

DRAFT - NOT COUNCIL POLICY

BYLAW CLAUSES 9(1), (2), (5)(a) – Prohibit or restrict access to parks or beaches

STATUTORY OBLIGATIONS/POWERS

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

ISSUE IN 2013

- No specific data on these issues in 2013.

OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To control activities and behaviour on parks and beaches relating to safety and nuisance, and to manage and protect from damage or misuse of land, assets or structures.
- Auckland Council and Auckland Transport made bylaws to:
 - restrict or close entry “to all or any portion of a park or beach during ... times ... necessary to prevent damage to ensure public safety in or around, or allow maintenance of the park or beach”
 - temporarily set aside whole or part of a park or beach “for the exclusive use of particular groups or for specified activities during set times. The council may charge for the exclusive use ...”.
 - prohibit entry to “a park or beach or any part thereof that is closed to the public”.
- Powers to enforce the Bylaw include a court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage or power to request name and address.
- Penalties for breaches of the Bylaw include a maximum \$20,000 court fine or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

BYLAW IMPLEMENTATION SINCE 2013

- Bylaw is used to address nuisance (i.e. trespassers), prevent damage to surfaces and minimise risk to safety (i.e. ground saturation, flooding, foreshore collapse, contamination, unsafe waters), land maintenance (i.e. mowing, tree servicing) and to manage events (i.e. swims, triathlons, festivals, weddings).
- Park rangers implement Bylaw for events using a permit approval system.
- Council and park rangers retroactively respond to complaints from public or act on referral by police.
- Enforcement officers and park rangers apply a graduated enforcement approach (i.e. starting with voluntary compliance and education). Fencing barriers or signage is used to restrict access on sport fields, local parks, domains, reserves and regional parks.
- If persons do not comply with requests, park rangers involve Police and use trespass powers.
- No recorded prosecutions.

ISSUE IN 2018

- Public safety, nuisance, damage, maintenance, and use of public places.
- No specific data or complaints on issues in 2017.
- 20 per cent of Aucklanders surveyed in June 2017 witnessed a member of the public entering a closed park or beach in the past 12 months. Of those surveyed, 72 per cent felt annoyed, frustrated, angry or fearful.

OUTCOME SOUGHT IN 2018

- To ensure public safety, minimise nuisance and damage, manage maintenance and use of parks and beaches from misuse.

BYLAW EVALUATION

Still a problem requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can help address.
- ✓ For beaches, there **are no** feasible alternatives for restricting or closing access:
 - Under the Marine and Coastal Area Act 2011 the council (unlike parks) does not own areas between mean high-water springs and the outer limits of the territorial sea. The council can however, use bylaws to manage use of this area.
 - Council may also not own areas of beach above mean high-water springs. Parts of beaches may be owned privately, or be roads under the Land Transport Act 1998 or the Local Government Act 1974.
- ✗ For Parks, there **are** feasible alternatives for restricting or closing access:
 - As a fee simple landowner of parks, council has the right to restrict access, close property, trespass individuals or grant leases, hires or bookings. This power was used to close tracks at Chelsea Estate Heritage Park (North Shore) due to suspected kauri dieback or can be used to grant access to parks, picnic spots or community halls (i.e. Freemans Bay Community Hall, picnic spots on Long Bay Regional Park, or use of Sunnynook Park by the Glenfield Rugby League Club.

<ul style="list-style-type: none"> • Council powers under the Trespass Act 1980 (s3) can address trespassers on any place who neglect or refuse to leave after a warning. Penalties include a fine not exceeding \$1,000 or 3 months imprisonment. <p>✗ There are feasible alternatives to manage events and address nuisance behaviour on parks and beaches:</p> <ul style="list-style-type: none"> • Council under the Trading and Events in Public Places Bylaw 2015 issues permits for events on any park or beach i.e. weddings, private functions, organised gathering, festivals, concerts, celebrations, multi-venue sports events, marathons, duathlons or triathlons. Bylaw excludes indoor performance or private function, tasting and sampling activity, giveaway, sports practice or training. • Council powers under the Public Safety and Nuisance Bylaw 2013 (s6(1)(a)) can address wilful disturbance or interference with any person in their use or enjoyment of that public place. Penalties include a court fine (maximum of \$20,000). <p>Note: Other alternatives have been investigated but are not feasible because they only achieve some (not all) objectives. They include: Reserves Act 1977 (limited to only some reserves); Biosecurity Act 1993 (limited to pests or unwanted organisms); and Regional Parks Management Plan 2010 (requires bylaw enforcement).</p>
<p>Bylaw effective / efficient?</p> <ul style="list-style-type: none"> ✓ Bylaw is used regularly. Operational staff support retention of these clauses. ✓ For beaches, it provides a mechanism to temporarily restrict or close entry. ✓ For parks, while a bylaw may be unnecessary (can use powers under the Trespass Act 1980), a bylaw could be enforced using infringement penalties if central government makes the necessary regulations. ✗ Bylaw duplicates provisions in the Trading and Events in Public Places Bylaw 2015. ✗ Enforcement is difficult. Offenders may have left area, flee or resume entry once officers leave.
<p>Bylaw clearly written?</p> <ul style="list-style-type: none"> ✗ No. Bylaw clauses and structure are wordy, difficult to understand and do not provide sufficient transparency as to how decisions are made.
<p>Public aware of bylaw?</p> <ul style="list-style-type: none"> ✗ No. Likely to be low.
<p>Bylaw fit for the future?</p> <ul style="list-style-type: none"> ✗ No. Bylaw is too wordy and not clearly written, so the existing wording will need to be amended.
<p>Any Bill of Rights implications?</p> <ul style="list-style-type: none"> ✓ Does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act.
<p>SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION: A bylaw is the most appropriate way to ensure public safety, minimise nuisance and damage, and manage maintenance and use of parks and beaches from misuse now and in the future. The Bylaw is not the most appropriate form of bylaw because the clauses and structure are too wordy, difficult to understand, do not provide sufficient transparency as to how decisions are made, and duplicate provisions in the Trading and Events in Public Places Bylaw 2015. The Bylaw does not give rise to any implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.</p>

OPTIONS

<p>Option 1: Status quo - Retain Bylaw clause</p> <ul style="list-style-type: none"> • Manages the use of parks and beaches. • Bylaw prohibits or restricts access to parks or beaches. • Council responds to complaints. 	<p>Option 2: (RECOMMENDED) Amend Bylaw to improve clarity and certainty</p> <ul style="list-style-type: none"> • Manages the use of parks and beaches. • Bylaw amended to remove duplication with Trading and Events in Public Places Bylaw 2015 (events bylaw to be amended if required). • Bylaw clauses and structure amended to be more concise, easier to read and to provide guidance on how decisions will be made. • Council responds to complaints. 	<p>Option 3: Revoke Bylaw clause – Rely on existing regulations</p> <ul style="list-style-type: none"> • Manages the use of parks and beaches. • Delete Bylaw clauses. • Council uses powers under Local Government Act 2002, Trespass Act 1980, Trading and Events in Public Places Bylaw 2015, and general nuisance clause in amended Public Safety and Nuisance Bylaw.
<p>Effectiveness and efficiency:</p> <ul style="list-style-type: none"> ✓ Bylaw used. ✓ Bylaw helps to restrict or close entry to all or parts of a beach. ✗ Bylaw clauses and structure wordy, difficult to understand, do not provide sufficient transparency as to how decisions are made, and duplicate provisions of the Trading and Events in Public Places Bylaw 2015. 	<p>Effectiveness and efficiency:</p> <ul style="list-style-type: none"> ✓ Bylaw used. ✓ Bylaw more concise, easier to read, and provides guidance on how decision to restrict or close access will be made. ✓ Council approach streamlined (removes duplication with Trading and Events in Public Places Bylaw 2015). 	<p>Effectiveness and efficiency:</p> <ul style="list-style-type: none"> ✗ Existing legislation doesn't fully prohibit or restrict access to all beaches. There will be regulatory gaps.
<p>Bill of Rights implications:</p> <ul style="list-style-type: none"> ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990. 	<p>Bill of Rights implications:</p> <ul style="list-style-type: none"> ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990. 	<p>Bill of Rights implications:</p> <ul style="list-style-type: none"> - Criteria not applicable for non-bylaw option.
<p>Fit for future:</p> <ul style="list-style-type: none"> - See effectiveness and efficiency. 	<p>Fit for future:</p> <ul style="list-style-type: none"> - See effectiveness and efficiency. 	<p>Fit for future:</p> <ul style="list-style-type: none"> - See effectiveness and efficiency.
<p>Māori impact/risk:</p> <ul style="list-style-type: none"> • May have impact as Māori are kaitiaki of the natural environment. 	<p>Māori impact/risk:</p> <ul style="list-style-type: none"> • May have impact as Māori are kaitiaki of the natural environment. 	<p>Māori impact/risk:</p> <ul style="list-style-type: none"> • May have impact as Māori are kaitiaki of the natural environment.
<p>SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION: The Bylaw should be amended (Option 2) to address public safety, minimise nuisance and damage, and manage maintenance and use of parks and beaches from misuse. Taking this approach will improve certainty (Bylaw easier to read and understand) and will streamline council regulations.</p>		

References:

- Local Government Act 2002 s145, s156, s162, s163, s164-168, s171-174, s176, s178.
- Health Act 1956 s29, s64, s66(2), s128.
- Statement of Proposal - Review of Public Places / Safety and Nuisance Bylaws December 2012 pp 13, 50.
- Public Safety and Nuisance Bylaw Review Findings Report 2017 pp 80, 81, 82.
- Information from Licensing and Regulatory Compliance and Parks Sports and Recreation departments.
- Community Occupancy Guidelines, Auckland Council, 2012.

DRAFT – NOT COUNCIL POLICY

BYLAW CLAUSE 9(3), (4) and (7) – Recreational beach activities and controls specified by the council

STATUTORY OBLIGATIONS/POWERS

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

ISSUE IN 2013

- Concerns about set-netting and crab potting activities at Omaha Beach.
- Concerns about fishing lines entangling swimmers and walkers from beach-based fishers along Buckland's Beach.
- Debris such as fish hooks and fish skeletons left behind are unsightly and dangerous.
- Potential safety risks to other beach goers, including offensive and intimidatory conduct.

OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To control activities and behaviours on parks and beaches relating to safety and nuisance, and to manage and protect from damage or misuse of land, assets or structures.
- Auckland Council made a Bylaw that allowed a delegated authority to restrict recreational activities at a specified beach for a specified time to ensure public safety and prevent nuisance.
- Powers to enforce the Bylaw include a court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage, or power to request name and address.
- Penalties for breaches of the Bylaw include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

BYLAW IMPLEMENTATION SINCE 2013

- Adoption of controls delegated to staff who deferred decisions to Regulatory Committee due to significance.
- Bylaw only been used to adopt set-net controls (but can be used for any recreational activity).
- The Regulatory Committee adopted seasonal set-net controls at Army Bay and Te Haruhi Bay within Shakespear Regional Park (November 2014), Arkles Bay (July 2015) and Omaha Beach (May 2016).

ISSUE IN 2018

- Public safety and nuisance.
- 19 per cent of Aucklanders surveyed in June 2017 had witnessed or experienced set-netting from a beach in the past 12 months. Of those surveyed, 61 per cent said they felt annoyed, frustrated or angry, fearful or threatened.
- Four complaints received in relation to crab potting for the period between November 2015 to March 2016.

OUTCOME SOUGHT IN 2018

- To ensure public safety and minimise nuisance to bathers and swimmers from other recreational activities.

BYLAW EVALUATION

Still an issue requiring a bylaw response? ✓ Yes. There is still an issue that regulation can help address.

✓ There are no feasible regulatory alternatives.

- The Ministry for Primary Industries (MPI) is responsible for regulating fisheries resources and fishing equipment and issuing infringement notices.
- Council powers under Litter Act 1979 limited to leaving bait or fish offal. Penalties include a fine up to \$5,000.
- Police powers under the Summary Offences Act 1981 are limited to offensive and disorderly behaviour, and intimidation.
- Council powers under the Public Safety and Nuisance Bylaw 2013 (s6(1)(a)) are limited to wilful obstruction, disturbance or interference. However, the clause could be amended to include negligence.
- None of the above alternatives address the full range of public safety and nuisance issues.

Bylaw effective/efficient?

✓ Controls appear to have reduced conflicts between beach users.

✓ Compliance has been largely voluntary. Officers have not been required to actively enforce the controls.

✗ Findings identified concerns about the decision-making criteria, e.g. the level of evidence required to justify a control and obtaining the views of people who use set-nets.

✗ Enforcement difficult - activity mostly occurs after dark. Officers respond to high priority callouts after hours.

Bylaw clearly written? ✗ No. Definition of recreational beach activities and the decision-making criteria is unclear. E.g. are bathers and swimmers the priority users? What criteria must be met to adopt a control? Bylaw structure is also unclear which makes it difficult to read.

Public aware of bylaw? ✓ High awareness of controls due to media coverage/council signage.		
Bylaw fit for the future? ✗ No. Bylaw structure and form lacks clarity.		
Any Bill of Rights implications? ✓ Does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act.		
SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION: A bylaw is the most appropriate way to address public safety and minimise nuisance to bathers and swimmers from other recreational activities. The Bylaw is not the most appropriate form because the Bylaw structure and form lack clarity. The Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.		
OPTIONS		
Option 1: Status quo – Retain Bylaw clause <ul style="list-style-type: none"> Manages the use of beaches. Bylaw allows a delegated authority to restrict recreational activity on beaches, during such times and/or seasons considered necessary, to ensure public safety and prevent nuisance. Council responds to complaints. 	Option 2: (RECOMMENDED) Amend Bylaw clause and structure for clarity. <ul style="list-style-type: none"> Bylaw aim and implementation same as Option 1. Bylaw in Option 1 amended for clearer structure, decision-making criteria and tiered delegations based on nature of control. Public Safety and Nuisance Bylaw clause 6(1)(a) amended to better address repeated actions in non-control areas, that obstruct, disturb or interfere with any other person in their use or enjoyment of a beach. 	Option 3: Revoke Bylaw clause – Rely on existing legislation <ul style="list-style-type: none"> Manages the effects of activity. Bylaw clause deleted. For set netting this means relying on MPI's rules and Net Code of Practice. Litter Act 1979 to address bait and litter left on beaches. Police under Summary Offences Act 1981 to address offensive and disorderly behaviour, and intimidation. Clause 6(1)(a) of the Public Safety and Nuisance Bylaw addresses wilful obstruction, disturbance or interference (amendment required).
Effectiveness and efficiency: <ul style="list-style-type: none"> ✓ Bylaw enables the issues to be addressed where they arise. ✗ Bylaw structure and form make Bylaw difficult to understand. ✗ Bylaw is difficult to enforce. 	Effectiveness and efficiency: <ul style="list-style-type: none"> ✓ Bylaw enables the issues to be addressed where they arise. ✓ Bylaw structure, wording, decision-making criteria and delegations make Bylaw easier to understand. ✗ Bylaw is difficult to enforce. 	Effectiveness and efficiency: <ul style="list-style-type: none"> ✓ Enables individual issues to be addressed where they arise. ✓ Avoids duplication with existing regulations.
Bill of Rights implications: <ul style="list-style-type: none"> ✓ Bylaw does not give rise to any unjustified regulations and is not inconsistent with the New Zealand Bill of Rights Act 1990. 	Bill of Rights implications: <ul style="list-style-type: none"> ✓ Bylaw does not give rise to any unjustified regulations and is not inconsistent with the New Zealand Bill of Rights Act 1990. 	Bill of Rights implications: <ul style="list-style-type: none"> - Criteria not applicable for non-bylaw option.
Fit for the future: <ul style="list-style-type: none"> - See effectiveness and efficiency. 	Fit for the future: <ul style="list-style-type: none"> - See effectiveness and efficiency. 	Fit for the future: <ul style="list-style-type: none"> - See effectiveness and efficiency.
Māori impact/risk: <ul style="list-style-type: none"> There are no specific impacts for Māori. 	Māori impact/risk: <ul style="list-style-type: none"> There are no specific impacts for Māori. 	Māori impact/risk: <ul style="list-style-type: none"> There are no specific impacts for Māori.
SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION: The Bylaw should be amended (Option 2) to improve clarity around controls and recreational activities on beaches. Taking this approach continues to enable the council to respond to complaints with greater certainty.		

References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 25.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 36, 141, 144.
- Omaha beach report (Regulatory and Bylaws Committee 19 July 2016).
- Proposed summer set net control at Shakespeare Regional Park beaches (Regulatory and Bylaws Committee 17 Nov 2014).
- Local Government Act 2002 s145, s146, s162, s163, s164-168, s171-174, s176, s178, s242(4); Health Act 1956 s64, s66, s128.

DRAFT – NOT COUNCIL POLICY

BYLAW CLAUSE 9 (5)(b)(i)(ii) – Use of an aircraft on a park or beach

STATUTORY OBLIGATIONS/POWERS

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

ISSUE IN 2013

- Public safety, access to parks and beaches and misuse of public places.
- Park rangers identified the need to address the potential issue of aeroplanes or helicopters landing in regional parks. To avoid confusion this control was extended to include beaches.
- No specific data available on these issues in 2013.

OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To control activities and behaviours on parks and beaches relating to safety and nuisance, and to manage and protect from damage or misuse of land, assets or structures.
- Auckland Council and Auckland Transport made bylaws to prohibit the use of a park, beach, road or public transport infrastructure respectively to “land or take off in an aircraft ...” or to “... set down, pick up, or recover any person, animal, carcass, or article of any description ... “except in the case of an emergency or with prior written approval of the council” (e.g. paragliding is permitted in certain regional parks’ sites).
- Aircraft means “a fixed wing aircraft, helicopter, glider, dirigible, hot air balloon, parachute, hang glider, para glider, kite or model aircraft, whether powered or not powered.”
- Powers to enforce the Bylaw include: court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage or power to request name and address.
- Penalties for breaches of the Bylaw include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

BYLAW IMPLEMENTATION SINCE 2013

- No record of incidents, complaints or prosecutions.

ISSUE IN 2018

- Public safety, nuisance, damage and misuse of public places.
- Aircrafts are rarely used on parks and beaches. No record of complaints or incidents.
- Of 600 film permits issued in 2017, only one was for helicopter use and this was approved under the Trading and Events in Public Places Bylaw 2015.
- Issues not included in qualitative or quantitative surveys of Aucklanders in June 2017.

OUTCOME SOUGHT IN 2018

- To ensure public safety, minimise nuisance, damage and misuse of public places from using aircrafts on parks and beaches.

BYLAW EVALUATION

Still a problem requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can help address.
- ✓ There are **no** feasible alternatives to a bylaw to prohibit (unless approved) aircraft on parks and beaches:
 - Council powers under the Reserves Act 1977 do not apply to all parks or beaches.
 - The Civil Aviation Act 1990 allows aircraft to land where suitable and drop off or pick up items, where persons or property are not endangered.
 - Council powers under the Auckland Council Trading and Events in Public Places Bylaw 2015 require approval to use aircraft in public places but this is limited to trading, events and filming.
 - The Conservation Act 1987 prohibits aircraft in a conservation area not certified as an aerodrome unless in an emergency (s17ZF), but not all parks and beaches are conservation areas.
 - Clause 6(1)(c) of the Public Safety and Nuisance Bylaw 2013 (to be amended) allows the use of anything (including aircraft) in any public place provided it does not cause a nuisance or pose safety risks.
 - Council powers under the Unitary Plan do not specifically Landing aircraft on parks. It could be permitted as a temporary activity via resource consent if it met the time limits and noise standards in chapter E40. If it was a regular activity it could be non-complying under H7 Open space zones, H7.9.1 (A1) activities not provided for.
 - Council powers under the Unitary Plan - F9 ‘Vehicles on beaches’ would likely apply to aircraft. The clause relies on the bylaw for enforcement. Consents can be issued for this activity under certain circumstances. A plan change would be a lengthy process even then a bylaw is likely to be a more effective regulatory tool.

Bylaw effective / efficient?	
<ul style="list-style-type: none"> - Bylaw has not been enforced to date, so it is difficult to assess effectiveness. ✓ No regulatory alternatives exist to prohibit aircraft use (unless approved) on parks and beaches. ✗ Bylaw clause overlaps with clause 6(1)(c) of the Public Safety and Nuisance Bylaw 2013 (particularly in relation to kites and model aircraft) and the Trading and Events in Public Places Bylaw 2015 (particularly in relation to filming). 	
Bylaw clearly written?	
✗ Bylaw clause is reasonably clearly written but can be difficult to understand as it duplicates other regulations.	
Public aware of bylaw? ✗ Likely to be low. There are no known public awareness initiatives.	
Bylaw fit for the future? ✗ No. Bylaw difficult to understand as it duplicates other regulations and legislation.	
Any Bill of Rights implications?	
✓ Does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act.	
Section 160(1) Local Government Act 2002 Recommendation:	
A bylaw remains an appropriate way to address public safety, minimum nuisance, damage, and misuse of parks and beaches from aircraft. The Bylaw is not the most appropriate form of bylaw because overlaps with other regulations and legislation can cause confusion. The Bylaw does not give rise to any implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.	
OPTIONS	
Option 1: Status quo - Retain current wording and implementation of Bylaw clause	Option 2: (Recommended) Amend Bylaw clause wording and form for clarity and to address overlaps with other regulations and legislation
<ul style="list-style-type: none"> • Bylaw prohibits using a park or beach to “land or take off in an aircraft or to set down, pick up, or recover any person, animal, carcass, or article of any description, unless in an emergency or with prior approval of council”. • Council responds to complaints/incidents. 	<ul style="list-style-type: none"> • Bylaw prohibits use of aircraft on parks and beaches to land, take off, pick up or drop off anyone or anything unless in an emergency or with prior approval of council. • Bylaw addresses overlaps with other regulations and legislation (further investigation required). • Council responds to complaints/ incidents.
Effectiveness and efficiency:	Effectiveness and efficiency:
<ul style="list-style-type: none"> ✓ Enables council enforcement. ✗ Overlaps provisions in other bylaws and legislation. 	<ul style="list-style-type: none"> ✓ Enables council enforcement. ✓ Bylaw helps manage use of public places (e.g. regional parks). ✓ Streamlines council regulations. ✓ Bylaw clearer and easier to read. ✓ No change to customer experience.
Bill of Rights implications:	Bill of Rights implications:
<ul style="list-style-type: none"> ✓ Does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990. 	<ul style="list-style-type: none"> ✓ Does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.
Fit for future:	Fit for future:
- See effectiveness and efficiency.	- See effectiveness and efficiency.
Māori impact/risk:	Māori impact/risk:
<ul style="list-style-type: none"> • May have impact as Māori are a kaitiaki of the natural environment. 	<ul style="list-style-type: none"> • May have impact as Māori are a kaitiaki of the natural environment.
Section 160(3) Local Government Act 2002 recommendation:	
The Bylaw should be amended (Option 2) to address public safety, minimum nuisance, damage, and misuse of parks and beaches from aircraft landing, taking off or depositing items or people. Taking this approach will make the Bylaw clause and form clearer, easier to read and streamline council regulations.	

References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 9, 28, 53.
- Civil Aviation Act 1990: Civil Aviation Rule: 91 and advice from the Civil Aviation Authority.
- Trading and Events in Public Places Bylaw 2015 and advice from Screen Auckland.

DRAFT - NOT COUNCIL POLICY

BYLAW CLAUSES 9(5)(c, d, g, h) – Prohibit or restrict certain activities on a park or beach

STATUTORY OBLIGATIONS/POWERS

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

ISSUE IN 2013

- No specific data on these issues in 2013.

OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To control activities and behaviour on parks and beaches relating to safety and nuisance, and to manage and protect from damage or misuse of land, assets or structures.
- Auckland Council made a bylaw to prohibit:
 - engaging “in any recreational activity that is prohibited or restricted by the council on a park or beach...”
 - entry or remaining “on ... a park or beach marked out for a recreational activity while that ... activity is in progress unless that person is a competitor, participant or official ...”.
 - entry or remaining on a park to carry out “any activity for which approval from the council is required under a parks management plan or other regulation without that approval”.
 - engaging “in any activity on a park that is prohibited or restricted by a parks management plan”.
- Powers to enforce the Bylaw include a court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage or power to request name and address.
- Penalties for breaches of the Bylaw include a maximum \$20,000 court fine or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

BYLAW IMPLEMENTATION SINCE 2013

- Bylaw is used in addition to other more specific Bylaw clauses.
- Bylaw is used to address nuisance behaviour and public safety risks (i.e. from kites, model aircrafts, drones, playing golf, shooting firearms and bows, hunting, poaching animals, riding quad-bikes, leaving litter), event management (i.e. triathlons, festivals), and misuse (i.e. by freedom campers, camping in bush areas).
- Bylaw officers and park rangers retroactively respond to complaints from public or on referral by police.
- A graduated compliance approach is used starting with voluntary compliance and education. If people do not cease nuisance behaviour, they are asked to leave. If they resist, Police are called and trespass powers used.
- Fencing and signage also used to prohibit / restrict entry.
- Council officers and rangers rely on Police in dangerous situations (i.e. criminal acts, remote areas, at night).
- Bylaw used to implement the Regional Parks Management Plan 2010 (see Table 1 for activity list).
- Park rangers also apply Reserves Act 1977 offences to all park and beach areas using a voluntary compliance and education approach (see Table 2 for activity list).

ISSUE IN 2018

- Safety, nuisance and misuse of public places.
- No specific data or complaints on issues in 2017.

OUTCOME SOUGHT IN 2018

- To ensure public safety, minimise nuisance and misuse of public places from certain activities on a park or beach.

BYLAW EVALUATION

Still a problem requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can help address.
- Depending on the issue, feasible alternatives may or may not exist (see Tables 1 and 2).
- In general there are no feasible alternatives to a bylaw to address issues on beaches.
- On parks Council, as landowner, can restrict access, trespass individuals, grant leases, hires or bookings and use the Trespass Act 1980 (s3). Penalties include a fine not exceeding \$1,000 or 3 months imprisonment.
- However, a bylaw or specific legislation provide stronger enforcement powers and penalties which can be more effective. Examples include the Trading and Events in Public Places Bylaw 2015, Traffic Bylaw 2015, Public Safety and Nuisance Bylaw 2013 (clauses 6, 8, 9), Litter Act 1979 and Freedom Camping Act 2011.

Note: Reserves Act 1977 is not a feasible alternative because not all parks and beaches are classified as a reserve.

Bylaw effective / efficient?

- ✓ Bylaw is used (and useful) to address people undertaking prohibited or restricted activities.
- ✓ Implements the Regional Parks Management Plan 2010.
- ✗ Prohibited or restricted activities not easily identifiable (i.e. need to look in Regional Parks Management Plan).

<ul style="list-style-type: none"> ✗ Bylaw clause duplicates or overlaps with other bylaw or legislative provisions (examples in Tables 1 and 2). ✗ Use of Bylaw to apply Reserves Act 1977 offences to all park and beach areas not enforceable (only advisory). ✗ Enforcement can be challenging. Offenders can flee / resume entry once officers leave. 	
Bylaw clearly written? <ul style="list-style-type: none"> ✓ No. Bylaw clauses and structure are wordy and difficult to understand (i.e. Bylaw refers to other restrictions that are difficult to find (what is the “recreational activity that is prohibited or restricted by the council”?) 	
Public aware of bylaw? <ul style="list-style-type: none"> ✗ Public awareness of Bylaw is likely to be low. 	
Bylaw fit for the future? <ul style="list-style-type: none"> ✗ No. Bylaw duplicates or overlaps other bylaw or legislative provisions, is wordy and difficult to understand. 	
Any Bill of Rights implications? <ul style="list-style-type: none"> ✓ Does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act. 	
SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION: A bylaw is the most appropriate way to prohibit and restrict certain activities on a park or beach now and in the future. The Bylaw is not the most appropriate form because it duplicates or overlaps with other bylaw or legislative provisions, is wordy and difficult to understand. The Bylaw does not give rise to any implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.	
OPTIONS	
Option 1: Status quo - Retain Bylaw <ul style="list-style-type: none"> • Manages the use of parks and beaches. • Bylaw prohibits or restricts certain activities on a park or beach. • Council responds to complaints. 	Option 2: (RECOMMENDED) Amend Bylaw to improve clarity <ul style="list-style-type: none"> • Manages the use of parks and beaches. • Bylaw intent same as Option 1. • Bylaw clause and structure amended to be easier to read. • Bylaw specifies all prohibited or restricted activities whether as amendments to this or other bylaws, or reference to other regulations as appropriate. • Council responds to complaints.
Effectiveness and efficiency: <ul style="list-style-type: none"> ✓ Bylaw helps to manage the use of parks. ✗ Bylaw wordy and unclear. 	Effectiveness and efficiency: <ul style="list-style-type: none"> ✓ Bylaw helps to manage the use of parks. ✓ Bylaw easier to understand (more concise, clear, structured). ✓ Streamlines regulation (removes duplication and overlaps with other bylaws and legislation).
Bill of Rights implications: <ul style="list-style-type: none"> ✓ Bylaw does not give rise to implications and is not inconsistent with the New Zealand Bill of Rights Act 1990. 	Bill of Rights implications: <ul style="list-style-type: none"> ✓ Bylaw does not give rise to implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.
Fit for future: <ul style="list-style-type: none"> - See effectiveness and efficiency. 	Fit for future: <ul style="list-style-type: none"> - See effectiveness and efficiency.
Māori impact/risk: <ul style="list-style-type: none"> • Māori may be concerned with rules around burial of body parts, placenta or disposal of ashes. 	Māori impact/risk: <ul style="list-style-type: none"> • Māori may be concerned with rules around burial of body parts, placenta or disposal of ashes.
SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION: The Bylaw should be amended (Option 2) to better ensure public safety, minimise nuisance and misuse of public places from certain activities on a park or beach. Taking this approach will make the Bylaw easier to understand and will streamline regulations.	

References:

- Local Government Act 2002 s145, s146, s162, s163, s164-168, s171-174, s176, s178.
- Health Act 1956 s29, s64, s66(2), s128.
- Statement of Proposal - Review of Public Places / Safety and Nuisance Bylaws December 2012 pp 13, 50.
- Public Safety and Nuisance Bylaw Review Findings Report 2017 pp 80, 81, 82.
- Information from Licensing and Regulatory Compliance and Parks, Sports and Recreation.

Table 1: Regional Park Management Plan Prohibited and Restricted Activities

Prohibited or restricted activity	Implementation instruments?
Prohibited activities (not allowed, exceptions can apply)	
<p>Prohibit recreational hunting on all regional parks. Pig hunting is managed by the council as part of pest control programmes and only undertaken by contractors in the Waitākere Ranges Regional Park, and by contractors or hunters in the Hūnua Ranges Regional Park who have council permits and follow the conditions set by council.</p>	<p>BYLAW CLAUSES 9(5)(c,d,g,h) Possible alternatives: 9(5)(l) PSN</p>
<p>Prohibit burial of bodies, body parts, placentas, animals and ashes on all regional parks with the exception of: a) park farm animals b) animals killed through biosecurity programmes, c) burials of marine mammals, and d) burials in cemeteries that haven't been formally closed.</p>	<p>BYLAW CLAUSES 9(5)(c,d,g,h) No alternatives identified at this time.</p>
<p>Prohibit the scattering of ashes on all parks with the exception of the scattering of ashes in cemeteries that haven't been formally closed.</p>	<p>BYLAW CLAUSES 9(5)(c,d,g,h) No alternatives identified at this time.</p>
<p>Prohibit all mining activities including prospecting, exploration and mining within regional parks except for mining activities approved by the Crown on Crown land administered as a regional park, where the Crown expressly reserved ownership of minerals.</p>	<p>BYLAW CLAUSES 9(5)(c,d,g,h) No alternatives identified at this time.</p>
<p>Prohibit set netting from regional parks.</p>	<p>BYLAW CLAUSES 9(5)(c,d,g,h) Possible alternatives: 9(3)(a) PSN</p>
<p>Prohibit people from bringing in, leaving or removing animals (including dogs) unless permitted in a bylaw or in this Plan, or with the prior approval of the council.</p>	<p>BYLAW CLAUSES 9(5)(c,d,g,h) Possible alternatives: 9(5)(l) PSN, Dog Management Bylaw 2012, Animal Management Bylaw 2015</p>
<p>Controlled activities (approval required)</p>	
<p>Abseiling on designated sites.</p>	<p>BYLAW CLAUSES 9(5)(c,d,g,h) No alternatives identified at this time.</p>
<p>Overnight stays in designated campgrounds and self-contained vehicles at designated parking areas. Designated campgrounds and parking areas include vehicle-accessible campgrounds, back-country campgrounds, sea kayak / waka trail campgrounds, certified self-contained parking areas and certified self-contained vehicle campgrounds (for certified self-contained vehicles including caravans).</p>	<p>BYLAW CLAUSES 9(5)(c,d,g,h) Possible alternatives: The Reserves Act 1977 (s44), Legacy Bylaw Provisions on Freedom Camping Act 2015</p>
<p>Overnight stays in designated baches and lodges on regional parks.</p>	<p>BYLAW CLAUSES 9(5)(c,d,g,h) No alternatives identified at this time.</p>
<p>Use of designated park locations that can be booked by park users for group activities. Designated sites are provided where the location is deemed able to handle high levels of repetitive use.</p>	<p>BYLAW CLAUSES 9(5)(c,d,g,h) No alternatives identified at this time.</p>
<p>Recreational horse riding on designated tracks and in designated areas on regional parks (casual and non-competitive trekking).</p>	<p>BYLAW CLAUSES 9(5)(c,d,g,h) Possible alternatives: 9(1)(c)(ii) and (iii) Animal Management Bylaw 2015</p>
<p>Use of meeting venues on regional parks.</p>	<p>BYLAW CLAUSES 9(5)(c,d,g,h) No alternatives identified at this time.</p>
<p>Vehicular access over internal park roads for people with limited mobility where public vehicular access is not normally provided on regional parks.</p>	<p>BYLAW CLAUSES 9(5)(c,d,g,h) No alternatives identified at this time.</p>

Discretionary activities (consent, lease or licence required)	
All commercial activities (including filming). Excludes filming undertaken for personal use and for no financial reward.	BYLAW CLAUSES 9(5)(c,d,g,h) Possible alternatives: Trading and Events in Public Places Bylaw 2015
Any activity that involves exclusive occupation of an area for extended period.	BYLAW CLAUSES 9(5)(c,d,g,h) No alternatives identified at this time.
Any activity that requires erection of permanent structures and buildings.	BYLAW CLAUSES 9(5)(c,d,g,h) Alternatives: 8(1)(b) and 8(2) PSN
All activities that exceed the informal group size.	BYLAW CLAUSES 9(5)(c,d,g,h) No alternatives identified at this time.
Activities involving amplified sound.	BYLAW CLAUSES 9(5)(c,d,g,h) Alternatives: 6(1)(b) PSN
Commemorative memorials, plaques and dedicated structures and plantings on regional parks.	BYLAW CLAUSES 9(5)(c,d,g,h) No alternatives identified at this time.
Research activities undertaken by external agencies in regional parks.	BYLAW CLAUSES 9(5)(c,d,g,h) No alternatives identified at this time.
Activities involving dogs, horses, vehicles and commerce undertaken on scenic reserves.	BYLAW CLAUSES 9(5)(c,d,g,h) Possible alternatives: Dog Management Bylaw 2012, Animal Management Bylaw 2015, 9(5) PSN

Note: PSN means the Auckland Council Public Safety and Nuisance Bylaw 2013.

Table 2: Reserves Act 1977 Offences

Offence (activity)	Implementation instruments?
Lighting Fires (s94(1)(a))	BYLAW CLAUSES 9(5)(c,d,g,h) Possible alternatives: 6(2)(b) PSN
Allows or liberates any animal on any reserve (s94(1)(b),(c))	BYLAW CLAUSES 9(5)(c,d,g,h) Alternatives: 9(5)(l) PSN
Plants any tree, shrub, or plant of any kind, on any reserve (s94(1)(d))	BYLAW CLAUSES 9(5)(c,d,g,h) Possible alternatives: 7(1)(e) and 7(3) PSN
Wilfully breaks or damages any fence, building, apparatus or erection on any reserve (s94(1)(e))	BYLAW CLAUSES 9(5)(c,d,g,h) Possible alternatives: 6(1)(a) PSN
Removal and wilful damage of anything on any reserve (s94(1)(f),(g))	BYLAW CLAUSES 9(5)(c,d,g,h) Possible alternatives: 6(1)(a) PSN
Occupies or uses any land in a reserve for cultivation or any other purpose (s94(1)(h))	BYLAW CLAUSES 9(5)(c,d,g,h) No alternatives identified at this time.
Takes, destroys, wilfully injures, disturbs or interferes with any animal or bird on any reserve (s94(1)(i))	BYLAW CLAUSES 9(5)(c,d,g,h) Alternatives: 9(5)(l) PSN
Deposits on any reserve (s94(1)(j))	BYLAW CLAUSES 9(5)(c,d,g,h) Possible alternatives: 7(1)(d) and 7(3) PSN (depositing any material or artefact)
Erects any building, sign, hoarding or apparatus on any reserve (s94(1)(k),(ka),(kb))	BYLAW CLAUSES 9(5)(c,d,g,h) Possible alternatives: 8(1)(a) PSN
Trespasses with any vehicle or boat or aircraft or hovercraft on any reserve (s94(1)(l),(m))	BYLAW CLAUSES 9(5)(c,d,g,h) Possible alternatives: 9(5)(j) PSN (any vehicle), 9(5)(n)(i)(ii) PSN (boats), 9(5)(b)(i)(ii) PSN (aircrafts / hovercrafts)
Uses, receives, sells or disposes any material from any reserve (s9(3))	BYLAW CLAUSES 9(5)(c,d,g,h) No alternatives identified at this time.
Possession or discharge of any weapon (s9(4))	BYLAW CLAUSES 9(5)(c,d,g,h) Possible alternatives: 9(5)(k) PSN

DRAFT – NOT COUNCIL POLICY

BYLAW CLAUSE 9(5)(e),(f),(j) – Vehicles on parks

STATUTORY OBLIGATIONS/POWERS

Council may make a bylaw about driving, parking or stopping vehicles, or leaving bicycles in parks to address public nuisance, obstruction, damage, health, safety and use of public places under the Local Government Act 2002 (s145, s146) and Health Act 1956 (s64).

ISSUE IN 2013

- Public safety, damage (including environmental, archaeological or historical sites), nuisance, obstruction and misuse of public places.

OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To control activities and behaviours on parks relating to safety and nuisance, and to manage and protect from damage or misuse of land, assets or structures.
- Auckland Council made a bylaw to prohibit “driving, parking, stopping, standing vehicles on any park in a way that may obstruct any entrance or thoroughfare” except where permitted.
- Powers to enforce the Bylaw include: court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage or power to request name and address.
- Penalties for breaches of the Bylaw include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

BYLAW IMPLEMENTATION SINCE 2013

- Bylaw officers reactively respond to complaints relating to vehicles on parks.
- Difficult to enforce. Offenders no longer there when officers respond. Issues often referred to police.
- Parks staff are not warranted to enforce the Bylaw. Regional park rangers rely on voluntary compliance to address issues. Most people are compliant but there are some serial offenders are not.
- Specific complaints data not available as it is captured under general nuisance complaints.
- Other Bylaw clause used to recover costs for damage where registration number and evidence is obtained.

ISSUE IN 2018

- Public safety, nuisance, damage and misuse of public places.
- 43 per cent of Aucklanders surveyed in June 2017 had seen someone driving or parking a car in an area of a park not designated for driving/parking and 45 per cent had seen a vehicle blocking a park entrance or pathway in the past 12 months. Of those more than 90 per cent considered either issue a nuisance.
- Bylaw officers and Regional Park rangers note an increase in people driving cars, motorbikes and quad bikes.

OUTCOME SOUGHT IN 2018

- To ensure public safety, minimise nuisance, damage and misuse of parks from vehicles.

BYLAW EVALUATION

Still a problem requiring a bylaw response?

- ✓ Yes. There is still a problem regulation can help address.
- ✗ There are feasible alternatives to the Bylaw for vehicles on parks:
 - Council can use powers under the Auckland Council Traffic Bylaw 2015 to regulate parking and use of vehicles on council-controlled places (including parks) not part of the transport system. But there are prerequisites:
 - Council needs to resolve to restrict vehicles on parks in accordance with the Traffic Bylaw.
 - Additional signage/road markings may be required.
 - Enforcement currently delegated to Auckland Transport. Decision required on whether Auckland Transport will enforce and/or to warrant council officers and rangers to issue infringement notices/remove vehicles.
 - Other alternatives investigated but not feasible, include:
 - Council powers under the Reserves Act 1977 do not apply to all parks.
 - Police powers under the Summary Offences Act 1981 (s12, 13, 22) can address safety and obstructions, but do not address lower level issues and are unlikely to be prioritised by police.
 - Police powers under the Trespass Act 1980 (s3, 4) require people who have been warned to leave any place, but likely to be less effective than a bylaw to restrict/manage vehicle access to all parks.
 - Auckland Unitary Plan F9. Vehicles on beaches can apply to parks, but enforcement under the Resource Management Act 1991 (RMA) (via abatement notices and enforcement orders) is less effective than a bylaw for nuisance and safety issues on parks.

Bylaw effective/efficient?

- ✓ Bylaw helps proactively manage the use of parks by vehicles.
- ✓ Bylaw shown to be effective to address issues where offenders identified.
- ✓ Bylaw implements the Unitary Plan - RMA is less effective for enforcement than the Bylaw.
- ✗ Bylaw duplicates provisions in the Auckland Council Traffic Bylaw 2015.
- ✗ Bylaw can be difficult to enforce as Bylaw officers or park rangers cannot always respond in time.
- ✗ No ability for council to issue infringement notices under current Bylaw.

Bylaw clearly written? ✗ No. Bylaw clauses and structure are difficult to read and understand.

Public aware of bylaw?

- ✗ Likely to be low. There are no known public awareness initiatives.

Bylaw fit for the future?

- ✗ No. Bylaw is difficult to read and understand and duplicates / overlaps provisions in the Traffic Bylaw.

Any Bill of Rights implications?

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

Section 160(1) Local Government Act 2002 Recommendation: A bylaw remains an appropriate way to address public safety, nuisance, damage and misuse of public places from vehicles in parks. The Bylaw is not in the most appropriate form because the clauses and structure are difficult to read and understand. The Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.

OPTIONS

Option 1: Status quo - Retain bylaw

- Manages vehicle use on parks.
- Bylaw prohibits driving, parking or stopping or standing vehicles in parks resulting in nuisance, safety issues, obstruction and damage.
- Council responds to complaints.

Option 2: (RECOMMENDED) Amend bylaw to remove overlap with Traffic Bylaw

- Manages vehicle use on parks.
- Use Auckland Council Traffic Bylaw 2015.
- Council to make necessary decisions about restrictions on vehicles in parks and delegations for enforcement after commencement of Bylaw amendments.
- Transitional provisions to save current Bylaw clauses until a future date to enable sufficient time to make and implement resolutions (e.g. install signage/road markings)
- Council responds to complaints.

Effectiveness and efficiency:

- ✓ Enables enforcement where offenders identified.
- ✗ Bylaw clauses and structure difficult to read and understand.
- ✗ Bylaw duplicates/overlaps provisions in Traffic Bylaw
- ✗ Bylaw can be difficult to enforce.

Effectiveness and efficiency:

- ✓ Enables enforcement where offenders identified.
- ✓ Better enforcement powers than Option 1. Provides for issuing of infringement notices and removal of vehicles under the Land Transport Act 1998.
- ✓ Streamlines council regulations.
- ✗ Bylaw can be difficult to enforce.

Bill of Rights implications:

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

Bill of Rights implications:

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

Fit for future:

- See effectiveness and efficiency.

Fit for future:

- See effectiveness and efficiency.

Māori impact/risk:

- There are no specific impacts for Māori.

Māori impact/risk:

- There are no specific impacts for Māori.

Section 160(3) Local Government Act 2002 recommendation:

The Bylaw should be amended (Option 2) to better ensure public safety, minimise nuisance and misuse of parks from vehicles. Taking this approach will improve enforcement options while simplifying council regulations.

References:

- Statement of Proposal Review of Public Places/Safety and Nuisance Bylaws December 2012, pp 24, 25, 53.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 37, 133.
- Auckland Council Traffic Bylaw 2015, Auckland Unitary Plan, Reserves Act 1977, Resource Management Act 1991, Trespass Act 1980.

DRAFT - NOT COUNCIL POLICY

BYLAW CLAUSE 9(5)(i) – Must leave a gate in a park in the same position as it is found

STATUTORY OBLIGATIONS/POWERS

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

ISSUE IN 2013

- No data available on the issue in 2013.

OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To control activities and behaviours on parks and beaches relating to safety and nuisance, and to manage and protect from damage or misuse of land, assets or structures.
- Auckland Council and Auckland Transport made a bylaw to prohibit “leave[ing] any gate on a park in a different position from that which that person finds it. Gates found open must be left open and gates found closed must be left closed”.
- Powers to enforce the Bylaw include a court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage or power to request name and address.
- Penalties for breaches of the Bylaw include a maximum \$20,000 court fine or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

BYLAW IMPLEMENTATION SINCE 2013

- Bylaw has not been used. No offenders identified.
- Any issue arising from a gate being left in a different position is remedied (e.g. stock moved back into paddock).

ISSUE IN 2018

- Public safety, nuisance and misuse of public places.
- Park rangers identify this as an issue that occurs rarely.
- Leaving closed gates open can affect the management of stock in parks. It can result in unplanned calving, loss of stock, risk to public safety (perceived threat or harassment by stock) and extra work for park staff.
- While park management practices (e.g. stock management, locks on gates or swing gates) reduce the problem, manual gates are still used in some parks (e.g. to allow horse riders access to tracks in Anawhata, Te Rau Puriri, Pae o Te Rangi, Atui Creek and sometimes Awhitu and Hūnua).
- Some local boards identified this issue as of concern generally, but no further information was given.
- No council complaint data.

OUTCOME SOUGHT IN 2018

- To ensure public safety and minimise nuisance and misuse of public places from leaving a gate in a park in a different position to how it is found.

BYLAW EVALUATION

Still an issue requiring a bylaw response?

- ✓ Yes. Still an issue that regulation can help address, but to date, bylaw is neither used nor enforced.
 - ✗ There are feasible alternatives to address leaving a gate in a different position:
 - The Trespass Act 1980 (s3) can address people who do not leave a place after being asked to do so (e.g. after continually leaving a gate open). This is consistent with a graduated compliance approach.
- Note: An alternative clause investigated is the Trespass Act 1980 [s8(b)] but this is limited to private land.

Bylaw effective / efficient?

- ✗ Bylaw expresses a “common sense” expectation but has not been used nor enforced.
- ✗ Enforcement difficult. No offenders identified. Evidence is also an issue (e.g. “gate was already open”).

Bylaw clearly written?

- ✗ No. The clause is clearly written but Bylaw structure is difficult to read.

Public aware of bylaw?

- ✗ No. Likely to be low.

Bylaw fit for the future?

- ✗ No. Bylaw states expectation but is neither used nor enforced and structure is unclear.

Any Bill of Rights implications?

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

SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:

A bylaw is not the most appropriate way to address leaving a gate in a park in a different position to how it is found. Adequate provisions already exist under the Trespass Act 1980. The Bylaw is not in the most appropriate form

because structure is difficult to read. The Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.

OPTIONS

<p>Option 1: Status quo – Retain Bylaw clause</p> <ul style="list-style-type: none"> • Manages the use of parks. • Bylaw prohibits leaving any gate in a park in a different position from that which it is found. • Council rectifies issue. 	<p>Option 2: Amend Bylaw clause and structure for clarity</p> <ul style="list-style-type: none"> • Manages the use of parks. • Bylaw in Option 1 amended for clearer structure and clause. • Council rectifies issue. 	<p>Option 3: (RECOMMENDED) Revoke Bylaw clause– Rely on existing provisions</p> <ul style="list-style-type: none"> • Manages the effects of activity. • Unused Bylaw clause deleted. • Trespass Act 1980 used for enforcement. • Council rectifies issue.
<p>Effectiveness and efficiency:</p> <ul style="list-style-type: none"> ✓ Enables enforcement if the person responsible is identified. ✗ Bylaw not used. ✗ Bylaw structure is difficult to understand. ✗ Difficult to enforce (no offenders identified to date). 	<p>Effectiveness and efficiency:</p> <ul style="list-style-type: none"> ✓ Enables enforcement if the person responsible is identified. ✗ Bylaw not used ✓ Bylaw structure easier to understand. ✗ Difficult to enforce (no offenders identified to date). 	<p>Effectiveness and efficiency:</p> <ul style="list-style-type: none"> ✓ Enables enforcement if the person responsible is identified. ✓ Removes unused bylaw clause. ✗ Difficult to enforce (no offenders identified to date).
<p>Bill of Rights Implications:</p> <ul style="list-style-type: none"> ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990. 	<p>Bill of Rights Implications:</p> <ul style="list-style-type: none"> ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990. 	<p>Bill of Rights Implications:</p> <ul style="list-style-type: none"> - Criteria not applicable for non-bylaw options.
<p>Fit for the future:</p> <ul style="list-style-type: none"> - See effectiveness and efficiency. 	<p>Fit for the future:</p> <ul style="list-style-type: none"> - See effectiveness and efficiency. 	<p>Fit for the future:</p> <ul style="list-style-type: none"> - See effectiveness and efficiency.
<p>Māori impact/risk:</p> <ul style="list-style-type: none"> • There are no specific impacts for Māori. 	<p>Māori impact/risk:</p> <ul style="list-style-type: none"> • There are no specific impacts for Māori. 	<p>Māori impact/risk:</p> <ul style="list-style-type: none"> • There are no specific impacts for Māori.

SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:

The Bylaw should be revoked (Option 3) and existing legislation used instead. The Bylaw is not used and adequate powers already exist under the Trespass Act 1980. Taking this approach will remove unnecessary bylaw regulation while still allowing Council to take action against any offenders if they are identified.

References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp. 25.
- Attachment B Assessment of Public Safety and Nuisance Behaviours and Opportunities 2017, pp. 47.
- Local Government Act 2002 s145, s146, s162, s163, s164-168, s171-174, s176, s178, s242 (4); Health Act 1956 s64, s66, s128.

DRAFT - NOT COUNCIL POLICY

BYLAW CLAUSE 9(5)(k) – Prohibit weapons, traps or instruments of a dangerous nature on a park

STATUTORY OBLIGATIONS/POWERS

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

ISSUE IN 2013

- No data on this issue in 2013.

OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To control activities and behaviours on parks and beaches relating to safety and nuisance, and to manage and protect from damage or misuse of land, assets or structures.
- Auckland Council and Auckland Transport made a bylaw to prohibit any person from “possess[ing] or use[ing] any weapon, trap or instrument of a dangerous nature on a park”.
- Powers to enforce the Bylaw include a court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage or power to request name and address.
- Penalties for breaches of the Bylaw include a maximum \$20,000 court fine or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

BYLAW IMPLEMENTATION SINCE 2013

- If safe to do so, rangers ask members of the public to leave an area or park. Police address dangerous situations.
- No Bylaw prosecutions have occurred to date.

ISSUE IN 2018

- Managing the use of public places for public safety, wildlife and environmental protection.
- Under the Reserves Act 1977 the possession or use of weapons, traps etc without approval is an offence, but this is limited to reserves and does not apply to all parks, beaches or other public places.
- The Regional Parks Management Plan 2010 aims, through a bylaw, to prohibit recreational hunting (with exceptions for pest control) on regional parks to prevent safety risks and environmental damage.
- Complaints about weapons or dangerous instruments occur rarely (e.g. hunting in parks without approval).
- Typically, no complaints about traps.
- Park rangers have encountered people trapping possums in the Waitākere Ranges, trapping pigs in the Hūnua Ranges, trapping eels and shooting in parks.
- Six per cent of Aucklanders surveyed in June 2017 had seen a person using an unauthorised animal trap in a park in the last 12 months. Of those surveyed, 92 per cent felt fearful, threatened, frustrated, angry or annoyed.

OUTCOME SOUGHT IN 2018

- To ensure public safety, wildlife and environmental protection from the possession or use of weapons, traps or instruments of a dangerous nature in public places.

BYLAW EVALUATION

Still an issue requiring a bylaw response?

- ✓ Yes. Still an issue that regulation can help address.
- ✓ No feasible regulatory alternatives to prohibit the possession or use of weapons, traps or dangerous instruments.

Possessing or using any weapon or instrument of a dangerous nature

- Police powers under the Crimes Act 1961 (s202A) are limited to public possession of any knife, offensive weapon or disabling substance made/altered or intended to commit bodily injury, threat or fear of violence.
- Police powers under the Reserves Act 1977 [s94(4)] are limited to reserves to address possession of any firearm, weapon, trap, net or other like object or discharging any firearm, weapon or other instrument.
- Police powers under Summary Offences Act (s13A) can address possession of knives in a public place, but not use.
- Police powers under the Arms Act 1983 can address restrictions on possession and use of some types of weapons.

Possessing or using any trap

- Police powers under the Crimes Act 1961 (s202) are limited to setting, placing, or causing to be set or placed any trap/device likely to, or with intent to, injure or with reckless disregard for public safety.
- Police powers under the Animal Welfare Act 1999 (s34) are limited to using a prohibited trap/device for killing, managing, entrapping, capturing, entangling, restraining or immobilising an animal.

Other instruments of a dangerous nature

- The Crimes Act 1961 (s156) is limited to using a dangerous thing without reasonable care, and Summary Offences Act 1981 (s13) is limited to doing anything with anything (which in the absence of care is likely to cause injury) with reckless disregard for the safety of others. Both Acts do not prohibit possession/use of dangerous things.

Bylaw effective / efficient?		
<ul style="list-style-type: none"> ✓ Bylaw is useful as a tool for park rangers to ask people to leave a park. ✓ Bylaw implements the Regional Parks Management Plan 2010 and applies the Reserves Act 1977 to all parks. 		
Bylaw clearly written? ✗ No. Bylaw clause is unclear as lacking definitions for “weapon”, “trap” and “instrument of a dangerous nature” (e.g. does this include picnic knives?). Bylaw clause uses different language to the Reserves Act 1977 and Regional Parks Management Plan 2010 which may be confusing. Bylaw structure is unclear which makes it difficult to read.		
Public aware of bylaw? ✗ No. Likely to be low.		
Bylaw fit for the future? ✗ No. Bylaw structure and form lacks clarity.		
Any Bill of Rights implications?		
✓ Does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act.		
SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:		
A bylaw is the most appropriate way to address public safety, wildlife and environmental protection from the possession or use of weapons, traps or instruments of a dangerous nature in public places. The Bylaw is not in the most appropriate form because the bylaw clause and structure are unclear. The Bylaw does not give rise to any implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.		
OPTIONS		
Option 1: Status quo – Retain Bylaw clause	Option 2: (RECOMMENDED) Amend Bylaw clause and structure for clarity	Option 3: Revoke Bylaw clause- Rely on existing provisions
<ul style="list-style-type: none"> • Manages the use of parks. • Bylaw prohibits possessing or using any weapon, trap or instrument of a dangerous nature in a park. • Complaints addressed by council rangers. Dangerous situations addressed by Police. 	<ul style="list-style-type: none"> • Manages the use of public places. • Bylaw in Option 1 amended for clearer structure, better aligned to Reserves Act 1977 and Regional Parks Management Plan 2010, definitions included, and consideration given to application to beaches and civic spaces (exceptions may apply). • Bylaw implementation same as Option 1. 	<ul style="list-style-type: none"> • Manages the effects of activity. • Bylaw clause deleted. • Police can use powers under Crimes Act 1961, Summary Offences Act 1981, Arms Act 1983, Reserves Act 1977, and Animal Welfare Act 1999 to address unlawful use of weapons, traps and dangerous instruments.
Effectiveness and efficiency:	Effectiveness and efficiency:	Effectiveness and efficiency:
<ul style="list-style-type: none"> ✓ Bylaw helps to manage the use of parks. ✗ Bylaw structure and wording unclear. 	<ul style="list-style-type: none"> ✓ Bylaw helps to manage the use of public places (e.g. regional parks). ✓ Bylaw structure and definitions make Bylaw easier to understand and wording clearer. 	<ul style="list-style-type: none"> ✗ Regulatory gaps as provisions are limited in scope compared to bylaw and still permit possession or use in some places/situations. ✗ Legislation has higher threshold for offence than bylaw.
Bill of Rights Implications:	Bill of Rights Implications:	Bill of Rights Implications:
<ul style="list-style-type: none"> ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990. 	<ul style="list-style-type: none"> ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990. 	<ul style="list-style-type: none"> - Criteria not applicable for non-bylaw options.
Fit for the future:	Fit for the future:	Fit for the future:
<ul style="list-style-type: none"> - See effectiveness and efficiency. 	<ul style="list-style-type: none"> - See effectiveness and efficiency. 	<ul style="list-style-type: none"> - See effectiveness and efficiency.
Māori impact/risk:	Māori impact/risk:	Māori impact/risk:
<ul style="list-style-type: none"> • May have impact as Māori are a kaitiaki of the natural environment. 	<ul style="list-style-type: none"> • May have impact as Māori are a kaitiaki of the natural environment. 	<ul style="list-style-type: none"> • May have impact as Māori are a kaitiaki of the natural environment.
SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:		
The Bylaw should be amended (Option 2) to better ensure public safety, wildlife and environmental protection from the possession or use of weapons, traps or instruments of a dangerous nature in public places. Taking this approach will make the Bylaw clause and structure easier to understand and better aligned to existing plans and legislation.		

References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp. 25, 27.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 133.
- Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242 (4); Health Act 1956 s66, s128.
- Regional Parks Management Plan 2010, pp. 171.

DRAFT - NOT COUNCIL POLICY

BYLAW CLAUSE 9(5)(I) – Prohibits removing, harming or killing, or releasing or losing control of any animal

STATUTORY OBLIGATIONS/POWERS

- Council may make a bylaw about removing, harming or killing any animal, or releasing or losing control of any animal in a park to address public health, safety, nuisance, offensive behaviour or use of public places under the Local Government Act 2002 (s145, s146), and Health Act 1956 (s64).

ISSUE IN 2013

- No data available on the issue in 2013.

OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To control certain activities and behaviours in parks and on beaches relating to safety and nuisance and to manage and protect from damage to, or misuse of, land, assets or structures on parks, reserves and beaches.
- Auckland Council made a bylaw to prohibit any person to “remove, harm or kill any animal or release or lose control of any animal under that person’s control” in a park. Definition of animal excludes dogs and humans.
- Powers to enforce the Bylaw include a court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage or power to request name and address.
- Penalties for breaches of the Bylaw include a maximum \$20,000 court fine or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

BYLAW IMPLEMENTATION SINCE 2013

- Park rangers ask members of the public to leave a park or area when issues arise.

ISSUE IN 2018

- Managing the use of public places for public safety, wildlife and environmental protection.
- The Regional Parks Management Plan 2010 aims, through a bylaw, to prohibit recreational hunting (with exceptions for pest control), bringing in, leaving or removing animals without approval, and pest introduction.
- Park rangers state this issue occurs occasionally. Rangers have encountered people releasing pigs in the Waitākere Ranges, hunting in the Hūnua Ranges without approval, trapping eels and shooting at animals.
- Some local boards identified this issue as of concern generally, but no further information was given.
- No council complaint data available.

OUTCOME SOUGHT IN 2018

- To ensure public safety, wildlife and environmental protection from removing, harming or killing any animal or releasing or losing control of any animal in a public place.

BYLAW EVALUATION

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

✓ No feasible regulatory alternatives to prohibit these activities.

Removing any animal under one’s control from a park

- The Wild Animal Control Act 1977 (s8) can address possession of any wild animal without approval of the land owner/occupier, but this is limited by the s2 definition of wild animal (any deer, chamois, tahr, goat (unconstrained/unidentified), pig living in a wild state, or species declared by regulations to be wild animals for the purposes of the Act) which excludes animals in the wild on council land which are otherwise ownerless.
- The Crimes Act 1961 (s219) can address theft. Under the Wild Animal Control Act 1977 [s9(1)], wild animals are property of the Crown unless lawfully killed, taken or held. Under s8, possession of any wild animal without the express authority of the owner/occupier of the land is unlawful. This is limited to wild animals defined under s2.

Harming any animal under one’s control in a park

- The Animal Welfare Act 1999 (s29) can address ill-treatment of an animal (causing unreasonable or unnecessary pain or distress). However, “harm” is not defined in the Bylaw and could feasibly be broader than “ill-treatment”.

Killing any animal under one’s control in a park

- The Wild Animal Control Act 1977 (s8) can address hunting or killing any wild animal without approval of the land owner or occupier, but this is limited to wild animals defined under s2 of this Act.
- The Animal Welfare Act 1999 (s12) can address where a person in charge of an animal kills it in a way that it suffers unreasonable or unnecessary pain or distress. This does not prohibit the act of killing, only how it is done.

Releasing any animal under one’s control in/from a park

- The Animal Welfare Act 1999 (s14) can address a person in charge of an animal deserting it without reasonable excuse and with no provisions to meet its physical, health and behavioural needs, but not temporary release.

Losing control of any animal under one’s control in a park

- The Animal Management Bylaw 2015 (s6-7) can address where an animal causes a nuisance or public health and safety risk, is intimidating, or damages property in a public place, but this does not address risk to other wildlife.

Bylaw effective / efficient?		
<ul style="list-style-type: none"> ✓ Bylaw is a useful tool for park rangers to speak with people and ask them to leave a park or area. ✗ No prosecutions to date due to lack of sufficient evidence. ✓ Bylaw implements the Regional Parks Management Plan 2010. 		
Bylaw clearly written? ✗ No. Bylaw clause is unclear in terms of whether it should apply to all public places (not just parks), definition of “under that person’s control” and with possible overlaps with existing bylaws and legislation. Bylaw structure is unclear which makes it difficult to read.		
Public aware of bylaw? ✗ No. Likely to be low.		
Bylaw fit for the future? ✗ No. Bylaw structure and wording lacks clarity.		
Any Bill of Rights implications?		
✓ Does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act.		
SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:		
A bylaw is the most appropriate way to address public safety, wildlife and environmental protection from removing, harming or killing any animal or releasing or losing control of any animal in a public place. The Bylaw is not the most appropriate form of bylaw because the Bylaw clause and structure is unclear. The Bylaw does not give rise to any implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.		
OPTIONS		
Option 1: Status quo – Retain bylaw clause <ul style="list-style-type: none"> • Manages the use of parks. • Bylaw prohibits removing, harming or killing any animal or releasing or losing control of any animal under that person’s control in a park. • Complaints addressed by council. 	Option 2: (RECOMMENDED) Amend bylaw clause and structure for clarity <ul style="list-style-type: none"> • Manages the use of public places. • Bylaw in Option 1 amended for clearer structure, addresses possible overlaps with existing bylaws and legislation (includes potential amendment of Animal Management Bylaw 2015), definitions included, and consideration given to application to beaches and civic spaces. • Bylaw implementation same as Option 1. 	Option 3: Revoke Bylaw clause - Rely on existing provisions <ul style="list-style-type: none"> • Manages the effects of activity. • Bylaw clause deleted. • Police powers under the Crimes Act 1961, Wild Animal Control Act 1977, Animal Welfare Act 1999 and council powers under the Animal Management Bylaw 2015 to address removing, harming, killing, releasing or losing control of an animal under one’s control.
Effectiveness and efficiency: <ul style="list-style-type: none"> ✓ Bylaw helps to manage the use of parks. ✗ Bylaw structure and wording unclear and difficult to understand. 	Effectiveness and efficiency: <ul style="list-style-type: none"> ✓ Bylaw helps to manage the use of public places (e.g. regional parks). ✓ Bylaw structure and wording clearer and easier to understand. 	Effectiveness and efficiency: <ul style="list-style-type: none"> ✗ Regulatory gaps because existing regulations are more limited than bylaw. ✗ Legislation has higher threshold for enforcement than Bylaw.
Bill of Rights Implications: <ul style="list-style-type: none"> ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990. 	Bill of Rights Implications: <ul style="list-style-type: none"> ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990. 	Bill of Rights Implications: <ul style="list-style-type: none"> - Criteria not applicable for non-bylaw options.
Fit for the future: <ul style="list-style-type: none"> - Refer to effectiveness and efficiency. 	Fit for the future: <ul style="list-style-type: none"> - Refer to effectiveness and efficiency. 	Fit for the future: <ul style="list-style-type: none"> - Refer to effectiveness and efficiency.
Māori impact/risk: <ul style="list-style-type: none"> • Māori are kaitiaki of the natural environment, including parks. 	Māori impact/risk: <ul style="list-style-type: none"> • Māori are kaitiaki of the natural environment, including parks. 	Māori impact/risk: <ul style="list-style-type: none"> • Māori are kaitiaki of the natural environment, including parks.
SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:		
The Bylaw should be amended (Option 2) to better ensure public safety, wildlife and environmental protection from removing, harming or killing any animal or releasing or losing control of any animal in a public place. Taking this approach will make the Bylaw clause and structure easier to understand and better aligned to existing plans, other bylaws and legislation.		

References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp. 25, Attachment B Assessment of Public Safety and Nuisance Behaviours and Opportunities 2017, pp. 47.
- Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242 (4); Health Act 1956 s66, s128.
- Regional Parks Management Plan 2010, pp. 78, 171, 172.

DRAFT – NOT COUNCIL POLICY

BYLAW CLAUSE 6(5)(m) – Vehicles on beaches

STATUTORY OBLIGATIONS/POWERS

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

ISSUE IN 2013

- Public safety, environmental damage, amenity, obstruction, misuse of public places.
- Vehicles on beaches subject to same rules as driving on roads (e.g. WOF, registration, speed limits, safety).
- Vehicles on beaches (other than for boat launching/retrieval emergency services) and boat trailer parking on parks and beaches are longstanding issues, particularly on some beaches e.g. Muriwai.
- Especially problematic during the summer season and events (such as surf-lifesaving competitions).

OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To prevent injury, damage, nuisance and misuse of public places from driving vehicles on a beach.
- Auckland Council made a bylaw to prohibit “driving, riding...or parking...vehicles on a beach” unless permitted.
- Powers to enforce the Bylaw include: court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage, or power to request name and address.
- Penalties for breaches of the Bylaw include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

BYLAW IMPLEMENTATION SINCE 2013

- Bylaw officers dealt with regular complaints about vehicles on parks and beaches and monitored ‘hot spots’.
- Difficult to enforce. Offenders no longer there when officers respond.
- Parks staff are not warranted to enforce the bylaw. Regional Park rangers rely on voluntary compliance to address issues. Most people are compliant but there are some serial offenders who do not respond to this.
- Council, Police and Department of Conservation jointly manage issue as road rules still apply.
- Due to high demand for access a permit system grants vehicles access on Muriwai and Karioitahi beaches.

ISSUE IN 2018

- Use of public places, obstruction, damage, safety and nuisance.
- Bylaw officers and Regional Park rangers note vehicles on beaches still a significant safety and nuisance issue.
- In 2015, four people killed on Muriwai beach when their four-wheel-drive rolled at high speed. Other speed related incidents also occur on the beach and there are risks associated with drift wood and other hazards.
- Public and stakeholder confusion as to whether or not the beach is a road and subject to road rules.
- Of Aucklanders surveyed in June 2017, 37 per cent had seen this behaviour, of those surveyed 86 per cent regarded driving, riding or parking a car or motorbike on a beach without approval to be a nuisance.
- Māori stakeholders identified the need to ensure good environmental management, ensuring Māori engagement as kaitiaki and maintaining tikanga (protocols) on land that may be adjacent to public parks and beaches.

OUTCOME SOUGHT IN 2018

To ensure public safety, minimise nuisance and misuse of beaches from vehicles.

BYLAW EVALUATION

Still a problem requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can help address.
- ✗ There are feasible regulatory alternatives to the Bylaw for vehicles on beaches:
 - Council can use powers under the Auckland Council Traffic Bylaw 2015 to regulate parking and use of vehicles on council-controlled places (including beaches) not part of transport system. But there are some prerequisites as described in the assessment of clause 9(5)(e), (f), (j) - Vehicles on parks. These relate to Council resolutions to restrict vehicles on beaches, additional signage / road markings, and enforcement delegations.

Note: Alternatives not feasible are described in the assessment of *clause 9(5)(e), (f), (j) - Vehicles on parks*.

Bylaw effective/efficient?

- ✓ Bylaw helps proactively manage the use of beaches by vehicles.
- ✓ Bylaw shown to be effective to address issues where offenders are identified.
- ✓ Bylaw implements the Unitary Plan – Resource Management Act 1991 is less effective for enforcement than the bylaw.
- ✗ Bylaw duplicates provisions in the Auckland Council Traffic Bylaw 2015.

- ✘ Bylaw can be difficult to enforce as Bylaw officers or park rangers cannot always respond in time.
- ✘ No ability to issue infringement notices under current bylaw.
- ✘ Permits for Muriwai and Karioitahi beaches not regularly checked. While permit system supports holders to familiarise themselves with regulations, this does not appear to moderate unsafe driving behaviour.

Bylaw clearly written? ✘ Bylaw not clearly written and wordy.

Public aware of bylaw? ✘ Likely to be a low, except on Muriwai and Karioitahi beaches due to media coverage.

Bylaw fit for the future? ✘ No. Bylaw not clearly written, wordy, and duplicates/overlaps Traffic Bylaw.

Any Bill of Rights implications?

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

Section 160(1) Local Government Act 2002 Recommendation:

A bylaw remains an appropriate way to address vehicles on beaches. The Bylaw is not in the most appropriate form because it is not clearly written and wordy. The Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.

OPTIONS

Option 1: Status quo - Retain current wording and implementation

- Manages vehicle use on beaches.
- Bylaw prohibits driving, parking or stopping or standing vehicles on beaches resulting in nuisance, safety issues and misuse of public places.
- Council responds to complaints.

Option 2: (Recommended) Amend bylaw to remove overlap with Traffic Bylaw

- Manages vehicle use on beaches.
- Use Auckland Council Traffic Bylaw 2015
- Council to make necessary decisions about restrictions on vehicles on beaches and delegations for enforcement after commencement of Bylaw amendments
- Transitional provisions to save current Bylaw clauses until a future date to enable sufficient time to make and implement resolutions (e.g. install signage/road markings)
- Council responds to complaints.

Effectiveness and efficiency:

- ✓ Enables Council enforcement.
- ✘ Bylaw not clearly written and wordy.
- ✘ Bylaw duplicates/overlaps provisions in Traffic Bylaw.
- ✘ Bylaw can be difficult to enforce.

Effectiveness and efficiency:

- ✓ Enables Council enforcement.
- ✓ Better enforcement powers than Option 1. Provides for issue of infringement notices and removal of vehicles under the Land Transport Act 1998.
- ✓ Streamlines council regulations.
- ✘ Bylaw can be difficult to enforce.

Bill of Rights implications:

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

Bill of Rights implications:

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

Fit for future:

- Refer to effectiveness and efficiency.

Fit for future:

- Refer to effectiveness and efficiency.

Māori impact/risk:

- May have impact as Māori are kaitiaki of the natural environment.

Māori impact/risk:

- May have impact as Māori are kaitiaki of the natural environment.

Section 160(3) Local Government Act 2002 recommendation:

The Bylaw should be amended (Option 2) to better ensure public safety, minimise nuisance and misuse of beaches from vehicles. Taking this approach will improve enforcement options while simplifying council regulations.

References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 15, 24, 53,135
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 37,133, 134, 135, 137
- Trespass Act 1980, Summary Offences Act 1981, Resource Management Act 1991, Unitary Plan, Reserves Act 1977
- www.stuff.co.nz/auckland/75800785/new-driving-regulations-not-making-muriwai-beach-any-safer--lifeguard

DRAFT – NOT COUNCIL POLICY

BYLAW CLAUSE 9(5)(n)(i)(ii), (o) – Leaving a boat on a beach

STATUTORY OBLIGATIONS/POWERS

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

ISSUE IN 2013

- Obstruction and misuse of public places.

OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To control activities and behaviour on parks and beaches relating to safety and nuisance, and to manage and protect from damage or misuse of land, assets or structures.
- Auckland Council made a bylaw to prohibit “leaving boats on beaches in a way that causes obstruction or nuisance or obstructs access to boat ramps and launching facilities” unless permitted by council.
- Powers to enforce the Bylaw include court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage or power to request name and address.
- Penalties for breaches of the Bylaw include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

BYLAW IMPLEMENTATION SINCE 2013

- Officers issue warnings via stickers requiring removal of boats from beaches where they may cause nuisance or obstruction. This is largely effective in making boat owners remove their boats.

ISSUE IN 2018

- Obstruction and misuse of public places.
- Bylaws officers reported that boats are often left for long periods of time (e.g. people leave unseaworthy boats at places like Rocky Bay on Waiheke Island, Okura/Long Bay, Puhoi River).
- 14 per cent of Aucklanders surveyed in June 2017 had seen a boat unattended on a beach in a way that blocks others use of a beach or access. Of those surveyed 91 per cent regarded this as a nuisance.
- Findings did not investigate the issue of obstructing access to boat ramps or boat launching facilities.

OUTCOME SOUGHT IN 2018

- To manage the use of public places and address safety, nuisance and obstruction from boats on beaches and obstructions to boat ramps and launching facilities.

BYLAW EVALUATION

Still a problem requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can address.
- ✗ There are feasible regulatory alternatives to a bylaw:
 - Council powers under clause 8(1)(a) of the Public Safety and Nuisance Bylaw 2013 (to be amended) can address placing or leaving any material, object, thing or structure in a public place without council approval.
 - Other less feasible alternatives to the Bylaw include:
 - Police powers under of the Summary Offences Act 1981 (s12, 13, 22) prohibit acts and things that endanger safety and obstructing a public way. This is likely to be a low priority for police
 - Council powers under the Navigation Safety Bylaw 2014 regulate on-water activities rather than on beaches
 - Council powers under the Maritime Transport Act 1994 are too limited to address boats left on beaches
 - Council powers under Unitary Plan rule F2.19.8 (A86) permitted activity addresses anchoring of vessels to the foreshore or seabed in the same position for no more than 28 consecutive days (e.g. houseboats) without a resource consent (with specific exemptions. However, Bylaw is more effective in addressing short term nuisance.

Bylaw effective/efficient?

- ✓ People generally respond to notifications of a breach of the Bylaw and remove their boats.
- ✓ Bylaw more effective than relying on other alternative regulations (e.g. Unitary Plan).
- ✗ Bylaw clause overlaps with existing provisions in clause 8(1)(a) of the Public Safety and Nuisance Bylaw.

Bylaw clearly written?

- ✓ Bylaw clause uncertain. Bylaw officers note ‘obstruction’ is not defined, making Bylaw open to interpretation.

Public aware of bylaw?

- ✗ Likely to be low. Offenders are made aware due to issuing of written notices.

Bylaw fit for the future?	
✘ No. Bylaw clause unclear and duplicates provisions in clause 8(1)(a) of Public Safety and Nuisance Bylaw 2013.	
Any Bill of Rights implications?	
✔ Does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act.	
Section 160(1) Local Government Act 2002 Recommendation:	
A bylaw is the most appropriate way to manage the use of public places, and address safety, nuisance and obstruction from boats on beaches and obstructions to boat ramps and launching facilities. The Bylaw is not the most appropriate form because it is unclear and overlaps provisions in clause 8(1)(a) of the Public Safety and Nuisance Bylaw 2013. The Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.	
OPTIONS	
Option 1: Status quo - Retain Bylaw	Option 2: (RECOMMENDED) Amend bylaw clause and structure for clarity
<ul style="list-style-type: none"> • Bylaw manages the use of boats on beaches. • Bylaw prohibits nuisance, misuse of public places, and addresses safety, nuisance and obstruction from boats left on beaches where not permitted. Council responds to complaints. 	<ul style="list-style-type: none"> • Bylaw manages the use of boats on beaches. • Bylaw clause incorporated into clause 8(1)(a) to address placing or leaving any material, object, thing or structure in a public place without council approval (exceptions may apply). • Council responds to complaints.
Effectiveness and efficiency:	Effectiveness and efficiency:
<ul style="list-style-type: none"> ✔ Enables Council enforcement. ✘ Overlaps with Bylaw clause 8(1)(a). ✘ Bylaw lacks clarity. 	<ul style="list-style-type: none"> ✔ Enables Council enforcement. ✔ Bylaw easier to read and understand. ✔ Streamlines council regulations.
Bill of Rights implications:	Bill of Rights implications:
<ul style="list-style-type: none"> ✔ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990. 	<ul style="list-style-type: none"> ✔ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.
Fit for future:	Fit for future:
- See effectiveness and efficiency.	- See effectiveness and efficiency.
Māori impact/risk:	Māori impact/risk:
<ul style="list-style-type: none"> • There are no specific impacts for Māori. 	<ul style="list-style-type: none"> • There are no specific impacts for Māori.
Section 160(3) Local Government Act 2002 recommendation:	
The Bylaw clause should be amended (Option 2) to better manage the use of public places, and address safety, nuisance and obstruction from boats on beaches and obstructions to boat ramps and launching facilities. Taking this approach will enable council to respond to complaints while simplifying council regulations.	

References:

- Local Government Act 2002 s145, s146, and Health Act 1956 s64, s65.
- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp. 9, 26, 53, 120, 133.
- Navigation Safety Bylaw 2014.
- Summary Offences Act 1981 s12, 13, 22.
- Auckland Unitary Plan.

DRAFT - NOT COUNCIL POLICY

BYLAW CLAUSE 9(5)(p) – Prohibits cleaning or leaving any fish or fish offal on a beach

STATUTORY OBLIGATIONS/POWERS

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

ISSUE IN 2013

- No data available on this issue in 2013.

OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To control activities and behaviours on parks and beaches relating to safety and nuisance, and to manage and protect from damage or misuse of land, assets or structures.
- Auckland Council and Auckland Transport made a bylaw to prohibit “clean[ing] or leav[ing] any fish or fish offal on a beach”. Beach is defined as the foreshore and any adjacent area that forms a part of the beach environment.
- Powers to enforce the Bylaw include a court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage or power to request name and address.
- Penalties for breaches of the Bylaw include a maximum \$20,000 court fine or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

BYLAW IMPLEMENTATION SINCE 2013

- No data available on implementation of Bylaw to date.

ISSUE IN 2018

- Public health and safety, nuisance, offensive behaviour and misuse of public places.
- Complaints about cleaning or leaving fish or fish offal on a beach or boat ramp occur less than 10 times a year.
- Complaints also occur about people disposing of fish offal in or next to public bins at the beach or leaving bait.
- Smell, sight and safety risk for people and animals were highlighted as issues in articles about fish offal, blood and scales left by fishers on Murrays Bay wharf (2016 onwards) and fish skeletons left on Mellons Bay beach in 2014.
- 23 per cent of Aucklanders surveyed in June 2017 had experienced someone cleaning or leaving fish or fish offal on a beach or boat ramp in the past 12 months. Of those surveyed, 90 per cent felt fearful, threatened, frustrated, angry or annoyed by this issue.

OUTCOME SOUGHT IN 2018

- To protect public health and safety and minimise nuisance, offensive behaviour and misuse of public places from cleaning or leaving fish or fish offal on a beach or boat ramp.

BYLAW EVALUATION

Still an issue requiring a bylaw response?

- ✓ Yes. This is still an occasional issue that regulation can help address.
- ✓ There are no feasible alternatives to a bylaw for cleaning a fish on a beach. For instance, Council powers under s6(1)(a) Public Safety and Nuisance Bylaw 2013 are limited to people cleaning fish to intentionally disturb another person’s use or enjoyment of a public place. However, it is the disposal of whatever is removed from the fish that is the issue.
- ✗ There are feasible alternatives to a bylaw for leaving any fish, fish offal or any parts of a fish on a beach:
 - Council powers under the Litter Act 1979 allow council to appoint Litter Control Officers (s5-7) who can issue infringement notices (s13-14) for littering. Infringement fees vary from \$100-\$400 for the first offence depending on the quantity and type of litter and \$400 for each subsequent offence within a 365-day period.
 - Police powers under the Litter Act 1979 (s15) can address littering in a public place. Penalties include a fine not exceeding \$5,000 and in addition may include payment of cost of removing litter.

Bylaw effective / efficient? ✗ No.

- ✗ Bylaw has limited enforcement due to difficulty in identifying offenders and evidence of offence.
- ✗ People who fish have differing practices for acceptable locations to clean fish or dispose of offal.

Bylaw clearly written? ✗ No. Bylaw clause is unclear whether “beach” includes a boat ramp and wharf. Bylaw structure is unclear which makes it difficult to read.

Public aware of bylaw? ✗ No. Likely to be low.

Bylaw fit for the future? ✗ No. Litter Act 1979 gives more efficient powers and bylaw could be amended for clarity.

Any Bill of Rights implications?

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

SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:

A bylaw is not the most appropriate way to address the cleaning or leaving of fish or fish offal on a beach. Adequate powers exist under the Litter Act 1979. The Bylaw is not in the most appropriate form as the Bylaw clause and

structure are unclear. The Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.

OPTIONS

<p>Option 1: Status quo – Retain Bylaw clause</p> <ul style="list-style-type: none"> • Manages the use of beaches. • Bylaw prohibits cleaning or leaving any fish or fish offal on a beach. • Council responds to complaints. 	<p>Option 2: Amend Bylaw clause for greater clarity</p> <ul style="list-style-type: none"> • Manages the use of beaches. • Bylaw amended to remove the part about leaving fish offal (addressed in Litter Act 1979). • Bylaw prohibits cleaning fish on a beach. • Bylaw amended for clearer structure and definitions. • Bylaw implementation same as Option 1. 	<p>Option 3: (RECOMMENDED) Revoke Bylaw clause - Rely on existing provisions</p> <ul style="list-style-type: none"> • Manages the effects of activity. • Bylaw clause deleted. • Council or Police powers under Litter Act 1979 can address leaving any fish or fish offal on a beach.
<p>Effectiveness and efficiency:</p> <ul style="list-style-type: none"> ✓ Bylaw helps manage use of beaches. ✗ Duplication with Litter Act 1979. ✗ Bylaw structure and lack of definitions make Bylaw difficult to understand. ✗ Enforcement difficult. 	<p>Effectiveness and efficiency:</p> <ul style="list-style-type: none"> ✓ Bylaw helps manage use of beaches. ✓ Infringement fees are immediate and efficient for fish offal. ✓ Bylaw structure and definitions make Bylaw easier to understand. ✗ Disposal of mess from cleaning a fish is the issue, not the act itself. ✗ No best practice for where to clean fish. ✗ Enforcement difficult. 	<p>Effectiveness and efficiency:</p> <ul style="list-style-type: none"> ✓ Infringement fees are immediate and efficient for fish offal. ✗ Enforcement difficult.
<p>Bill of Rights Implications:</p> <ul style="list-style-type: none"> ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990. 	<p>Bill of Rights Implications:</p> <ul style="list-style-type: none"> ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990. 	<p>Bill of Rights Implications:</p> <ul style="list-style-type: none"> - Criteria not applicable for non-bylaw options.
<p>Fit for the future:</p> <ul style="list-style-type: none"> - See effectiveness and efficiency. 	<p>Fit for the future:</p> <ul style="list-style-type: none"> - See effectiveness and efficiency. 	<p>Fit for the future:</p> <ul style="list-style-type: none"> - See effectiveness and efficiency.
<p>Māori impact/risk:</p> <ul style="list-style-type: none"> • May have impacts as Māori are kaitiaki of the natural environment. 	<p>Māori impact/risk:</p> <ul style="list-style-type: none"> • May have impacts as Māori are kaitiaki of the natural environment. 	<p>Māori impact/risk:</p> <ul style="list-style-type: none"> • May have impacts as Māori are kaitiaki of the natural environment.

SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:

The Bylaw should be revoked (Option 3) and existing legislation used instead. Adequate powers already exist in provisions under the Litter Act 1979. Taking this approach will ensure immediate and efficient enforcement for the disposal of fish offal.

References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp. 25.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 133, 136, 139.
- Local Government Act 2002 s145, s146 s162, s163, s164-168, s171-174, s176, s178, s242 (4); Health Act 1956 s64, s66, s128.
- www.aucklandcouncil.govt.nz
- *Fishy mess on new wharf upsets residents on Auckland's North Shore*, www.stuff.co.nz, 13 January 2017
- *Stink over dead fish*, www.stuff.co.nz, 5 February 2014

DRAFT- NOT COUNCIL POLICY

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

STATUTORY OBLIGATIONS/POWERS

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

ISSUE IN 2013

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

OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

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

BYLAW IMPLEMENTATION SINCE 2013

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

ISSUE IN 2018

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

OUTCOME SOUGHT IN 2018

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

BYLAW EVALUATION

Still an issue requiring a bylaw response?

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

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

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

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

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

References:

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