auckland Council Food Safety Grading System refer to Section 7 of Additional Information to the Food Safety Bylaw 2013.

Part 3

Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974

[Expired]

7 Display of food safety grade certificates

[Expired]

Explanatory note: clause 7 expired as all food businesses now regulated under the Food Act 2014.

8 Training of staff at food premises

[Expired]

Explanatory note: clause 8 expired as all food businesses now regulated under the Food Act 2014.
9 Food stalls and mobile food shops
[Expired]
Explanatory note: clause 9 expired as all food businesses now regulated under the Food Act 2014.

Part 4
Enforcement, offences and penalties

10 Non-compliance with bylaw

(1) The council may use its powers under the Health Act 1956 and the Local Government Act 2002 to enforce this bylaw.

11 Offences and penalties

(1) A person who fails to comply with this bylaw commits an offence against Section 236 of the Local Government Act 2002 and is liable on conviction to the penalties set out in Section 242(4) of the Local Government Act 2002.
Additional Information to the Food Safety Bylaw 2013

This document contains matters for information purposes only and does not form part of the bylaw. They include matters to assist in the ease of understanding, use and maintenance of the bylaw.

The information contained in this document may be updated at any time.

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<td>6</td>
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</tbody>
</table>
### Section 1
#### History of bylaw

<table>
<thead>
<tr>
<th>Action</th>
<th>Description</th>
<th>Date of Decision</th>
<th>Decision Reference</th>
<th>Commencement</th>
</tr>
</thead>
</table>
| Make   | Following food safety bylaws in force on 31 Oct 2010 deemed to have been made by Auckland Council  
- Auckland City Council Food Premises Bylaw 2008  
- Auckland City Council Food Stalls Bylaw 2008  
- Franklin District Council Food Hygiene Bylaw 2010  
- Manukau City Council Food Hygiene and Food Handlers Training Bylaw 2008 (chapter 8)  
- North Shore City Council Food Safety Bylaw 2000 (part 17)  
- Rodney District Council Food Premises Bylaw 1998 (chapter 24)  
| Revoke |  
- Auckland City Council Food Premises Bylaw 2008  
- Auckland City Council Food Stalls Bylaw 2008  
- Franklin District Council Food Hygiene Bylaw 2010  
- Manukau City Council Food Hygiene and Food Handlers Training Bylaw 2008 (chapter 8)  
- North Shore City Council Food Safety Bylaw 2000 (part 17)  
- Rodney District Council Food Premises Bylaw 1998 (chapter 24)  
- Waitakere City Council Food Safety Bylaw 2005 | 23 May 2013      | GB/2013/48                                                                         | 01 July 2013 |
| Make   | Auckland Council Food Safety Bylaw 2013                                     | 23 May 2013      | GB/2013/48                                                                         | 01 July 2013 |
| Amend  | Auckland Council Food Safety Bylaw 2013                                     | 18 Feb 2016      | GB/2016/8                                                                          | 01 March 2016|
| Update | Auckland Council Food Safety Bylaw 2013                                     | 28 Feb 2019      | n/a                                                                                | n/a          |

### Section 2
#### Related documents

<table>
<thead>
<tr>
<th>Document Title</th>
<th>Description of Document</th>
<th>Location of Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision Minutes and Agenda of the Governing Body for 18 February 2016</td>
<td>Decision on amendments to the Food Safety Bylaw 2013</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
<tr>
<td>Decision Minutes and Agenda of the Governing Body for 23 May 2013</td>
<td>Decisions on submissions to proposed food safety bylaw</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
<tr>
<td>Background report for the hearing of submissions to proposed food safety bylaw</td>
<td>Background and summary of submissions to proposed food safety bylaw</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
<tr>
<td>Document Title</td>
<td>Description of Document</td>
<td>Location of Document</td>
</tr>
<tr>
<td>----------------</td>
<td>-------------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>Regulatory Committee</td>
<td>Review of Food Safety Bylaw 2013 - 19 April 2013</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
<tr>
<td>Food Safety Bylaw Review Statement of Proposal - Decision Minutes and Agenda of the Governing Body for 20 December 2012</td>
<td>Provides background to the proposed food safety bylaw</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
<tr>
<td>Long Term Plan</td>
<td>Outlines financial plans</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
<tr>
<td>Annual Plan</td>
<td>Sets fees for food operators</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
<tr>
<td>Local Government Act 2002</td>
<td>Provides certain functions, duties, powers and penalties to make and enforce this bylaw</td>
<td><a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a></td>
</tr>
<tr>
<td>Health Act 1956</td>
<td>Provides certain functions, duties, powers and penalties to make and enforce this bylaw</td>
<td><a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a></td>
</tr>
<tr>
<td>Bylaws Act 1910</td>
<td>Provides for certain matters related to the validity of bylaws</td>
<td><a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a></td>
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<tr>
<td>Interpretations Act 2009</td>
<td>Provides for certain matters related to the interpretation of bylaws</td>
<td><a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a></td>
</tr>
<tr>
<td>Health (Registration of Premises) Regulations 1966</td>
<td>Provides for the registration of premises</td>
<td><a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a></td>
</tr>
<tr>
<td>Food Act 1981</td>
<td>Provides for exemptions to the Food Hygiene Regulations 1974, food standards and enforcement</td>
<td><a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a></td>
</tr>
<tr>
<td>Food Hygiene Regulations 1974</td>
<td>Provides regulations for registration, conduct, maintenance, application to food premises, workers, manufacturers and specific provisions for types of premises and types of food sold</td>
<td><a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a></td>
</tr>
<tr>
<td>Food Act 2014</td>
<td>Provides for the regulation of food businesses through risk-based measures to achieve the safety and suitability of food for sale and minimise and manage risks to public health</td>
<td><a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a></td>
</tr>
<tr>
<td>Food Regulations 2015</td>
<td>Provides regulations for food businesses subject to risk-based measures under the Food Act</td>
<td><a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a></td>
</tr>
</tbody>
</table>

### Section 3

**Delegations for matters contained in the bylaw**

<table>
<thead>
<tr>
<th>Clause</th>
<th>Function, duty, power to be delegated</th>
<th>Delegated authority</th>
<th>Date of delegation decision</th>
<th>Decision reference</th>
<th>Commencement of delegation</th>
</tr>
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<tbody>
<tr>
<td>Clause 5(1)</td>
<td>Determining the grading system.</td>
<td>Tier 4 Manager Environmental Health</td>
<td>23 May 2013</td>
<td>Resolution number GB/2013/48</td>
<td>1 July 2013</td>
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<tr>
<td>Clause 5(3)</td>
<td>Amending explanatory notes and attachments to the bylaw.</td>
<td>Tier 5 Manager Social Policy and Bylaws</td>
<td>23 May 2013</td>
<td>Resolution number GB/2013/48</td>
<td>1 July 2013</td>
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<tr>
<td>Clause 6(5) and 7(5)</td>
<td>Prescribing standards relating food safety for businesses that operate at a lower standard than the issued grade.</td>
<td>Tier 4 Manager Environmental Health</td>
<td>23 May 2013</td>
<td>Resolution number GB/2013/48</td>
<td>1 July 2013</td>
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</tbody>
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### Section 4
#### Register of controls

<table>
<thead>
<tr>
<th>Action</th>
<th>Description</th>
<th>Date of decision</th>
<th>Decision reference</th>
<th>Commencement</th>
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<tbody>
<tr>
<td>None</td>
<td>N/A</td>
<td>N/A</td>
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### Section 5
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<td>Health Act 1956</td>
<td>23 General powers and duties of local authorities in respect of public health</td>
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<td>30 Penalties for permitting or causing nuisances</td>
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<td></td>
<td>33 Proceedings in respect of nuisances</td>
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<td>34 Power to abate nuisance without notice</td>
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<td></td>
<td>41 Owners or occupiers may be required to cleanse premises</td>
</tr>
<tr>
<td></td>
<td>42 Local authority may require repairs and issue closure order</td>
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<td></td>
<td>65 General provisions as to bylaws</td>
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<td></td>
<td>86 Penalties for breach of bylaws</td>
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<td></td>
<td>137 Offences punishable on summary conviction</td>
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<tr>
<td>Local Government Act 2002</td>
<td>162 Injunctions restraining commission of offences and breaches of bylaws</td>
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<td></td>
<td>163 Removal of works in breach of bylaws</td>
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<td></td>
<td>164 Seizure of property not on private land</td>
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<td></td>
<td>165 Seizure of property from private land</td>
</tr>
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<td></td>
<td>166 Power to dispose of property seized and impounded</td>
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<td></td>
<td>171 General power of entry</td>
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<td>172 Power of entry for enforcement purposes</td>
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<td>173 Power of entry in cases of emergency</td>
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<td>175 Power to recover for damage by with or negligent behaviour</td>
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<td>176 Costs of remedying damage arising from breach of bylaw</td>
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<td>178 Enforcement officers may require certain information</td>
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<td>183 Removal of fire hazards</td>
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<td>185 Occupier may act if owner of premises makes default</td>
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<td>186 Local authority may execute works if owner or occupier defaults</td>
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<td>187 Recovery of cost of works by local authority</td>
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<td>188 Liability for payments in respect of private land</td>
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</table>

### Section 6
#### Offences and penalties

<table>
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<tr>
<th>Clause</th>
<th>Description of offence</th>
<th>Fine</th>
<th>Infringement fee</th>
<th>Other penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>All</td>
<td>A person who fails to comply with Part 2 or Part 3 of this bylaw commits a breach of this bylaw and is liable to a penalty under the Local Government Act 2002 and/or the Health Act 1956.</td>
<td>Under Section 242 of the Local Government Act 2002 person who is convicted of an offence against a bylaw is liable to a fine not exceeding $20,000. Under Section 66 of the Health Act 1956, any person who breaches a bylaw is liable to a fine not exceeding $500 and, in the case of a continuing offence, to a further fine not exceeding $50 for every day on which the offence has continued.</td>
<td>nil</td>
<td></td>
</tr>
</tbody>
</table>
Appendix C: Summary of the differences between the existing and proposed bylaw

Table 1 shows a comparison of the existing and proposed food safety bylaws.

In general, the new food safety bylaw uses a different structure to make the bylaw easier to understand.

The differences between the structures make a comparison difficult for some clauses. To mitigate this Table 1 –

- follows the order of the proposed new food safety information bylaw
- equivalent clauses from the existing bylaw in the first column may appear out of sequence or are repeated
- differences that are less significant are referenced as opposed to stated.

IMPORTANT: The proposed new bylaw in Appendix A prevails in the event of any differences between the proposed bylaw in Appendix A and Table 1.

Table 1: Summary of differences between the existing Food Safety Bylaw 2013 and proposed new Food Safety Information Bylaw 2020

<table>
<thead>
<tr>
<th>Existing Bylaw</th>
<th>Proposed Bylaw</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bylaw made pursuant to section 145 of the Local Government Act 2002 and section 64 of the Health Act 1956.</td>
<td>Bylaw made pursuant to section 145 of the Local Government Act 2002 and section 64 of the Health Act 1956.</td>
<td></td>
</tr>
<tr>
<td>Contents</td>
<td>Summary and Contents</td>
<td>[Not shown because differences only relevant to that bylaw]</td>
</tr>
<tr>
<td>1 Title</td>
<td>1 Title</td>
<td>1 Title: New bylaw has clearer focus on the display of food grades.</td>
</tr>
<tr>
<td>(1) This bylaw is the Food Safety Bylaw 2013.</td>
<td>(1) This Bylaw is the Whakapai kai 2013, Food Safety Information Bylaw 2020.</td>
<td></td>
</tr>
<tr>
<td>2 Commencement</td>
<td>2 Commencement</td>
<td>[Not shown because differences only relevant to that bylaw]</td>
</tr>
<tr>
<td>(Not shown)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 Application</td>
<td>3 Application</td>
<td></td>
</tr>
<tr>
<td>(1) This bylaw applies to Auckland.</td>
<td>(1) This Bylaw applies to Auckland.</td>
<td></td>
</tr>
<tr>
<td>Part 1 Preliminary provisions</td>
<td>Part 1 Preliminary provisions</td>
<td></td>
</tr>
<tr>
<td>4 Purpose</td>
<td>4 Purpose</td>
<td>4 Purpose: New bylaw better reflects its purpose and methods to protect public health.</td>
</tr>
<tr>
<td>(1) The purpose of this bylaw is to promote and protect public health by –</td>
<td>(1) The purpose of this Bylaw is to protect public health by requiring operators of certain food businesses to publicly display a food safety information certificate to –</td>
<td></td>
</tr>
<tr>
<td>(a) requiring food businesses registered with the council that operate subject to a Food Control Plan to display a food safety grade certificate for public information;</td>
<td>(a) incentivise food businesses to achieve high food safety standards</td>
<td></td>
</tr>
<tr>
<td>(b) [consequential editorial deletion]</td>
<td>(b) raise public awareness to enable people to make informed decisions about where to purchase food.</td>
<td></td>
</tr>
<tr>
<td>Existing Bylaw</td>
<td>Proposed Bylaw</td>
<td>Reasons</td>
</tr>
<tr>
<td>----------------</td>
<td>----------------</td>
<td>---------</td>
</tr>
<tr>
<td><strong>Interpretation</strong>&lt;br&gt;5 1. In this Bylaw, unless the context otherwise requires, –</td>
<td><strong>Interpretation</strong>&lt;br&gt;5 1. In this Bylaw, unless the context otherwise requires, –</td>
<td><strong>Term not used in new bylaw.</strong></td>
</tr>
<tr>
<td><strong>Approved basic food hygiene course</strong>&lt;br&gt;Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.</td>
<td>Auckland has the meaning given by section 4(1) of the Local Government (Auckland Council) Act 2009.</td>
<td><strong>New bylaw definition improves certainty.</strong>&lt;br&gt;<strong>New bylaw provides related information for clarity.</strong></td>
</tr>
<tr>
<td><strong>Certificate of registration</strong>&lt;br&gt;Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.</td>
<td>Auckland has the meaning given by section 4(1) of the Local Government (Auckland Council) Act 2009.</td>
<td><strong>Term not used in new bylaw.</strong></td>
</tr>
<tr>
<td><strong>Council</strong>&lt;br&gt;means the Governing Body of the Auckland Council or any person delegated to act on its behalf.</td>
<td>Council, for the purposes of this Bylaw, means the Governing Body of the Auckland Council or any person delegated or authorised to act on its behalf.</td>
<td><strong>New bylaw definition improves certainty.</strong>&lt;br&gt;<strong>New bylaw provides related information for clarity.</strong></td>
</tr>
<tr>
<td><strong>Food</strong>&lt;br&gt;has the meaning given by the Food Act 2014.</td>
<td>Related information&lt;br&gt;Council’s Environmental Health Unit has delegated authority to administer and enforce this Bylaw as at June 2019.</td>
<td><strong>New bylaw clarifies that terms or expressions defined in the Food Act 2014 and used in this Bylaw have the same meaning as in that Act.</strong></td>
</tr>
</tbody>
</table>
### Existing Bylaw

Food Business has the meaning given by the Food Act 2014. Explanatory note: As at 1 June 2014, the definition in Section 10 of the Food Act 2014 states: “Food business means —

(a) a business, activity, or undertaking that trades in food (whether in whole or in part); and

(b) includes a business, activity, or undertaking that—

(i) sells food on the Internet; or

(ii) is declared by the Governor-General, by Order in Council made under Section 393, to be a food business for the purposes of this Act; but

(c) does not include a business, activity, or undertaking—

(i) merely because it carries on a business other than trading in food, and, in the course of doing so, acts as an intermediary between persons who trade in food by providing, for reward, a place (including mobile premises) or services (for example, an Internet service provider or an auction site on the Internet); or

(ii) that is declared by the Governor-General, by Order in Council made under Section 393, not to be a food business for the purposes of this Act.”

### Proposed Bylaw

- New bylaw clarifies that terms or expressions defined in the Food Act 2014 and used in this Bylaw have the same meaning as in that Act (unless defined differently in this Bylaw).

### Reasons

(Unless defined differently in this Bylaw).

### Food Control Plan

Explanatory note: As at 1 June 2014, the definition in Section 36 of the Food Act 2014 states: “Food control plan is a plan designed for a particular food business to identify, control, manage, and eliminate or minimise hazards or other relevant factors for the purpose of achieving safe and suitable food, taking into account—

(a) each type of food that the food business trades in; and

(b) each type of process or operation that is applied to the food; and

(c) each place in which the food business trades in food. As at 1 June 2014, the definition in Section 414 of the Food Act 2014 states: “Deemed food control plan means a registered food control plan.”

- New bylaw clarifies that terms or expressions defined in the Food Act 2014 and used in this Bylaw have the same meaning as in that Act (unless defined differently in this Bylaw).
<table>
<thead>
<tr>
<th>Existing Bylaw</th>
<th>Proposed Bylaw</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Safety programme that is deemed to be a registered food control plan”</td>
<td></td>
<td>• Term not used in new bylaw.</td>
</tr>
<tr>
<td>As at 7 December 2015, the definition in Section 3 of the Food Regulations 2015 states: “template food control plan means a registered food control plan that is based on an official template or model”.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Food handler</strong> [consequential editorial deletion]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Food premises</strong> [consequential editorial deletion]</td>
<td></td>
<td>• Term not used in new bylaw.</td>
</tr>
<tr>
<td>Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Food stall or mobile food shop</strong> [consequential editorial deletion]</td>
<td></td>
<td>• Definition of term unnecessary in new bylaw.</td>
</tr>
<tr>
<td>Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Grade and Grading</strong> means the allocated grade resulting from an inspection of the food premises or assessment of a food business’ compliance with their Food Control Plan by the council according to the grading system determined by the council from time to time.</td>
<td></td>
<td>• New bylaw clarifies definition of food grades in Summary.</td>
</tr>
<tr>
<td>Explanatory note: For further information on the Auckland Council Food Safety Grading System refer to Section 7 of Additional Information to the Food Safety Bylaw 2013 – Guidelines to the Auckland Council Food Grading System.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Marae</strong> has the meaning given by the Food Act 2014.</td>
<td></td>
<td>• Term not used in new bylaw.</td>
</tr>
<tr>
<td>Explanatory note: As at 1 June 2014, the definition in Section 8 of the Food Act 2014 states: “marae includes the area of land on which all buildings such as wharenui (meeting house), wharekai (dining room), ablation blocks, and any other associated buildings are situated”.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Occupier</strong> [consequential editorial deletion]</td>
<td></td>
<td>• Term not used in new bylaw.</td>
</tr>
<tr>
<td>Existing Bylaw</td>
<td>Proposed Bylaw</td>
<td>Reasons</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Operator of a food business</strong> has the meaning given by the Food Act 2014.</td>
<td></td>
<td>- New bylaw clarifies that terms or expression's defined in the Food Act 2014 and used in this Bylaw have the same meaning as in that Act (unless defined differently in this Bylaw).</td>
</tr>
<tr>
<td><strong>Operator of a Food Control Plan</strong> has the meaning given by the Food Act 2014.</td>
<td></td>
<td>- Term not used in new bylaw.</td>
</tr>
<tr>
<td><strong>Operator verification</strong> has the meaning given by the Food Act 2014 and the Food Regulations 2015.</td>
<td></td>
<td>- Term not used in new bylaw.</td>
</tr>
<tr>
<td><strong>Place of food business</strong> has the meaning given by the Food Regulations 2015.</td>
<td></td>
<td>- Term not used in new bylaw.</td>
</tr>
<tr>
<td>Existing Bylaw</td>
<td>Proposed Bylaw</td>
<td>Reasons</td>
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<td>---------------</td>
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</tr>
<tr>
<td><strong>Explanatory note:</strong> As at 7 December 2015, the definition in Section 3 of the Food Regulations 2013 states: &quot;place of food business means a place where a food business does either or both of the following: (a) produces food (b) processes and handles food; and (c) that is covered by a food control plan or subject to a national programme.&quot;</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Processing and handling</strong> has the meaning given by the Food Act 2014.</td>
<td><strong>Processing and handling</strong> includes any one or more of the following: (a) preparing the food (b) manufacturing the food (c) packing the food (d) labelling the food (e) transporting the food (f) storing the food (g) displaying the food (h) serving the food.</td>
<td>• Term not used in new bylaw.</td>
</tr>
<tr>
<td><strong>Readily perishable food</strong> [consequential editorial deletion]</td>
<td><strong>Registered</strong> means the process of registration under the Food Act 2014.</td>
<td>• Term not used in new bylaw.</td>
</tr>
<tr>
<td><strong>Safety and suitability</strong> has the meaning given by the Food Act 2014.</td>
<td><strong>Safety and suitability</strong> means that the composition, labelling, identification, and condition of the food are appropriate in terms of its intended use, but does not include matters of quality or presentation of the food that</td>
<td>• Term not used in new bylaw.</td>
</tr>
<tr>
<td>Existing Bylaw</td>
<td>Proposed Bylaw</td>
<td>Reasons</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------</td>
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</tr>
<tr>
<td>relates to a purely commercial decision by the person trading in the food. Food is unsuitable if it—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) is in a condition that is offensive;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) is damaged, deteriorated, or perished to the extent of affecting its reasonable intended use;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) contains, or has attached to it or enclosed with it, any damaged, deteriorated, perished, or contaminated substance to the extent of affecting its reasonable intended use;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(d) contains a biological or chemical agent, or other substance, that is foreign to the nature of the food and the presence of which would be unexpected and unreasonable in food prepared or packed for sale in accordance with good trade practice;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(e) has packaging that is damaged, deteriorated, perished, or contaminated to the extent of affecting the food’s reasonable intended use.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food is not unsafe or unsuitable merely because—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) any part of the community objects to it on moral, ethical, cultural, spiritual, or religious grounds;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) any person objects to it because of personal preference; or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) its consumption of inappropriate quantities may damage a person’s health; or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(d) its presence or consumption is unhealthy for any person who has an allergy or other personal health condition.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Sale</strong> has the meaning given by the Food Act 2014. Explanatory note: As at 1 June 2014, the definition in Section 13 of the Food Act 2014 states: &quot;sale means—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) selling food for processing and handling or for human consumption; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) includes reselling food for processing and handling or for human consumption; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) includes the following activities relating to food for human consumption:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) offering food for sale or attempting to sell food, or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>receiving or having food in possession for sale, or exposing</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Existing Bylaw

- Food for sale, or sending or delivering food for sale, or causing or permitting food to be sold, offered for sale, or exposed for sale;
- Bartering food;
- Supplying food, together with any accommodation, service, or entertainment, as part of an inclusive charge;
- Supplying food in exchange for payment or in relation to which payment is to be made in a shop, hotel, or restaurant, at a stall, in or on a craft or vehicle, or in any other place;
- Supplying food to an employee or other person in accordance with an employment agreement or an agreement for services;
- For the purpose of advertisement or to promote any trade or business, giving away food or, whether or not on payment of money, offering food as a prize or reward to the public;
- Exporting food;
- Every other method of disposition of food for valuable consideration; but
- Does not include—
  - Exchanging food for food or other goods or services as part of a personal relationship between individuals that is not commercial in nature; or
  - Supplying food together with accommodation to a person residing at a private dwelling or farm in exchange for services or labour by the person; or
  - Supplying drinking water by network reticulation to the point of supply of any dwelling or commercial premises.

### Proposed Bylaw

<table>
<thead>
<tr>
<th>Valid food safety information certificate</th>
<th>New bylaw definition improves clarity.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verified</td>
<td>New bylaw definition improves clarity.</td>
</tr>
</tbody>
</table>
### Existing Bylaw

(2) A term or expression that is defined in the Food Act 2014 and Food Regulations 2015 and is used in this bylaw but not defined by this bylaw, has the meaning given by the legislation.

**Explanatory note:** consequential editorial amendment to clause 5(2) to remove reference to Food Hygiene Regulations 1974 for ease of reading because it relates to expired Part 3.

(3) Any explanatory notes and attachments are for information purposes only, but do not form part of this bylaw, and may be made, amended, revoked or replaced by the council at any time.

(4) The Interpretation Act 1999 applies to this bylaw.

### Proposed Bylaw

(2) A term or expression defined in the Food Act 2014 and used in this Bylaw has the same meaning as it has in that Act, unless defined differently in this Bylaw.

(3) Related information does not form part of this Bylaw and may be inserted, changed or removed without any formality.

(4) The Interpretation Act 1999 applies to this Bylaw.

### Part 2

#### Grading of food businesses registered pursuant to the Food Act 2014

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td><strong>Display of food safety grade certificates</strong></td>
</tr>
<tr>
<td>(1)</td>
<td>The council will assess the following food businesses that operate subject to a deemed or template Food Control Plan registered with the council to provide a grading for those businesses:</td>
</tr>
<tr>
<td></td>
<td>(a) the food retail sector where food businesses prepare or manufacture and sell food, and</td>
</tr>
<tr>
<td></td>
<td>(b) the food service sectors specified in Schedule 1 of the Food Act 2014.</td>
</tr>
<tr>
<td>(2)</td>
<td>The current food safety grade certificate issued by the council must be conspicuously displayed at the principal entrance to the place of food business in full and un-observed view. The council may require an alternative display position in situations where the council deems it necessary to ensure that the grading certificate can be seen before a person enters the place of food business.</td>
</tr>
<tr>
<td>(3)</td>
<td>The current food safety grade certificate issued by the council must be displayed at every site where food is sold directly to the public, including food stalls and mobile shops.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td><strong>Certain food businesses must display a food safety information certificate</strong></td>
</tr>
<tr>
<td>(1)</td>
<td>The operator of a food business must display a valid food safety information certificate in a manner specified in clause 7 if that business—</td>
</tr>
<tr>
<td></td>
<td>(a) operates under a Template Food Control Plan in the Food Act 2014;</td>
</tr>
<tr>
<td></td>
<td>(b) directly serves the public; and</td>
</tr>
<tr>
<td></td>
<td>(c) is registered and verified by council.</td>
</tr>
</tbody>
</table>

### Reasons

- New bylaw subclauses remove unnecessary detail to improve certainty.

- New bylaw clarifies that operators of food businesses are responsible for the display of food safety information certificates.

- New bylaw clarifies which food businesses are required to display a food safety information certificate.

- New bylaw provides related information for clarity about which food businesses are subject to this Bylaw.

- New bylaw provides Summary section at...
## Regulatory Committee

11 July 2019

### Review of Food Safety Bylaw 2013, options and proposed future direction

### Attachment A

#### Item 10

<table>
<thead>
<tr>
<th>Existing Bylaw</th>
<th>Proposed Bylaw</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>(4) Applications for re-grading must be made in writing and subject to the prescribed fee.</td>
<td><strong>Related information about food businesses subject to this Bylaw</strong>&lt;br&gt;The Food Act 2014 establishes a regulatory framework in which&lt;br&gt;- high-risk food businesses that operate only in Auckland (for example Auckland-only restaurants, bars, cafes and takeaways) must register and be verified by council&lt;br&gt;- high-risk food businesses with stores both in Auckland and other locations in New Zealand (for example fast food and supermarket chains) can register with the Ministry of Primary Industries and be verified by third-party verifiers (instead of council)&lt;br&gt;- medium to low risk food businesses must be registered and verified (for example bread bakeries, coffee carts and dairies or superettes)&lt;br&gt;- exempt and lower risk food businesses have a general responsibility to provide safe and suitable food (for example fundraisers, custom food at marae and farm gate sales)&lt;br&gt;This Bylaw applies to all high-risk food businesses that operate in Auckland only and any food chains that choose to register and be verified by council. This Bylaw does not apply to::&lt;br&gt;- high-risk food businesses that are not registered and verified by council because council does not hold the information necessary to administer the Eatsafe Auckland food grading scheme&lt;br&gt;- medium or lower risk food businesses due to their lower risk to public health.</td>
<td>the beginning of the Bylaw to clarify the council food grading scheme and opportunity to opt-in to the Bylaw.</td>
</tr>
<tr>
<td>(6) Clauses 6(1) to 6(5) do not apply to any food business:&lt;br&gt;(a) that was operating prior to 1 March 2016, and that was not required to be registered by the council pursuant to the Food Hygiene Regulations 1974; or&lt;br&gt;(b) that is established from 1 March 2016, and that would not have been required to be registered by the council pursuant to the Food Hygiene Regulations 1974 had it been operating prior to 1 March 2016.</td>
<td><strong>Explanatory note:</strong> The Food Act 2014 introduces regulatory requirements for food sectors that were not subject to registration under the Food Hygiene Regulations 1974, such as businesses that sell food from marae, school tuckshops and work canteens. The grading requirements of this bylaw are not intended to apply to those businesses that would not have been subject to grading under the bylaw prior to 1 March 2016.</td>
<td><strong>Explanatory note:</strong> For further information on the Auckland Council Food Safety Grading System refer to Section 7 of Additional Information to the Food Safety Bylaw 2013.</td>
</tr>
<tr>
<td>(7) Notwithstanding Clause 6(6), the operator of any food business that would otherwise be exempt from grading may notify the council in writing that the food business elects to waive the exemption, in which case Clauses 6(1) to 6(5) will apply to that food business.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 6 Display of food safety grade certificates

(2) The current food safety grade certificate issued by the council must be conspicuously displayed at the principal entrance to the place of food business in full and un-obscured view. The council may require an alternative display position in situations where the council deems it necessary to ensure that the grading certificate can be seen before a person enters the place of food business.

### 7 Food safety information certificates must be displayed for specified durations and in specified locations

#### (1) The operator of a food business specified in clause 6(1) must display a valid food safety information certificate—

- no later than the first business open day after the business receives the certificate, until the date the certificate expires or a new certificate is issued, whichever occurs first; and
- in one or more locations as specified in the below table; or
- in any other location directed by council.

| New bylaw clarifies duration and location of display of food safety information certificates depending on the type of food business site. | New bylaw clarifies that a valid food safety information | |
### Existing Bylaw

The current food safety grade certificate issued by the council must be displayed at every site where food is sold directly to the public, including food stalls and mobile shops.

### Proposed Bylaw

<table>
<thead>
<tr>
<th>Food business site type</th>
<th>Food safety information certificate display location</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any physical site¹ – (i) used in connection with the food business; (ii) at which food is sold directly to the public; and (iii) that operate under the same Food Control Plan.</td>
<td>The certificate must be displayed in a manner that is clearly visible to the public (in order of preference) – (i) on all doors used by the public and clearly visible in the direction of entry; or if this is not possible (ii) on windows adjacent to doors in (i) and clearly visible in the direction of entry; or if this is not possible (iii) at the main counter; or if this is not possible (iv) on a wall behind the main counter; or if this is not possible (v) on any other external surface facing the public.</td>
<td>Certificate may be copied to display at multiple food business sites.</td>
</tr>
<tr>
<td>Any online site² – (i) related to the food business; and (ii) that the business has control over.</td>
<td>An image of the certificate must be clearly visible on the food business homepage or similar landing page or screen.</td>
<td></td>
</tr>
</tbody>
</table>

¹ For example any building, structure or similar site, food truck, food stall, including restaurant, café, takeaway.

² For example a website, app, social media or similar medium.

### Display of food safety grade certificates

(5) The grading certificate will remain the property of the council and may be withdrawn and removed by the council if the performance of the food business falls below the grading standard prescribed by the council.

(2) The operator of a food business must not display an invalid food safety information certificate.

### Food safety information certificates remain the property of council

(1) Food safety information certificates, including any copies, remain the property of council.

(2) The operator of a food business must not display an invalid food safety information certificate.

*New bylaw clarifies that food safety information certificates (including...*
### Part 3  
**Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974**

<table>
<thead>
<tr>
<th>Existing Bylaw</th>
<th>Proposed Bylaw</th>
<th>Reasons</th>
</tr>
</thead>
</table>
| 7 Display of food safety grade certificates | | any copies remain property of council.  
| 8 Training of staff at food premises | | New bylaw clarifies that an invalid food safety information certificate must not be displayed.  
| 9 Food stalls and mobile food shops | | |

#### Part 4  
**Enforcement, offences and penalties**

<table>
<thead>
<tr>
<th>Item 10</th>
<th>9 Enforcement powers, offences and penalties</th>
<th></th>
</tr>
</thead>
</table>
| Non-compliance with bylaw  
(1) The council may use its powers under the Health Act 1956 and the Local Government Act 2002 to enforce this bylaw. | Council can use statutory powers and other methods to enforce this Bylaw  
Council may use its powers under the Local Government Act 2002 and Health Act 1956 or its powers as a service provider to enforce this Bylaw. | New bylaw clarifies enforcement powers under the Local Government Act 2002 and the Health Act 1956.  
New bylaw provides related information for clarity. |
<table>
<thead>
<tr>
<th></th>
<th>Existing Bylaw</th>
<th>Proposed Bylaw</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>11 Offences and penalties</strong></td>
<td>(1) A person who fails to comply with this bylaw commits an offence against Section 239 of the Local Government Act 2002 and is liable on conviction to the penalties set out in Section 242(4) of the Local Government Act 2002.</td>
<td>10 (1) A person can be penalised for not complying with this Bylaw. A person who fails to comply with Part 2 of this Bylaw commits an offence and is liable to a penalty under the Local Government Act 2002 or the Health Act 1956.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Related information about penalties</td>
<td>Related information about penalties</td>
<td></td>
</tr>
<tr>
<td></td>
<td>A person who is convicted of an offence against a bylaw is liable to a fine not exceeding $20,000 under section 242 of the Local Government Act 2002 (as reprinted on 1 July 2018) or a fine not exceeding $500 and a further $50 per day for a continuing offence under section 66 of the Health Act 1956 (as reprinted on 2 March 2018).</td>
<td>A person who is convicted of an offence against a bylaw is liable to a fine not exceeding $20,000 under section 242 of the Local Government Act 2002 (as reprinted on 1 July 2018) or a fine not exceeding $500 and a further $50 per day for a continuing offence under section 66 of the Health Act 1956 (as reprinted on 2 March 2018).</td>
<td></td>
</tr>
<tr>
<td></td>
<td><em>New bylaw clarifies penalties for non-compliance under the Local Government Act 2002 and Health Act 1956.</em></td>
<td><em>New bylaw provides related information for clarity.</em></td>
<td></td>
</tr>
<tr>
<td><strong>Part 4</strong></td>
<td><strong>Savings and transitional provisions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>11 Existing inquiries to be completed under the Food Safety Bylaw 2013</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(1) Any compliance or enforcement action by council under the Whakahai Kai 2013, Auckland Council Food Safety Bylaw 2013 that was not completed before the date this Bylaw commences, will continue to be actioned under that bylaw as if it were still in force and as if this Bylaw had not been made.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Food Safety Bylaw 2013
Findings Report 2019
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1 Summary of Key Findings

The Bylaw complements the Food Act 2014 which aims to make food safe and suitable
- The Act introduced a risk-based approach to food safety and requires most food businesses to be registered with the Ministry for Primary Industries (MPI) or council and be verified by council or third-party verifiers.
- The Bylaw requires high-risk food businesses registered and verified by council (Auckland only based cafes, restaurants and takeaways) to display a food grade.
- The food grade is based on the verification outcome and is issued as part of council’s Eatsafe Auckland food safety grading scheme. Eatsafe Auckland is not part of the Bylaw.

Foodborne Illnesses continue to pose risks to public health
- Foodborne illnesses:
  - result from the consumption of contaminated food containing harmful bacteria, parasites, viruses or chemicals
  - may be notifiable and include campylobacteriosis, listeriosis and salmonellosis
  - may be acute or lead to chronic health problems and significant economic costs
  - are more likely to affect children, the elderly, pregnant women and people with immunodeficiency.
- New Zealand has a high level of foodborne illnesses compared to other western countries.

The public continue to be concerned about food safety issues
- Common food safety concerns include pests, cleanliness, foreign materials in food and unregistered businesses.
- Food allergies, raw foods, traditional foods, online food sale and markets present food safety challenges.

The Food Act is an effective and efficient means of addressing foodborne illness
- Council and MPI food safety officers address food safety concerns using Act powers.
- Council has brought three prosecutions resulting in significant fines.

Stakeholders consider the current food grading scheme and Bylaw are useful
- Grading arguably provides useful public information, is easy to understand, and is an incentive for businesses to maintain or strive for higher food safety standards.
- Health experts, industry organisations, the public and operators strongly support the food grading scheme and display requirement.
- Most high-risk food businesses in Auckland (cafes, restaurants and takeaways) are required to display a food grade (70 per cent).
- Studies however are divided about the impact of food grading on foodborne illness.

Stakeholders consider the current food grading scheme and Bylaw could be improved:
- clarification is needed about which businesses need to display a food grade and where
- the food grade could contain more information, including about verification.

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

The Bylaw is not inconsistent with the Food Act 2014
- Bylaw amendments in 2016 removed inconsistencies with the Food Act.
- MPI has yet to develop a national food safety grading scheme.
2 Introduction

2.1 Purpose of the report

This report presents findings from the review of the Auckland Council Whakapai Kai 2013, Food Safety Bylaw 2013 (Bylaw). The Bylaw will expire on 23 May 2020.

2.2 Key questions

The review asked the following key questions to meet council’s statutory review requirements under section 155 of the Local Government Act 2002:

- are the problems the Bylaw sets out to address still evident?
- has the nature and scale of the problems changed since the Bylaw was made?
- has implementation of the Bylaw been effective and efficient?
- is the Bylaw the most appropriate form of bylaw?
- does the Bylaw have any implications under the New Zealand Bill of Rights Act 1990?
- is a bylaw the most appropriate way to help reduce the risk of foodborne illness?

2.3 Methodology

Research and engagement methods used to answer the key questions included:

- **key stakeholder face to face interviews** with environmental health officers, health experts and consumer organisations (full list in Appendix A)
- **interactive workshops** with Environmental Health officers and industry organisations
- **engagement with advisory panels** by written feedback (Ethnic Peoples Advisory Panel)
- **local board cluster workshops**
- **Māori Engagement** by written feedback from marae committees
- **research** on foodborne illness, industry trends and domestic and international approaches
- **analysis of council databases** on complaints and food business data.

2.4 Bylaw context

2.4.1 Original problem and outcome sought in 2013

The problem in 2013 was defined as:

- unhygienic or unsafe premises being operated
- high levels of food poisoning arising from food sold by food premises
- public usually unable to determine the standards of hygiene in food premises
- crockery, cutlery and utensils potentially hired to the public in an unhygienic state
- sale of food to private premises (bun running) occurring in unsafe manner
- food stalls and mobile food shops operated in unsafe manner.

---

1. A Māori engagement plan was developed with the assistance of Te Waka Anga Mua and Citizen Engagement and Insights – Māori Engagement.

The outcome sought in 2013 to address the problem was defined as:

- to minimise the potential risks when food is produced or when members of the public purchase food from food premises, hawkers of food, food stalls or mobile food premises.\(^3\)

2.4.2 Regulatory bylaw approach

Bylaw complements the Food Act purpose

The Bylaw was made by the Auckland Council Governing Body on 23 May 2013 (GB/2013/48) under the Local Government Act 2002 (section 145) and the Health Act 1956 (section 64).

When first adopted, the Bylaw required all food businesses in Auckland\(^4\) to display a food grade certificate (food grade) and had provisions about staff training, food stalls and mobile shops

With the introduction of the Food Act 2014 (Food Act) (refer 2.5.1 for further discussion):

- certain food businesses previously registered with council can instead register with the Ministry for Primary Industries (MPI) and be verified by third-party verifiers (for example fast food chains)
- the Bylaw was substantially amended in 2016 to remove provisions inconsistent with the Food Act 2014 (GB/2016/8)\(^5\) (for example staff training requirements)
- transitional Bylaw clauses for staff training, food stalls and mobile shops expired on 28 February 2019 when regulation transitioned to the Food Act.

The Bylaw in its current form complements the Food Act by requiring certain food businesses (including certain food stalls and mobile shops) to display a food grade in clear view of the public. Council officers can require the food grade to be moved to a more visible location.

The Bylaw requirement to display a food grade:

- applies to food businesses\(^6\) that operate under a template food control plan\(^7\) and are registered with and verified by council (for example fishmongers, retail butchers, supermarkets, bars, cafés, restaurants, takeaways, hospitals, rest homes, and catering)
- excludes food businesses that were not graded before the introduction of the Food Act 2014, unless that business opts-in to the Bylaw and is registered with and verified by council (for example early childhood centres, marae).

At the time of writing the Bylaw applies to 6,711 food businesses from a total of 9,617 food businesses (70 per cent) that serve food to the public (refer 3.4.6 for further discussion).

A copy of the Bylaw is included in Appendix B.

Food grades are issued as part of council’s “Eatsafe Auckland” food grading service which is not part of the Bylaw. Refer 2.5.2 for further discussion, including the ability for some food businesses to receive and voluntarily display an ‘A’ food grade.

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4 The Health (Registration of Premises) Regulations 1986 required all food premises in Auckland to register with council.
5 Section 446 of the Food Act 2014 provides that if a bylaw is inconsistent with the Act, a regulation under the Act, a food standard or notice under the Act, these documents will prevail over the bylaw to the extent of the inconsistency.
6 There is an obligation on the local authority to amend the bylaw to remove the inconsistency.
7 Food Act 2014, section 39 template food control plans.
2.4.3 Bylaw status

The Bylaw will expire on 23 May 2020 under section 160A of the Local Government Act 2002. If council determines a new bylaw is necessary, the new bylaw must be made before 23 May 2020 to avoid a regulatory gap.

2.5 Regulatory and strategic context

Figure 1 illustrates how the Bylaw forms part of a wider regulatory and strategic framework. A summary of the legislation, Auckland Plan outcomes and long-term plan targets for food safety that form part of this framework is provided in Tables 1, 2 and 3.

The Food Act 2014 and council’s “Eatsafe Auckland” food grading service are critical parts of this framework. These documents are discussed in more detail later in this section.

Figure 1 Regulatory and strategic framework

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8 This is because the review of the Bylaw is outside the statutory review deadline of 25 October 2017 under section 158 of the Local Government Act 2002.
Table 1 Legislation and regulations authorising or informing the Bylaw and/or Code

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Relationship to Bylaw</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Food Act 2014</strong></td>
<td>Key legislation regulating the food industry in New Zealand to ensure the safety and suitability of food. Provides council with enforcement powers and penalties, including infringement fines to ensure food safety. Refer to 2.5.1 of this document for further discussion.</td>
</tr>
<tr>
<td><strong>Local Government Act 2002</strong></td>
<td>Allows council to make bylaws to protect, promote and maintain public health. Provides council with enforcement powers and penalties to protect public health.</td>
</tr>
<tr>
<td><strong>Health Act 1956</strong></td>
<td>Council has a duty to “improve, promote, and protect public health within its district”. Allows and directs council to make bylaws to protect public health. Provides council with enforcement powers and penalties to address health nuisance.</td>
</tr>
<tr>
<td><strong>Food Regulations 2015</strong></td>
<td>Provide additional requirements for verifiers, food control plans and national programmes. Identifies infringement offences and fines.</td>
</tr>
<tr>
<td><strong>Animal Products Act 1999</strong></td>
<td>Regulates the production and processing of animal products intended for human and animal consumption. Ensures animal material and products are fit for their intended purpose. Overlap with Food Act for food businesses that manufacture animal products, for example cheese makers and butchers.</td>
</tr>
<tr>
<td><strong>Wine Act 2003</strong></td>
<td>Sets standards for wine safety and labelling. Overlap with Food Act for food businesses that sell wine.</td>
</tr>
<tr>
<td><strong>Australia New Zealand Food Standard Code</strong></td>
<td>Developed by Food Standards Australia New Zealand and has legislative status in both countries. Standards that apply to New Zealand include food labelling, maximum residue limits for food, packaging materials, dietary supplement standards.</td>
</tr>
</tbody>
</table>


Table 2 Auckland Plan Outcomes

<table>
<thead>
<tr>
<th>Document/Outcome</th>
<th>Direction/Focus area/Priority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auckland Plan: Belonging and participation</td>
<td><strong>Direction 2:</strong> Improve health and wellbeing for all Aucklanders by reducing harm and disparities in opportunities.</td>
</tr>
<tr>
<td>Auckland Plan: Opportunity and prosperity</td>
<td><strong>Focus area 2:</strong> Ensure regulatory planning and other mechanisms support business, innovation and productivity growth.</td>
</tr>
<tr>
<td>Auckland’s Economic Development Strategy</td>
<td><strong>Priority 1:</strong> Grow a business-friendly and well-functioning city.</td>
</tr>
</tbody>
</table>

Table 3 Auckland Council Long-Term Plan 2018-2028 Targets

<table>
<thead>
<tr>
<th>Level or service statement</th>
<th>Performance measure</th>
<th>Actual 2016/17</th>
<th>Annual plan target 2017/18</th>
<th>Long-term plan targets 2018/19</th>
<th>2019/20</th>
<th>2020/21</th>
<th>2021-2028 (p.a.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>We regulate the safe</td>
<td>The percentage of licensees satisfied with the food and hygiene licensing service</td>
<td>82%</td>
<td>70%</td>
<td>70%</td>
<td>80%</td>
<td>80%</td>
<td>80%</td>
</tr>
<tr>
<td>operation of premises</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>selling food and/or alcohol</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The percentage of food</td>
<td>N/A</td>
<td></td>
<td></td>
<td>New measure</td>
<td>95%</td>
<td>95%</td>
<td>95%</td>
</tr>
<tr>
<td>premises that improve from</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a D or E grade to an A, B</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>or C grade when revisited</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2.5.1 Food Act 2014

The Food Act 2014 introduced a risk-based approach to food safety

The Food Act regulates all food-related issues (including imported food and food recall) and introduces a new risk-based approach to food safety that:

- imposes more stringent food safety requirements and checks that are proportionate to food safety risks (for example, a dairy who reheats pies is not treated the same as the pie manufacturer)
- focuses on food production processes instead of the premises where the food is made
• makes businesses responsible for ensuring food is safe and suitable to eat\textsuperscript{9}, where previously businesses were required to comply with prescriptive food hygiene regulations, which were inspected and enforced by council’s environmental health officers.

The Act implements a nationally consistent approach that replaces most food safety rules in the Bylaw. It made the Ministry for Primary Industries (MPI) the chief regulatory body for food safety with responsibility for implementing, monitoring, enforcing and advising on the food safety regime.\textsuperscript{10}

The Act also introduced a more business-friendly approach that:

• makes both MPI and council responsible for registration of Auckland food businesses
• enables competition between council and third-party verifiers to reduce compliance costs
• reduces verification frequency and costs for businesses that are performing well
• creates the separate role of food safety officer (at council and MPI) which investigates complaints and takes enforcement action
• requires MPI and council to have a “co-ordinated and aligned approach” to fulfilling their roles and responsibilities under the Act.\textsuperscript{11}

Refer Appendix C for more information on council roles under the Food Act.

**Food Act requires businesses to adopt safe food practices, be registered and audited**

The Food Act requires most food businesses to:

• adopt, register and follow a Food Control Plan or National Programme that contains food safety practices based on the whether the business has a high to low risk to public health
• register with the council where their business operates or with MPI if they operate in multiple districts
• be periodically verified (audited) by council or a third-party verifier to ensure the business is complying with their Food Control Plan or National Programme.

Most food businesses operate under a Template Food Control Plan (Auckland – 66 per cent, New Zealand – 72 per cent). Most other food businesses operate under a National Programme (Auckland – 27 per cent, New Zealand – 23 per cent) and only five per cent of food businesses operate under a Custom Food Control Plan.\textsuperscript{12}

Refer Table 4 for an overview and Appendix D for further information.

---

\textsuperscript{9} In sections 12 and 14 of the Food Safety Act 2014, “safe” means the food is “unlikely to cause or lead to illness or injury to human life or public health” and “suitable” means the food is properly labelled, is uncontaminated and in an appropriate condition for consumption.

\textsuperscript{10} Food Safety Act 2014, section 18.

\textsuperscript{11} Food Safety Act 2014, section 15.

\textsuperscript{12} Ministry of Primary Industries (MPI)/Territorial Authority Multiple Approvals Processing System (MAPS) data extract on 24 June 2019.
### Table 4: Overview of food safety practices and number of food businesses in Auckland

<table>
<thead>
<tr>
<th>Food safety practices (public health risk)</th>
<th>Registration</th>
<th>Verification</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Food Control Plan (high risk)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Custom – specific to a certain business</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Template (s40) – developed by industry</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Number of sites in Auckland: 1,020 (9 per cent)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Examples: fast food chains, supermarkets</td>
<td>MPI only</td>
<td>Council or third-party verifier (council recently accredited)</td>
</tr>
<tr>
<td><strong>Template Food Control Plan (s39) – developed by MPI</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Number of sites in Auckland: 7,286 (64 per cent)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Examples: cafes, restaurants, takeaways</td>
<td>Council or MPI</td>
<td>Council only (under review)</td>
</tr>
<tr>
<td><strong>National programme 3 (medium risk)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Number of sites in Auckland: 1,701 (15 per cent)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Examples: dairies and service stations that reheat pies or scoop ice cream</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>National programme 2 (low risk)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Number of sites in Auckland: 864 (8 per cent)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Examples: early childhood centres, sale of chilled and frozen foods, except ice cream</td>
<td>Council or MPI</td>
<td>Council or third-party verifier</td>
</tr>
<tr>
<td><strong>National programme 1 (lower risk)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Number of sites in Auckland: 496 (4 per cent)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Examples: coffee carts, sale of pre-packaged ice cream and shelf stable products</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>No Food Plan or National Programme (lowest risk)</strong></td>
<td>Not required</td>
<td>Not required</td>
</tr>
<tr>
<td>• General responsibility to provide safe and suitable food</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Examples: selling food for fundraising, sharing food at clubs, farm gate sales, customary food at marae.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: National Programme businesses can instead adopt a Food Control Plan (s28, Food Act 2014)

**Food Act audit process is called verification**

Verification (auditing) results in an acceptable or unacceptable outcome based on requirements set out in the Food Regulations 2015.14 Verification frequency depends on the food business risk level and past food safety management (i.e. better performing businesses are checked less frequently) – see Appendix D.15

Reasonable notice must be given to the business before verification16, in contrast to previous regulation.17 This is because, unlike food safety officers, verifiers do not possess statutory powers.
of entry under the Food Act, and partly to ensure that the person(s) responsible for the management of the Food Control Plan or National Programme are on-site and available for questions from the verifier as an integral part of the verification process.

Council currently charges $165.90 per hour for verifications. A Template Food Control Plan verification normally takes four hours ($663.60), National Programme 3 verification takes three hours ($497.70) and National Programmes 1 and 2 take two hours ($331.80). Council charges less than third-party verifiers.

Council verifiers can undertake an unscheduled verification of a food business if they consider that giving prior notice might defeat the purpose of the verification. However, they would be unable to force the business to be verified if the operator refuses.

Any food safety risks identified by the verifier are required to be reported to the regulator (either council or MPI) who will decide if an investigation by their food safety officers is required. Refer Appendix E for further discussion on verification.

Food Act does not require the public display of registration, verification or food grade

The Food Act does not currently require food businesses to display any public information about their registration or verification status, such as a certificate.

While MPI is authorised under the Act to develop a national food safety grading scheme, no scheme has been developed and it is uncertain whether a scheme will be developed in the future.

2.5.2 Eat Safe Auckland food safety grading system

Council’s food safety grading scheme “Eat Safe Auckland” is separate from the Bylaw

Council’s “Eat Safe Auckland” food safety grading scheme is an operational initiative developed by the council’s Environmental Health Unit. The scheme does not form part of the Bylaw and can be changed at any time.

The scheme provides a food grade to food businesses using a Template Food Control Plan (s39) that is registered and verified by council (refer Table 4). National Programme businesses that are registered and verified by council can voluntarily choose to display an ‘A’ food grade if awarded by council verifiers.

Food grades are based on the verification scores

Council automatically assesses the food safety grade and issues a certificate based on the outcome of the verification process. There is no charge for grading in addition to the verification charge.

The verification score determines whether the business receives a pass or fail grade. The grade is based on the assessed performance of a food business in meeting the requirements of the 5 topics that make up a food control plan or national programme. These topics are:

- process control
- environmental control
- food safety behaviour

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18 Food Regulations 2015, clause 102
19 Risks could include critical risk to food safety, food business not providing the necessary paperwork, or recurring non-compliance with food safety requirements.
20 Regulations may be made to introduce a national grading scheme under the Food Safety Act 2014, section 385.
• confidence in management
• compliance history.

These topics include the “Four Cs”, which are the food safety standards viewed as most important to the public:

• Cook: temperature control, defrosting and reheating food.
• Chill: food storage, temperature control, cooling and freezing.
• Clean: cleaning, pest control, waste, maintenance.
• Conduct: competence, personal hygiene, food allergen management.

Refer to Table 5 below for more information on grading.

Table 5: Eatsafe food grade summary

A: Excellent (91-100 per cent)
These food businesses provide the highest level of confidence that:
• they manage a food control plan,
• practise our four Cs of “Cook, Clean, Chill and Conduct”
• consistently produce safe and suitable food.
Note: Minor documentation issues may result in a score below 100 per cent.

B: Good (61-90 per cent)
These food businesses provide a good level of confidence that:
• they manage a food control plan
• practise our four Cs of Cook, Clean, Chill and Conduct
• produce safe and suitable food.
Note: There may be areas for improvement that do not directly impact food safety, usually around documentation and procedures.

C: Satisfactory (50-60 per cent)
• These food businesses provide a level of confidence that they produce safe food.
• They meet the minimum requirements for food safety and suitability.
• There may be multiple areas for improvement that do not directly impact food safety, including practices, documentation and procedures.

Food businesses can be regraded

A food business will be automatically regraded if it receives a lower pass grade (B or C grade) and the recommended corrective action is taken within the timeframe agreed to with the business. For example, a food business may be assessed as a B or C grade because of non-compliance issues
following the initial verification. Corrective actions are raised by the verifier that outline what the business needs to do to fix the non-compliances, and a timeframe for this work to be completed is agreed with the business. If the corrective actions are completed within the agreed timeframe the grade is automatically reassessed, considering the corrective actions they completed. The reassessed grade is likely to be higher than the grade that was initially assessed, most often an A.

**Fail grades (D or E) indicate that enforcement action has been taken**

Council’s food safety officer can issue a D or E grade following an inspection that identifies a food safety risk that requires formal enforcement or compliance action.

A D grade means enforcement action (e.g. an improvement notice or notice of direction) has been taken. The food business can continue to trade subject to stringent checks by food safety officers to confirm they are complying with all requirements.

An E grade means that there is an immediate risk that can only be resolved by closing the food business. The business is only permitted to trade again once council food safety officers are confident that they have addressed all the critical risks and are able to provide safe food.

D or E grades inform consumers that the food business was recently found to have critical or significant food safety risks and is only trading because these have been rectified. This information would otherwise not be available to consumers. For example, if businesses were reassessed once they had rectified the issues, this would practically eliminate the display of D and E grades.

However, businesses are regraded after a minimum period of one month after a reverification takes place.

Where a business is awarded a fail grade (D or E-grade), it will have the option to appeal against the underlying enforcement or compliance action as provided in the Food Act.

**The display of food grades may be mandatory or voluntary**

The Bylaw makes it mandatory for food businesses using a Template Food Control Plans (s39) (for example Auckland-based cafés or restaurants) that are registered and verified by council to display the food grade.

The Bylaw does not apply to food business using a National Programme 2 or 3 that are registered and verified by council (for example Auckland-based bread bakeries). This means it is voluntary for those businesses to display the food grade.
3 Findings

3.1 Are the issues the Bylaw sets out to address still evident?

3.1.1 Foodborne illnesses continue to pose risks to public health

Types of foodborne illness and symptoms

Foodborne illnesses are infections or irritations of the gastrointestinal tract caused by the consumption of contaminated food or beverages that contain harmful bacteria, parasites, viruses, or chemicals (Refer discussion below and Appendix E).

Food can become contaminated because of:

- improper food storage, preparation or cooking
- cross-contamination (for example between raw meat and uncooked fruit and vegetables)
- food prepared by a person infected with a virus
- contaminated water.

Foodborne illnesses:

- can result in fever, chills, abdominal pain, vomiting and diarrhoea, which can last from a few hours to several days
- may lead to dehydration and other complications
- may be acute and lead to chronic or long-lasting health problems.\(^{21}\)
- are more likely to affect vulnerable society members such as children under four, the elderly (70+), pregnant women,\(^ {23}\) and people with immunodeficiency, such as diabetics and people being treated for cancer.\(^ {24}\)
- can result in significant economic costs for government – an estimated $161.9 million per year.\(^ {25}\)

Foodborne illness can be notifiable.\(^ {26}\) Examples of notifiable illnesses that can be transmitted through ingesting contaminated food include:\(^ {27}\)

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\(^ {21}\) For example, Guillain-Barre syndrome (autoimmune disorder that can lead to paralysis) and Haemolytic-uraemic syndrome (blood disorder that can lead to kidney failure); Pattis, I, Cressey, P, Lopez, L, Horn, B and Roos, R. (2018) Annual Report Concerning Foodborne Disease in New Zealand 2017, ESR.

\(^ {22}\) Pattis (2018).

\(^ {23}\) Due to lower immunity. Ministry of Primary Industries, ‘Food and pregnancy’.


\(^ {26}\) Notifiable diseases in Auckland must be reported by medical practitioners to the local medical officer of health (the Auckland Regional Public Health service (ARPHS)), to council in certain cases, and to MPI where a food or a food business is the suspected cause of the illness. Self-notified cases are also accepted by ARPHS. Notification data is recorded by each public health service and provides for local control measures through national analysis by the Institute of Environmental Science and Research (ESR) on behalf of the Ministry of Health; Ministry of Health, Communicable Disease Control Manual.

\(^ {27}\) Ministry of Health, Communicable Disease Control Manual. Note that for shigellosis, giardiasis, cryptosporidiosis, hepatitis A where foodborne transmission is considered to only contribute a small proportion of the total disease burden. Pattis (2018).
Regulatory Committee
11 July 2019

- Campylobacteriosis
- Hepatitis A
- Shigellosis
- Giardiasis
- Yersiniosis
- Norovirus (if common source outbreak or from a person in a high-risk category)

- Cryptosporidiosis
- Listeriosis
- Acute gastroenteritis
- Salmonellosis
- Trichinellosis
- Verocytotoxin- or shiga toxin E. coli (VTEC/STEC) infection

**High rates of foodborne notifiable diseases in New Zealand**

New Zealand has a high rate of some illnesses that are notifiable and potentially foodborne (campylobacteriosis, cryptosporidiosis, giardiasis, VTEC/STEC infection and yersiniosis) compared to other western countries (refer Appendix E):

- Campylobacteriosis is most commonly notified – peaked in 2006 with 15,873 cases but has significantly decreased since then due to improvements in the poultry industry and remained stable from 2008 to 2017. Counties-Manukau DHB had the lowest rate of campylobacteriosis in New Zealand in 2017 (85.4 per 100,000, 467 cases). Children aged 1 to 4 years and infants aged less than 1 year had the highest notification rates in 2017.\(^{23}\)
- There has been an increase in notification rates for shigellosis, VTEC/STEC infection and yersiniosis since 2016 - may partly be due to more sensitive testing procedures.\(^{29}\)
- The rates of yersiniosis are particularly high for a developed country.\(^{30}\)
- Foodborne hepatitis A outbreaks are rare with only five outbreaks reported in the period 2008 to 2017.\(^{31}\)

**Table 6: Estimated proportion and incidence of the main foodborne diseases for 2017\(^{32}\)**

<table>
<thead>
<tr>
<th>Notifiable Illness</th>
<th>Total number cases notified in NZ</th>
<th>Estimated foodborne %</th>
<th>Total cases Auckland region</th>
</tr>
</thead>
<tbody>
<tr>
<td>Campylobacteriosis</td>
<td>6482</td>
<td>63.8%</td>
<td>1765</td>
</tr>
<tr>
<td>Cryptosporidiosis</td>
<td>1192</td>
<td>N/A</td>
<td>333</td>
</tr>
<tr>
<td>Giardiasis</td>
<td>1648</td>
<td>N/A</td>
<td>591</td>
</tr>
<tr>
<td>Hepatitis A</td>
<td>58</td>
<td>N/A</td>
<td>34</td>
</tr>
<tr>
<td>Listeriosis</td>
<td>21</td>
<td>87.8%</td>
<td>8</td>
</tr>
<tr>
<td>Salmonellosis</td>
<td>1119</td>
<td>62.1%</td>
<td>297</td>
</tr>
<tr>
<td>Shigellosis</td>
<td>245</td>
<td>N/A</td>
<td>150</td>
</tr>
<tr>
<td>VTEC/STEC E.infection</td>
<td>547</td>
<td>29.9%</td>
<td>177</td>
</tr>
<tr>
<td>Yersiniosis</td>
<td>918</td>
<td>63.2%</td>
<td>289</td>
</tr>
<tr>
<td>Norovirus</td>
<td>6517</td>
<td>4.7%</td>
<td></td>
</tr>
</tbody>
</table>

\(^{28}\) Pattis (2018).
\(^{29}\) Pattis (2018).
\(^{30}\) Pattis (2018).
\(^{31}\) Pattis (2018).
\(^{32}\) Modified table from Pattis (2018).
Most reported foodborne illness outbreaks result from commercial food operators and food consumed on cruise ships (see table 82, Appendix E). Health experts noted that while campylobacteriosis transmission through poultry has been reduced, there are other sources such as direct animal contact and waterway contamination.

However, measurement of rates of foodborne illness is limited by:

- underreporting worldwide\textsuperscript{33} and in New Zealand (according to the Auckland Regional Public Health Service (ARPHS) and the Institute of Environmental Science and Research (ESR))\textsuperscript{34}
- difficulties in New Zealand establishing whether diseases are foodborne or transferred through water supply, animal or farm environment contact\textsuperscript{35}
- varied testing procedures – testing is shifting to more sensitive methods such as DNA-based testing which can lead to increases in diagnosis (unclear for some illnesses if rates are increasing or if tests are more accurate)\textsuperscript{36}
- potential inability to test for all possible illnesses at one site, according to ARPHS.

3.1.2 There are still concerns about poor food safety practices in Auckland

Poor food safety practices at Auckland food businesses continue to occur, which can pose public health risks.

In total there were 2,188 Auckland Council requests for service (RFS)\textsuperscript{37} about food safety concerns for the period 1 July 2017 to 30 April 2019.\textsuperscript{38} This included 2,778 separate food safety concerns, with multiple concerns for some food businesses.\textsuperscript{39}

As an illustration of the scale of concern, this would equate to a request for service for 19 per cent of the current 11,367 business sites\textsuperscript{40} registered in the Auckland region.\textsuperscript{41}

Common concerns include unregistered businesses, food safety, pests, cleanliness and foreign materials

The top food safety concerns identified in request for service data are unregistered or incompliant food businesses, unsafe food and pest activity.

\textsuperscript{33} World Health Organisation “Food Safety.”\textsuperscript{34} See also World Health Organisation “Food Safety.”\textsuperscript{35} Ministry of Health, Communicable Disease Control Manual\textsuperscript{36} Pittis (2018)\textsuperscript{37} Request for service data consists of complaints from the public and council operational logs.\textsuperscript{38} Limitations of request for service data include that multiple requests for the same food business could not be compiled due to data input variation, data was categorised manually and errors are possible; council enforcement action is not limited to that logged on RFS system; data does not include multiple instances of one food safety concern for one business; and data prior to 2017 is not included due to unreliability.\textsuperscript{39} The main food businesses identified in RFS data were restaurants/bars, fast food businesses and takeaways, cafes, grocery stores, supermarkets, bakeries, and dairies/convenience stores.\textsuperscript{40} Ministry of Primary Industries (MPI)/Territorial Authority Multiple Approvals Processing System (MAPS) data extract on 24 June 2019. One food business may have multiple sites, for example one food business has 129 sites in Auckland, although most food businesses (75 per cent) operate one site only.\textsuperscript{41} MAPS data only accounts for businesses registered from 2016 onwards so data may not accurately reflect the total number of food business sites in New Zealand. In addition, data is of currently registered businesses and does not include businesses that have changed ownership or closed between 2016 and 2019.
Table 7: Food safety concerns in request for service data (2017-2019) with examples

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unregistered or non-compliant businesses</td>
<td>19%</td>
<td>Food storage (location, inadequate containment, cross-contamination, temperature control)</td>
</tr>
<tr>
<td>Unsafe food (expired, spoiled, stale, uncooked, undeclared allergens, incompliant)</td>
<td>14%</td>
<td>Inadequate food grade (expired, hidden, false, low grade)</td>
</tr>
<tr>
<td>Pest activity (cockroaches, flies, rats, mice, birds)</td>
<td>11%</td>
<td>Food labelling (lacking, covered, removed, false)</td>
</tr>
<tr>
<td>Food handling and preparation</td>
<td>9%</td>
<td>Food display (uncovered, temperature control, cross-contamination)</td>
</tr>
<tr>
<td>Cleanliness (dirty, rubbish, odour)</td>
<td>8%</td>
<td>Unknown</td>
</tr>
<tr>
<td>Foreign materials in food (maggots, cockroaches, hair, flies, metal, plastic)</td>
<td>8%</td>
<td>Inadequate facilities (lacking or broken fridge, freezer, dishwasher, handwashing facility)</td>
</tr>
<tr>
<td>Non-display of food grade</td>
<td>6%</td>
<td>Enforcement action</td>
</tr>
<tr>
<td>Foodborne illness</td>
<td>6%</td>
<td></td>
</tr>
</tbody>
</table>

The most common pests identified in RFS data were cockroaches (33 per cent), flies (22 per cent), rats or mice (17 per cent) and birds (16 per cent). The most common foreign materials found in food were maggots (12 per cent) and cockroaches, hair and flies (each 11 per cent).

A People’s Panel survey was held in May 2019 with 4,269 respondents. Just over half (59 per cent) of the respondents had not had a bad food experience in the past three months. Where people had a bad food experience, the most common concerns were pest activity (17 per cent) and cleanliness (11 per cent).

Food safety concerns identified in RFS data most often relate to restaurants and bars (23 per cent), followed by fast-food and takeaway businesses (17 per cent), cafés (10 per cent) and grocery stores (10 per cent). Where respondents had a poor food experience, only one per cent reported the experience to council. Most respondents (46 per cent) decided not to go to the food business again.

A food business operator survey was held in May 2019 with 1,113 respondents. The most common issues identified by respondents were unclean food businesses (38 per cent) and poor employee

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42 The survey aimed to understand Aucklanders’ ‘eating out’ habits, bad food experiences and awareness and views on food grading. Respondents could select multiple answers to some questions so percentages will not necessarily equal 100.

43 Includes small grocery stores, large-scale supermarkets, Asian supermarkets, and fruit and vegetable stores.
hygiene practice (35 per cent). However, 32 per cent of respondents indicated that they were not aware of any issues with food businesses.

**Other stakeholder views**

Environmental Health officers indicate that many complaints to council originate from other food businesses rather than the public. Officers identified that cleanliness and pest activity are the most common reasons for closing a business and prosecution (where there is a critical risk to food safety). Food labelling complaints (for example unidentified allergens and non-English labels) are increasing.

Consumer New Zealand identified common complaints about improperly cooked or unhygienic food, particularly at smaller businesses such as takeaways.

### 3.2 Has the nature and scale of the problems changed?

#### 3.2.1 Aucklanders are dining out more frequently

Most People’s Panel respondents dined out or purchased food from an Auckland food business in the past month. More than 50 per cent of respondents had purchased food from a café, restaurant, local takeaway shop, supermarket or bakery while just two per cent had not dined out or purchased takeaways during this period.

**Figure 2: People’s Panel May 2019 survey question – in the last month, which of these food places have you eaten from in Auckland?**

There is an increase in the frequency of dining out or purchasing food. Seventy-six per cent of People’s Panel respondents dine out or purchase food from a food business either every day, every two or three days, or weekly, compared to 71 per cent in 2015.

This means there is a greater risk of Aucklanders experiencing poor food safety at a food business.

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44 Note: A supermarket was not included as an option in the 2015 People’s Panel survey.
3.2.2 Frequency of poor food experiences is unclear

It is unclear whether the frequency of poor food experiences has changed.

The number of People’s Panel respondents who had not seen or experienced poor food safety practices in the last three months at a food business in Auckland has decreased by 12 per cent (59 per cent in 2019 compared to 71 per cent in 2015). Of those who had experienced poor food safety practices, 64 per cent of People’s Panel respondents and 54 per cent of operator survey respondents considered that over the past few years the frequency of poor food experiences had stayed the same or decreased.46

Environmental Health officers think the number of food businesses with poor food safety practices are roughly the same.

3.2.3 The number of people with food allergies is increasing

Food allergy occurs when a person’s immune system overreacts to a protein in food. The most common foods that cause 90 per cent of allergic reactions are: cow’s milk, peanuts, soy, fish, seafood, wheat and tree nuts.46 Common food allergens must be declared on food labels, or information must be available at the point of sale.47

International consensus is that food allergy rates have significantly increased overall in the last 30 years in westernised countries, such as New Zealand.48

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46 Data is limited by how 29 per cent of People’s Panel respondents and 32 per cent of operator’s survey respondents did not select a response (did not know, found the question not applicable or did not agree with available responses). In addition, 2015 data could be limited by fewer available response options which may have reduced association of experiences as poor food experiences.

47 Ministry of Primary Industries, ‘Food Allergies’.

48 Ministry of Primary Industries, ‘How to read food labels, consumer information’.

A 2011 Melbourne study found more than 10% of infants had a food allergy\(^{49}\) and a review of Australian hospital data (1993-2005) found a 5-fold increase in hospitalisations for anaphylaxis to food in children under 5 years.\(^ {50}\) It is likely rates will be similar in New Zealand.\(^ {51}\)

Referrals to paediatric clinics around New Zealand for investigation of food allergy are increasing.\(^ {52}\) The rate of food-induced anaphylactic shock in adults is also an increasing problem in New Zealand, particularly among females, younger adults (15–34 years) and Pacific Island populations.\(^ {53}\)

Reasons for the increase in prevalence of food allergy are not known but include genetic inheritance and potential environmental factors.\(^ {54}\)

Environmental Health officers note an increased emphasis on correct food labelling and allergy compliance under the Food Act. Officers note anecdotally that many food business operators remain unaware of MPI food notices on updates to imported or other food. Less than one per cent of council request for service concerns related to undeclared allergens in food. This may be because the public do not realise council has this role under the Food Act.

3.2.4 As Auckland becomes more diverse people are consuming a wider range of traditional foods

Increased availability of traditional foods

Auckland’s growing diversity has resulted in demand for a larger variety of food. Traditional ingredients and food preparation processes can be more difficult to assess for food safety without reducing the cultural and nutritional value of foods. Food Standards Australia-New Zealand recommends that traditional food safety assessments should rely largely on analysis of the food’s composition and a demonstrated history of safe use.\(^ {55}\)

Environmental Health officers identified an increase in exemptions granted for preparation of ethnic food under the Food Act (section 31). This means it can be difficult to monitor food safety practices.

Traditional food is being on-sold

ARPRESS notes that food not made through a commercial manufacturing process is often brought from the Pacific Islands into New Zealand as a customary offering to hosts. ARPRESS identified issues where excess food is on-sold through commercial premises. Clusters of food-borne illness can occur, often due to poor food temperature control.

\(^ {49}\) Osborne et al. (2011) “Prevalence of challenge-proven IgE-mediated food allergy using population based sampling and predetermined challenge criteria in infants.” J All Cl Immuniol.


\(^ {51}\) Allergy New Zealand ‘What is the prevalence of food allergy in New Zealand?’

\(^ {52}\) Allergy New Zealand ‘What is the prevalence of food allergy in New Zealand?’


\(^ {54}\) Allergy New Zealand ‘What is the prevalence of food allergy in New Zealand?’

\(^ {55}\) Food Standards Australia New Zealand ‘The Analysis of Food Related Health Risks’ (2009).
Domestic slaughter of pigs can pose health risks

ARPHS notes the domestic slaughter of pigs for sale or gifts can present risks from diseases carried by pork, especially if inadequately cooked. ARPHS previously identified one family business that was selling up to seven pigs a day online on social media.

3.2.5 New Zealand diets are changing to incorporate more raw foods

In New Zealand and internationally, there is a trend towards consuming raw or minimally processed produce, including ready-to-eat and fresh cut vegetables and fruits, fresh (unpasteurised) juices and sprouts. This could be due to an increase in vegan, organic or “sustainable” eating as identified by Hospitality NZ.

There is a greater risk of contracting foodborne illness where food is not heated sufficiently to kill certain harmful bacteria. The open nature of the fresh produce chain means that contamination can be introduced at various points in production, harvesting and processing, and then passed to the consumer.

Raw fruits and vegetables continue to be the main source of foodborne illness outbreaks internationally (for example, E. coli, salmonella and listeria), although raw and undercooked meat is more likely to be contaminated. Leafy greens, sprouts, tomatoes and berry fruits are most commonly connected with foodborne illness outbreaks, however, all types of fresh produce have the potential to become contaminated.

New Zealand Health experts identified fresh produce such as fresh fruit and vegetables as an increasing source of outbreaks in line with diet trends towards less-processed foods (for example, a 2019 salmonella outbreak was linked to sprouts).

MPI and the ESR identify increasing raw milk consumption in New Zealand, especially in urban areas. Raw milk is not heat-treated and can contain faecal matter as well as bacteria such as e-coli and listeria.

3.2.6 New food handling or preparation practices are becoming more common

Environmental Health officers note that the food industry is changing rapidly as new technology allows different food handling and preparation techniques. Officers believe that these changes are occurring at a faster rate than can be regulated and it can be difficult to verify and monitor these practices.

Techniques usually performed at high-end restaurants are becoming more common at casual food businesses, including sous vide, raw fish, raw burgers, preparation fermentation, and 24 to 48-hour slow cooking which have increased or unknown food safety risks.

Other trends include supplements and insects in food, and hemp as a food product.

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56 Murray (2017).
Environmental Health officers note that the current template version of the Food Control Plan (produced by MPI) may not always account for new cooking methods and technologies.

3.2.7 Unregistered food businesses and market stalls present food safety challenges

Unregistered online businesses

Anecdotally there are hundreds of unregistered food businesses (i.e. do not comply with the Food Act) operating from domestic premises, that sell food on social media sites such as Facebook and WeChat. This problem appears to be increasing but monitoring is difficult.

ARP&HS noted that lower socio-economic groups are at greater risk from foodborne illness from unregulated food businesses, as they are more likely to buy food offered at a cheaper price.

Markets

Local board members and stakeholders also identified concerns regarding market stalls:

- Council verifiers often do not assess food businesses in situ at the market, instead verifying their food control plan after hours. Inspections occur by chance if officers happen to be at the same market, and there are no guidelines for inspection.
- It is difficult to keep track of market stall operators in Auckland as they may be registered and verified in another region and operate in Auckland.
- Market stall operators do not all display a food grade which is confusing for the public.
- Food trucks may not have access to running water.

Some Environmental Health officers and ARP&HS believe market organisers should take more responsibility for food safety standards of market stalls.

Pop-up restaurants and delivery services

Pop-up restaurants can have food safety issues as they often under the same food control plan as their permanent premises, which may not appropriately address food safety risks at a temporary premises.

Other stakeholders identified the potential for increased risk of foodborne illness if food temperature is not properly maintained by delivery services such as Uber Eats.

3.3 Food Act is an effective and efficient means of addressing foodborne illness

Food safety issues including unsafe food\(^{62}\) are addressed under the Food Act by council and MPI food safety officers through framework risk-based measures (Food Control Plans or National Programmes). The Act introduced the role of food safety officer, which is separate to council officers and third-party verifiers that verify food businesses.

The Food Act introduced better powers and enforcement tools than the former Food Act 1981. Minor and technical offences are dealt with faster and more effectively, and penalties for the worst offences have been strengthened (refer Appendix F for further information). Council Environmental Health officers indicate that the Food Act has helped improve evidence-gathering and prosecution.

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\(^{62}\) Food Act also addresses issues where businesses fail to identify allergens in their products, unethical food operators, and misleading or inaccurate labelling.
While these tools cannot be used to directly enforce the Bylaw requirement to display a food grade, they are essential for meeting council’s food safety responsibilities.

Since 2017, council has successfully brought two prosecutions under the Food Act for the lesser offence of negligently endangering, harming, creating risk, or increasing risk, and one for recklessly creating or increasing risk. Fines awarded ranged from $10,625-$37,500. There are currently 15 pending prosecutions. Enforcement action under the Food Act will normally trigger an automatic reverification of the food business and therefore the grade if applicable.

Council has also issued approximately seven infringement notices63 since 2018 for failure to register a food control plan, with a fine of $450 for each. Infringements do not impact the food grade.

3.3.1 Stakeholder views of the Food Act verification process

While these matters cannot be addressed by a bylaw, stakeholders had a few concerns regarding Food Act requirements and the verification process, including:

- Notification of businesses prior to verification can mean that verifiers are less likely to identify poor food safety practices as the food business is likely to make changes in anticipation. While food safety officers can inspect a food business unannounced in response to a complaint or randomly, the cost of this inspection cannot be recovered unless a food safety problem is identified.
- While there are templates and guidance materials for food businesses, the Food Act requirements are complicated and can be difficult to understand, particularly given low levels of literacy, language barriers and high staff turnover in the food industry.
- Some food control plan requirements are onerous or unnecessary, including some record-keeping.
- There is a risk some operators will stop record-keeping after verification, particularly if the next verification is not due for a long time.
- Food business staff may not be trained in all aspects of the food control plan.

3.4 Has implementation of the Bylaw been effective and efficient?

Auckland Council’s food safety grading system is well-established and popular with stakeholders as it provides an easy way to determine if a food business has been inspected and to assess food safety standards. Anecdotally it may also incentivise better performance than other regulation. However, there is conflicting evidence about whether grading results in improved food safety outcomes and there is public confusion because not all food businesses display a food grade.

3.4.1 Bylaw may be enforced under the Local Government Act or Health Act

If a food business is not clearly displaying its food grade at the premises’ main entrance, Environmental Health officers may use powers and penalties under either the Local Government Act 2002 or the Health Act 1965:

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63 Infringements can address businesses without required registration or labelling offences. Infringements for failure to register (often failure to renew a registration on time) are only issued after a business has received a warning to register within a certain timeframe and has failed to do so. No infringements for labelling offences have been issued.
Local Government Act 2002 (sections 162-188)
- powers of entry, seizure of property and requiring information
- officers can obtain a court order to stop a breach of a Bylaw (injunction), and/or prosecute operators for breaching a Bylaw
- if convicted, a person will be liable for a maximum fine of $20,000
- officers cannot issue infringement fines for breach of the Bylaw.

Health Act 1956
- powers of entry and inspection (s128)
- if convicted, a person can be fined $500, and $50 per day for a bylaw breach (s66)
- officers cannot issue infringement fines for breach of the Bylaw.

3.4.2 Environmental Health takes a graduated approach to Bylaw compliance

The Environmental Health unit applies a Voluntary, Assisted, Directed and Enforced (VADE) model to its compliance interventions under the Food Act 2014 (refer Appendix F for further discussion) and the Bylaw. This is based on the MPI model (see figure 4 below) and encourages food businesses to voluntarily choose to conform. While the ultimate enforcement tool is prosecution, officers seldom use this option and have not prosecuted a food business for failure to display a food grade since amalgamation.

Figure 4: Vade explanation

<table>
<thead>
<tr>
<th>Voluntary = willing and able to comply</th>
<th>Assisted = ‘yes to comply but don’t always succeed’</th>
</tr>
</thead>
<tbody>
<tr>
<td>Influence behaviours by making theory</td>
<td>Aims:remove barriers to compliance by reinforcing</td>
</tr>
<tr>
<td>voluntary compliance to happen by ensuring</td>
<td>expectations and obligations</td>
</tr>
<tr>
<td>people know what they need and how</td>
<td></td>
</tr>
<tr>
<td>Understanding that the consequences of non-</td>
<td></td>
</tr>
<tr>
<td>compliance are proportionate.</td>
<td></td>
</tr>
<tr>
<td>Compliance standards are adhered through</td>
<td></td>
</tr>
<tr>
<td>education, training, engagement and</td>
<td></td>
</tr>
<tr>
<td>communication of expectations and obligations.</td>
<td></td>
</tr>
</tbody>
</table>

Directed = ‘don’t want to comply’
- Directed compliance is a range of tools that can be applied to direct a desired behaviour change ranging from Notices of Direction, Formal Warnings, Infringement Notices and when appropriate lower threshold prosecutions.
- Directed compliance is a range of tools that can be applied to direct a desired behaviour change ranging from Notices of Direction, Formal Warnings, Infringement Notices and when appropriate lower threshold prosecutions.
- Directed compliance is a range of tools that can be applied to direct a desired behaviour change ranging from Notices of Direction, Formal Warnings, Infringement Notices and when appropriate lower threshold prosecutions.
- Directed compliance is a range of tools that can be applied to direct a desired behaviour change ranging from Notices of Direction, Formal Warnings, Infringement Notices and when appropriate lower threshold prosecutions.

Enforced = ‘we believe decisions not to comply’
- Enforced compliance is where the full extent of the law is applied.
- Enforced compliance is where the full extent of the law is applied.
- Enforced compliance is where the full extent of the law is applied.
- Enforced compliance is where the full extent of the law is applied.

3.4.3 Most food businesses comply with requirement to display a food grade

Environmental Health officers will check to see that a food grade is properly displayed during verification or in response to a complaint. While there is no data, anecdotally most food businesses required to display a food grade do so properly. Only on rare instances do officers need to direct an operator to move the food grade to a more visible location.

There is, however, public confusion about the requirement to display a food grade because not all food business have or are required to display a food grade (refer 3.4.11 for further discussion).

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04 Voluntary Assisted Directed Enforced.
3.4.4 There is strong support for current display of food grades

Key stakeholders

Stakeholders including Environmental Health officers, ARPHS, Consumer NZ, and Hospitality NZ believe that the food grading scheme and requirement to clearly display a food grade is useful. Stakeholders also support development of a national grading scheme through the Food Act.

Stakeholders identified the following advantages to the food grading scheme:

- easy to understand even if someone does not know the rules
- highly visible
- the range of grades enables a high level of public information and allows customers to make an informed choice
- can be an effective tool to improve food safety standards
- promotes council as a verification agency
- incentive for businesses to maintain or strive for higher standard (reputational incentives anecdotal more effective than financial incentives)
- can help to improve or maintain reputation of food businesses
- can reinforce the importance of having a food control plan.

Stakeholder also identified the following limitations:

- businesses focus more on the grade than on food safety which is the purpose of verification
- smaller operators may be less likely to choose council verification due to grading
- a higher grade does not necessarily guarantee or improve food safety
- food businesses that have been automatically regraded to an A after addressing verification issues may have a higher risk of standards dropping in future and this may be unfair to businesses that originally received an A grade.

Local boards

Local board members strongly support the Bylaw requirement for businesses to display a food grade. However, the public can be confused over which businesses are verified by council and would benefit from consistency in both the businesses required to display food grades and the information provided. One member noted that some businesses can be unfairly impacted when the media run a food grading story when they happen to have a lower grade.

Marae committees

Marae committees that responded consider that the display of food grades is helpful where food is sold to the public. However, one committee considered that the pakeha system would not work for traditional food at marae as “food preparation knowledge varies from kaupapa to kaupapa” and “marae prepare their kai from lessons passed on from their forefathers.”

Instead “whānau in kitchens have a standard or grade that they maintain as it’s their mana to uphold, as well as the marae mana. This [food safety] level in Te Ao Māori is the highest [at] all times.”

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*Otaeki Marae and Rerotāwhoi Marae.*
People’s Panel and operator survey respondents

Most People’s Panel and operator survey respondents consider that the food grading scheme is useful and should apply to most food businesses.

Table 8: Summary of People’s Panel and Operator views of food grading scheme

<table>
<thead>
<tr>
<th>People’s Panel Survey</th>
<th>Operator Survey</th>
</tr>
</thead>
<tbody>
<tr>
<td>Respondents:</td>
<td>Operators:</td>
</tr>
<tr>
<td>• consider food grading is useful or very useful (89 per cent)</td>
<td>• consider food grading is beneficial or very beneficial to food businesses (72 per cent) and the public (76 per cent)</td>
</tr>
<tr>
<td>• think food grading should continue to operate (97 per cent)</td>
<td>• are satisfied or very satisfied with current system (86 per cent)</td>
</tr>
<tr>
<td>• have high awareness of food grades (95 per cent), requirement for display (95 per cent) and how the system works in Auckland (82 per cent)</td>
<td>• consider food grading should continue to operate (82 per cent)</td>
</tr>
<tr>
<td>• know what A – E grades mean (97 per cent)</td>
<td>• agree or strongly agree that all food businesses must clearly display their food grade (85 per cent)</td>
</tr>
<tr>
<td>• look for a food grade always or often (59 per cent) or sometimes or rarely (35 per cent)</td>
<td></td>
</tr>
<tr>
<td>• much less likely to purchase food from businesses with a lower grade (C grade- 10 per cent, D grade- 1 per cent, E grade- 0 per cent).</td>
<td></td>
</tr>
</tbody>
</table>

3.4.5 Fills a regulatory gap until a national food grading scheme is made

While MPI can make regulations to provide a national grading scheme under the Food Act\textsuperscript{66}, there is no current scheme and it is uncertain when this will be developed and what form it will take.

MPI does not currently provide any other document that could be displayed to inform the public that a food business has been registered and verified as acceptable.

3.4.6 Most food businesses in Auckland have a food grade

Auckland Council’s food safety grading scheme is well established and reasonably comprehensive (see Table 9) Overall, 86 per cent of high-risk food businesses in Auckland who sell to the public have a food grade and 70 per cent of total food businesses in Auckland who sell to the public have a food grade.

\textsuperscript{66} Regulations may be made to introduce a national grading scheme under the Food Safety Act 2014, section 385.
Table 9: Auckland food businesses who sell to the public and have a food grade

<table>
<thead>
<tr>
<th>Food Plan</th>
<th>Registered sites with council (MPI)</th>
<th>Verified by Council (3rd Party verifier)</th>
<th>Number of sites with food grade</th>
<th>Percentage of sites with a food grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Custom Food Control Plan (specific to a certain business)</td>
<td>0 (431)</td>
<td>0 (431)</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Template (s40) Food Control Plan (developed by industry) (e.g. food chains and supermarkets)</td>
<td>0 (83)</td>
<td>0 (83)</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Template Food Control Plan (s39) (e.g. Auckland only cafes, restaurants, takeaways)</td>
<td>6712 (567)</td>
<td>6712 (567)</td>
<td>6298</td>
<td>87%</td>
</tr>
<tr>
<td>National Programme 3 (e.g. dairies and service stations that reheat pies or scoop ice cream)</td>
<td>1434 (114)</td>
<td>1238 (310)</td>
<td>1072</td>
<td>69%</td>
</tr>
<tr>
<td>National Programme 2 (e.g. early childhood centres, sale of chilled and frozen foods, except ice cream)</td>
<td>106 (44)</td>
<td>60 (90)</td>
<td>51</td>
<td>34%</td>
</tr>
<tr>
<td>National Programme 1 (e.g. coffee carts, sale of pre-packaged ice cream and shelf stable products)</td>
<td>123 (3)</td>
<td>98 (28)</td>
<td>11</td>
<td>9%</td>
</tr>
</tbody>
</table>

3.4.7 Most Auckland food businesses have an “A” grade to display

Table 10 below shows that of those food businesses with a food grade registered and verified by Auckland Council, 89 per cent of have an “A” grade.

Table 10: Grading of food businesses registered by Auckland Council

<table>
<thead>
<tr>
<th>Grade</th>
<th>National Programme 2</th>
<th>National Programme 3</th>
<th>Template Food Control Plan</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>44</td>
<td>908</td>
<td>5636</td>
<td>88.5%</td>
</tr>
<tr>
<td>B</td>
<td>5</td>
<td>53</td>
<td>159</td>
<td>2.9%</td>
</tr>
<tr>
<td>C</td>
<td>1</td>
<td>15</td>
<td>118</td>
<td>1.8%</td>
</tr>
<tr>
<td>D</td>
<td>0</td>
<td>1</td>
<td>8</td>
<td>0.1%</td>
</tr>
<tr>
<td>E</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>0.1%</td>
</tr>
<tr>
<td>Pending</td>
<td>27</td>
<td>84</td>
<td>377</td>
<td>6.6%</td>
</tr>
<tr>
<td>Unknown</td>
<td>94</td>
<td>178</td>
<td>414</td>
<td>9.2%</td>
</tr>
<tr>
<td>Total (not ‘Unknown’)</td>
<td>77</td>
<td>1061</td>
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</table>

* Ministry of Primary Industries/Territorial Authority Multiple Approvals Processing System data and Eatsafe Auckland data as at 24 June 2019. Numbers are not exactly the same as Table 9 due to differences between data sets.
Stakeholders indicated that the current system could be perceived as unfair as an operator with consistently high standards and an operator who was required to take corrective action may both receive an A. Environmental Health officers believe that this limits the reliability of information for the public to make an informed decision, particularly where standards drop again after corrective action has been undertaken. This may also indicate that the current provision of a full range of pass grades from A–C is unnecessary.

A marae committee and some People’s Panel respondents raised concerns that some businesses currently displaying A grades had unclean kitchens.

3.4.8 Food grading raises public awareness but impact on foodborne illness is uncertain

Food safety interventions are often difficult to evaluate and literature on the efficacy of food grading is divided.

One study found that the introduction of a food grading scheme (A, B or C grade) in 1998 and requirement for display in Los Angeles County resulted in reduced foodborne illness (20 per cent reduction). This was because grading incentivised improved restaurant hygiene and consumers could choose restaurants with better food hygiene.68

However, these findings were challenged by a recent study which found that certain variables were not considered and “there was little credible evidence for the impact of restaurant grading... on foodborne illness.”70

Other US studies have found that food grading suffers from serious flaws:71

- There is little evidence that grading is effective in improving foodborne illness outcomes or can guarantee consistent hygiene standards.
- There is limited consumer understanding of inspections and if all restaurants receive an A it is difficult to make informed choices.
- Grading can reallocate inspection resources from health hazards to grade dispute resolution.
- The conditions found on inspection date may change greatly (degrade or improve).

3.4.9 Most New Zealand local authorities do not have a bylaw

Most New Zealand territorial authorities do not have a bylaw that provides for a food grading scheme. Only 12 territorial authorities (excluding Auckland Council) have a bylaw (18 per cent). Of those territorial authorities with a bylaw, only 7 provided for a food grading scheme (11 per cent), including Dunedin City Council and Queenstown-Lakes District Council (refer Appendix G). Horowhenua District Council provides for food grading in a policy.

All other territorial authorities rely solely on the Food Act to provide for food safety in their districts. Feedback indicated limited problems with this approach.

69 The area experienced a large and acute salmonella outbreak immediately before introduction of restaurant grading which artificially increased the pre-grading illness rates. Other neighbouring counties without food grading had experienced a similar drop in foodborne illness hospitalisations.
An officer at a council that had ceased using a food grading scheme did not consider this had any impact on food safety outcomes. However, the food grading scheme was not as well established as Auckland Council’s scheme.

An officer at a council that has an established food grading scheme, considered that its value had decreased since the introduction of the Food Act and there had been public confusion. However, the council intends to keep the system until a national grading scheme is developed.

3.4.10 Comparable international jurisdictions have food grading but may not require display

Staff reviewed Australian (New South Wales, Victoria) Canadian (Toronto) and United Kingdom approaches to food safety. Three out of four jurisdictions\(^2\) had a food safety grading scheme. However, the food grading schemes were only enforceable or required display of a certificate in Toronto and Wales (refer Appendix H).

3.4.11 Public confusion because not all food businesses have a food grade

The Bylaw only requires 70 per cent of food businesses in Auckland that sell food to the public to display a food grade.

While voluntary display of food grades increases this to 78 percent:

- 19 per cent of all high-risk food businesses in Auckland that sell food to the public do not have a food grade
- 22 per cent of all food businesses in Auckland that sell food to the public do not have a food grade.

Local boards and stakeholders noted that many members of the public consider that:

- food grades should be displayed by all registered food businesses and not just those registered and verified by council
- if no food grade is displayed the business must not have been inspected.

Common questions and points of confusion for the public include:

- which food businesses are registered or verified and by which authority?
- which businesses must display a food grade?
- why do businesses with lower grades (D or E) remain open?

Officers consider there has been an increase in complaints about grading. Consumer NZ also identified public concerns about food grades not being displayed.

Most People’s Panel survey respondents indicated that popular food retail or service businesses should be required to display a food grade (for example, takeaways, cafes, restaurants, food courts, bakeries, food trucks, bars and service stations).

Council received 178 requests for service queries and complaints about food businesses not displaying a food grade (2017-2019). There were also 110 requests for service queries and complaints about food businesses displaying an expired, hidden, false or low food grade.

Complaints about non-display are difficult to monitor and are a low priority for enforcement which can be difficult to communicate to the customer.

\(^2\) New South Wales, Toronto and the UK (England and Wales). Victoria, Australia did not have a grading system.
3.4.12 Statutory penalties are not used to enforce Bylaw

No prosecutions have been brought against a food business for failing to display a food grade under the current Bylaw.

Legacy councils prosecuted businesses under legacy bylaws that failed to display their D or E grade for the required period or that fraudulently displayed a grade that they were not entitled to (e.g. displaying an A while they were required to display an E). This resulted in fines of around $1000 to $2000.

Prosecution under the Local Government Act 2002 or Health Act 1956 for a breach of the Bylaw is unlikely as it is a lengthy and expensive process (costs are not fully recovered from fines). If the failure did warrant prosecution, officers would more likely prosecute under the Local Government Act 2002.

Environmental Health officers believe that current penalties (e.g. $20,000 fine) are too low and would like to have infringement powers under the Bylaw. However, penalties are set under the Local Government Act 2002 and cannot be altered under the Bylaw.

In contrast, food safety officers can issue infringement notices and prosecutions under the Food Act can result in imprisonment and significant fines of up to $500,000. The Act also provides for the recovery of compliance costs from the food business concerned. These powers cannot be used for a failure to display a food grade but target underlying food safety problems.

3.5 Is the Bylaw the most appropriate form of bylaw?

3.5.1 Stakeholders consider the bylaw could be improved

Clarification needed about where food grades must be displayed

Environmental Health officers, Hospitality New Zealand and food industry members consider the display requirement needs clarification and that the requirement to display food grades “at the principal entrance” is vague. Stakeholders note that businesses display their food grades in a variety of places: at the entrance, behind the bar and at the back of the premises when they receive a lower grade.

Suggestions for clarification include requiring the display of food grades:

- in the front window of a food premises
- in an area easily visible before the customer enters the premises
- beside the counter
- on the food business’ website and Facebook page
- on service or review websites or apps such as Uber Eats and Zomato
- at the entrance to fast food drive-thru.

Most People’s Panel and operator survey respondents consider that food grades should be displayed somewhere clearly seen before entering the premises, or by the main entrance or front door. Most People’s Panel respondents consider food grades should also be displayed on online menus and business websites.

**Stakeholders consider the Bylaw could address more issues and needs updating**

Stakeholders identified additional issues that the Bylaw could cover to address gaps in current food business regulation. Some stakeholders would like a requirement for staff to undertake formal food
safety training as they are often unaware of high-risk products and appropriate procedures. However, the Food Act prevents the Bylaw from requiring such training.

Stakeholders note that most Bylaw clauses have expired and the attachments and reference to the Food Hygiene Regulations 1974 need to be updated.

3.5.2 Stakeholders recommend changes to the food safety grading scheme

While the food safety grading scheme is an operational policy outside of the Bylaw, stakeholders recommended the following improvements:

- Using “acceptable” and “unacceptable” could be more reliable and consistent with the Food Act than letter grades, particularly for lower risk food businesses.
- Removal of the “grade pending” certificate as complaints are received about these and they are confusing for the customer.
- Removal of the “C” grade as its purpose is unclear.
- Removal of percentage score as it puts pressure on verifiers to give 100 per cent.
- Every Auckland food business should be eligible for a grade and some large franchises would like council to grade food businesses outside the Auckland region.
- No food safety grading for National Programme food businesses as verified infrequently (some only every two or three years).

Stakeholders consider that food grades could be updated to include additional information such as:

- trading name and owner/operator name
- street address
- verification date (last verification and future verification), frequency and outcome
- original grade before automatic regrading if applicable
- reason for grade
- “ownership of Auckland Council” label – a feature of former certificates which enabled enforcement officers to take the certificate if necessary.

Comparable authorities use a variety of grading systems

New Zealand territorial authorities that have a food grading scheme used some variation of letter grading and require food grades to be displayed (refer Appendix G for full comparison table).

None of the international food grading schemes reviewed (New South Wales, Toronto, United Kingdom) use a letter grading system – instead preferring points, pass/conditional, pass/closed or star systems (refer Appendix H for full comparison table).

A general registration certificate could reduce confusion

Environmental Health officers and industry organisations identified that it could be useful for operators to be required to display a general registration certificate or similar. This would reduce confusion over which operators are registered, given that not all operators are eligible to receive a food grade from council, and some members of the public equate a food grade with registration. Industry workshop participants identified that this could be particularly useful at markets.
3.6 Does the Bylaw have any implications under the New Zealand Bill of Rights Act 1990?

Under the Local Government Act 2002, a bylaw review must consider whether a bylaw has any implications under the New Zealand Bill of Rights Act 1990. Legally a bylaw may not be inconsistent with the Act.

This requires consideration of:

- whether the Bylaw limits any of the rights or freedoms contained in the Act
- if so, whether this limitation is “demonstrably justifiable in a free and democratic society”.

3.6.1 Does the Bylaw limit rights under the Act?

The existing Bylaw could potentially limit freedom of expression (section 14).

“Expression” can be any activity that attempts to convey meaning. Nearly all human activity can be classified as expression since “most human activity combines expressive and physical elements” (Irwin Toy Ltd v Attorney-General [1989] Quebec 1 SCR 927).

Requiring food businesses to display a food grade could be seen as a limitation on the freedom of expression.

3.6.2 Would any limitations be justifiable under the Act?

While staff consider the existing Bylaw could potentially limit freedom of expression, this limitation is minor and considered justifiable.

For a limitation to be “demonstrably justifiable in a free and democratic society” it must serve a sufficiently important purpose to justify the limitation. Hansen v R [2007] 3 NZLR 1 (SC) provides that the limitation must:

- be rationally connected to its purpose
- not limit the right or freedom more than necessary to achieve the purpose
- be proportionate to the importance of the objective.

The broader purpose of the Bylaw is to protect the public from foodborne illness. The requirement to display a food grade supports this purpose by increasing public awareness of food safety and incentivising better food safety practice by businesses. The requirement to display is a minor limitation and proportionate to the public health objectives.
3.7 Is the Bylaw consistent with the Food Act 2014?

The Food Act prohibits council from making a bylaw that is inconsistent with the Act. If a bylaw is inconsistent, the Food Act will prevail over the bylaw to the extent it is inconsistent.73

At the time the Bylaw was being amended in 2016 to remove inconsistencies with the Act, MPI was concerned that because the Bylaw and food grading scheme only applied to food businesses registered and verified by Auckland Council, that this could create inequalities among businesses and cause public confusion.

Staff consider the requirement to display a food grade is not inconsistent with the Food Act as it:

- supports the purpose of achieving safety and suitability of food for sale and maintaining confidence in New Zealand’s food safety regime74
- aligns with the principles of achieving safety and suitability of food and minimising compliance costs by imposing no additional charge for grading75
- does not impact the need for productive working relationships, cooperation and a coordinated and aligned approach76
- MPI has yet to develop a national grading scheme and there is no limitation on local authorities establishing their own scheme.

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73 Food Act 2014, section 446.
74 Section 4.
75 Section 16.
76 Section 15.
### Appendix A: Stakeholders

<table>
<thead>
<tr>
<th>Stakeholders contacted</th>
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## Item 10

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### Attachment B

#### Item 10

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**Other organisations**

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**Local Boards**

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<td>Central</td>
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**Internal stakeholders**

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Appendix B: Food Safety Bylaw 2013
Food Safety Bylaw 2013
Whakapai kai 2013
(as at 28 February 2019)
Made by Governing Body of Auckland Council
Resolution in Council
23 May 2013

(amended by minute 05/2018/8 with effect from 1 March 2018)

Pursuant to the Local Government Act 2002 and the Health Act 1956, the Governing Body of Auckland Council makes the following bylaw.
## Contents

<table>
<thead>
<tr>
<th>Clause</th>
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<tbody>
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<td>Application</td>
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### Part 1

#### Preliminary provisions

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<th>Clause</th>
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<td>Interpretation</td>
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### Part 2

#### Grading of food businesses registered pursuant to the Food Act 2014

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<tr>
<td>6</td>
<td>Display of food safety grade certificates</td>
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### Part 3

#### Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974

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<td>Display of food safety grade certificates [Expired]</td>
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<td>8</td>
<td>Training of staff at food premises [Expired]</td>
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<td>9</td>
<td>Food stalls and mobile food shops [Expired]</td>
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### Part 4

#### Enforcement, offences and penalties

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<tr>
<td>11</td>
<td>Offences and penalties</td>
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</table>
1 Title
(1) This bylaw is the Food Safety Bylaw 2013.

2 Commencement
(1) This bylaw comes into force on 1 July 2013.

Explanatory notes:
Clauses 4, 5, 7, 8, 10, 11, 12 amended and Clauses 8, 9, 13, Schedules 1 and 2 have been revoked for consistency with the Food Act 2014 and the Food Regulations 2010 by minute GS/16/9, in force on 01 March 2016.
Clause 6, Part 3 amended to reflect expiry of Part 3 on 26 February 2019.

3 Application
(1) This bylaw applies to Auckland.

Part 1
Preliminary provisions

4 Purpose
(1) The purpose of this bylaw is to promote and protect public health by –
(a) requiring food businesses registered with the council to display a food safety grade certificate for public information;
(b) [consequential editorial deletion]

Explanatory note: clause 4(1)(b) removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

5 Interpretation
(1) In this bylaw, unless the context otherwise requires, –

Approved basic food hygiene course [consequential editorial deletion]
Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

Auckland has the meaning given by the Local Government (Auckland Council) Act 2009.
Explanatory note: As at 22 September 2009, the definition in Section 4(1) of the Local Government (Auckland Council) Act 2009 states: “Auckland means the area within the boundaries determined by the Local Government Commission under Section 33(1) (as that determination is given effect to by Order in Council under Section 38(1)).”

Certificate of registration [consequential editorial deletion]
Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

Council means the Governing Body of the Auckland Council or any person delegated to act on its behalf.
Food has the meaning given by the Food Act 2014.
Explanatory note: As at 1 June 2014, Section 9 of the Food Act 2014 includes the following definition: “food means anything that is used, capable of being used, or represented as being for use, for human consumption (whether raw, prepared, or partly prepared).”

Food business has the meaning given by the Food Act 2014.
Explanatory note: As at 1 June 2014, the definition in Section 10 of the Food Act 2014 states: “Food business means—
(a) a business, activity, or undertaking that trades in food (whether in whole or in part); and
(b) includes a business, activity, or undertaking that—
(i) sells food on the internet; or
(ii) is declared by the Governor-General, by Order in Council made under Section 393, to be a food business for the purposes of this Act, but
(c) does not include a business, activity, or undertaking—
(i) merely because it carries on a business other than trading in food and, in the course of doing so, acts as an intermediary between persons who trade in food by providing, for reward, a place (including mobile premises or services (for example, an internet service provider or an auction site on the internet); or
(ii) that is declared by the Governor-General, by Order in Council made under Section 393, not to be a food business for the purposes of this Act.

Food Control Plan has the meaning given by the Food Act 2014.
Explanatory note: As at 1 June 2014, the definition in Section 36 of the Food Act 2014 states: “food control plan is a plan designed for a particular food business to identify, control, manage, and eliminate or minimise hazards or other relevant factors for the purpose of achieving safe and suitable food. It takes into account—
(a) each type of food that the food business trades in; and
(b) each type of process or operation that is applied to the food; and
(c) each place in which the food business trades in food.
As at 1 June 2014, the definition in Section 414 of the Food Act 2014 states: “deemed food control plan means a registered food safety programme that is deemed to be a registered food control plan.”
As at 7 December 2015, the definition in Section 3 of the Food Regulations 2015 states: “template food control plan means a registered food control plan that is based on an official template or model.”

Food handler [consequential editorial deletion]
Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

Food premises [consequential editorial deletion]
Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

Food stall or mobile food shop [consequential editorial deletion]
Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.
Grade and Grading means the allocated grade resulting from an inspection of the food premises or assessment of a food business’ compliance with their Food Control Plan by the council from time to time.

Explanatory note: For further information on the Auckland Council Food Safety Grading System refer to Section 7 of Additional Information to the Food Safety Bylaw 2013 – Guidelines to the Auckland Council Food Grading System.

Marae has the meaning given by the Food Act 2014.

Explanatory note: As at 1 June 2014, the definition in Section 8 of the Food Act 2014 states: “Marae includes the area of land on which all buildings such as wharenui (meeting house), wharekai (dining room), ablution blocks, and any other associated buildings are situated”.

Occupier [consequential editorial deletion]

Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

Operator of a food business has the meaning given by the Food Act 2014.

Explanatory note: As at 1 June 2014, the definition in Section 8 of the Food Act 2014 states: “operator of a food business means the owner or other person in control of the business”.

Operator of a Food Control Plan has the meaning given by the Food Act 2014.

Explanatory note: As at 1 June 2014, the definition in Section 8 of the Food Act 2014 states: “operator of a food control plan or operator of a registered food control plan means—
(a) if the plan applies to only one food business, the operator of the food business; or
(b) if the plan applies to more than one food business, the person responsible for the plan”.

Operator verification has the meaning given by the Food Act 2014 and the Food Regulations 2015.

Explanatory note: As at 1 June 2014, the definition in Section 8 of the Food Act 2014 states: “operator verification means a process to ensure that internal practices, procedures, and activities comply with the applicable requirements of this Act”. As at 7 December 2015, in Section 32 of the Food Regulations 2015, the process for operator verification includes regular checks of:
(a) place of business; facilities; and equipment; and
(b) staff and visitors; and
(c) practices, procedures, and activities”.

Place of food business has the meaning given by the Food Regulations 2015.

Explanatory note: As at 7 December 2015, the definition in Section 3 of the Food Regulations 2015 states: “place of food business means a place where a food business does either or both of the following:
(a) produces food
(b) processes and handles food; and
(c) that is covered by a food control plan or subject to a national programme”.

---

Page 5 of 13
Processing and handling has the meaning given by the Food Act 2014.

Explanatory note: As at 1 June 2014, the definition in Section 11 of the Food Act 2014 states: “processing and handling, in relation to food for sale, includes any one or more of the following:”.

(i) preparing the food
(ii) manufacturing the food
(iii) packaging the food
(iv) labelling the food
(v) transporting the food
(vi) storing the food
(vii) displaying the food
(viii) serving the food.

Readily perishable food [consequential editorial deletion]

Explanatory note: definition removed for ease of reading because it relates to expired Part 3 Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974.

Safety and suitability has the meaning given by the Food Act 2014.

Explanatory note: As at 1 June 2014, the definition in Section 12 of the Food Act 2014 provides that “suitability” means a condition in which food, in terms of its intended use, is unlikely to cause or lead to illness or injury to human life or public health. “Suitability” means that the composition, labelling, identification, and condition of the food are appropriate in terms of its intended use, but does not include matters of quality or presentation of the food that relate to a purely commercial decision by the person trading in the food. Food is unsuitable if it——

(a) is in a condition that is offensive;
(b) is damaged, deteriorated, or perishable to the extent of affecting its reasonable intended use;
(c) contains, or has attached to it or enclosed with it, any damaged, deteriorated, perishable, or contaminated substance to the extent of affecting its reasonable intended use;
(d) contains a biological or chemical agent, or other substance, that is foreign to the nature of the food and the presence of which would be unexpected and unreasonable in food prepared or packed for sale in accordance with good trade practice;
(e) has packaging that is damaged, deteriorated, perishable, or contaminated to the extent of affecting the food’s reasonable intended use.

Food is not unsafe or unsuitable merely because——

(a) any part of the community objects to it on moral, ethical, cultural, spiritual, or religious grounds; or
(b) any person objects to it because of personal preference; or
(c) its consumption of inappropriate quantities may damage a person’s health; or
(d) its presence or consumption is unhealthy for any person who has an allergy or other personal health condition.
Sale has the meaning given by the Food Act 2014.

Explanatory note: As at 1 June 2014, the definition in Section 13 of the Food Act 2014 states: “sale means—

(a) selling food for processing and handling or for human consumption; and

(b) includes reselling food for processing and handling or for human consumption; and

(c) includes the following activities relating to food for human consumption;

(i) offering food for sale or attempting to sell food; or receiving or having food in possession for sale, or exposing food for sale, or selling or delivering food for sale, or causing or permitting food to be sold, offered for sale, or exposed for sale;

(ii) bartering food;

(iii) supplying food, together with any accommodation, service, or entertainment, as part of an inclusive charge;

(iv) supplying food in exchange for payment or in relation to which payment is to be made in a shop, hotel, or restaurant, at a stall, in or on a craft or vehicle, or in any other place;

(v) supplying food to an employee or other person in accordance with an employment agreement or an agreement for services;

(vi) for the purpose of advertisement or to promote any trade or business, giving away food or, whether or not on payment of money, offering food as a prize or reward to the public;

(vii) exporting food;

(viii) every other method of disposal of food for valuable consideration; but

(d) does not include—

(i) exchanging food for food or other goods or services as part of a personal relationship between individuals that is not commercial in nature; or

(ii) supplying food together with accommodation to a person residing at a private dwelling or farm in exchange for services or labour by the person; or

(iii) supplying drinking water by network reticulation to the point of supply of any dwelling or commercial premises”.

(2) A term or expression that is defined in the Food Act 2014 and Food Regulations 2015 and is used in this bylaw but not defined by this bylaw, has the meaning given by the legislation.

Explanatory note: consequential editorial amendment to clause 5(2) to remove reference to Food Hygiene Regulations 1974 for ease of reading because it relates to expired Part 5.

(3) Any explanatory notes and attachments are for information purposes only, but do not form part of this bylaw, and may be inside, amended, revoked or replaced by the council at any time.

(4) The Interpretation Act 1999 applies to this bylaw.
Part 2

Grading of food businesses registered pursuant to the Food Act 2014

6 Display of food safety grade certificates

(1) The council will assess the following food businesses that operate subject to a deemed or template Food Control Plan registered with the council to provide a grading for these businesses:
(a) the food retail sector where food businesses prepare or manufacture and sell food, and
(b) the food service sectors specified in Schedule 1 of the Food Act 2014.

(2) The current food safety grade certificate issued by the council must be conspicuously displayed at the principal entrance to the place of food business in full and un-obscured view. The council may require an alternative display position in situations where the council deems it necessary to ensure that the grading certificate can be seen before a person enters the place of food business.

(3) The current food safety grade certificate issued by the council must be displayed at every site where food is sold directly to the public, including food stalls and mobile shops.

(4) Applications for re-grading must be made in writing and subject to the prescribed fee.

(5) The grading certificate will remain the property of the council and may be withdrawn and removed by the council if the performance of the food business falls below the grading standard prescribed by the council.

(6) Clause 6(1) to 6(5) do not apply to any food business:
(c) that was operating prior to 1 March 2016, and that was not required to be registered by the council pursuant to the Food Hygiene Regulations 1974; or
(d) that is established from 1 March 2016, and that would not have been required to be registered by the council pursuant to the Food Hygiene Regulations 1974 had it been operating prior to 1 March 2016.

Explanation: The Food Act 2014 introduces regulatory requirements for food sectors that were not subject to regulation under the Food Hygiene Regulations 1974, such as businesses that sell food from mobile, school tuckshops and work canteens. The grading requirements of this bylaw are not intended to apply to those businesses that would not have been subject to grading under the bylaw prior to 1 March 2016.

(7) Notwithstanding Clause 6(6), the operator of any food business that would otherwise be exempt from grading may notify the council in writing that the food business elects to waive the exemption, in which case Clauses 6(1) to 6(5) will apply to that food business.

Explanation: For further information on the Auckland Council Food Safety Grading System refer to Section 7 of Additional Information to the Food Safety Bylaw 2013.

Part 3

Regulation of food businesses registered pursuant to the Food Hygiene Regulations 1974

[Expired]

7 Display of food safety grade certificates

[Expired]

Explanation: clause 7 expired as all food businesses now regulated under the Food Act 2014.

8 Training of staff at food premises

[Expired]

Explanation: clause 8 expired as all food businesses now regulated under the Food Act 2014.
9 Food stalls and mobile food shops

[Expired]

Explanatory note: clause 9 expired as all food businesses now regulated under the Food Act 2014.

Part 4
Enforcement, offences and penalties

10 Non-compliance with bylaw

(1) The council may use its powers under the Health Act 1956 and the Local Government Act 2002 to enforce this bylaw.

11 Offences and penalties

(1) A person who fails to comply with this bylaw commits an offence against Section 239 of the Local Government Act 2002 and is liable on conviction to the penalties set out in Section 242(4) of the Local Government Act 2002.
Additional Information to the Food Safety Bylaw 2013

This document contains matters for information purposes only and does not form part of the bylaw. They include matters to assist in the ease of understanding, use and maintenance of the bylaw.

The information contained in this document may be updated at any time.

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>History of bylaw</td>
<td>10</td>
</tr>
<tr>
<td>2</td>
<td>Related documents</td>
<td>10</td>
</tr>
<tr>
<td>3</td>
<td>Delegations</td>
<td>11</td>
</tr>
<tr>
<td>4</td>
<td>Register of controls</td>
<td>12</td>
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<td>5</td>
<td>Enforcement powers</td>
<td>12</td>
</tr>
<tr>
<td>6</td>
<td>Offences and penalties</td>
<td>12</td>
</tr>
</tbody>
</table>
Section 1
History of bylaw

<table>
<thead>
<tr>
<th>Action</th>
<th>Description</th>
<th>Date of Decision</th>
<th>Decision Reference</th>
<th>Commencement</th>
</tr>
</thead>
</table>
| Make   | Following food safety bylaws in force on 31 Oct 2010 deemed to have been made by Auckland Council  
- Auckland City Council Food Premises Bylaw 2008  
- Auckland City Council Food Stalls Bylaw 2008  
- Franklin District Council Food Hygiene Bylaw 2010  
- Manukau City Council Food Hygiene and Food Handlers Training Bylaw 2009 (chapter 8)  
- North Shore City Council Food Safety Bylaw 2003 (part 17)  
- Rodney District Council Food Premises Bylaw 1998 (chapter 24)  
| Revoke |  
- Auckland City Council Food Premises Bylaw 2008  
- Auckland City Council Food Stalls Bylaw 2008  
- Franklin District Council Food Hygiene Bylaw 2010  
- Manukau City Council Food Hygiene and Food Handlers Training Bylaw 2009 (chapter 8)  
- North Shore City Council Food Safety Bylaw 2003 (part 17)  
- Rodney District Council Food Premises Bylaw 1998 (chapter 24)  
- Waitakere City Council Food Safety Bylaw 2005 | 29 May 2013 | GB2013/48 | 01 July 2013 |
| Make   | Auckland Council Food Safety Bylaw 2013 | 23 May 2013 | GB2013/49 | 01 July 2013 |
| Amend  | Auckland Council Food Safety Bylaw 2013 | 18 Feb 2015 | GB2016/8 | 01 March 2016 |
| Update | Auckland Council Food Safety Bylaw 2013 | 28 Feb 2019 | n/a | n/a |

Section 2
Related documents

<table>
<thead>
<tr>
<th>Document Title</th>
<th>Description of Document</th>
<th>Location of Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision Minutes and Agenda of the Governing Body for 18 February 2016</td>
<td>Decision on amendments to the Food Safety Bylaw 2013</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
<tr>
<td>Decision Minutes and Agenda of the Governing Body for 23 May 2013</td>
<td>Decisions on submissions to proposed food safety bylaw</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
<tr>
<td>Background report for the hearing of submissions to</td>
<td>Background and summary of submissions to proposed food safety bylaw</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
</tbody>
</table>
### Section 3

#### Delegations for matters contained in the bylaw

<table>
<thead>
<tr>
<th>Clause</th>
<th>Function, duty, power to be delegated</th>
<th>Delegated authority</th>
<th>Date of delegation decision</th>
<th>Decision reference</th>
<th>Commencement of delegation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 5(1)</td>
<td>Determining the grading system</td>
<td>Tier 4 Manager, Environmental Health</td>
<td>23 May 2013</td>
<td>Resolution number GB/2013/46</td>
<td>1 July 2013</td>
</tr>
<tr>
<td>Clause 5(2)</td>
<td>Amending explanatory notes and attachments to the bylaw</td>
<td>Tier 5 Manager, Social Policy and Bylaws</td>
<td>23 May 2013</td>
<td>Resolution number GB/2013/46</td>
<td>1 July 2013</td>
</tr>
<tr>
<td>Clause 6(5) and 7(5)</td>
<td>Prescribing standards relating to food safety for businesses that operate at a lower standard than the issued grade</td>
<td>Tier 4 Manager, Environmental Health</td>
<td>23 May 2013</td>
<td>Resolution number GB/2013/46</td>
<td>1 July 2013</td>
</tr>
</tbody>
</table>

Review of Food Safety Bylaw 2013, options and proposed future direction

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### Section 4
Register of controls

<table>
<thead>
<tr>
<th>Action</th>
<th>Description</th>
<th>Date of decision</th>
<th>Decision reference</th>
<th>Commencement</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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</table>

### Section 5
Enforcement powers

<table>
<thead>
<tr>
<th>Legislative provision</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Health Act 1966</strong></td>
<td>23 General powers and duties of local authorities in respect of public health</td>
</tr>
<tr>
<td></td>
<td>30 Penalties for permitting or causing nuisances</td>
</tr>
<tr>
<td></td>
<td>33 Proceedings in respect of nuisances</td>
</tr>
<tr>
<td></td>
<td>34 Power to abate nuisance without notice</td>
</tr>
<tr>
<td></td>
<td>41 Owners or occupiers may be required to cleanse premises</td>
</tr>
<tr>
<td></td>
<td>42 Local authority may require repairs and issue closing order</td>
</tr>
<tr>
<td></td>
<td>65 General provisions as to bylaws</td>
</tr>
<tr>
<td></td>
<td>69 Penalties for breach of bylaws</td>
</tr>
<tr>
<td></td>
<td>137 Offences punishable on summary conviction</td>
</tr>
<tr>
<td><strong>Local Government Act 2002</strong></td>
<td>162 Injunctions restraining commission of offences or breaches of bylaws</td>
</tr>
<tr>
<td></td>
<td>163 Removal of works in breach of bylaws</td>
</tr>
<tr>
<td></td>
<td>184 Statute of property not on private land</td>
</tr>
<tr>
<td></td>
<td>185 Seized of property from private land</td>
</tr>
<tr>
<td></td>
<td>168 Power to dispose of property seized and impounded</td>
</tr>
<tr>
<td></td>
<td>171 General power of entry</td>
</tr>
<tr>
<td></td>
<td>172 Power of entry for enforcement purposes</td>
</tr>
<tr>
<td></td>
<td>173 Power of entry in cases of emergency</td>
</tr>
<tr>
<td></td>
<td>175 Power to recover for damage by wilful or negligent behaviour</td>
</tr>
<tr>
<td></td>
<td>176 Costs of remedying damage arising from breach of bylaw</td>
</tr>
<tr>
<td></td>
<td>179 Enforcement officers may require certain information</td>
</tr>
<tr>
<td></td>
<td>183 Removal of fire hazards</td>
</tr>
<tr>
<td></td>
<td>185 Occupier may act if owner of premises makes default</td>
</tr>
<tr>
<td></td>
<td>188 Local authority may execute works if owner or occupier defaults</td>
</tr>
<tr>
<td></td>
<td>187 Recovery of cost of works by local authority</td>
</tr>
<tr>
<td></td>
<td>188 Liability for payments in respect of private land</td>
</tr>
</tbody>
</table>

### Section 6
Offences and penalties

<table>
<thead>
<tr>
<th>Clause</th>
<th>Description of offence</th>
<th>Fine</th>
<th>Infringement fee</th>
<th>Other penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>All</td>
<td>A person who fails to comply with Part 2 or Part 3 of this bylaw commits a breach of this bylaw and is liable to a penalty under the Local Government Act 2002 and/or the Health Act 1966. Under Section 342 of the Local Government Act 2002 person who is convicted of an offence against a bylaw is liable to a fine not exceeding $50,000. Under Section 90 of the Health Act 1966, any person who breaches a bylaw is liable to a fine not exceeding $500 and, in the case of a continuing offence, to a further fine not exceeding $50 for every day on which the offence has continued.</td>
<td>nil</td>
<td>nil</td>
<td>nil</td>
</tr>
</tbody>
</table>
## Appendix C: Council roles under the Food Act 2014

### Table 11: Council roles under the Food Act 2014

<table>
<thead>
<tr>
<th>Role</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verification agency</td>
<td>Offers a commercial verification service to businesses. This service verifies or audits whether business are properly implementing their food control plan or complying with their national programme. Council can verify food businesses operating under a national programme or a template food control plan. Environmental Health has recently been approved by MPI to verify Custom Food Control Plans and industry Template Food Control Plans (section 40).</td>
</tr>
<tr>
<td>Regulatory authority</td>
<td>MPI and council food safety officers investigate complaints and non-compliance with food control plans and national programmes registered by the council or MPI, or where food businesses serving food that is not safe or suitable.</td>
</tr>
<tr>
<td>Registration Authority</td>
<td>Manages and enforces the registration of food businesses. Where a food business is registered depends on where it is based. If the food business has sites in multiple districts, it can either register with each local authority or register all sites with MPI. If the food business has a Custom Food Control Plan, it needs to register with MPI. Council issue a notice of registration but there is no requirement to display. Council charges a $300 registration fee.</td>
</tr>
</tbody>
</table>

---

77 Food Safety Act 2014, section 137
Appendix D: Risk-based measures and examples of low-risk food businesses or circumstances

Table 12: Risk-based measures (Food Control Plans and National Programmes)

<table>
<thead>
<tr>
<th>Food Control Plans</th>
<th>National Programmes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Written plan designed for particular food sectors to manage food safety on a day-to-day basis.</td>
<td>General set of requirements outlined in the Food Regulations 2015, that businesses must comply with instead of a written plan.</td>
</tr>
<tr>
<td>Sets out the steps the business making or selling higher-risk foods needs to take to make safe food.</td>
<td></td>
</tr>
<tr>
<td>Identifies food safety risks, mitigation measures and the means to confirm that they provide safe and suitable food.</td>
<td></td>
</tr>
</tbody>
</table>

Food control plans must contain:\(^{30}\)
- food business name and address
- physical layout
- nature of business and type of food
- hazard description
- operating practice
- risk management
- hazard control and monitoring
- preventative and corrective actions
- document and record keeping.

National programmes include requirements for:
- places and equipment
- suitable water
- competency and training
- personal hygiene
- cleaning
- checking for pests
- maintaining equipment and facilities
- producing, processing or handling foods
- sourcing, receiving and tracing food
- safe cooking and separating foods
- safe transport, storage and display
- food contents (ingredients, allergens, keeping foreign matter out)
- packaging and labelling

The Food Regulations 2015 contain requirements for both Food Control Plans and National Programmes, including:\(^{31}\)
- design, construction and location of premises
- cleaning and maintenance of equipment and premises
- waste management
- pest control
- competency and training
- record keeping
- hazard control.

---

\(^{30}\) See Food Act 2014, part 2 and schedule 1 for further information on food control plans.

\(^{31}\) See Food Act 2014, part 2 and schedule 2 for further information on national programmes.

\(^{31}\) Food Act 2014, section 41 and Food Regulations 2015, clause 9.

\(^{31}\) See Food Regulations 2015, parts 1 and 2.

---
### Types of Plans and Programmes

<table>
<thead>
<tr>
<th>Template Food Control Plans (higher risk)</th>
<th>National Programme 1 (lower risk)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A pre-evaluated plan for managing food safety created by MPI or industry.</td>
<td>• Applies to food businesses that:</td>
</tr>
<tr>
<td>• Most food businesses use a Template Food Control Plan.</td>
<td>• store or transport food only</td>
</tr>
<tr>
<td>• Examples: MPI’s “Simple, Safe and Suitable” for food service and food retail businesses, Food Safety Template for Cheesemakers and industry developed templates. 62</td>
<td>• grow or pack fruit, vegetable or other horticultural products</td>
</tr>
<tr>
<td></td>
<td>• sell tea, coffee or shelf-stable packaged food</td>
</tr>
<tr>
<td></td>
<td>• retailers of manufacturer-packaged ice cream and iced confectionery.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Custom Food Control Plans (higher risk)</th>
<th>National Programme 2 (medium risk)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Food businesses can develop a Custom Food Control Plan to suit their business.</td>
<td>• Applies to:</td>
</tr>
<tr>
<td>• Manufacturers of high-risk foods will need to develop a Custom Food Control Plan and register it with MPI.</td>
<td>• bread bakeries</td>
</tr>
<tr>
<td>• Other food businesses can choose this type of plan to personalise the way they manage food safety. For example, fast food chain restaurants.</td>
<td>• manufacturers of jams, chips and confectionery</td>
</tr>
<tr>
<td></td>
<td>• manufacturers of sauces and spreads</td>
</tr>
<tr>
<td></td>
<td>• early childhood education providers or kōhanga reo that cook meals or prepare food (note: exempt in certain circumstances). 63</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>National Programme 3 (higher risk)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Applies to:</td>
<td></td>
</tr>
<tr>
<td>• brewers and distillers</td>
<td></td>
</tr>
<tr>
<td>• food additive manufacturers</td>
<td></td>
</tr>
<tr>
<td>• fruit drink and flour manufacturers.</td>
<td></td>
</tr>
</tbody>
</table>

---

62 Food Act 2014, section 40 provides for industry template food control plans. These include, NZ Aged Care Association, Care Association New Zealand, Lone Star, Baking Industry Association of New Zealand, Bunnings Warehouse New Zealand. Industry Food Control Templates are developed by industry and registered with MPI, similar to Custom Food Control Plans.

63 Early childhood centres are exempt if all the food brought in by kids from home; only serve fruit or pre-packaged snacks that do not need to be kept cold (like muffins or crackers), prepare food with the kids only as part of the curriculum, run a home-based service, or do not charge enrolment fees (or otherwise charge for the food).
Table 13: Examples of low-risk food businesses or circumstances exempt from Food Act requirements

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>selling food for fundraising less than 20 times a year[^{04}]</td>
<td>people who sell only pre-packaged foods that do not need refrigeration or freezing, like packets of biscuits or cans of food.</td>
</tr>
<tr>
<td>sharing food with others at sports clubs and social clubs where food is not the purpose of the event</td>
<td>food businesses which have been granted a special exemption by MPI[^{05}]</td>
</tr>
<tr>
<td>home-based childcare providers who prepare food for children in their care</td>
<td>kai prepared and served on marae for customary activities such as tangi</td>
</tr>
<tr>
<td>small accommodation operators who provide food to less than 10 guests</td>
<td>kai sold on marae for fundraising purposes that takes place no more than 20 times a year (marae that sell food for other purposes must comply with the Food Act).</td>
</tr>
<tr>
<td>growers selling unprocessed, home-grown fruit and vegetables directly to consumers, such as at farm gates or farmers markets</td>
<td></td>
</tr>
</tbody>
</table>

Table 14: Risk-based measures and verification frequency

<table>
<thead>
<tr>
<th>Risk-based measure</th>
<th>Verification frequency range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food control plan</td>
<td>3 months to 18 months</td>
</tr>
<tr>
<td>National programme 1</td>
<td>3 months to no verification</td>
</tr>
<tr>
<td>National programme 2</td>
<td>3 months to 3 years</td>
</tr>
<tr>
<td>National programme 3</td>
<td>3 months to 2 years</td>
</tr>
</tbody>
</table>

\[^{04}\] Food Safety Act 2014, section 31
\[^{05}\] Food Safety Act 2014, sections 33, 343 and 344
Appendix E: Foodborne illness

Table 15: Common types of bacteria or chemicals which cause foodborne illness

**Bacteria**
- Salmonella: found in raw and undercooked meat, poultry, dairy products, eggs and seafood.
- *Campylobacter jejuni*: found in raw or undercooked chicken and unpasteurized milk.
- *Strep.*: spread from infected people who do not wash their hands thoroughly and prepare food.
- *Escherichia coli* (E. coli): found in raw or undercooked meat, unpasteurized fruit juices and milk, and fresh produce.
- *Listeria monocytogenes* (L. monocytogenes): found in raw and undercooked meats, unpasteurized milk, soft cheeses, and ready-to-eat deli meats and hot dogs.
- *Vibrio*: found in contaminated fish or shellfish.
- *Clostridium botulinum* (C. botulinum): found in improperly canned foods, and smoked and salted fish.

**Viruses**
- Spread from an infected person to food consumed by another.
  - Norovirus: causes inflammation of the stomach and intestines.
  - Hepatitis A: causes inflammation of the liver.

**Parasites**
- Organisms that live inside another organism.
  - *Cryptosporidium parvum* and *Giardia intestinalis*: parasites that are spread through water contaminated with the stools of people or animals who are infected. Foods can come into contact with contaminated water or infected food preparers.
  - *Trichinella spiralis*: type of roundworm parasite. People may be infected with this parasite by consuming raw or undercooked pork or wild game.

**Chemicals**
- Harmful chemicals that cause illness may contaminate foods such as fish or shellfish, unwashed fruits and vegetables.
Figure 5: New Zealand foodborne campylobacter outbreaks and associated cases reported by year, 2008 – 2017

Table 16: Rate per 100,000 population of selected notifiable diseases in New Zealand and other selected countries

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>Campylobacteriosis</td>
<td></td>
<td>15.2</td>
<td>11.0</td>
<td>11.1</td>
<td>25.3</td>
<td>90.2*</td>
<td>0.3*</td>
<td>228.2 (Czech Republic)*</td>
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<tr>
<td>Cryptosporidiosis</td>
<td></td>
<td>24.9</td>
<td>19.4</td>
<td>5.7</td>
<td>2.4</td>
<td>9.8*</td>
<td>3.1*</td>
<td>0.4 (Ireland)*</td>
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<tr>
<td>Giardiasis</td>
<td></td>
<td>34.4</td>
<td>NN</td>
<td>0.4*</td>
<td>10.4</td>
<td>7.6*</td>
<td>5.3*</td>
<td>12.3 (Argentina)*</td>
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<td>Hepatitis A</td>
<td></td>
<td>1.2</td>
<td>0.9</td>
<td>0.8*</td>
<td>0.5</td>
<td>0.5*</td>
<td>3.0*</td>
<td>33.3 (Romania)*</td>
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<tr>
<td>Vibrio</td>
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<td>0.4</td>
<td>0.3</td>
<td>0.3</td>
<td>0.40</td>
<td>0.31*</td>
<td>0.47*</td>
<td>1.77 (Morocco)*</td>
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<tr>
<td>Salmonella</td>
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<td>23.3</td>
<td>67.9</td>
<td>14.0</td>
<td>21.0</td>
<td>15.1*</td>
<td>20.4*</td>
<td>110.0 (Czech Republic)*</td>
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<td>Shigella</td>
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<td>7.2</td>
<td>4.5</td>
<td>2.5</td>
<td>3.9*</td>
<td>1.7*</td>
<td>5.7 (Bulgaria)*</td>
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<tr>
<td>VTEC (ESBL) Contagion</td>
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<td>42.2</td>
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<td>2.1*</td>
<td>1.0*</td>
<td>15.6 (India)*</td>
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<td>NN</td>
<td>10</td>
<td>NN</td>
<td>0.1*</td>
<td>1.8*</td>
<td>7.4 (Finland)*</td>
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</table>
### Table 17: Foodborne outbreaks and associated cases by preparation setting, 2017

<table>
<thead>
<tr>
<th>Preparation setting</th>
<th>Outbreaks (n = 61)*</th>
<th>Cases (n = 719)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%a</td>
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<tr>
<td>Commercial food operators</td>
<td>31</td>
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<tr>
<td>Restaurant/café/bakery</td>
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<td>Other food outlet</td>
<td>3</td>
<td>4.9</td>
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<tr>
<td>Takeaway</td>
<td>3</td>
<td>4.9</td>
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<tr>
<td>Caterers</td>
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<td>3.3</td>
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<tr>
<td>Fast food outlet</td>
<td>2</td>
<td>3.3</td>
</tr>
<tr>
<td>Supermarket/delicatessen</td>
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<td>3.3</td>
</tr>
<tr>
<td>Institutions</td>
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<td>16.4</td>
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<tr>
<td></td>
<td>No.</td>
<td>%a</td>
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<tr>
<td>Long term care facility</td>
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<tr>
<td>Marae</td>
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<td>3.3</td>
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<tr>
<td>School</td>
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<td>3.3</td>
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<tr>
<td>Hotel/motel</td>
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<td>1.6</td>
</tr>
<tr>
<td>Hospital (acute care)</td>
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<tr>
<td>Childcare centre</td>
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<tr>
<td>Other institution</td>
<td>1</td>
<td>1.6</td>
</tr>
<tr>
<td>Other</td>
<td>13</td>
<td>21.3</td>
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<tr>
<td>Home</td>
<td>8</td>
<td>13.1</td>
</tr>
<tr>
<td>Cruise ship</td>
<td>1</td>
<td>1.6</td>
</tr>
<tr>
<td>Community, church, sports gathering</td>
<td>1</td>
<td>1.6</td>
</tr>
<tr>
<td>Other setting</td>
<td>1</td>
<td>1.6</td>
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<tr>
<td>Overseas manufacturer</td>
<td>2</td>
<td>3.3</td>
</tr>
<tr>
<td>Unknown exposure setting</td>
<td>9</td>
<td>14.8</td>
</tr>
</tbody>
</table>

*Percentage of outbreaks for each preparation setting, calculated using the total number of foodborne outbreaks (61). An outbreak is classed as foodborne in this report if food was recorded as one of the likely modes of transmission applicable to the outbreak. It is important to note that a single outbreak may have multiple pathogens, modes of transmission, settings where exposure occurred, or settings where preparation of food was conducted.

*Percentage of cases for each implicated vehicle/source, calculated using the total number of associated cases (719).

C Two outbreaks had two or more preparation settings (56 cases).
### Appendix F: Powers, penalties, offences and enforcement action under the Food Act

<table>
<thead>
<tr>
<th>Powers of food safety officers</th>
<th>Enforcement action</th>
<th>Offences and penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>• enter food businesses, search and seize property and documents(^{86})</td>
<td>• infringement offences (instant fine of up to $450) for minor offences, including mislabelling and failure to register a food business or food control plan(^{53})</td>
<td>Offences range in seriousness and penalties based on a sliding scale of culpability:</td>
</tr>
<tr>
<td>• examine, take, purchase, sample, seize, test and dispose of food(^{87})</td>
<td>• improvement notices and notices of direction requiring food businesses to take any reasonable action that a food safety officer deems necessary to ensure food safety(^{92})</td>
<td>• knowingly or recklessly endangering or harming a person (individual maximum fine of $100,000 or maximum 5 years’ imprisonment, or $500,000 for corporate)</td>
</tr>
<tr>
<td>• powers to require information to determine food safety or breach of the Act(^{88})</td>
<td>• compliance orders can be issued by a District Court to compel business operators to take certain actions(^{93})</td>
<td>• knowingly or recklessly creating or increasing risk of harming the public (individual maximum fine of $75,000 or maximum 2 years’ imprisonment, or $300,000 for corporate)</td>
</tr>
<tr>
<td>• power to interrupt operations and give directions(^{91})</td>
<td>• prosecution under the Act for a range of offences.</td>
<td>• negligently endangering, harming, creating risk, or increasing risk of harming the public (individual maximum fine of $50,000 or maximum 1 years’ imprisonment, or $250,000 for corporate)(^{94})</td>
</tr>
<tr>
<td>• powers to restrict use or close a place (^{90})</td>
<td></td>
<td>• Council can recover direct and indirect costs of compliance or monitoring activities from food businesses where enforcement action is taken.(^{95})</td>
</tr>
</tbody>
</table>

\(^{86}\) Food Act 2014, sections 298, 310 and 311.  
\(^{87}\) Food Act 2014, section 301, 304, 306 and 312.  
\(^{88}\) Food Act 2014, sections 292, 293 and 296.  
\(^{90}\) Food Act 2014, section 305.  
\(^{90}\) Food Act 2014, section 307.  
\(^{91}\) Food Regulations 2015. Schedule 2.  
\(^{92}\) Food Act 2014, section 302 and 303.  
\(^{93}\) Food Act 2014, sections 330-342.  
\(^{94}\) Food Act 2014, sections 222-224. See sections 225-244 for other offences involving defeating the purpose of the Act, deceiving, obstructing, threatening or assaulting an official, and failing to comply with certain orders or directions.  
\(^{95}\) Food Act 2014, section 205(1)(c).
# Appendix G: local authority food safety bylaws

<table>
<thead>
<tr>
<th>Local Authority</th>
<th>Bylaw or Food Act</th>
<th>Bylaw Name</th>
<th>Relevant Rules/Topics</th>
<th>Food Grading</th>
</tr>
</thead>
<tbody>
<tr>
<td>Far North DC</td>
<td>Bylaw</td>
<td>Whangarei District Council Food Businesses Grading Bylaw 2016</td>
<td>• food grading scheme.</td>
<td>• Must obtain a food grade (A-D).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Regrading upon application.</td>
<td>• Offence to display a food grade that is not current.</td>
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<tr>
<td>Kaipara DC</td>
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<tr>
<td>Thames-Coromandel DC</td>
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<tr>
<td>Hauraki DC</td>
<td>Bylaw</td>
<td>Food Grading Bylaw 2019</td>
<td>• food grading scheme.</td>
<td>• Food grades A+, A, B, D and E available.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>• Food grade must be displayed at the entrance of premises.</td>
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<tr>
<td>Waikato DC</td>
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<tr>
<td>Matamata-Piako DC</td>
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<tr>
<td>Hamilton CC</td>
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<td>Waipa DC</td>
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<td>Otorohanga DC</td>
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<tr>
<td>South Waikato DC</td>
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<td>Taupo DC</td>
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<tr>
<td>Western Bay of Plenty DC</td>
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<tr>
<td>Tauranga CC</td>
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<tr>
<td>Rotorua DC</td>
<td>Bylaw</td>
<td>Rotorua District Council Food Safety Bylaw 2013</td>
<td>• food safety supervisor responsibilities • self-service food display.</td>
<td>N/A</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>• closure of premises.</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>• staff training and qualifications.</td>
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<td>Whakatane DC</td>
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<tr>
<td>Kawerau DC</td>
<td>Bylaw</td>
<td>Kawerau District Council Food Safety Bylaw 2009</td>
<td>• required training for food handlers • closure of premises.</td>
<td>N/A</td>
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<tr>
<td>Opoiki DC</td>
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<td>Gisborne DC</td>
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<td>Local Authority</td>
<td>Bylaw or Food Act</td>
<td>Relevant Rules/Topics</td>
<td>Food Grading</td>
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<td>Waitakere DC</td>
<td>1974 &amp; Food Act</td>
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<td>Food grades A, B, D, E (none)</td>
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<td>Bylaw Name</td>
<td>Relevant Rules/Topics</td>
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<td>Westlands DC</td>
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<td>Central Otago DC</td>
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<td>Queenstown-Lakes DC</td>
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<td>Queenstown Lakes District Food Grading Bylaw 2016</td>
<td>• food grading scheme.</td>
<td>• Food grades A, B, C, D, P.</td>
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<td>• re-grading</td>
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<td>Dunedin City Council Food Grading Bylaw 2018</td>
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<td>• Food grades A, B, C, D, GP (pending), U (ungraded).</td>
</tr>
<tr>
<td></td>
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<td>• objections</td>
<td></td>
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<tr>
<td>Clutha DC</td>
<td>Food Act</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Southland DC</td>
<td>Food Act</td>
<td></td>
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<tr>
<td>Gore DC</td>
<td>Food Act</td>
<td></td>
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<td></td>
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<td>Invercargill CC</td>
<td>Food Act</td>
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</table>
Appendix H: International jurisdiction food regulations and food grading schemes

<table>
<thead>
<tr>
<th>Country/State</th>
<th>Legislation/Regulation Name</th>
<th>Regulator</th>
<th>Requirements</th>
<th>Food grading scheme</th>
<th>Enforcement</th>
</tr>
</thead>
</table>
| New South Wales Australia | Food Act 2003 Food Regulations 2015 | State Law Councils | • safe and suitable food  
• licensing  
• inspections  
• food labelling | • NSW Food Authority ‘Scores on Doors’  
• Only certain councils have opted in.  
• Businesses offered but not required to display score certificate.  
• Star system based on points earned for non-compliance with requirements (e.g. food handling, cleaning, temperature control, pests, premises):  
  ★★★★★ 0-3  
  ★★★★ 4-8  
  ★★★ 9-15  
  No grade <15 | • No enforcement of food grading scheme.  
• Food safety offences have a maximum penalty of 1,000 penalty units ($110,000) or imprisonment for 2 years for an individual or 5,000 penalty units ($550,000) for a corporation. |
| Victoria Australia | Food Act 1984 | State law Councils | • Safe and suitable food  
• registration  
• assessment and auditing  
• risk based classification of food businesses | • No food grading scheme identified. | • Infringement notices  
• Prosecution  
• Failure to comply with listed Food Standards Code requirement is 5 penalty units or $758.35. |
| Toronto Canada | Health Protection and Promotion Act Provincial government Municipalities | Provincial government Municipalities | • licensing  
• Inspections  
• Food handler certification | • Dine Safe food safety programme.  
• Based on whether minor, significant or crucial infractions.  
Pass – only minor or no infractions. | • Offence with a maximum fine of $25,000 (individual) or $50,000 (corporate).  
• Infringement fines of $45-$375. |
<table>
<thead>
<tr>
<th>Country/State</th>
<th>Legislation/Regulation Name</th>
<th>Regulator</th>
<th>Requirements</th>
<th>Food grading scheme</th>
<th>Enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ontario</td>
<td>Regulation 493/17: Food Premises; Toronto Municipal Code, Chapters 545 and 520</td>
<td></td>
<td>• Risk based inspection – every establishment inspected 1-3 times per year depending on risk.</td>
<td>Conditional pass – one or more significant infractions. Closed notice – one or more crucial infractions. Must post latest inspection notice in a conspicuous place.</td>
<td>• Failure to post inspection notice has maximum fine of $5,000.</td>
</tr>
</tbody>
</table>
| United Kingdom (England and Wales) | Food Safety Act 1990; Food Safety and Hygiene (England) Regulations 2013                     | Food Standards Agency; Local authorities | • Food must comply with food safety requirements.  
• Food labelling  
• Frequency of inspection based on risk (type of food, vulnerable customers, processes and standards at last inspection). | Food hygiene rating based on food handling, storage, preparation, cleanliness, pest control, management.  
5 – hygiene standards are very good  
4 – hygiene standards are good  
3 – hygiene standards are generally satisfactory  
2 – some improvement is necessary  
1 – major improvement is necessary  
0 – urgent improvement is required  
**England:** no requirement to display rating at premises.  
**Wales:** legally required to display rating in a prominent place. Must provide information on their rating verbally if requested in person or over the phone. | • Failure to meet food safety requirements has a maximum fine of £20,000 or two years’ imprisonment. |
Food Safety Bylaw 2013 Review  
Options report 2019

Introduction

This report provides advice on options available to Auckland Council in response to the review of Tamaki Makaurau Whakapai Kai 2013, Auckland Council Food Safety Bylaw 2013. It draws on findings in the “Food Safety Bylaw 2013: Findings Report 2019”.

Executive summary

To enable Auckland Council to decide how to respond to the findings report on the review of the Tamaki Makaurau Whakapai Kai 2013, Auckland Council Food Safety Bylaw 2013, staff assessed the following options using Local Government Act 2002 criteria:

- **Option one** (improve Bylaw): new bylaw requiring most food businesses that serve the public and are registered and verified by council to display a food grade
- **Option two** (extend Bylaw): new bylaw requiring more food businesses that serve the public regardless of registration or verification agency to display a food grade
- **Option three** (no bylaw): allow the Bylaw to expire but continue food grading
- **Option four** (no bylaw or grading): allow the Bylaw to expire and cease food grading

Staff recommend **option one** (improve Bylaw) to require most food businesses to display a food safety grade certificate (food grade) is the most favourable option because:

- the current Bylaw and food grading scheme have support from the public, operators, health experts and environmental health officers as they can incentivise better food safety practices
- most food businesses that serve the public are currently required to display a food grade (6,711 or 70 per cent), even if they have a lower grade
- it raises public awareness of food safety standards and enables them to make an informed decision
- it has less compliance costs for business and council than option two and avoids the risk of inconsistency with the Food Act
- it can provide greater incentives for food businesses to improve food safety standards than options three and four which have no requirement to display a food grade
- it fills a regulatory gap in the absence of a national food grading scheme.

**Option two** (extend Bylaw) would be more effective than the other options as it would require 81 per cent of food businesses that serve food to the public to display a food grade. The key trade-off is it would increase compliance costs for food businesses not registered and verified by council and may be inconsistent with the Food Act 2014. Further engagement with food businesses and the Ministry for Primary Industries would be required before adopting this option.

**Option three** (no Bylaw) is less effective than options one and two. **Option four** (no bylaw or grading) is the least effective of all options.
Problem definition and status quo (current Bylaw)

Original problem statement and status quo

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

Unhygienic or unsafe premises being operated; high levels of food poisoning arising from food sold by food premises; public usually unable to determine the standards of hygiene in food premises; crockery, cutlery and utensils potentially hired to the public in an unhygienic state; sale of food to private premises (bun running) occurring in unsafe manner; and food stalls and mobile food shops operated in unsafe manner.¹

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

Current and future problem

The current and future problem is that some food businesses continue to have poor food safety practices that may lead to an increased risk of the public contracting foodborne illness or “food poisoning”.

Common foodborne illnesses include:

- Campylobacteriosis
- Hepatitis A
- Shigellosis
- Giardiasis
- Yersiniosis
- Norovirus
- Cryptosporidiosis
- Listeriosis
- Acute gastroenteritis
- Salmonellosis
- Trichinellosis

Scale and magnitude of the problem

Foodborne illness can cause gastroenteritis and can lead to acute and long-lasting health problems such as kidney failure.

New Zealand has high rates of foodborne illness (particularly campylobacteriosis) compared to other western countries. There was an estimated 3,634 incidences of notifiable illness in Auckland in 2017, a high proportion of which was likely to be caused by contaminated food (see findings report).

Data shows Aucklanders are eating out more often and this, combined with food trends such as the consumption of raw foods, may increase risks of foodborne illness in the future.

Stakeholder views of the problem

Stakeholders, including the Auckland Council Environmental Health Unit and health experts, consider there are ongoing food safety problems at some food businesses that can lead to foodborne illness. These include cleanliness concerns, pest control, and poor food storage, handling, preparation and display.

Objectives

In line with the problem definition, Food Act 2014 (Food Act), Local Government Act 2002 and the Auckland Plan\(^2\), the objectives of a regulatory response to this problem are to:

1. reduce the risk of foodborne illness while ensuring:
   (i) compliance costs are reasonable
   (ii) consistency with the Food Act
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).

These objectives are used to assess the options below.

Outcomes

The key desired outcome is to protect public health from foodborne illness resulting from poor food safety practices by food businesses.

Status quo (current Bylaw)

The Bylaw requires 6,711 current template food safety control plan businesses to display a food grade if they serve the public, are registered and verified by council, and were graded before the introduction of the Food Act. This equates to 70 percent of all food businesses that serve the public in Auckland.

Food Control Plan businesses registered and verified by council that were not previously graded can opt-in to food grading (e.g. early childhood centres, marae).

Other Food Control Plan and all National Programme 1, 2 and 3 businesses that serve the public are not required to display under the Bylaw.

Eatsafe Auckland does however provide food grades as an additional service outside of the Bylaw to National Programme food businesses registered and verified by council to display if they choose.

Eatsafe Auckland do not provide food grades to the remaining food businesses that serve the public, as they are not registered and verified by council.

\(^2\) Auckland Plan 2050 direction to “improve health and wellbeing for all Aucklanders by reducing harm and disparities in opportunities” (Belonging and Participation, direction 2) and “ensure regulatory planning and other mechanisms support business, innovation and productivity growth” (Opportunity and Prosperity, focus area 2).
Options

Staff identified the following options to achieve the outcome sought:

- **Option one**: (improve Bylaw) new bylaw requiring most food businesses that serve the public and are registered and verified by council to display a food grade
- **Option two**: (extend Bylaw) new bylaw requiring more food businesses that serve the public regardless of registration or verification agency to display a food grade
- **Option three**: (no bylaw) allow the Bylaw to expire but continue food grading
- **Option four**: (no bylaw or grading) allow the Bylaw to expire and cease food grading.

Retaining the status quo is not possible as the current Bylaw will expire on 23 May 2020. An option to require National Programme food businesses to display a food grade was considered but not assessed further because they are lower risk.

A summary of which food businesses are required to display a food grade under each option is contained in Table 2 and a more detailed description of each option is provided below.

Note, the food business and grading data used in this report is based on an analysis of MPI\(^2\) and Eatsafe Auckland data as at 24 June 2019.

Table 2: food businesses required to display a food grade under each option

<table>
<thead>
<tr>
<th>Examples of types of food business</th>
<th>Status Quo</th>
<th>Option one (improve bylaw)</th>
<th>Option two (extend bylaw)</th>
<th>Option three (no bylaw)</th>
<th>Option four (no bylaw or grading)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auckland only cafes, restaurants and takeaways registered and verified by council (6,712 food businesses)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>food chains, supermarkets registered by MPI and/or verified by third-parties (1,081 food businesses)</td>
<td>x</td>
<td>x</td>
<td>✓</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>dairies and service stations that heat food, coffee carts (1,824 food businesses)</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
</tbody>
</table>

\(^2\) Ministry of Primary Industries (MPI)/Territorial Authority Multiple Approvals Processing System (MAPS) data

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Option one: improve Bylaw

Description

This option would involve making a new bylaw that would:

- continue to apply to the 6,711 Template Food Control Plan businesses that serve the public and are registered and verified by council
- continue to exclude 1,082 Food Control Plan businesses that serve the public because they are not registered and verified by council
- continue to exclude the 1,824 National Programme businesses that serve the public because they are lower risk and less frequently verified
- issue a food grade following verification or inspection
- require a food grade to be displayed in an appropriate location to council’s satisfaction
- meet best practice drafting standards.

Eatsafe Auckland would continue to provide food grades as an additional service outside of the Bylaw that can be changed at any time.

Implementation

The current process to issue food grades at no additional charge and the use of a graduated enforcement approach to Bylaw compliance would continue (refer to Findings Report 3.4.2). Council would continue to verify food businesses and respond to complaints as required under the Food Act.

Pros and cons

Pros

- the display of food grades and food grading has strong public and operator support
- health experts and environmental health officers consider food grades can incentivise better food safety practices
- requires most food businesses that serve the public to display a food grade (6,711 or 70 per cent)
- requires most food businesses to display a food grade even if it is a lower grade
- raises public awareness of food safety standards and enables them to make an informed decision
- can provide greater incentives for food businesses to improve food safety standards
- does not increase compliance costs for businesses or council
- fills a regulatory gap in the absence of a national food grading scheme.

Cons

- retains an ‘uneven playing field’ and public confusion as 2,906 food businesses (24 per cent of all food businesses) that serve the public would not be required to display a food grade.
Risks
- MPI allows third-party verification of Auckland-based Template Food Control Plans, resulting in some of the current 6,711 food businesses changing to a third-party verifier if they do not want to display a food grade
- MPI introduces a national food grading scheme that is different to Eatsafe Auckland, which makes the transition for businesses more complicated
- MPI does not support this option because it retains an ‘uneven playing field’ and could cause public confusion.

Mitigation
- rely on strong operator support for the display of food grades and food grading
- council engages with MPI about the proposed new bylaw and any future grading developments to avoid or address any inconsistency with the Food Act.

Option two: extend Bylaw

Description
This option would involve making a new bylaw that would:
- apply to the 7,793 Custom and Template Food Control Plan businesses that serve the public regardless of registration or verification authority
- exclude the 1,824 National Programme businesses that serve the public because they are lower risk and less frequently verified
- require third-party verifiers or businesses to provide council with verification report
- issue a food grade following verification or inspection
- require a food grade to be displayed in an appropriate location to council’s satisfaction
- meet best practice drafting standards.

Eatsafe Auckland would continue to provide food grades as an additional service outside of the Bylaw that can be changed at any time.

Implementation
The current process to issue food grades and the use of a graduated enforcement approach to Bylaw compliance will continue (refer to Findings Report 3.4.2).

Council would charge an additional fee to process a food grade for each of the 1,081 food businesses not currently registered and verified by council.

Additional administration and enforcement resources may be needed to process verification reports and ensure third-party verifiers and/or food businesses provide them to council.

However, there would be no additional charge for food businesses registered and verified by council.

Council would continue to verify food businesses and respond to complaints as required under the Food Act.

Council would not be able to issue ‘D’ or ‘E’ food grades for the 1,081 Custom and Template Food Control businesses registered with MPI. MPI food safety officers take all enforcement action for these businesses and council is not informed of the outcome.
Pros and cons

Pros
- the display of food grades and food grading has strong public and operator support
- health experts and environmental health officers consider food grades can incentivise better food safety practices
- extends the number of food businesses that serve the public and required to display a food grade from 6,711 to 7,793 or from 70 per cent to 81 per cent
- requires more food businesses to display a food grade even if it is a lower grade
- creates a level playing field in Auckland as all Custom and Template Food Control Plan businesses that serve the public would be required to display a food grade
- raises public awareness of food safety standards and enables them to make an informed decision
- reduces public confusion about which food businesses must display a food grade
- provides incentives to improve food safety standards
- fills a regulatory gap in the absence of a national food grading scheme.

Cons
- the additional administration fee for the 1,081 food businesses currently not registered and verified by council may be contrary to the principles of the Food Act
- increased council resourcing is required to process third-party verification reports and to ensure verification information is provided to enable council to issue a food grade
- creates an uneven playing field if only food businesses registered and verified with council are actually required to display a ‘D’ or ‘E’ grade
- food business registered with MPI that would otherwise be issued a ‘D’ or ‘E’ food grade could continue to display an ‘A’ grade.

Risks
- food businesses not currently required to display a food grade may challenge the extension of the bylaw, for example food chains, supermarkets or service stations
- third-party verifiers or food businesses may refuse to provide verification information
- MPI introduces a national food grading scheme that is different to Eatsafe Auckland, which makes the transition for businesses more complicated
- MPI is likely to be opposed to this option
- Council has not specifically engaged with food businesses or MPI on this option.

Mitigation
- council engages with MPI, third-party verifiers and MPI registered food businesses prior to further consideration of this option.
Option three: no bylaw

Description
This option would:

- allow the current bylaw to expire
- make the display of a food grade voluntary for the current 6,711 Template Food Control Plan businesses that serve the public and required to display a food grade.

Eatsafe Auckland would continue to provide food grades as an additional service that can be changed at any time.

Implementation
The current process to issue food grades at no additional charge for food businesses registered and verified by council would continue.

There would be no enforcement, as the display of a food grade would be voluntary.

Council may use non-regulatory tools such as public and food business education campaigns to promote display.

Council would continue to verify food businesses and respond to complaints as required under the Food Act.

Pros and cons

Pros

- food businesses can still choose to display a food grade which is supported by stakeholders
- creates a level playing field in Auckland as no food business would be required to display a food grade
- it raises public awareness of food business safety standards and enables them to make an informed decision
- council would still hold publicly accessible records of food grades for businesses that choose to be graded
- could provide incentives for food businesses to improve food safety standards.

Cons

- stakeholders consider the requirement to display a food grade is important for food safety
- unable to take enforcement action
- the incentive to improve food safety would be reduced because businesses are not required to display a low grade
- decreased public awareness of food safety standards and ability to make informed decisions on where to purchase food, which would increase public confusion

Risks

- reputational risk that the public view council as failing to ensure food safety
- the majority of food businesses do not display a food grade making Eatsafe Auckland redundant
- MPI introduces a national food grading scheme that is different to Eatsafe Auckland, which makes the transition for businesses more complicated.

**Mitigation**

- media campaign to reassure the public that food businesses are verified and inspected for food safety
- promote the benefits of displaying a food grade for attracting customers, although this will be less effective for food businesses with lower grades
- council engages with MPI about any future grading developments to avoid or address any inconsistency with the Food Act.

**Option four: no bylaw or grading**

**Description**

This option would:

- allow the current Bylaw to expire.
- remove the mandatory display of food grades from the current 6,711 food businesses in Auckland that serve the public and are registered and verified by council.

Eatsafe Auckland would cease to exist and a food grade would no longer be issued.

**Implementation**

No implementation as food grading and the requirement to display would not exist.

Council would continue to verify food businesses and respond to complaints as required under the Food Act.

**Pros and cons**

**Pros**

- creates a level playing field in Auckland as no food businesses would be required to display a food grade
- avoids public confusion about why only some food businesses are displaying a food grade
- removes disincentive for some food businesses to be verified by council where they are concerned about having to display a food grade.

**Cons**

- reduced public awareness of food business safety standards and ability to make informed decisions
- removes incentive for food businesses to improve food safety practices to obtain a higher food grade
- majority of stakeholders consider the food grading scheme and requirement to display a food grade is important for food safety.

**Risks**

- significant reputational risk as the public will consider that council is removing a useful information source and is reducing food safety standards.
Mitigation

- public awareness campaign about what change will mean and council’s role in ensuring food safety under the Food Act.

Options assessment

Preliminary legal assessment

Bylaws must comply with certain legal requirements to be valid, including that they be authorised by statute, and not be repugnant or unreasonable.

Staff consider option one meets these preliminary legal requirements. Option two may arguably be inconsistent with the Food Act.

Options three and four do not require a legal assessment as they do not require the preparation of a bylaw. However, they would not be repugnant or unreasonable.

Consistency with the Food Act

The Food Act provides that local authorities must not make a bylaw that is inconsistent with the Act. If a bylaw is inconsistent, the Food Act will prevail over the bylaw to the extent it is inconsistent.\(^4\)

Options one and two are consistent with the Food Act’s purpose (section 4) to achieve the safety and suitability of food and maintain confidence in New Zealand’s food safety regime. Option one is also aligned with all other principles of the Act (section 16).

Option two however, is arguably inconsistent with “the need to minimise compliance costs for food businesses” if it imposes additional costs on food businesses that use third-party verifiers. Option two may also be contrary to the development and maintenance of productive working relationships and enhanced co-operation with MPI and the need for a coordinated and aligned approach. Further engagement with MPI is required to complete this assessment.

While option three does not involve the preparation of a bylaw it would align with the purpose and principles of the Food Act as a food safety guidance measure.

New Zealand Bill of Rights Act 1990 assessment

Options one and two raise potential limitations to freedom of expression by requiring food business operators to display a food grade. Any limitation however is minor and justified in meeting the broader purpose to protect the public from foodborne illness. The requirement to display a food grade supports this purpose by increasing public awareness of food safety and incentivising better food safety practices by businesses. Therefore, there are no implications and the options are not inconsistent with the New Zealand Bill of Rights Act 1990.

Option three and four do not require the preparation of a bylaw and therefore a New Zealand Bill of Rights Act assessment is not required.

\(^4\) Food Act 2014, section 446.
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 to:

1. improve and maintain business food safety standards to decrease the risk of foodborne illness while ensuring:
   (i) compliance costs are reasonable
   (ii) consistency with the Food Act.
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).

The criteria and a summary of the assessment is shown in Table 3. The “✓” and “✗” reflect the impact of the option against each criterion relative to other options. For instance, the more “✓”, the better the option.
### Table 3: Summary of assessment of options against stated objectives

<table>
<thead>
<tr>
<th>Option one: improve Bylaw</th>
<th>Effectiveness at improving and maintaining business food safety standards to decrease the risk of foodborne illness</th>
<th>Reasonableness of compliance costs and consistency with Food Act</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>✓ ✓</td>
<td>✓ ✓</td>
</tr>
<tr>
<td></td>
<td>Option one is effective as it requires most public serving food businesses to display, incentivises them to improve food safety to gain a higher grade and allows the public to make informed decisions.</td>
<td>Option one has reasonable compliance costs as it requires little extra council resourcing to issue food grades and there is no additional charge to food businesses. Option one is consistent with the Food Act.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Option two: extend Bylaw</th>
<th>Effectiveness at improving and maintaining business food safety standards to decrease the risk of foodborne illness</th>
<th>Reasonableness of compliance costs and consistency with Food Act</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>✓ ✓ ✓</td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>Option two would be very effective as it requires all food business that serve the public to display, incentivises them to improve food safety to gain a higher grade and allows the public to make more informed decisions.</td>
<td>Option two would increase compliance costs for food businesses who use third-party verifiers (likely administrative fee) and council resourcing to ensure verification information is provided for grading. Option two is arguably inconsistent with the Food Act. Further engagement is required to make a final determination.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Option three: no bylaw</th>
<th>Effectiveness at improving and maintaining business food safety standards to decrease the risk of foodborne illness</th>
<th>Reasonableness of compliance costs and consistency with Food Act</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>✓</td>
<td>✓ ✓</td>
</tr>
<tr>
<td></td>
<td>Option three may be an incentive for some food businesses to improve food safety but would reduce public information and provide less incentive for some businesses as they could choose not to display a food grade.</td>
<td>Option three has reasonable compliance costs as it requires little extra council resourcing and there is no additional charge to food businesses. Option three is consistent with the Food Act.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Option four: no bylaw, no grading</th>
<th>Effectiveness at improving and maintaining business food safety standards to decrease the risk of foodborne illness</th>
<th>Reasonableness of compliance costs and consistency with Food Act</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>✗ ✗ ✗</td>
<td>✓ ✓</td>
</tr>
<tr>
<td></td>
<td>Option four would not provide any additional food safety incentives above the Food Act requirements and would remove a public information source.</td>
<td>The compliance costs for option four would be more reasonable as it would not require extra council resourcing to issue food grades and there would be no additional charge to food businesses. Option four is consistent with the Food Act.</td>
</tr>
</tbody>
</table>
Analysis and recommendations

Option one (improve Bylaw) scores most favourably against the assessment criteria.

Based on analysis against assessment criteria and the pros and cons of each option, staff recommend option one (improve Bylaw) as the most favourable option because:

- the current Bylaw and food grading scheme have support from the public, operators, health experts and environmental health officers as they can incentivise better food safety practices
- most food businesses that serve the public are required to display a food grade (6.711 or 70 per cent) even if they have a lower grade
- it raises public awareness of food safety standards and enables them to make an informed decision
- it has less compliance costs for businesses and council than option two and avoids the risk of inconsistency with the Food Act
- it can provide greater incentives for food businesses to improve food safety standards than options three and four which have no requirement to display
- it fills a regulatory gap in the absence of a national food grading scheme.

Option two (extend Bylaw) would be more effective than the other options as it would require 81 per cent of all food businesses that serve food to the public to display a food grade. The key trade-off is it would increase compliance costs for food businesses not registered and verified by council and may be inconsistent with the Food Act. Further engagement with food businesses and MPI would be required before adopting this option.

Option three (no bylaw) would continue to raise public awareness and incentivise some food businesses. However, there would be no ability to enforce the display of food grades, particularly for businesses with lower grades. If most food businesses choose not to display a food grade, the scheme would become redundant.

Option four (no bylaw or grading) is the least effective option because it would not provide any additional food safety incentives above the Food Act verification requirements and would remove a public information source.
Te take mō te pūrongo

Purpose of the report

1. To request the appointment of Independent Hearing Commissioners to hear submissions and make decisions on Private Plan Change 21 (Southern Cross Hospitals Ltd) to the Auckland Unitary Plan (Operative in Part).

Whakarāpopototanga matua

Executive summary

2. The Private Plan Change seeks to rezone land at 3 Brightside Road and 149, 151 and 153 Gillies Avenue, Epsom from Mixed Housing Suburban and Single House Zones to Special Purpose – Healthcare Facility and Hospital Zone. It also seeks to remove the special character overlay from 149, 151 and 153 Gillies Avenue and amend transport provisions to specify the parking requirement for the hospital.

3. 176 primary submissions were received on the Private Plan Change request. The submissions raise a mixture of planning, visual landscape, urban design and transport matters.

4. It is considered appropriate that the hearings panel be made up of three independent commissioners, with expertise in planning, urban design or visual landscape and transport matters to hear submissions and make decisions on the Private Plan Change request.

Ngā tūtohunga

Recommendations

That the Regulatory Committee:

a) appoint four independent commissioners, with expertise in planning, urban design or landscape, transport and tikanga to hear submissions and make decisions on Private Plan Change 21 to the Auckland Unitary Plan (Operative in Part);

b) delegate authority to the chairperson of the Regulatory Committee (or its equivalent) to make replacement appointments to the hearing panel in resolution a) in the event that a member of the hearings panel is unavailable.

Horopaki

Context

5. Southern Cross Hospitals Limited lodged a private plan change to the Auckland Unitary Plan (Operative in Part) in July 2017. On 5 March 2019 the private plan change was considered and accepted by the council.

6. Private Plan Change 21 seeks to:

• rezone land at 3 Brightside Road from Mixed Housing Suburban to Special Purpose - Healthcare Facility and Hospital Zone
• rezone land at 149, 151 and 153 Gillies Avenue, Epsom from Single House to Special Purpose – Healthcare Facility and Hospital Zone

• remove the special character overlay from the sites at 149, 151 and 153 Gillies Avenue; and

• amend transport provisions to specify the minimum parking requirement of 1 space per 64m² for the hospital

7. The purpose of the Private Plan Change is to enable an expansion of the existing hospital at 3 Brightside Road. The expansion will be on 149, 151 and 153 Gillies Avenue.

8. The Private Plan Change was publicly notified on 21 March 2019. After the closing date for submissions on 18 April 2019, 176 primary submissions were received. The summary of submissions was publicly notified on 30 May 2019 with a closing date for further submissions being 13 June 2019.

9. There is a high degree of public interest on the proposal. Submitters have raised a mixture of planning, visual and landscape, urban design and transport matters. It is therefore recommended that submissions on the Private Plan Change request be heard and decided by a panel of commissioners with expertise in planning, visual and landscape, urban design and transport matters. As discussed further below, the relevant iwi authorities have also recommended that a commissioner with expertise in tikanga is appointed to the panel.

Tātaritanga me ngā tohutohu
Analysis and advice

10. Analysis will be provided in the Council Officer’s hearings report (section 42A report) for the Private Plan Change request. Key matters that require expert assessment include planning, visual and landscape, urban design and transport.

Ngā whakaawaeawe me ngā tirohanga a te rōpū Kaunihera
Council group impacts and views

11. The applicant’s infrastructure report indicates that there are no water or wastewater issues associated with the proposal. No feedback has been received from Watercare staff on the proposal.

12. The proposed rezoning will allow for an increased total maximum impervious area across the sites. The council’s Healthy Waters unit has advised that the applicant’s infrastructure report adequately addresses the key matters in relation to stormwater management and flooding.

13. The submission from Auckland Transport seeks that Council approves the Private Plan Change request provided the transport concerns in relation to parking, traffic generation, safety, access and construction traffic effects are resolved.

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

14. Southern Cross Hospitals Ltd met and provided information of the proposed Private Plan Change request and potential resource consent application for the future hospital development to the Albert-Eden Local Board in October 2018. The local board raised some matters including consideration of alternative sites, traffic, noise, building height and construction effects. On 18 April 2019 feedback was received from the local board opposing the Private Plan Change request in its entirety. The local board states that the Private Plan Change request would allow development that would be incompatible with the character of the neighbouring area and undermine the integrity of the Auckland Unitary Plan.
15. Southern Cross Hospitals Ltd consulted the relevant 11 iwi groups within the plan change area (see below). The draft Private Plan Change with rezoning information was sent to the iwi groups via email, providing opportunity for queries and feedback on 17 September 2018. No responses were received from the iwi groups.

- Ngāti Pāoa
- Ngāti Whātua o Kaipara
- Ngāi Tai Ki Tāmaki
- Ngāti Maru
- Ngāti Tamaoho
- Ngāti Tamaterā
- Ngāti Te Ata Waiohua
- Ngāti Whātua Ōrākei
- Te Akitai Waiohua
- Te Rūnanga o Ngāti Whātua
- Waikato - Tainui

16. No submissions were received from any mana whenua on full notification of the plan change.

17. As required under section 34A(1A) of the Resource Management Act, council staff contacted representatives from the above iwi authorities to establish whether they considered that the hearing panel for the plan change should include a commissioner with expertise in tikanga. Ngāti Whātua Ōrākei and Waikato - Tainui recommended such an appointment.

Ngā ritenga ā-pūtea
Financial implications

18. The cost of independent hearing commissioners will be recovered from Southern Cross Hospitals Ltd.

Ngā raru tūpono me ngā whakamaurutanga
Risks and mitigations

19. Hearing commissioners are appointed from the pool of independent commissioners due to their professionalism, expertise and experience. A small number of elected members that hold the Good Decision-making accreditation may also sit as commissioners. These processes, in addition to staff reporting, ensure a high quality of informed decision-making and help avoid any procedural or judicial risks.

Ngā koringa ā-muri
Next steps

20. Council staff will commence preparation for a hearing to take place in October.

The key next steps involve:

- contacting the appointed Independent Hearing Commissioners to check their availability
- notifying submitters of the hearing dates and venue
- providing submitters with a copy of the hearing report
- Independent Hearing Commissioners conduct the hearing
- Council decision released.
Request to Appoint Hearing Commissioners for Private Plan Change 21 (Southern Cross Hospitals Ltd) to the Auckland Unitary Plan (Operative in Part)

Ngā tāpirihanga
Attachments
There are no attachments for this report.

Ngā kaihaina
Signatories

<table>
<thead>
<tr>
<th>Author</th>
<th>Authorisers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Panjama Ampanthong - Principal Planner</td>
<td>John Duguid - General Manager - Plans and Places</td>
</tr>
<tr>
<td></td>
<td>Craig Hobbs – Director Regulatory Services</td>
</tr>
</tbody>
</table>
Request to Appoint Hearing Commissioners for Private Plan Change 24 (Waita Shores Local Centre) to the Auckland Unitary Plan (Operative in Part)

File No.: CP2019/11045

Te take mō te pūrongo
Purpose of the report

1. To request the appointment of Independent Hearing Commissioners to hear submissions and make decisions on Plan Change 24 (Private) Waiata Shores Local Centre to the Auckland Unitary Plan (Operative in Part).

Whakarāpopototanga matua
Executive summary

2. Plan Change 24 seeks to rezone land at 2 Te Napi Drive, Waiata Shores from Residential – Mixed Housing Urban Zone to Business – Local Centre Zone in the Auckland Unitary Plan (Operative in Part). No other amendments to the Auckland Unitary Plan are sought by Plan Change 24.

3. Eight primary submissions were received on the Private Plan Change Request, including four submitters that wish to be heard. The submissions primarily relate to transport matters, economic effects and urban design.

4. Feedback received from the Manurewa and Papakura Local Boards to date has been in support of the Plan Change.

Ngā tūtohunga
Recommendation/s

That the Regulatory Committee:

a) appoint three independent commissioners, with expertise in planning, transport and tikanga to hear submissions and make decisions on Plan Change 24 (Private) Waiata Shores Local Centre to the Auckland Unitary Plan (Operative in Part); and

b) delegate authority to the chairperson of the regulatory committee (or is equivalent) to make replacement appointments to the hearing panel in resolution a) in the event that a member of the hearings panel is unavailable.

Horopaki
Context

5. Woolworths New Zealand Limited lodged a private plan change request to the Auckland Unitary Plan (Operative in Part) in December 2018. On 5 March 2019 the Planning Committee resolved to accept the private plan change request for processing and notification by the council.

6. Plan Change 24 seeks to rezone land at 2 Te Napi Drive, Waiata Shores from Residential – Mixed Housing Urban Zone to Business – Local Centre Zone in the Auckland Unitary Plan (Operative in Part). No other amendments to the Auckland Unitary Plan are sought by Plan Change 24.
7. The purpose of Plan Change 24 is to provide for commercial activities, such as retail, supermarkets and commercial services, on the part of 2 Te Napi Drive, Waiata Shores subject to the request. Woolworths New Zealand have submitted a proposed development 

8. The Plan Change was publicly notified on 9 May 2019. After the closing date for submissions on 7 June, eight primary submissions were received. The summary of submissions was public notified on 20 June 2019 with a closing date for further submissions being 5 July 2019. At the time of this report being prepared, the number of further submissions is not yet known. However, an update can be provided to the Regulatory Committee on the number of further submissions received.

9. The primary focus of the submissions relates to transport and traffic effects associated with the proposal. Other matters raised in submissions include economic effects, and urban design.

Tātaritanga me ngā tohutohu
Analysis and advice

10. Analysis will be provided in the council officers’ hearings report (section 42A report) on the Plan Change. Key matters that require expert assessment include planning, transport, economic effects, urban design and landscape effects, and noise.

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera
Council group impacts and views

11. The applicant’s wastewater and water supply assessment concludes that the reticulated network is adequate to sustain the demand from the proposal. Veolia Ltd have reviewed the information and advise that there are no constraints on water or wastewater services that would prevent rezoning of this land.

12. The applicant has submitted stormwater and flooding assessments as part of the application. Healthy Waters have been involved in council’s initial review of the Plan Change request and will provide specialist review of the applicant’s assessments to inform the council’s officer’s hearings report.

13. The submission from Auckland Transport seeks to decline the Plan Change, unless the transport effects of the proposal are avoided, remedied or mitigated as set out in Auckland Transport’s submission. It is noted that Auckland Transport have been involved in discussions with the applicant and council focused on resolving transport issues associated with the Plan Change.

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

14. The applicant engaged in workshops with the Papakura and Manurewa Local Boards on 13 and 14 February 2019 respectively. Both Local Boards have since confirmed their support for the Plan Change.

Tauākī whakaaweawe Māori
Māori impact statement

15. The applicant circulated the Plan Change to the nine iwi groups recognised as having an interest in the site. The applicant has since held a joint hui with three iwi groups that sought to engage with the project, being Te Ākitai Waiohua, Ngāti Te Ata, Ngāti Tamaoho.
16. In accordance with Section 34A(1A) of the Resource Management Act 1991, Council is required to:

‘consult tangata whenua through relevant iwi authorities on whether it is appropriate to appoint a commissioner with an understanding of tikanga Māori and of the perspectives of local iwi or hapū’

17. Letters were sent to the nine iwi groups recognised as having an interest in the site on 27 June 2019, requesting feedback on whether it is appropriate to appoint a commissioner with an understanding of tikanga Māori and of the perspectives of local iwi or hapū. These responses have been sought by 10 July 2019.

18. At the time of this report being prepared, responses have been received by Ngāti Whanaunga and Waikato -Tainui, both in support of appointing a commissioner with an understanding of tikanga Māori.

19. An update can be provided to the Regulatory Committee on any further responses received from iwi groups in relation to the appointment of commissioners.

Ngā ritenga ā-pūtea
Financial implications
20. The cost of independent hearing commissioners will be recovered from Woolworths New Zealand Limited.

Ngā raru tūpono me ngā whakamaurutanga
Risks and mitigations
21. Hearing commissioners are appointed from the pool of independent commissioners due to their professionalism, expertise and experience. This process, in addition to staff reporting, ensures a high-quality of informed decision-making and helps to avoid any procedural or judicial risks.

Ngā koringa ā-muri
Next steps
22. Council staff will commence preparation for a hearing to take place in late August. The key next steps involve:

- Contacting the appointed Independent Hearing Commissioners to check their availability;
- Notifying submitters of the hearing dates and venues;
- Providing submitters with a copy of the hearing report;
- Independent Hearing Commissioners conduct the hearing; and
- Council decision released.

Ngā tāpirihanga
Attachments
There are no attachments for this report.

Ngā kaihaina
Signatories

<table>
<thead>
<tr>
<th>Author</th>
<th>Sanjay Bangs - Planner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authorisers</td>
<td>John Duguid - General Manager - Plans and Places</td>
</tr>
<tr>
<td></td>
<td>Craig Hobbs - GM Licensing &amp; Regulatory Compliance</td>
</tr>
</tbody>
</table>
Te take mō te pūrongo
Purpose of the report
1. To provide an update of all current resource consent appeals lodged with the Environment Court.

Whakarāpopototanga matua
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 6 June 2019 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.

Ngā tūtohunga
Recommendation/s
That the Regulatory Committee:


Horopaki
Context
4. As at 2 July 2019, there are 30 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 and one appeal resolved.

6. Separate appeals from two submitters, Urban Auckland, The Society for the Protection of Auckland City and Waterfront Inc. and Ngāti Whātua Orakei Whaia Maia Limited have been lodged to the grant of resource consent to establish the Queens Wharf dolphins. Panuku Development Limited has been granted consent to to construct two ship mooring dolphins and associated wharf access structures from the end of Queens Wharf in the coastal marine area. Alterations are also proposed to the existing Queens Wharf structure, including strengthening, installation of new piles and replacement bollards and modifying the substructure. The Urban Auckland Appeal opposes the consent in its entirety. The Ngāti Whātua Orakei appeal is neutral however seeks changes to the reasoning and consent conditions relevant to mana whenua issues, mana whenua consent conditions and ss6(e), 6(g), 7(a) and 8 of the RMA.

7. The Society for the Protection of Western Springs Forest Inc. and Gael Joy Baldock appeal the decision of Auckland Council to grant resource consent to remove approximately 200 pine trees and undertake associated earthworks and restoration planting in the northern corner of Te Wai Orea - Western Springs Lakeside Park. The proposal is argued to be contrary to AUP OP objectives and policies and create adverse effects that cannot be mitigated.
Item 13

8. The appeal by Stellan Trust is to the grant of resource consents associated with the construction, operation and maintenance of a widened State Highway One at Warkworth, being the intersection with the future Matakana Link Road.

Tātaritanga me ngā tohutohu

Analysis and advice

9. To receive the report as provided.

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera

Council group impacts and views

10. Not applicable.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe

Local impacts and local board views

11. Not applicable.

Tauākī whakaaweawe Māori

Māori impact statement

12. The decision requested of the Regulatory Committee is to receive this progress report rather than to decide each appeal.

13. 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.

Ngā ritenga ā-pūtea

Financial implications

14. 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.

Ngā raru tūpono me ngā whakamaurutanga

Risks and mitigations

15. Not applicable.

Ngā koringa ā-muri

Next steps

16. Not applicable.
Ngā tāpirihanga
Attachments

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<tr>
<th>No.</th>
<th>Title</th>
<th>Page</th>
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<tr>
<td>A8</td>
<td>Resource Consent Appeals as at 2 July 2019</td>
<td>269</td>
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Ngā kaihaina
Signatories

<table>
<thead>
<tr>
<th>Author</th>
<th>Authorisers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert Andrews - Principal Specialist Planning</td>
<td>Ian Smallburn - General Manager Resource Consents</td>
</tr>
<tr>
<td></td>
<td>Craig Hobbs – Director Regulatory Services</td>
</tr>
</tbody>
</table>
## RODNEY – Local Board Area (2 Appeal)

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Stellan Trust</th>
<th>Received</th>
<th>4 June 2019</th>
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</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2019-AKL-000099 Council : BUN60322627, LUC60322701, WAT60322704, DIS60322702, DIS60323625 and LUS60323625</td>
<td></td>
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<tr>
<td>Applicant</td>
<td>New Zealand Transport Agency (NZTA)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>Multiple Properties Between Hudson Road and 102 State Highway 1, Warkworth</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>An appeal to resource consents associated with the construction, operation and maintenance of a widened State Highway One at Warkworth, being the intersection with the future Matakana Link Road. (There is a related confirmation of a Notice of Requirement for alteration of designation 6763) The appellant’s submission seeks a reduced extent of designation and provision for access.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>The application did not trigger any requirement for a Cultural Impact Assessment or raise any iwi or Treaty issues. The Requiring Authority is to prepare a Protocol for any accidental archaeological discoveries during Construction Works.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>New appeal by a submitter. Yet to be timetabled.</td>
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<table>
<thead>
<tr>
<th>Appellant</th>
<th>Goatley Holding Limited</th>
<th>Received</th>
<th>4 June 2019</th>
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</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2019-AKL-000097 Council : BUN60322627, LUC60322701, WAT60322704, DIS60322702, DIS60323625 and LUS60323625</td>
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<tr>
<td>Applicant</td>
<td>New Zealand Transport Agency (NZTA)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>Multiple Properties Between Hudson Road and 102 State Highway 1, Warkworth</td>
<td></td>
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<tr>
<td>Other parties</td>
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</tr>
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<td>Description</td>
<td>An appeal to resource consents associated with the construction, operation and maintenance of a widened State Highway One at Warkworth, being the intersection with the future Matakana Link Road. (There is a related confirmation of a Notice of Requirement for alteration of designation 6763) The appellant’s submission seeks a reduced extent of designation and provision for access.</td>
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</tr>
<tr>
<td>Iwi comments</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>New appeal by a submitter. Yet to be timetabled.</td>
<td></td>
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</table>
Hibiscus and Bays - Local Board Area (1 Appeal)

<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</td>
<td></td>
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<td>- 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 Ki 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 heard from the parties, and by minute of 22 February 2018 set the appeal down for a pre-hearing on jurisdiction over the right to appeal and determined that an amicus curiae should be appointed. Affidavits prepared for the pre-hearing set for 9 April 2018 that proceeded as scheduled. The Court on 2 May 2018 released its decision confirming jurisdiction over the Council’s right to appeal. A pre-hearing of 31 July 2018 discuss timetabling, possible mediation dates and sought the appellant to clarify the appeal issues. Court assisted mediation took place on the 21st and 22nd of February 2019. The substantive issues have been addressed and agreed between the main parties, some s.274 parties have not agreed. The matter proceeded to Court hearing, for the full week of 6th May 2019. <em>Awaiting decision from the Court.</em></td>
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</table>

DEVONPORT TAKAPUNA – Local Board Area (1 Appeal)

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Pierce Road Coalition</th>
<th>Received</th>
<th>21 February 2019</th>
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<tbody>
<tr>
<td>References</td>
<td>ENV-2019-AKL-000028</td>
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<td></td>
<td>- Council – LUC60313256</td>
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<tr>
<td>Site address</td>
<td>110 Kitchener Road and 1a Pierce Road, Milford</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>One 274 party</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>Appeal by submitters against Council’s decision to grant consent to a six story building containing 20 residential apartments and one commercial unit.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>The application was publically notified and no submissions from Iwi were submitted.</td>
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</tr>
<tr>
<td>Status</td>
<td><em>Agreement to settle the appeal reached at mediation on Wed 29 May 2019.</em></td>
<td></td>
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### WAITAKERE – Local Board Area (1 Appeal)

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Trustees of Forest Trust and Successors</th>
<th>Received</th>
<th>19 July 2018</th>
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<tbody>
<tr>
<td>References</td>
<td>ENV-2018-AKL-000145</td>
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<tr>
<td></td>
<td>Council: SUB-2011-63</td>
<td></td>
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</tr>
<tr>
<td>Site address</td>
<td>199 Anzac Valley Road, Waitakere</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 against hearing decision to uphold in part and dismiss in part a section 357 objection to conditions and costs of a subdivision resource consent (SUB-2011-63)</td>
<td></td>
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</tr>
<tr>
<td>Iwi comments</td>
<td>The application did not trigger any requirement for a Cultural Impact Assessment or raise any iwi or Treaty issues.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>Appeal lodged on 26 July 2018. Environment Court decision to refuse appeal issued 18 December 2018. <strong>Appealed to the High Court however there is now a five year imposed by the Court stay against any current or new appeals lodged by P. Mawhinney of the Forest Trust.</strong></td>
<td></td>
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### Henderson-Massey – Local Board Area (1 Appeal)

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Gordon Moase</th>
<th>Received</th>
<th>20 May 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2019-AKL-000091 Moase v Auckland Council</td>
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</tr>
<tr>
<td>Site address</td>
<td>105 Waimumu Rd, Massey, Auckland</td>
<td></td>
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<tr>
<td>Other parties</td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>Appeal against council’s decision to approve landuse and subdivision consents for 29 dwellings.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>The application did not trigger any requirement for a Cultural Impact Assessment or raise any iwi or Treaty issues.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>The Court has requested a memorandum from the Council about the residential activity status of the application and whether there is jurisdiction to appeal. <strong>The Environment Court struck out this appeal on 10 June 2019 for lack of jurisdiction. Matter complete.</strong></td>
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## ALBERT-EDEN –Local Board Area (1 Appeal)

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Panuku Development Auckland v Auckland Council</th>
<th>References</th>
<th>Received</th>
<th>04 September 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site address</td>
<td>198-202 and 214-222 Dominion Road and 113-117 Valley Road, Mt Eden</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Description</td>
<td>Appeal against a hearing commissioner’s decision to refuse resource consent for a mixed use development comprising four new buildings with 102 residential units, nine retail units and 115 carparks. The commissioner’s grounds for refusal related to the bulk and scale of the proposal and the associated visual, shading and dominance effects, and the adverse effects on Special Character values from the loss of the Universal Building (a character-supporting building).</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>The application did not trigger any requirement for a Cultural Impact Assessment, attract submissions from Iwi or raise Treaty issues.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>Appeal regarding a development that has generated media, political and local interest. Council has met on a without prejudice basis with the appellant (18 and 24 September 2018). Court assisted mediation occurred on 31 October 2018, no agreement reached between the parties. Further informal discussion between the parties (December 2018). Second court-assisted mediated occurred on 16 January 2019. Mediation agreement reached – subject to various conditions being satisfied. Council to report back to the Court as to progress by 15 February 2019. A number of the s274 parties have requested further time to consider their positions. Council has filed a memorandum with the Court seeking a judicial conference on the first available date after 15 March 2019. Pre-hearing conference scheduled for 2 April 2019. The pre-hearing conference held on 2 April 2019 confirmed that the matter will proceed to a hearing on or after 15 July 2019. A timetable for evidence exchange has been issued. <strong>The Court has issued a notice of hearing confirming that the hearing will commence of 19 August 2019.</strong></td>
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The Court has issued a notice of hearing confirming that the hearing will commence of 19 August 2019.
## WAIHEKE – Local Board Area (1 Appeal)

<table>
<thead>
<tr>
<th>Appellants</th>
<th>Cable Bay Wines Ltd v Auckland Council</th>
<th>Received</th>
<th>2 February 2018</th>
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<tbody>
<tr>
<td>References</td>
<td>ENV-2017-AKL-000010</td>
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<td>Council – LUC60127798</td>
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<tr>
<td>Site address</td>
<td>12 Nick Johnston Drive, Waiheke Island</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicant</td>
<td>Cable Bay Wines Limited</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>Stephen &amp; Suzanne Edwards, Julie Loranger &amp; Lindsay Niemann, Michael &amp; Christine Poland.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>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 the activity and the general amenity / noise effects associated with the use of the structure.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>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.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>The Environment Court directed court-assisted mediation after the expiry of the section 274 period on 15 March 2018. Three s274 parties have joined. Awaiting confirmation of Environment Court mediation date and to involve both the consent appeal and the enforcement order application. Mediation held on 2 July 2018. No agreements reached between the parties. Caucusing between noise experts to on 5 July 2018 and a further mediation to be scheduled. No agreement reached at second mediation and matter to be set down for a hearing. The Court has confirmed a joint resource consent appeal and enforcement order hearing commencing on 7 November 2018. The appellant’s evidence is due by 7 September and the Council’s evidence is due by 21 September. Council to call Planning and Noise expert witnesses. Council’s evidence was filed with the Court on 21 September 2018. The hearing commenced on 7 November 2018 and an interim decision on the resource consent was issued on 21 November to convey the Court’s refusal of part of the application, particularly in relation to the use of the lawn for outdoor dining and drinking, and make further directions about the refinement of conditions of consent to aspects of the proposal which might attract consent. An interim decision on the application for enforcement order was issued on 28 November 2019 ordering Cable Bay to undertake various steps to limit their activities. The Court intends that the orders will substantially mirror the final resource consent conditions. Further monitoring and testing work order by the Court is ongoing. A second interim decision on the resource consent appeal was issued by the Court 22 February 2019 confirming the Court’s earlier decision to refuse consent in part. Further collaborative noise monitoring and assessment has been undertaken by the parties’ acoustic engineers and a report on this work is to be provided to the Court by 8 March 2019.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
This will assist the court in determining whether or not consent can be granted to a modified proposal for the restaurant, alfresco dining and outdoor functions. A judicial teleconference held on 28 March 2019. A further 1-2 day hearing will be scheduled, however that will not be held until July (as the Judge is away for May and June). An evidence exchange timetable will be set in due course. **The Court has indicated that the hearing will resume for 2 days in the week of 26 August. A timetable for evidence exchange has been issued.**
### Waitematā (12 appeals)

<table>
<thead>
<tr>
<th>Appellants</th>
<th>Society for the Protection of Western Springs Forest Incorporated 2736092 &amp; G Baldock v Auckland Council</th>
<th>Received</th>
<th>11 June 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2019-AKL-000104 LUC60321424</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>859 Great North Road, Grey Lynn</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicant</td>
<td>Auckland Council Community Facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>n/a</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>To remove approximately 200 pine trees in Te Wai Orea – Western Springs Lakeside Park, including earthworks for an access track and restoration planting.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>Initial engagement and responses received from Ngati Paoa, Ngati Whatua Orakei, Ngati Whatua Kaipara, Te Patukirikiri, Te Runanga o Ngati Whatua, Walkato Tainui, Waiohua Te Ahiwaru Makaurau and Te Kawerau a Maki. Generally supportive of the works. No mana whenua groups have appealed or joined as s274 parties.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>New appeal. A timetable for court-assisted mediation has not yet been set.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Appellants</th>
<th>Urban Auckland, The Society for the Protection of Auckland City and Waterfront Inc.v Auckland Council; and Ngāti Whātua Orakei Whaia Maia Limited v Auckland Council</th>
<th>Received</th>
<th>15 May 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV 2019 AKL 000*** CST60323353</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>Wharf/ 11-99 Brigham Street Auckland Central</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicant</td>
<td>Panuku Development Auckland Limited</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>Various 274 parties in support of applicant Devonport Heritage in support of Urban Auckland</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>Appeal against council’s decision to grant consent to construct two ship mooring dolphins and wharf access structures from the end of Queens Wharf and undertake alterations to the existing Queens Wharf structure including strengthening, bollard replacement, new piles and modifying the sub-structure.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>Submissions by various Mana whenua groups opposed or supported the application and were neutral by the end of the hearing.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>New appeal yet to be timetabled</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Appellants

<table>
<thead>
<tr>
<th>Item 13</th>
<th>Drago Jujnovich v Auckland Council</th>
<th>Received</th>
<th>11 December 2018</th>
</tr>
</thead>
</table>

**References**

| ENV 2018 AKL 000371 |

**Site address**

| 560 Richmond Road, Ponsonby |

**Applicant**

| Drago Jujnovich c/- Jadren Trust |

**Other parties**

| Lesley Baddon |

**Description**

Appeal against council’s decision to refuse resource consent to remove an existing dwelling and utilise the site for up to 13 carparking spaces (staff cars and cars waiting to be repaired) associated with the West Lynn Paint and Panel shop.

**Iwi comments**

No iwi issues. The application was considered in accordance with the RMA.

**Status**

The Environment Court has set down a reporting date of 31 January 2019 to advise of any negotiations on the appeal. Joint memorandum filed by parties on 31 January for a further reporting date to the Court of 12 March 2019. Mediation set down for 28 March has since been deferred to 17 April 2019. Mediation held and parties have agreed to settle the appeal. **Conditions currently being drafted by Council for circulation to parties for comments. Draft consent order to settle the appeal subject to amended proposal and conditions has been filed dated 10 June for approval by the Environment Court.**

### Appellants

| Item 13 | Henry v Auckland Council  
North Eastern Investments Limited v Auckland Council  
The Dark Horse Trust & Others v Auckland Council  
The St Mary’s Bay Association Inc. & Herne Bay Residents Association Inc. | Received | 30 November 2018  
30 November 2018  
30 November 2018  
30 November 2018 |
|---------|------------------------------------------------------------------|----------|-----------------|

**References**

| ENV 2018 AKL 000359 (Henry)  
ENV 2018 AKL 000358 (NEIL)  
ENV 2018 AKL 000355 (Dark Horse)  
ENV 2018 AKL 000357 (Associations) |

**Site address**

| St Mary’s Bay and Masefield Beach |

**Applicant**

| Auckland Council (Healthy Waters) |

**Other parties**

| Numerous |

**Description**

Appeal against council’s decision to grant resource consent for the St Mary’s Bay and Masefield Beach Water Quality Improvement Project.

**Iwi comments**

Iwi submitted in support of the application and have joined the appeals as a section 274 party in support of the Council’s decision.
### Status

The Environment Court has set down mediation in weeks 18 and 25 February 2019. Environment Court mediations held on 18 and 25 February 2019 to clarify issues and discuss and amend conditions of consent. Parties are to file a joint memorandum by 1 March 2019 setting out a timetable for a hearing in June. Appeal by NEIL and its section 274 notices to the appeals listed above withdrawn on 25 February 2019. Late applications by Watercare and Mr. and Ms. Henry to join as a section 274 party granted by the judge at the judicial conference held on 29 March 2019. Mediations held on 18 and 25 February. Parties are still in discussions with a reporting date to be agreed and approved by the Court. Henry Appeal is now withdrawn. Parties have requested a reporting date of 12 July 2019 with the court to allow Watercare and parties to seek independent review of proposed stormwater pipe.

### Appellants

| Ngāi Tai Kī Tāmaki v Auckland Council | Received |
| Te Ākitai O Waiohua, Ngaati Whanaunga, Ngāti Tamaoho, Ngāti Tamaterā, Te Patukirikiri, And Ngāti Maru v Auckland Council | 30 January 2019 |
| Ngāti Whātua Orakei Whaia Maia Limited v Auckland Council | 31 January 2019 |

### References

- ENV-2019-AKL-000014
- ENV-2019-AKL-000015
- ENV-2019-AKL-000016

### Site address

31 Westhaven Drive, Auckland Central

### Other Parties

Ngāti Te Ata

### Description

Appeal against the decision of hearing commissioners to grant resource consents for the redevelopment of existing pile moorings within the Westhaven Marina, including land reclamation, installation of new pile berths, a new car park, and a new observation deck and public open space area

### Iwi comments

The applications were publicly notified. Submissions from appellant iwi were received, along with other iwi who have not lodged an appeal against these decisions.

### Status

ENV-2019-AKL-000014 and ENV-2019-AKL-000015 were withdrawn on 13 January 2019. Mediation scheduled with remaining appellant (Ngāti Whātua Orakei Whaia Maia Limited) and s274 parties on the 29 April 2019. Mediation for 29 April cancelled at the agreement of all parties, appeal will proceed to a hearing, to be held on or after 19 August. A s116 application was made to allow consents to commence while appeal is determined, this was approved by EC on the 27 March 2019. **Matter proceeding to hearing, though the appellant is seeking a 2-3-month delay to this process.**
## Ferry Building Limited v Auckland Council

**Received:** 25 February 2019

**References:** ENV-2019-AKL-000030

**Site address:** Quay Street, Auckland Central

**Other Parties:** Cooper and Company NZ

**Description:** Appeal against the decision of hearing commissioners to grant resource consents for the placement of underground seawalls along Quay St (between Marsden Wharf and Queens Wharf) for seismic strengthening purposes (Stage 1 of project).

**Iwi comments:** The application was publicly notified. No submissions were received from iwi.

**Status:** Recently received. Auckland Transport has lodged a memorandum seeking priority hearing. Waiting for mediation date. Evidence exchange timetable provided by the court. Mediation set down for 11 April 2019. Draft conditions agreed by the parties at mediation. A draft consent order has been filed with the Environment Court for approval. **Consent order with amended conditions dated 16 May 2019 now issued by the Environment Court. File Closed.**

## ORAKEI (1 appeal)

**Appellants:** Summerset Villages (St John) Limited v Auckland Council

**Received:** 10 August 2018

**References:** ENV-2018-AKL-000160

**Site address:** 55-57 Ripon Crescent, Meadowbank

**Applicant:** Summerset Villages (St John) Limited

**Other parties:** Andrew and Jeanette Hayes and others

**Description:** An appeal against a decision to refuse an application to construct and operate a retirement village consisting of 7 buildings with 344 residential units at 55-57 Ripon Cres, Meadowbank

**Iwi comments:** The resource consent application was publicly notified and determined by commissioners in accordance with the RMA. Involved stormwater discharge and removal of SEA. CIA provided by Ngai Tai ki Tamaki.

**Status:** Council directed to report back to the Court by 24 September 2018 on progress regarding any negotiation/mediation. Awaiting further directions from the Court and confirmation of a mediation date. The appellant has requested further time to consider possible design revisions. The Court required the appellant to report back on 30th November as to progress before scheduling mediation. Court-assisted mediated is scheduled for 27 February 2019. No settlement reached at mediation. The matter is to proceed to a hearing. The timetable for evidence exchange has not yet been set. The Court issued a Minute on 20 March 2019 confirming the timetable for evidence exchange. A 5 day fixture will be allocated after 5 August 2019. Council’s evidence in chief was filed with the Court on 4 June 2019. **Expert conferencing scheduled for the week beginning 1 July.**
## HOWICK (1 appeal)

<table>
<thead>
<tr>
<th>Appellant</th>
<th>508 Chapel Road Partnership Trust</th>
<th>Received</th>
<th>16 October 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2018-AKL 000281</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Council – LUC60292090</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>508 Chapel Road Flat Bush</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicant</td>
<td>508 Chapel Road Partnership Trust</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Parties</td>
<td>W &amp; B Smith, C Yang, M Muthu and T Mahesh</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>Appeal by applicant against a decision refusing consent to establish a childcare centre accommodating 60 children and eight full-time staff at 508 Chapel Road, Flat Bush, Auckland</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>No iwi issues. The application was considered in accordance with the RMA.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>The Court has asked parties to confirm a list of issues unresolved between the parties, witnesses, timetabling and whether they agree to Court assisted mediation by 30 November 2018. The applicant was declined in regard to adverse neighbourhood character and residential amenity effects arising from the traffic access arrangements. Proceeded to mediation on 15 February 2019. Discussion primarily around traffic matters and alternatives. No settlement reached. <em>Caucusing and evidence exchange proceeding during April to June. Evidence from the applicant received.</em></td>
<td></td>
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</tbody>
</table>

## PAPAKURA – Local Board Area (1 Appeal)

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Wallace Group Limited, BJ Wallace Trust and SJ Wallace Trust</th>
<th>Received</th>
<th>14 March 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2019-AKL 000043</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Council – LUC60311805, DIS60303201, DIS60303159</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>3 Popes Road, Takanini</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicant</td>
<td>Alpha Dairy Limited</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>Spark NZ Ltd</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>An appeal against a decision to grant consents for the construction, operation and maintenance of a new dairy processing facility for the production of infant formula on a Business- Light Industry Zone site with an area of 22,372m². The consent was publicly notified, with 4 submissions in opposition received.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>No iwi group indicated a need for a cultural impact assessment and no submissions were received from iwi. The 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><em>Mediation set down for 28 May has since been vacated.</em></td>
<td></td>
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</tr>
</tbody>
</table>
FRANKLIN – Local Board Area (4 Appeals)

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Clevedon North Limited</th>
<th>Received</th>
<th>22 February 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2019-AKL 000029</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Council – (BUN60303009) LUC60303381, SUB60303384, DIS60303387</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>52 North Road, Clevedon</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicant</td>
<td>Clevedon North Limited</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>- Numerous 274 parties have joined.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>An appeal against a decision on an application for subdivision and land use consents to subdivide a 9.04ha site into 68 residential lots. Associated earthworks, new roading and infrastructure. The consent was publicly notified, with 43 submissions in opposition received.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>No iwi group indicated a need for a cultural impact assessment and no submissions were received from iwi. The 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>The appeal proceeded to mediation on 30 May 2019. The parties remain open to exploring alternative designs that may be the subject of a second mediation. A revised design was the bases of a second mediation on 25 June and an agreement in principal was reached. The parties will continue to work towards agreement on a finalised design and conditions of consent.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Jacks Ridge Limited</th>
<th>Received</th>
<th>24 April 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2019-AKL 00067</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- LUC60322216</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>76 Kimptons Road, Brookby</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicant</td>
<td>Jacks Ridge Limited</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>- Non-notified application.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>An appeal against a decision on an application to refuse consent to construct four commercial storage buildings. The consent proceeded without notification being found that the environmental effects are not more than minor however then refused as being contrary to the objectives and policies for the Rural - Mixed Rural Zone. The decision expresses concerns as to the nature, purpose and scale of the non-residential activity and being not associated with rural production.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>No iwi group indicated a need for a cultural impact assessment. The commissioner considered the application in accordance with the requirements of the RMA 1991 and Part 2 of the RMA.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>Recently lodged and likely to proceed to mediation in the coming month. The matter proceeded to mediation on 4 June 2019. The parties continue to proceed towards a possible consent order on the bases of a revised proposal.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appellant</td>
<td>Signature Building Ltd</td>
<td>Received</td>
<td>22 January 2019</td>
</tr>
<tr>
<td>----------------------------</td>
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<td>-----------------</td>
</tr>
<tr>
<td><strong>References</strong></td>
<td>ENV-2019-AKL 000009</td>
<td>Council</td>
<td>LUC60313362</td>
</tr>
<tr>
<td><strong>Site address</strong></td>
<td>17A Bell Road, Beachlands</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Applicant</strong></td>
<td>Signature Building Ltd</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Other parties</strong></td>
<td>- Beachlands Neighbourhood Voice Inc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Description</strong></td>
<td>Appeal by the applicant against the Council decision to decline consent to establish a childcare facility for 105 children and 17 staff. The consent was publicly notified, with 83 submissions received (82 in opposition)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Iwi comments</strong></td>
<td>No iwi group indicated a need for a cultural impact assessment and no submissions were received from iwi. The 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><strong>Status</strong></td>
<td>Mediation held 29 March. No agreement reached at mediation however parties have agreed to attend further mediation in May. <em>A revised proposal was the subject of a second mediation on 15 May 2019. Agreement was not reached and the matter is to be timetabled for evidence exchange and hearing.</em></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Ahuareka Trustees (No. 2) Ltd</th>
<th>Received</th>
<th>19 November 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>References</strong></td>
<td>ENV-2015-AKL-000147</td>
<td>Council</td>
<td>42081</td>
</tr>
<tr>
<td><strong>Site address</strong></td>
<td>650-680 Whitford Maraetai Road, Whitford</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Other parties</strong></td>
<td>Whitford Residents and Ratepayers Association</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Description</strong></td>
<td>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.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Iwi comments</strong></td>
<td>No iwi submissions</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Status</strong></td>
<td>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. Judicial teleconference held 30 March. Court hearing proceeded within the week 3 July 2017, with the applicants reply to be filed in writing. 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. Council filed its submissions on 31 August and a hearing has been set for 9 October 2018. The appellant’s lawyer requested a deferral for health reasons, which was agreed to. The hearing will now not be held until early 2019. <em>High Court hearing held 9 May 2019 and awaiting decision.</em></td>
<td></td>
<td></td>
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</tbody>
</table>
### Regionwide – All Local Board Areas (3 Appeals)

<table>
<thead>
<tr>
<th>Appellants</th>
<th>Royal Forrest and Bird Protection Society of NZ Inc. v Auckland Council Housing New Zealand Corporation v Auckland Council Herne Bay Residents Association Inc. &amp; The St Mary’s Bay Association Inc.</th>
<th>Received</th>
<th>10 May 2019 10 May 2019 15 May 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV 2019 AKL ENV 2019 AKL ENV 2019 AKL</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>Regionwide</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicant</td>
<td>Auckland Council (Healthy Waters)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>Numerous</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>Appeals against council’s decision to grant resource consent for the discharges of stormwater from existing and future urban landuses that will enter Council’s stormwater network; and discharges of stormwater from the Council’s stormwater network to the environment.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>Mr. Tame Te Rangi made submissions on behalf of Te Mana Whenua Katiaki Forum which has membership from each of the 19 mana whenua entities with interests in the Auckland Council area and supported the application. There were other submissions from iwi including submission lodged by Ngati Tamaoho initially opposed the application but supported it at the hearing based on conditions recommended by the applicant.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>The section 274 party notice timeframe closes at end of May 2019. Waiting for the Environment Court directions on the appeals and a mediation date.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Te take mō te pūrongo
Purpose of the report
1. To note the progress on the forward work programme (Attachment A).

Whakarāpopototanga matua
Executive summary
2. This is a regular information-only report which aims to provide greater visibility of information circulated to Regulatory Committee members via memoranda/briefings or other means, where no decisions are required. There were none circulated in the last month.
3. The up-to-date forward work programme is appended as Attachment A.
4. This document can be found on the Auckland Council website at the following link:
   http://infocouncil.aucklandcouncil.govt.nz/
   • at the top left of the page, select meeting/Te hui “Regulatory Committee” from the drop-down and click ‘view’;
   • under ‘Attachments’, select either HTML or PDF version of the document entitled ‘Extra Attachments’
5. Note that, unlike an agenda decision report, staff will not be present to answer questions about the items referred to in this summary. Committee members should direct any questions to the authors.

Ngā tūtohunga
Recommendation/s
That the Regulatory Committee:
   a) note the progress on the forward work programme appended at Attachment A of the agenda report

Ngā tāpirihanga
Attachments

<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A0</td>
<td>Forward Work Programme</td>
<td>285</td>
</tr>
</tbody>
</table>

Ngā kaihaina
Signatories

<table>
<thead>
<tr>
<th>Author</th>
<th>Andrew Gray - Governance Advisor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authoriser</td>
<td>Craig Hobbs – Director Regulatory Services</td>
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</table>
## REGULATORY COMMITTEE FORWARD WORK PROGRAMME 2019 / 2020

This committee is responsible for regulatory hearings, appointing independent commissioners and for the development of regulatory policy and bylaws.

<table>
<thead>
<tr>
<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>
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<tbody>
<tr>
<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. Review 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>FY18/19: Apr – Jun 11 April 9 May 13 June</td>
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<tr>
<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. 2018 – Due to the Building (Earthquake-Prone Buildings) Amendment Act 2016, Auckland Council’s management of earthquake-prone buildings now falls under the national policy and methodology set by MBIE. Our ongoing work programme for issuing statutory EPB notices, receiving seismic assessments, and identifying residual potential EPBs is being carried out on this basis. Note that dangerous and insanitary buildings continue to have their own local policy that is now under the management of Regulatory Compliance.</td>
<td>Update the Committee on the progress made in implementing Auckland Council’s regulatory obligations with regard to earthquake-prone buildings within its jurisdiction.</td>
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<tr>
<td>Area of work</td>
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<td></td>
<td>For the need for and options for regulating freedom camping in Auckland</td>
<td><strong>Receive</strong> options report following the completion of the research and pilot. (July 2017)</td>
<td><strong>Expected timeframes</strong> Highlight financial year quarter and state month if known</td>
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<td></td>
<td><strong>Key milestones</strong></td>
<td>If a regulatory response is required then the committee will:</td>
<td>FY18/19</td>
<td>FY19/20</td>
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<tr>
<td></td>
<td>Late Nov 2018 – mid Feb 2019 - Public consultation</td>
<td>- <strong>Establish</strong> the hearings panel for deliberations on submissions.</td>
<td>11 April</td>
<td>11 July</td>
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<td></td>
<td>April 2019 - Public deliberations</td>
<td>- <strong>Recommend</strong> final draft of bylaw to governing body for adoption.</td>
<td>9 May</td>
<td>8 Aug</td>
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<tr>
<td></td>
<td>May 2019 – Panel’s recommendation to Governing Body</td>
<td><strong>Progress to date:</strong></td>
<td>13 June</td>
<td>12 Sept</td>
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<td></td>
<td>An overview programme was presented on 10/08/17 item 9</td>
<td><strong>Review is within current baselines.</strong></td>
<td><strong>Funding proposals will be required for any recommendations that require capital or operational upgrades.</strong></td>
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<td>REG/2017/72 resolution</td>
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<td>Q4</td>
<td>Q1</td>
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<td>SCP process</td>
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<td>9/8/18 - report to provide a presentation updating the development of a bylaw under the Freedom Camping Act 2011 REG/2018/64</td>
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<td>13/9/18 - report to seek direction on the content of the statement of proposal for the management of freedom camping REG/2018/64</td>
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<td></td>
<td>8/11/2018 - report to recommend that the Governing Body adopt the freedom camping in vehicles statement of proposal and draft bylaw for public engagement and appoint a panel to consider feedback, deliberate and make recommendations REG/2018/77</td>
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<td><strong>Progress to date:</strong></td>
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<td><strong>Receive</strong> report following the completion of the bylaw review. (November 2017)</td>
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<td><strong>Recommend</strong> statement of proposal to Governing Body.</td>
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<tr>
<td>Dog management Bylaw and Policy on Dogs.</td>
<td>Legislative requirement to review the bylaw and policy after five years.</td>
<td><strong>Establish</strong> the hearings panel for deliberations on submissions.</td>
<td>14/6/18 - A report to endorse the findings of the Auckland Council Policy on Dogs 2012 and Dog Management Bylaw 2012 statutory review and approve a report back on options that respond to the findings REG/2018/44</td>
<td><strong>Recommend</strong> final draft of bylaw to governing body for adoption.</td>
</tr>
</tbody>
</table>
### Area of work

#### Solid Waste Bylaw review

- **Legislative requirement to review the bylaw and policy after five years.**

**Key milestones:**
- Sept-Dec 2018 - research and engagement
- Feb 2019 – findings report to Regulatory Committee
- March 2019 – options report to Regulatory Committee
- April 2019 – proposed bylaw
- June 2019 – public feedback
- July 2019 – panel deliberation
- By August 2019 – Governing Body to adopt bylaw

- **Receive** report following the completion of the bylaw review.
- **Recommend** statement of proposal to Governing Body.
- **Establish** the hearings panel for deliberations on submissions.
- **Recommend** final draft of bylaw to governing body for adoption.

**Progress to date:**
- 14/2/19 - a report to endorse the findings of the Solid Waste Bylaw 2012 review and request a report on options that responds to the findings [REG/2019/7]
- 14/3/19 – a report to request a statement of proposal that makes a new bylaw [REG/2019/12]
- 14/3/19 – a report to determine outcome of review and decide whether to make changes [REG/2019/12]

#### Alcohol Control Bylaw review

- **Legislative requirement to review the bylaw and policy after five years.**

**Next steps**
- Staff to prepare a statement of proposal
- Report back in early 2020

- **Receive** report following the completion of the bylaw review.
- **Recommend** statement of proposal to Governing Body.
- **Establish** the hearings panel for deliberations on submissions.
- **Recommend** final draft of bylaw to governing body for adoption.

**Progress to date:**
- 9/5/19 report to provide an update on the Alcohol Control Bylaw review 2019 options for any changes [REG/2018/18]
## Attachment A

<table>
<thead>
<tr>
<th>Area of work</th>
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<tbody>
<tr>
<td>Alcohol Fees Bylaw 2019</td>
<td>Development of an alcohol fees bylaw</td>
<td><strong>Recommendation</strong> around development of bylaw. If accepted <strong>Receive</strong> report following the completion of the bylaw review. <strong>Recommend</strong> statement of proposal to Governing Body. <strong>Establish</strong> the hearings panel for deliberations on submissions. <strong>Recommend</strong> final draft of bylaw to governing body for adoption. <strong>Progress to Date:</strong> Report 11/4/19 on development and decision to delay</td>
<td></td>
<td>FY18/19: 4 Apr – 6 Jun 9 May 13 June 8 Aug 12 Sept FY19/20: 9 May 11 July 8 Aug 12 Sept</td>
</tr>
<tr>
<td>Cemeteries and Crematoria Bylaw 2014 Review</td>
<td>Legislative requirement to review the bylaw and policy after five years.</td>
<td><strong>Receive</strong> report following the completion of the bylaw review. <strong>Recommend</strong> statement of proposal to Governing Body. <strong>Establish</strong> the hearings panel for deliberations on submissions. <strong>Recommend</strong> final draft of bylaw to governing body for adoption. <strong>Progress to Date:</strong> Report 11/4/19 and request and options report 9/5/19 and decision on option</td>
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<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><strong>Receive updates</strong> <strong>Progress to date:</strong> 8/2/18 report to provide an update on the proactive boarding houses inspection programme An update on the initiative was provided at the 15/6/18 meeting</td>
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<td>Q4 Q1 Q2 Q3</td>
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</table>

Summary of Regulatory Committee information memoranda and briefings - 11 July 2019 including the Forward Work Programme
<table>
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<tr>
<td>Resource Consents Appeal Update</td>
<td>To provide oversight of the appeals received to resource consent decisions.</td>
<td>Information purposes</td>
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<td></td>
<td></td>
<td>Monthly updates – Memo</td>
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<td><strong>Progress to Date:</strong></td>
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<td>Report 14/2/19 received REG/2019/8</td>
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<td>Report 14/3/19 received REG/2019/14</td>
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<td>Report 11/4/19 received REG/2019/23</td>
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<td>Report 9/5/19 received REG/2019/30</td>
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<td>Report 13/6/19 received REG/2019/35</td>
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<tr>
<td>The Regulatory Committee Policy</td>
<td>Reporting on and monitoring of commissioner appointments</td>
<td>Information purposes</td>
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<td>Memo quarterly</td>
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<tr>
<td>The Regulatory Committee Policy</td>
<td>Annual review of commissioner pool</td>
<td>Decision: review RMA commissioner pool</td>
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<td>Memo Quarterly</td>
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<tr>
<td>The Regulatory Services Directorate</td>
<td>Report on:</td>
<td>For information only:</td>
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<tr>
<td></td>
<td>• progress implementing the Food Act 2014</td>
<td>6 monthly updates</td>
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<td></td>
<td>• insights into the performance, opportunities and risk of the Resources Consents Dept</td>
<td><strong>Progress to Date:</strong></td>
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<tr>
<td></td>
<td>• progress implementing the Regulatory Compliance programme</td>
<td>Report 13/6/19 Compliance work with taverns hosting pokie machines REG/2019/34</td>
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<td>• update of Building control activity</td>
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<td>FY19/20</td>
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