



**Air Quality Bylaw for Indoor Domestic Fires 2017**

**Te Ture ā-Rohe Kounga Hau mō ngā Pākaiahi Tara ā-Whare**

**To be made by the Governing Body of Auckland Council**

**by Resolution in Council on 25 May 2017**

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**1 Title**

- (1) This bylaw is the Air Quality Bylaw for Indoor Domestic Fires 2017.

**2 Commencement**

- (1) This bylaw comes into force on 1 June 2017.

**3 Application**

- (1) This bylaw applies to Auckland.

**Part 1 - Preliminary provisions**

**4 Purpose**

- (1) The purpose of this bylaw is to protect, promote and maintain public health and safety in Auckland and to protect the public from nuisance by regulating the use of existing and new indoor domestic fires.

***Explanatory note:***

*This bylaw sits alongside and complements national air quality standards and other regional air quality standards in Auckland's Unitary Plan.*

*This bylaw will not regulate outdoor fires. That issue is managed by a separate Auckland Council bylaw – the Outdoor Fire Safety Bylaw 2014 – and by several rules in Auckland's Unitary Plan.*

**5 Interpretation**

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

**Auckland** means the same area defined as **Auckland** in section 4 of the Local Government (Auckland Council) Act 2009.

**Auckland Council** or **Council** means the unitary authority established under section 6 of the Local Government (Auckland Council) Act 2009.

**Auckland urban air quality area** means all land within:

- a) The following Unitary Plan residential zones:
- (i) large lot;
  - (ii) rural and coastal settlement;
  - (iii) single house;
  - (iv) mixed housing suburban;
  - (v) mixed housing urban;
  - (vi) terrace housing and apartment buildings; and

- b) The following Unitary Plan business zones:
  - (i) city centre;
  - (ii) metropolitan centre;
  - (iii) town centre;
  - (iv) local centre;
  - (v) neighbourhood centre;
  - (vi) mixed use;
  - (vii) general business;
  - (viii) business park;
  - (ix) heavy industry;
  - (x) light industry; and
- c) Unitary Plan open space zones that adjoin one or more of the zones listed in (a) or (b);
- d) Unitary plan special purpose areas that adjoin one or more of the zones listed in (a) or (b);
- e) The following zones in the Auckland Council District Plan: Hauraki Gulf Islands Section – Operative 2013:
  - (i) residential zones;
  - (ii) commercial zones;
  - (iii) Matiatia; and
- f) The areas illustrated in Schedule 1 of this bylaw.

**Commercial premises** means a premises that is not primarily a dwellinghouse and from which a commercial enterprise is undertaken, including any business, manufacture, process, trade, market, or other undertaking.

**Contaminant** has the meaning given by the Resource Management Act 1991.

**Dwellinghouse** means any building, whether permanent or temporary, that is occupied, in whole or in part, as a residence; and includes any structure or outdoor living area that is accessory to, and used wholly or principally for the purposes of, the residence; but does not include the land upon which the residence is sited.

**Indoor domestic fire** means any indoor combustion appliance that is used primarily for heating space, and/or water, or for cooking, which has a chimney or flue and includes wood burners, coal ranges, multi-fuel burners, pellet burners, an indoor fire fuelled by natural gas or liquid fossil fuels, solid-fuel open fires and open fires fuelled by natural gas or liquid fossil fuels, but does **not** include:

- (a) an indoor combustion appliance located in a commercial premises if the use of the indoor combustion appliance is a permitted activity under the Unitary Plan or specifically authorised under a resource consent granted by the council under the Resource Management Act 1991; or
- (b) an indoor combustion appliance located in a commercial premises and used primarily for cooking purposes.

**Indoor open fire** (or **open fire**) means an indoor domestic fire that is not enclosed, and includes (but is not limited to):

- a) Open fireplaces;
- b) Open hearths;
- c) Visor fireplaces.

**Multi-fuel burner** means a fully enclosed fire which can be a fireplace insert, a built-in fireplace or free standing appliance, and is designed to burn both wood and coal for heating purposes.

**Nuisance** means an unreasonable interference with the peace, comfort or convenience of any person, and includes adverse impacts on human health or property due to the generation of noxious, dangerous, offensive or objectionable odours, particulate matter, dust, fumes, smoke, ash or visible emissions.

**Occupier** has the meaning given by the Local Government Act 1974.

**Owner** has the meaning given by the Local Government Act 1974.

**Pellet burner** means an enclosed fire that burns wood pellets made from untreated wood residue (that is, sawdust and wood shavings).

**Person** has the meaning given by the Interpretation Act 1999.

**Property** has the meaning given by the Local Government Act 1974.

**Rural Air Quality Management Area** means the areas defined as rural air quality management areas in Map Series 1 and 1A within the Auckland Council Regional Plan: Air Land and Water (2013).

**Solid fuel** has the meaning given by the Resource Management (National Environmental Standards for Air Quality) Regulations 2004.

***Explanatory note:***

*In the Resource Management (National Environmental Standards for Air Quality) Regulations 2004, the definition for solid fuel is “a solid substance that releases useable energy when burnt (for example, wood and coal)”.*

**Unitary Plan** means the document described in section 122 of the Local Government (Auckland Transitional Provisions) Act 2010, whether proposed or operative.

**Waste** has the meaning given by the Waste Minimisation Act 2008.

- (2) To avoid doubt, compliance with this bylaw does not remove the need to comply with all other applicable statutes, regulations, bylaws and rules of law.
- (3) The Interpretation Act 1999 applies to this bylaw.

- (4) Any explanatory notes and attachments are for information purposes, do not form part of this bylaw, and may be made, amended and revoked without any formal process.

## **Part 2 – Using indoor domestic fires in Auckland**

### **6 Use of indoor domestic fires in Auckland – general conditions**

- (1) The owner or occupier of a property containing an indoor domestic fire may not discharge, or permit to be discharged, contaminants into the air from an indoor domestic fire on that property, if that contaminant causes or is likely to cause a nuisance beyond the boundary of the property containing the indoor fire.
- (2) The owner or occupier of a property containing an indoor domestic fire may not burn, or permit to be burnt, any of the following in an indoor domestic fire on that property:
- a) wood with a moisture content of more than 25 per cent by dry weight;
  - b) fuel with a sulphur content of more than 0.5 per cent (by weight);
  - c) waste, including household waste, plastic, rubber, paint, used oil, motor oil or solvents
  - d) wood and wood products, including particle board, that are painted, tanned (treated with copper, chrome and arsenic), or treated with preservatives or chemicals to prevent the wood from deteriorating; or
  - e) green waste and vegetation.

### **7 Use of indoor domestic fires in Auckland urban air quality area**

- (1) The owner or occupier of a property in the Auckland urban air quality area containing an indoor domestic fire that burns solid fuel that was installed, replaced or retrofitted (into an existing building) on that property on or after 1 September 2005, may not discharge, or permit to be discharged, contaminants into the air from that solid fuel indoor domestic fire unless:
- (a) The indoor domestic fire is manufactured to comply with a particulate emission rate of no more than 4.0 grams of particles per kilogram of fuel burned; or
  - (b) The indoor domestic fire was installed, replaced or retrofitted:
    - (i) Before this bylaw came into effect; and
    - (ii) On a property that is located within a Rural Air Quality Management Area; or
  - (c) The indoor domestic fire was installed, replaced or retrofitted in accordance with a building consent granted before this bylaw came into effect.

***Explanatory notes:***

*A wood burner installed on or after 1 September 2005, on a property in Auckland less than 2 hectares in size, must also comply with the national emission design and*

*thermal efficiency standards specified in regulations 22-24 of the Resource Management (National Environmental Standards for Air Quality) Regulations 2004.*

### **Part 3 - Enforcement, offences and penalties**

#### **8 Non-compliance with this bylaw**

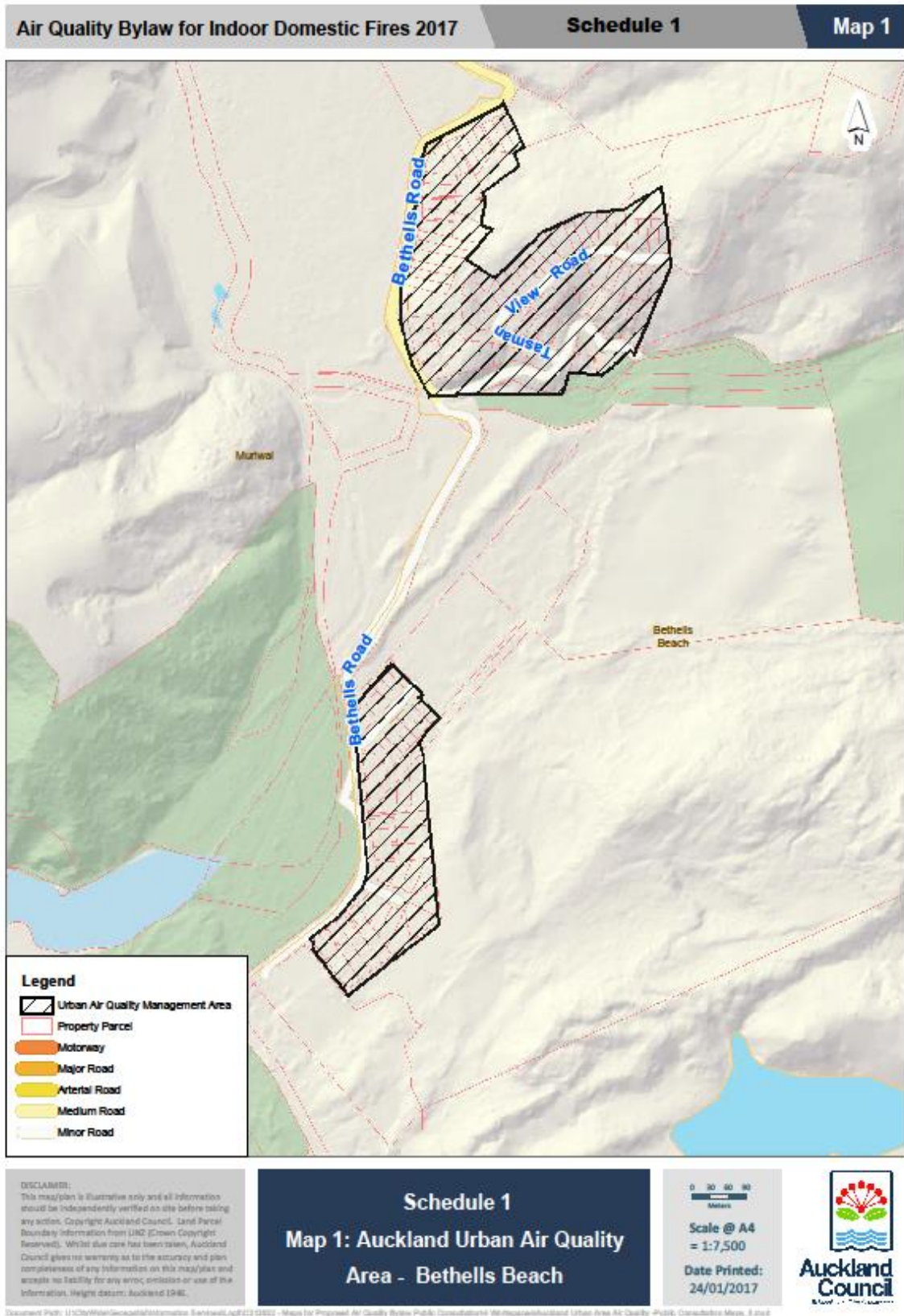
- (1) The council may use its powers under the Local Government Act 2002 to enforce this bylaw.

#### **9 Offences and penalties**

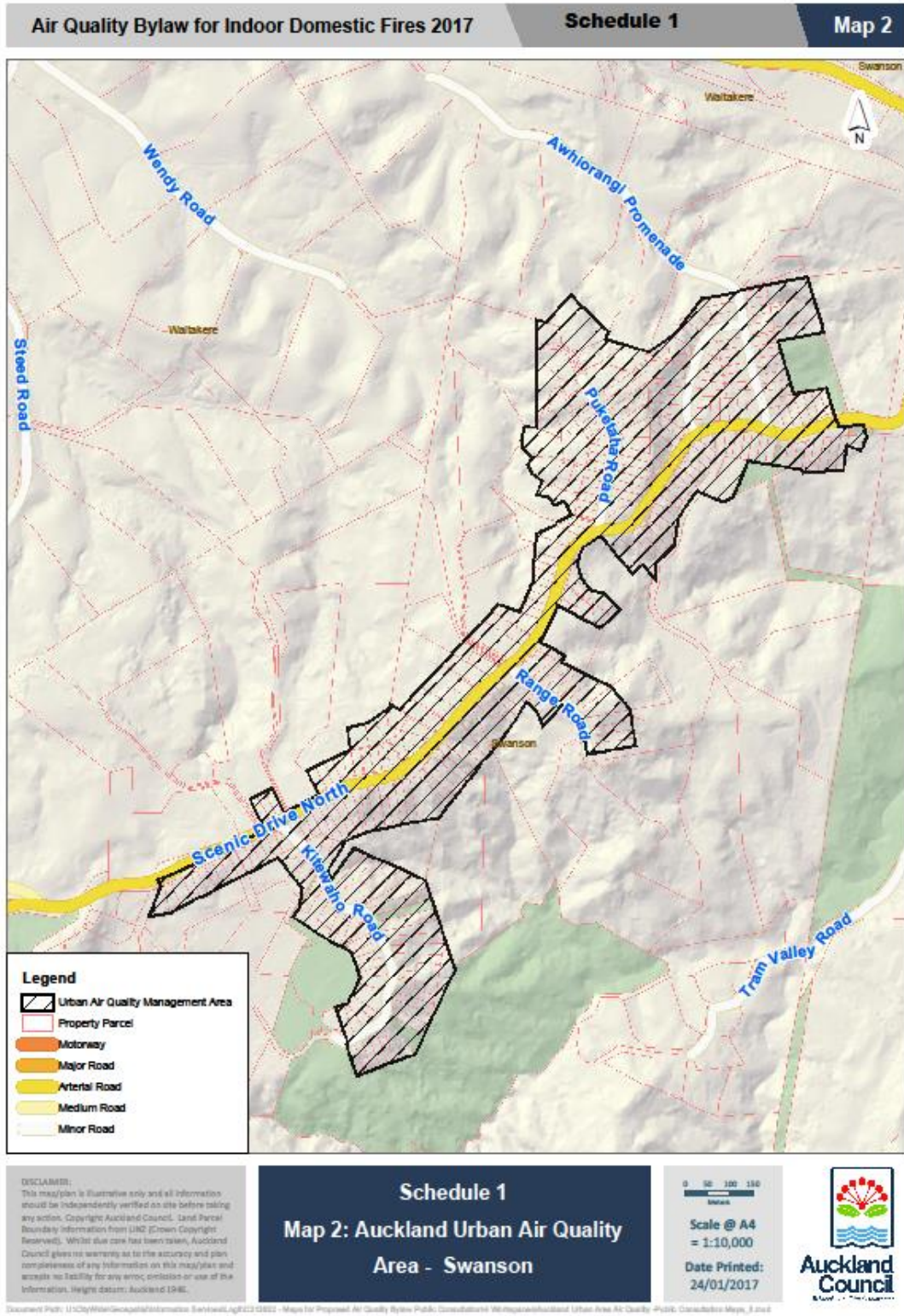
- (1) A person who fails to comply with this bylaw commits an offence against section 239 of the Local Government Act 2002 and is liable on conviction to the penalties set out in section 242 (4) of the Local Government Act 2002.

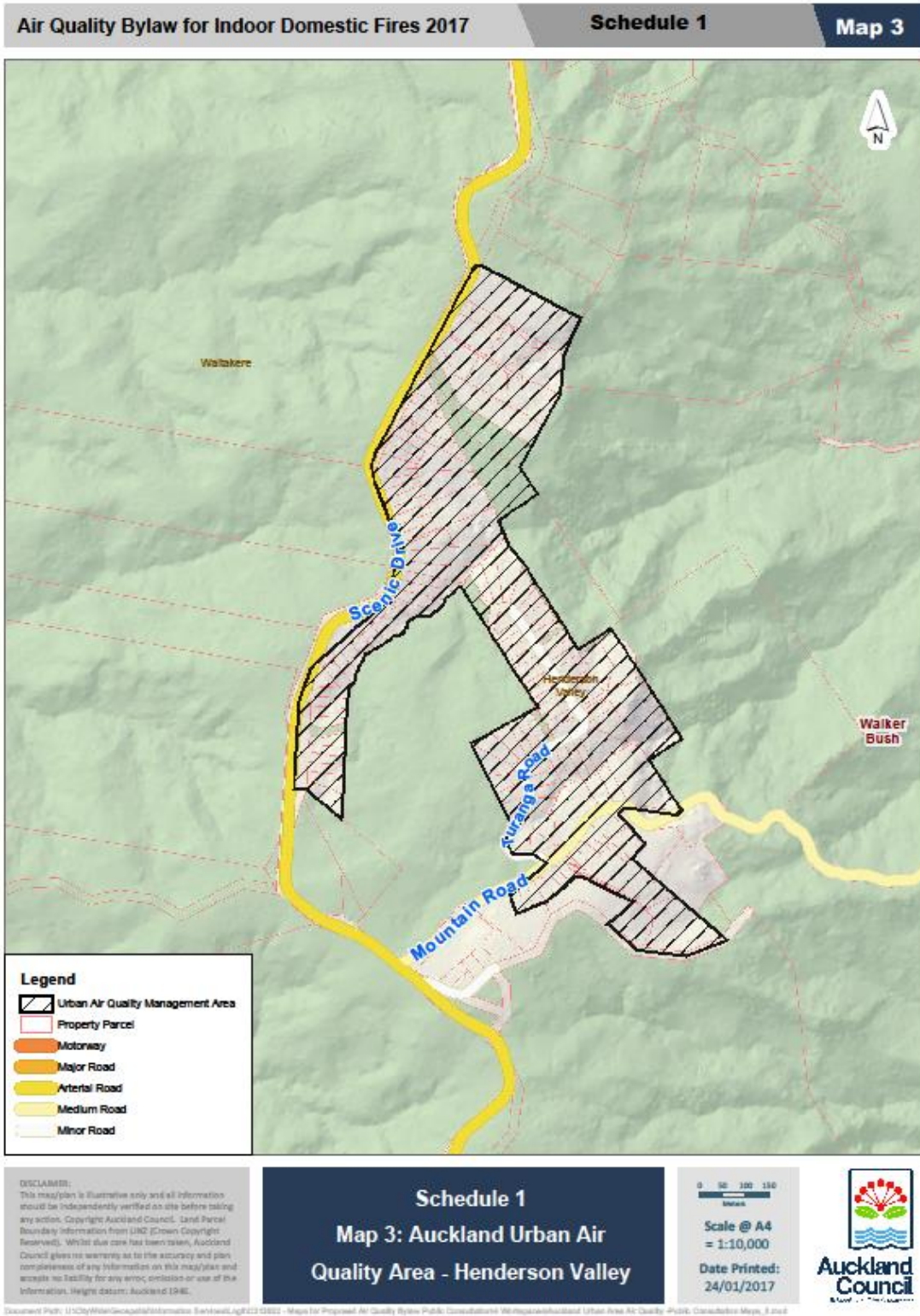
***Explanatory note:*** *As at 25 May 2017, a penalty in relation to this bylaw relates to an offence for which a person is liable on conviction to a fine not exceeding \$20,000.*

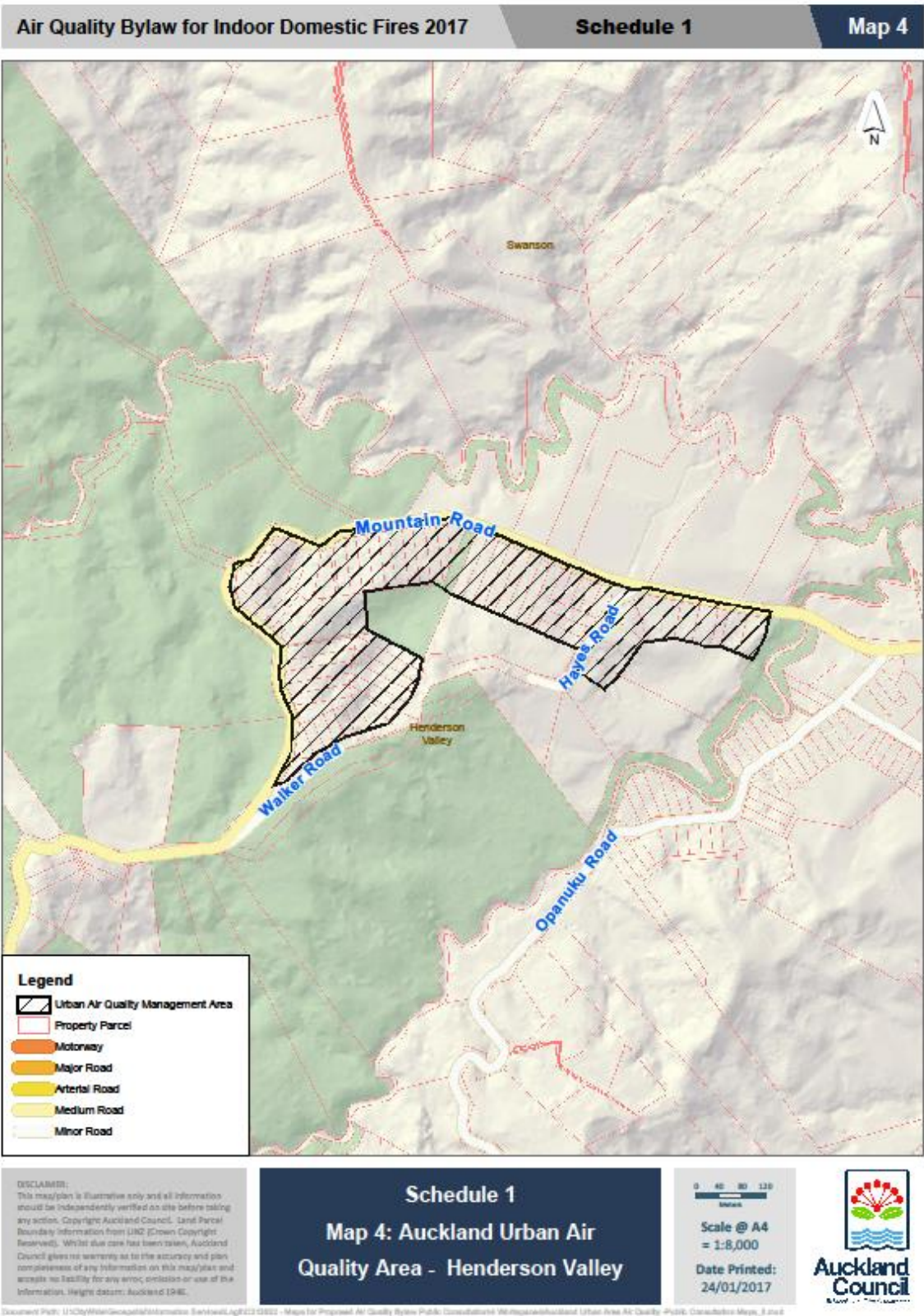
**SCHEDULE 1: Maps of urban areas in the Waitākere Ranges that are included in the Auckland Urban Air Quality Area**

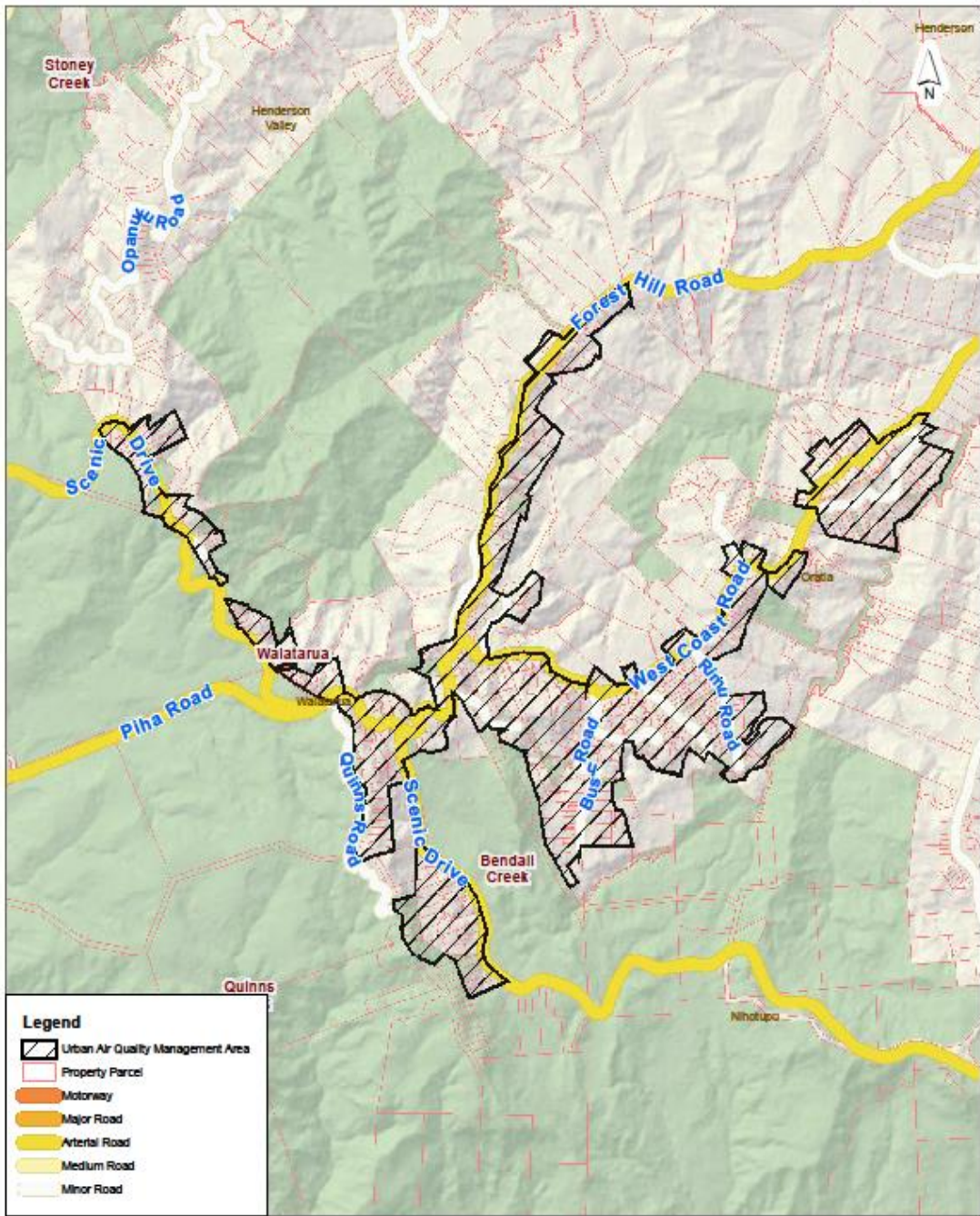












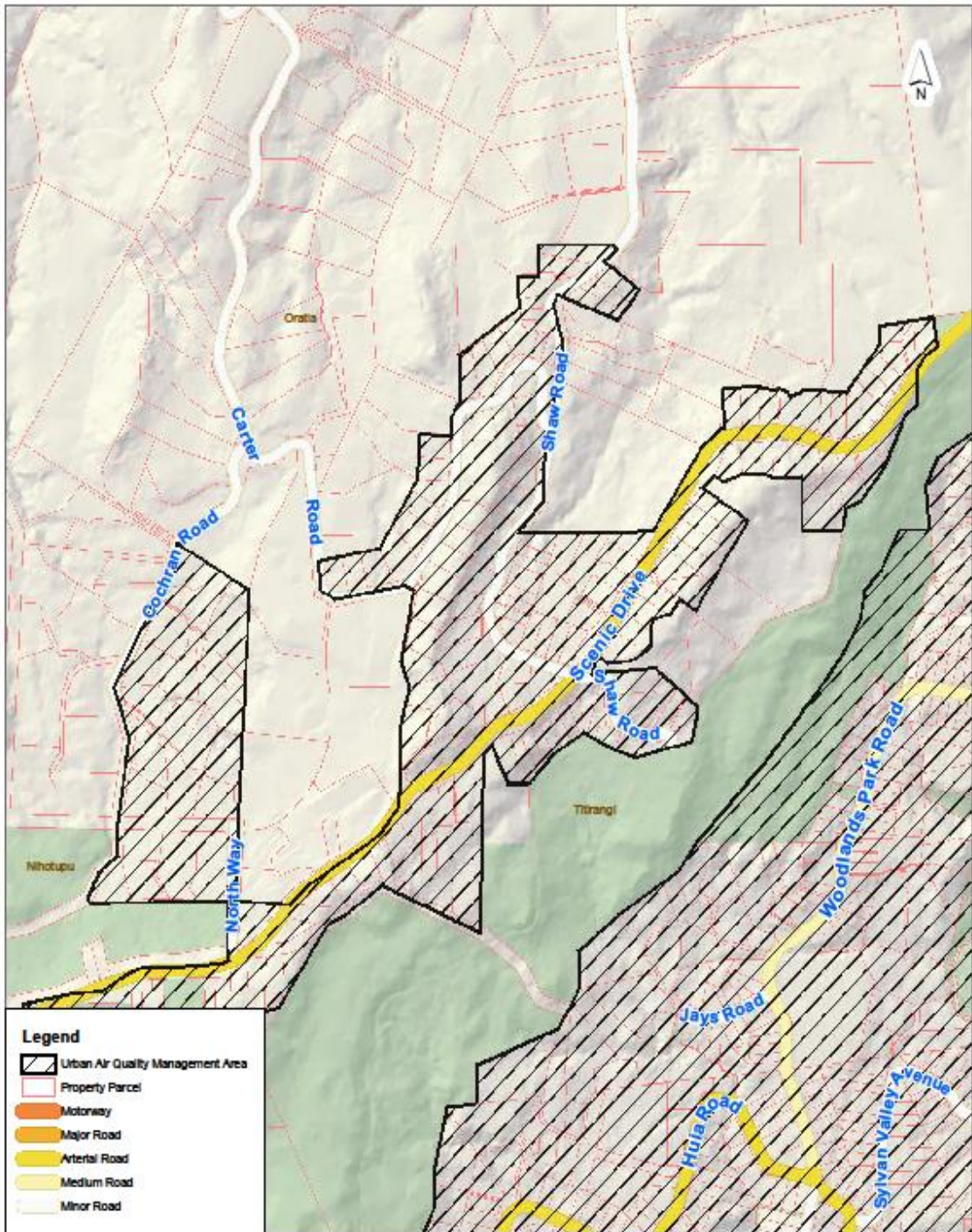
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**Schedule 1**  
**Map 5: Auckland Urban Air Quality Area - Oratia and Waatarua**

0 100 200 300  
 Metres  
 Scale @ A4  
 = 1:21,031  
 Date Printed:  
 24/01/2017



Document Path: I:\CityWater\Geospatial\Information Systems\GIS\2017 - Maps for Proposed Air Quality Bylaw Public Consultation\Work\Geospatial\Urban Area Air Quality\Public Consultation Maps\_3.mxd



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**Schedule 1**  
**Map 6: Auckland Urban Air Quality Area - Oratia and Titirangi**

0 40 80 120  
 Metres  
 Scale @ A4 = 1:8,500  
 Date Printed: 24/01/2017



**Additional information to the Air Quality Bylaw for Indoor Domestic Fires 2017**

This document is for information purposes only and does not form part of this bylaw.

The Additional Information contains matters related to this bylaw; and information to help users understand, use and maintain this bylaw.

The Additional Information may be updated at any time, without any formal process.

**Contents:**

| <b>Section</b> | <b>Description</b>                  |
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| <b>2</b>       | <b>Related documents .....</b>      |
| <b>3</b>       | <b>Register of controls .....</b>   |
| <b>4</b>       | <b>Enforcement powers .....</b>     |
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| <b>6</b>       | <b>Monitoring and review .....</b>  |

**Section 1: History of bylaw**

| Action      | Description   | Date of decision   | Decision reference         | Commencement |
|-------------|---|--|----------------------------|--------------|
| <b>Make</b> | <i>Air Quality Bylaw for Indoor Domestic Fires 2017</i> | Decision by Auckland Council's Governing Body on 25 May 2017 | Resolution number XXXXXXXX | 1 June 2017  |

**Section 2: Related documents**

| Title  | Description   | Location |
|--|---|----------|
| <b>Reports on the Air Quality Bylaw:</b>   |   |          |
| Report to the Regulatory Committee:<br><i>Statement of Proposal: Draft Air Quality Bylaw for Indoor Domestic Fires</i><br>File No.: CP2016/25312   |   |          |
| Resolutions of the Regulatory Committee on 9 February 2017   | Resolution number REG/2017/6<br>The resolution covers the appointment of the Hearing Panel  |          |
| Report from the Regulatory Committee to the Governing Body<br>File No.: CP2017/01455   |   |          |
| Resolutions of the Governing Body on 23 February 2017  | Resolution number GB/2017/15  |          |
| Report to the Hearing Panel:<br><i>Background Report for the Hearing of Submissions on the Draft Air Quality Bylaw for Indoor Domestic Fires</i><br>Report considered at Public Hearing on 20 April 2017                 | Submitters heard; no resolutions  |          |
| Public Deliberations held on 28 April 2017<br>Document tabled at the meeting:<br><i>Draft Air Quality Bylaw for Indoor Domestic Fires</i><br><i>Deliberations: Staff recommendations for final bylaw (28 April 2017)</i> | Decisions of the Hearing Panel were recorded in the document. Those decisions are formally documented in the Hearing Panel's report to the Governing Body (CP2017/07725). |          |
| Report of the Hearing Panel to the Governing Body:<br><i>Hearing Panel Report on the proposed Air Quality Bylaw for Indoor Domestic Fires</i><br>File No.: CP2017/07725  |   |          |
| Resolutions of the Governing Body on 25 May 2017 on making the bylaw   | Resolution number XXXXXXXX  |          |
| Public notice  |   |          |
| <b>Auckland Community Outcomes:</b>  |   |          |
| The Auckland Plan  | Chapter 7 "Auckland's Environment" covers air quality issues  |          |
| The Unitary Plan   | Air quality is addressed in:<br>Chapter B Regional Policy Statement, B7 – Natural Resources, B7.5 Air; and<br>Chapter E Auckland-wide, E14 Air quality                    |          |

## Attachment A: Air Quality Bylaw for Indoor Domestic Fires 2017

|   |   |  |
|---|---|--|
| <p>Schedule of Issues of Significance to Maori in Tamaki Makarau</p> <p>Part One: Schedule of Issues of Significance to Maori in Tamaki Makarau (page 13)</p> <p>Part Two: The Māori Plan for Tamaki Makaurau (pp. 82-85)</p> | <p>Principle Two: Kaitiakitanga</p> <p>Issue of Significance:</p> <p>2.0 Environmental Protection and Management</p> <p>The Māori Plan for Tamaki Makaurau highlights the principle of kaitiakitanga, the exercise of guardianship, in relation to nature and environmental assets in Auckland.</p> |  |
| <p>Whiria te muka tangata - Māori Responsiveness Framework</p>  | <p>One of the lenses in the framework is to value Te Ao Maori.</p> <p>The Te Ao Māori lens focuses on Māori knowledge, expertise, and practises, developed over hundreds of years of observation and interaction with the environment in Tāmaki Makaurau.</p>                                       |  |
| <p>Auckland Council Long –Term Plan 2015-2025</p>   | <p>Volume 2</p>   |  |
| <p><b>National Legislation and Regulations:</b></p>   |   |  |
| <p>Local Government Act 2002</p>  | <p>Bylaws are made under sections 145 and 146.</p> <p>The bylaw development process must meet the requirements noted in sections 155-157.</p>   |  |
| <p>The Resource Management (National Environmental Standards for Air Quality) Regulations 2004</p>  | <p>The Resource Management (National Environmental Standards for Air Quality) Regulations 2004 specify national air quality standards for a wide range of issues.</p> <p>There are specific standards for new wood burners installed on sites less than 2 ha in area (regulations 23 and 24).</p>   |  |
| <p>Interpretations Act 1999</p>   | <p>Provides for certain matters related to the interpretation of bylaws</p>   |  |

### Section 3: Register of controls

| Action | Description | Date of decision | Decision reference | Commencement |
|--------|-------------|------------------|--------------------|--------------|
|        |             |                  |                    |              |
|        |             |                  |                    |              |



### Section 4: Enforcement powers

| Legislative provision   | Description  |
|---|--|
| Part 8 of the Local Government Act 2002;<br>Subpart 2:<br>Enforcement powers              | 162- Injunctions restraining commission of offences and breaches of bylaws<br>163 – Removal of works in breach of bylaws<br>164 - Seizure of property not on private land<br>165 - Seizure of property from private land<br>168 - Power to dispose of property seized and impounded<br>171 - General power of entry<br>172 - Power of entry for enforcement purposes<br>175 - Power to recover for damage by wilful or negligent behaviour<br>176 - Costs of remedying damage arising from breach of bylaw<br>178 - Enforcement officers may require certain information |
| Part 8 of the Local Government Act 2002;<br>Subpart 3: Powers in relation to private land | 185 - Occupier may act if owner of premises makes default<br>186 - Local authority may execute works if owner or occupier defaults<br>187 - Recovery of cost of works by local authority<br>188 - Liability for payments in respect of private land  |

### Section 5: Offences and penalties

| Legislative provision     | Description of offence   | Fine | Infringement fee | Other penalty |
|---------------------------|--|------|------------------|---------------|
| Local Government Act 2002 | <b>239 Offences in respect of breaches of bylaws (other than alcohol bans)</b><br>Every person commits an offence and is liable on conviction to the penalty set out in section 242(4) or (5) (as the case may be), who breaches a bylaw made under Part 8 (other than a bylaw made under section 147).  |      |                  |               |
| Local Government Act 2002 | <b>242 Penalties for offences</b><br>(4) A person who is convicted of an offence against a bylaw made under Part 8 (other than a bylaw made under Part 8 referred to in subsection (5)) is liable to a fine not exceeding \$20,000.<br><br>(5) A person who is convicted of an offence against a bylaw made under section 146(a)(iii) (which relates to trade wastes) is liable to a fine not exceeding \$200,000. |      |                  |               |

### Section 6: Monitoring and review

| Performance indicator | Measured by | Target |
|-----------------------|-------------|--------|
|                       |             |        |
|                       |             |        |