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

**Date:** Thursday, 16 April 2020  
**Time:** 10.00am  
**Meeting Room:** These meetings will be held remotely and can be viewed on the Auckland Council website  
**Venue:** [https://councillive.aucklandcouncil.govt.nz/](https://councillive.aucklandcouncil.govt.nz/)

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**Te Kāhui Ngārahu / Emergency Committee**  
**OPEN AGENDA**  

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**MEMBERSHIP**

- **Mayor**: Hon Phil Goff, CNZM, JP  
- **Deputy Mayor**: Deputy Mayor Cr Bill Cashmore  
- **Councillors**:  
  - Cr Josephine Bartley  
  - Cr Dr Cathy Casey  
  - Cr Fa'anana Efeso Collins  
  - Cr Pippa Coom  
  - Cr Linda Cooper, JP  
  - Cr Angela Dalton  
  - Cr Chris Darby  
  - Cr Alf Filipaina  
  - Cr Christine Fletcher, QSO  
  - Cr Shane Henderson  
  - Cr Richard Hills  
  - Cr Tracy Mulholland  
  - Cr Daniel Newman, JP  
  - Cr Greg Sayers  
  - Cr Desley Simpson, JP  
  - Cr Sharon Stewart, QSM  
  - IMSB Chair David Taipari  
  - Cr Wayne Walker  
  - Cr John Watson  
  - Cr Paul Young  
  - IMSB Member TBC  

(Quorum 2 members)

---

Sarndra O'Toole  
Kaiarataki Kapa Tohutohu Mana Whakahaere / Team Leader Governance Advisors  

9 April 2020

Contact Telephone: +64 9 890 8152  
Email: sarndra.otoole@aucklandcouncil.govt.nz  
Website: [www.aucklandcouncil.govt.nz](http://www.aucklandcouncil.govt.nz)

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

Responsibilities

This committee is an ad-hoc committee of the whole of the Governing Body which is established in times of emergency. It will assume the functions and power of all governing body committees (and sub-committees), except for the Audit and Risk Committee, and its responsibilities include all the responsibilities of the Governing Body which can legally be delegated as well as the responsibilities of all the committees it assume the functions and power for.

Powers

(i) All the powers of the Governing Body which can legally be delegated, except those of the Audit and Risk Committee.
Exclusion of the public – who needs to leave the meeting

Members of the public

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

Those who are not members of the public

General principles

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

Members of the meeting

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

Independent Māori Statutory Board

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

Staff

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

Local Board members

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

Council Controlled Organisations

- Representatives of a Council Controlled Organisation can remain only if required to for discussion of a matter relevant to the Council Controlled Organisation.
<table>
<thead>
<tr>
<th>ITEM</th>
<th>TABLE OF CONTENTS</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Apologies</td>
<td>7</td>
</tr>
<tr>
<td>2</td>
<td>Declaration of Interest</td>
<td>7</td>
</tr>
<tr>
<td>3</td>
<td>Confirmation of Minutes</td>
<td>7</td>
</tr>
<tr>
<td>4</td>
<td>Petitions</td>
<td>7</td>
</tr>
<tr>
<td>5</td>
<td>Public Input</td>
<td>7</td>
</tr>
<tr>
<td>6</td>
<td>Local Board Input</td>
<td>7</td>
</tr>
<tr>
<td>7</td>
<td>Extraordinary Business</td>
<td>8</td>
</tr>
<tr>
<td>8</td>
<td>COVID-19 briefing and Auckland Emergency Management status update</td>
<td>9</td>
</tr>
<tr>
<td>9</td>
<td>Submission on the Local Government (Rating of Whenua Māori) Amendment Bill</td>
<td>11</td>
</tr>
<tr>
<td>10</td>
<td>Auckland Council submission on the Accessible Streets Regulatory Package</td>
<td>35</td>
</tr>
<tr>
<td>11</td>
<td>Consideration of Extraordinary Items</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Procedural Motion to Exclude the Public</td>
<td>63</td>
</tr>
<tr>
<td>C1</td>
<td>CONFIDENTIAL: Financial position and Annual Budget 2020/2021 Update (Covering report)</td>
<td>63</td>
</tr>
</tbody>
</table>
1 Apologies

At the close of the agenda no apologies had been received.

2 Declaration of Interest

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

3 Confirmation of Minutes

That the Emergency Committee:

a) confirm the ordinary minutes of its meeting, held on Thursday, 9 April 2020, including the confidential section, as a true and correct record.

4 Petitions

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

5 Public Input

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

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

6 Local Board Input

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) no resolution, decision or recommendation may be made in respect of that item except to refer that item to a subsequent meeting of the local authority for further discussion.”
Te take mō te pūrongo
Purpose of the report
1. To enable the committee to be briefed on the COVID-19 pandemic and Auckland Emergency Management status.

Whakarāpopototanga matua
Executive summary
2. Ian Maxwell, Director Executive Programmes and Mace Ward, Group Controller, Auckland Emergency Management will provide a written and verbal briefing. The report will be circulated prior to the meeting.

Ngā tūtohunga
Recommendation/s
That the Emergency Committee:
a) receive the report and thank Ian Maxwell, Director Executive Programmes and Mace Ward, Group Controller, Auckland Emergency Management for the briefing on the COVID-19 pandemic and the Auckland Emergency Management status update.

Ngā tāpirihanga
Attachments
There are no attachments for this report.

Ngā kaihaina
Signatories

<table>
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<tr>
<th>Author</th>
<th>Sarndra O'Toole - Kaiarataki Kapa Tohutohu Mana Whakahaere / Team Leader Governance Advisors</th>
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<tbody>
<tr>
<td>Authoriser</td>
<td>Phil Wilson - Governance Director</td>
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</table>

COVID-19 briefing and Auckland Emergency Management status update
Submission on the Local Government (Rating of Whenua Māori) Amendment Bill

File No.: CP2020/04294

Te take mō te pūrongo
Purpose of the report
1. To seek approval for the Auckland Council submission on the Local Government (Rating of Whenua Māori) Amendment Bill.

Whakarāpopototanga matua
Executive summary

The report was to be included on the Finance and Performance Committee 23 April 2020 meeting agenda; however, in light of COVID-19, it must now be considered by the Emergency Committee.

2. Central Government has released the Local Government (Rating of Whenua Māori) Amendment Bill (the Bill) for feedback. The Bill is currently with the Māori Affairs Select Committee. Submissions will close on 17 April 2020.

3. This Bill intends to support the development of housing on Māori land and modernise rating legislation affecting Māori land. The Bill proposes legislative amendments to:
   - expand the categories of non-rateable Māori land
   - empower council to write off arrears that cannot be recovered
   - enable users of a part of a Māori freehold land rating unit to be rated separately and to access the rates rebate scheme
   - treat rating units of Māori freehold land used as a single economic unit as a single unit for rating purposes to reduce the number of fixed charges that apply
   - require council to consider offering rates remissions for Māori freehold land being developed
   - protect Māori freehold land that was converted to general land under the Māori Affairs Amendments Act 1967 (MAAA 1967)

4. The draft submission supports the Bill. The proposed amendments have a strong alignment to Council’s objectives for improving Māori outcomes. The proposed legislation will enable council to better work with and support Māori landowners, and address long standing issues such as the accumulation of arrears.

5. Nearly all the changes proposed are already delivered by Auckland Council through its rating policy and Māori land rates remission and postponement policy. The proposed amendments therefore have no significant financial impacts for council and no major changes for the relevant landowners. Nevertheless, it is still advantageous to amend the legislation and have consistent treatment nationally.

6. To ensure the equitable treatment of Māori freehold land with general land and between different kinds of land held in Māori ownership officers recommend that the Bill be amended to provide for:
   - unused parts of Māori freehold rating units to be treated as non-rateable
   - unused land returned for cultural redress and Māori freehold land converted under the MAAA 1967 to be treated as non-rateable
   - users of Māori freehold land converted under the MAAA 1967 to be rated separately and access the rates rebate scheme
   - residents of Maori housing developments to access the rates rebates scheme.
Ngā tūtohunga
Recommendation/s

That the Emergency Committee:

a) approve the submission on the Local Government (Rating of Whenua Māori) Amendment Bill (Attachment A of the agenda report)

b) delegate to the chair of the Finance and Performance Committee and Group Chief Financial Officer to authorise any minor amendments and corrections to the submission.

Horopaki
Context

Purpose of the Bill and Proposals


8. The purpose of the Bill is to:
   - support the development of, and provision of housing on, Māori land
   - modernise rating legislation affecting Māori land.

9. The proposed amendments to rating legislation provide:
   - additional protection to Māori freehold land
   - equitable treatment between land held in Māori freehold title and land held by Māori in other forms of title
   - equitable treatment between Māori freehold land and land held in general title.

10. The key amendments proposed by the Bill are summarised below. A comprehensive comparison of the amendments proposed in the Bill with current legislation and the council's approach to these issues is set out in Attachment B: Comparison of Amendments to Current Legislative and Council Policy.

11. The Bill makes the following changes to the rating of Māori land that the council has already implemented through its rating policy and its Māori freehold land rates remission policy:
   - all marae and urupā, and land subject to a Ngā Whenua Rāhui covenant is made non-rateable
   - unused land is made non-rateable
   - Māori freehold land used as a single economic unit, for example a farm, can be treated as a single rating unit for the setting of rates
   - Māori freehold land converted under the MAAA 1967 which continues to be owned by the original landowner or their descendants will be protected from rating sales by local authorities.

12. The Bill also:
   - enables separate rating areas to be established for Māori freehold land where parts of the land are being used separately
   - requires councils to consider applications for the remission of rates on Māori land under development
   - empowers local authorities to write off arrears on land in general, not just Māori land.
Māori land in Auckland

13. Auckland has a relatively small amount of land remaining in Māori freehold land title. Council has identified 265 rating units covering 8,600 hectares. Total assessed rates for these properties in the current year was $910,000. While the majority of Māori landowners pay their rates, 57 properties are in arrears. Arrears for Māori land in Auckland is now $2.8 million, the majority of which is penalties. Detailed information regarding Māori land in Auckland can be found in Attachment C: Māori Land in Auckland.

Auckland Council Māori Freehold Land Rates Remission and Postponement Policy

14. Auckland Council’s rates remission policy for Māori land offers five remission schemes. These are:
   - full remission for land that is undeveloped and unused
   - partial remission for land where the nature of the land or its ownership mean that the highest and best use for the land is unlikely to be achieved
   - full remission for marae and urupā
   - partial remission for land used for non-commercial purposes for the community benefit of Māori
   - remission of rate arrears if current rates are paid for three years.

15. In 2019/2020 council remitted $123,000 in rates on 85 properties for unused Māori land. Five properties received remissions totalling $4,300 for land used for community benefit. One property received a full remission of arrears after completing their three-year payment arrangement.

Tātaritanga me ngā tohutohu
Analysis and advice

Support for the Bill

16. The draft submission supports the proposed amendments to legislation contained in the Bill. The proposals align with council’s current policies regarding Māori land rates. The Bill also provides council with new powers that will enable us to address longstanding issues with rating Māori land. The submission’s responses to the key amendments are summarised below.

Changes to rateability

17. The Bill makes all marae and urupā, and land subject to a Ngā Whenua Rāhui covenant non-rateable. It also makes Māori freehold land non-rateable where the rating unit is entirely unused.

18. Currently only some marae are non-rateable. There is a two-hectare limit for both marae and urupā, with the part of the land over the limit being rateable.

19. The draft submission supports these changes. Land used for marae, urupā or protected by Ngā Whenua Rāhui covenants provide benefits to the community and is not able to generate income to cover rates. Unused Māori freehold land is often a consequence of barriers to development including multiple owners, lack of succession, poor land quality and lack of road access. As rates are a wealth tax it is appropriate to recognise the limited economic potential of such land.

20. Auckland Council remission policy offers a full remission for marae, urupā and unused Māori land. The proposals will have no financial impact on the council.
Enabling multiple Māori freehold land rating units to be treated as a single unit for rating purposes

21. The Bill proposes that where rating units of Māori freehold land are used as a single economic unit, for example a farm, they can be treated as a single rating unit for the setting of rates. This will reduce the number of fixed charges that will apply to these properties. Currently multiple rating units are treated as a single unit for rating purposes where the land is in the same ownership and the land is adjoining or only separated by a road or a stream.

22. The draft submission supports these changes as Māori land often fails this test as ownership differs between blocks as a result of succession. Auckland Council remits additional fixed charges for Māori land on multiple rating units that is used as a single economic unit through its general rates remission policy. This scheme is also available to farms generally.

23. The effects of the proposed changes are already achieved by the council’s rates remission policy for Māori land. As such, the proposal will have no financial impact on council.

Protecting Māori freehold land made general land under MAAA 1967

24. The MAAA 1967 required Māori freehold land with less than four owners to have its status changed to general land. This change in status was made without owner knowledge or consent. The MAAA 1967 was repealed in 1973 but affected land remained as general land and is not protected from alienation unlike Māori freehold land. The current Bill proposes that where former Māori freehold land converted under the MAAA 1967 continues to be owned by the original landowner or their descendants, this land will be protected from rating sales by local authorities in the same way Māori freehold land is protected.

25. The draft submission supports these changes as they ensure this land is treated fairly with other Māori freehold land. Auckland Council has identified fourteen properties that possibly fit the above criteria. Such land is able to qualify for remission under the council’s remission policy for Māori land.

26. Council already adopts a conservative approach to dealing with such land. The proposed legislation helps formalise the legal status of the land. It is a step towards rectifying the negative effects of the Māori Affairs Amendment Act 1967 on Māori landowners.

Empowering council to write off uncollectable arrears

27. The Bill empowers local authorities to write off arrears on land in general, not just Māori land.

28. Currently local authorities are required to write off uncollectable arrears after six years for both Māori and general land. The effects of penalties on penalties quickly sees outstanding balances grow to unmanageable levels. Councils are able to adopt a remission policy to remit arrears prior to the six-year limit. Auckland Council’s remission policy for Māori land can remit all arrears if the current rates are paid for three years.

29. The draft submission supports these changes as while council offers a remission scheme for arrears, officers consider that unmanageable debt acts as a barrier to landowners approaching council. Writing off uncollectable arrears sooner will also improve council’s outstanding debt balance. The financial impact of writing off these arrears will be negligible as council already makes provision for these debts not being collected.

Enabling the creation of separate rating areas

30. The Bill enables separate rating areas to be established for Māori freehold land where parts of the land are being used separately. Local authorities will then be able to invoice the users of the land for their share of the rates. The Bill also amends the Rates Rebate Act 1973 so that the ratepayers of separate rating areas can access the rebates scheme.

31. The LG(R)A 2002 requires rates to be invoiced to the landowner unless a registered lease exists. Auckland Council is currently limited in its ability to assist the users of Māori land where they are not the ratepayer for the land.
32. The draft submission supports this amendment as it will enable the council to build relations with the occupiers of Māori land, by recognising them as ratepayers. It will clarify individual liability for rates where there are multiple occupiers of a rating unit. It will also enable occupiers who are liable for rates to access the central government’s rates rebate system.

Remission of rates for Māori freehold land under development
33. The Bill will require councils to consider applications for remissions for Māori freehold land that is being developed. The council is not required to remit rates but may choose to remit some or all of the rates after considering whether the development will benefit Auckland by creating housing, employment or providing support for marae.
34. The LG(R)A 2002 requires Auckland Council to have a rates remission and postponement policy for Māori land. Legislation does not currently prescribe what remissions options must be considered in deciding on the form of the policy.
35. The submission is neutral on this issue. Auckland Council does not currently offer rates remissions to support development of Māori land. The use of rates remissions to support development of Māori land was considered by council during the development of the current remission policy for Māori land. This option was rejected by council in favour of the development of a grants programme. Grants were preferred because they provided greater flexibility and transparency than remissions. The current grants programmes provide grants of up to $150,000 to support the development of marae and papakāinga (Māori housing developments). In comparison, the average rates for Māori freehold land in Auckland is $3,400.

Recommended changes to the Bill
36. The draft submission includes some matters officers recommend be changed. These are set out below.

Unused parts of Māori freehold land rating units
37. The draft submission supports amending the Bill to treat any residual rating area that is unused as non-rateable for Māori land that has been divided into separate rating areas. The Bill proposes that only rating units that are entirely unused are to be treated as non-rateable.
38. The Bill also proposes to enable occupiers or owners of Māori freehold land to request the property be apportioned into separate rating areas so they can be rated directly only for the part of the property they use. This process may create a residual rating area. If this residual rating area is entirely unused, then it should be treated as non-rateable.
39. Auckland Council’s remission scheme for unused Māori land can be applied to a part of the property. This has been used in circumstances where large parts of the property are in bush. 15 properties currently receive a remission for unused Māori land for part of the property.
40. In general, most categories of land use that qualify as non-rateable under Schedule One of the Local Government (Rating) Act 2002 can be applied to part of a property. Auckland Council frequently apportions properties where the non-rateability use applies to part of the property.
41. The option of treating unused parts of a property as non-rateable was not recommend by the Department of Internal Affairs due to the potential administrative burden and risk to finances for some local authorities. As Māori land only makes up a very small part of Auckland’s rating base this is not an issue for Auckland Council.
42. The draft submission notes that the administrative burden and financial risk could be reduced by limiting the application of non-rateability to any unused residual rating area for properties that have been apportioned into separate rating areas. The approach would have the following advantages:

- additional administration would be minimal, as the unused part of the property would be assessed when the separate rating areas are created
- provides an incentive for occupiers of Māori freehold land to establish separate rating areas, and enter a rating relationship with council
- provides an incentive for land to be brought into part use without the risk of the whole property becoming rateable. This may result in a reduction of the number of fully unused rating units and an increase in the rating base.

**Land returned for cultural redress**

43. The draft submission recommends that land in general title that has been returned for cultural redress and is unused is treated as non-rateable.

44. Officers have identified five general land properties in Auckland that were returned under settlement for cultural redress which are unused. Of these properties, three are landlocked, and one is an islet. Such land has significant barriers to development. Some of these properties accrued significant rates arrears that have been addressed through council’s remission policy.

45. Council would not attempt to enforce rates collection against land returned for cultural redress, regardless of its legal status. The draft submission recommends that these categories of land be treated the same as Māori freehold land and be categorised as non-rateable where it is unused.

**Māori freehold land converted to general title under the MAAA 1967**

46. The Bill proposes to protect Māori freehold land made general land under the Māori Affairs Amendment Act 1967 from rating sales, where the land continues to be owned by the original landowner or their descendants.

47. Auckland Council has identified 14 properties in Auckland that may fit the above criteria. Of these, three are unused, one of which could be considered abandoned. The council has adopted a conservative approach in dealing with such land, largely treating it as it does Māori freehold land. Further clarification of the legal status of this land is welcome.

48. The draft submission recommends further alignment of rating of this class of land with Māori freehold land. Such land that remains in Māori ownership faces similar impediments to its use and development as land that remains in Māori freehold land title. These include multiple owners, lack of succession of owners and access issues.

49. If council is similarly proscribed from pursuing rating sales for Māori freehold land and land converted to general title under the MAAA 1967, then it would be equitable to offer similar mechanisms for preventing the accumulation of arrears on both classes of land. Officers recommend that land converted to general title under the MAAA 1967 should be:

- treated as non-rateable if the land is unused
- able have separate rating areas established where the land is used by separate occupiers.

**Access to rates rebates for Māori housing developments and clarification of definitions**

50. The draft submission recommends residents of Māori housing developments that use licence to occupy tenancies should be allowed access to the rates rebate scheme. The Rates Rebates Act currently allows for residents of retirement villages that use licence to occupy tenancies to access the scheme.
51. Auckland Council also requests clarification of the definition of unused land and the apportionment of rates charges to separate rating areas.

**Implementation**

52. Auckland Council is able to implement proposed legislative amendments if they proceed. The council’s submission requests six months lead in time before the amendments take effect to allow for implementation and testing of changes to our rating system.

**Tauākī whakaaweawe āhuarangi**

**Climate impact statement**

53. There is no climate impact from the issues considered in this report.

**Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera**

**Council group impacts and views**

54. There will be no impacts on the council group as a result of the amendments proposed in the Bill. Views of the wider council group were not sought.

55. Feedback on the submission was received from Maori Outcomes Leads within the following departments:
   - Treasury and Financial Transactions
   - Development Programme Office
   - Chief Planning Office
   - Infrastructure and Environmental Services
   - Customer and Community Services
   - Te Waka Anga Mua ki Uta.

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

**Local impacts and local board views**

56. Rates are a regional responsibility. The amendments proposed in the Bill will not negatively affect individual local boards. Those boards with Māori land may see improved rating outcomes for local Māori if the Bill is adopted. While changes in rateability for Māori land may shift the rates burden, the effect will be minimal as such properties already qualify for rates remission. A list of Māori freehold land by local board can be found in Attachment C: Māori Land in Auckland to the report.

57. Feedback was not sought from local boards given the limited impact on the boards, the short timeframe for the submission, and the difficulty in undertaking a formal feedback process while the country is at COVID-19 Alert Level 4.

**Tauākī whakaaweawe Māori**

**Māori impact statement**

58. The impact on Māori has been considered in the body of this report.

59. Feedback was sought from the Independent Māori Statutory Board. Advice from board’s officers was considered in the development of council’s submission. The Independent Māori Statutory Board will not be providing a formal submission on the Bill.

60. Feedback was sought from the Kaitiaki forum. Any feedback received from the forum will be appended to the submission.
Ngā ritenga ā-pūtea
Financial implications

61. There are no financial implications in deciding to make a submission. There are no significant financial implications for the council associated with the implementation of legislative amendments proposed in the Bill.

Ngā raru tūpono me ngā whakamaurutanga
Risks and mitigations

62. There are no risks in deciding to make a submission.

Ngā koringa ā-muri
Next steps

63. If approved, the Auckland Council submission on the Local Government (Rating of Whenua Māori) Amendment Bill will be sent by the deadline of 17 April 2020. If the council wishes to be heard a nominated elected member will present the submission at the Māori Affairs Select Committee.

64. The government will consider changes to the Bill as it moves through parliament during its second and third readings.

65. If the Bill is enacted, council will need to review its Māori Freehold Land Rates Remission Policy so that it is consistent with the provisions of the Bill.

Ngā tāpirihanga
Attachments

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<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Page</th>
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</thead>
<tbody>
<tr>
<td>A</td>
<td>Auckland Council submission Local Government (Rating of Whenua Māori) Amendment Bill</td>
<td>19</td>
</tr>
<tr>
<td>B</td>
<td>Comparison of Amendments to Current Legislation and Council Policy</td>
<td>29</td>
</tr>
<tr>
<td>C</td>
<td>Māori Land in Auckland</td>
<td>33</td>
</tr>
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Ngā kaihaina
Signatories

<table>
<thead>
<tr>
<th>Authors</th>
<th>Beth Sullivan - Principal Advisor Policy</th>
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<tr>
<td></td>
<td>Andrew Duncan - Manager Financial Policy</td>
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<th>Authorisers</th>
<th>Kevin Ramsay – Acting Group Chief Financial Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Phil Wilson - Governance Director</td>
</tr>
</tbody>
</table>
Auckland Council submission

Local Government (Rating of Whenua Māori) Amendment Bill

17 April 2020
Auckland Council’s submission on Local Government (Rating of Whenua Māori) Amendment Bill

1. Auckland Council welcomes the opportunity to make a submission on the Local Government (Rating of Whenua Māori) Amendment Bill.

2. This submission has been approved by council’s Emergency Committee. The address for service is Auckland Council, Private Bag 92300, Victoria Street West, Auckland 1142.

3. Please direct any enquiries to Kevin Ramsey, Acting Group Chief Financial Officer, at Kevin.Ramsay@aucklandcouncil.govt.nz and/or on 021-656-864
Introduction

Executive summary

1. Auckland Council supports the proposed amendments set out in the Local Government (Rating of Whenua Māori) Amendment Bill (the Bill). The proposals align with the council’s current policies regarding Māori land rates. The Bill also provides council with new powers that will enable us to address long standing issues with rating Māori land.

2. In particular, Auckland Council supports the proposed amendments to:
   - expand the categories of non-rateable Māori land
   - empower local authorities to write off arrears
   - treat rating units of Māori freehold land used as a single economic unit as a single unit for rating purposes to reduce the number of fixed charges that apply
   - enable Māori freehold land to be apportioned on request into separate rating areas so that separate occupiers of the land can be rated directly only for the portion of the land they use
   - enable occupiers of Māori freehold land to access the rates rebate scheme by establishing them as ratepayers for separate rating areas
   - increase protection for Māori freehold land that was converted to general title under the Māori Affairs Amendment Act 1967 (MAAA 1967).

3. Auckland Council recommends that the following changes are included in the Bill:
   - that an unused residual rating area of a Māori freehold land rating unit be treated as non-rateable, in the case where the unit has been apportioned into separate rating areas
   - that fixed charges applied on a per Separately Used or Inhabited Part (SUlP) only be applied to a residual rating area if the residual rating area is identified as a separately used part of the underlying rating unit
   - require notification of a change in circumstances that alter the ratepayer for separate rating areas
   - that land that in general title that has either been returned for cultural redress or that was converted under the MAA 1967 and remains in the same ownership, be treated as non-rateable where it is unused
   - that separate rating areas be able to be established for land in general title that was converted under the MAA 1967 and remains in the same ownership
   - that residents of Māori and social housing that use licence to occupy tenancies be able to access rates rebates
Submission

Māori land in Auckland

4. Auckland Council has 265 properties in Māori freehold land title, covering 8,800 hectares of land. This represents less than 0.1% of the Auckland rating base.

Amendments to the Local Government (Rating) Act 2002

5. The following sections set out Auckland Council’s response to the proposed amendments to the Local Government (Rating) Act 2002 (the Rating Act.)

Amendments to Schedule One: Categories of non-rateable land

6. Auckland Council supports the proposed amendments to Schedule One to make the following land non-rateable:
   - marae
   - urupā
   - meeting houses on Māori freehold land
   - unused Māori freehold land
   - land that is subject to a Ngā Whenua Rāhui covenant.

7. Land used for marae, urupā or protected by Ngā Whenua Rāhui covenants provide benefits to the community and is not able to generate income to cover rates. Unused Māori freehold land is a consequence of barriers to development including multiple owners, lack of succession, poor land quality and lack of road access. As rates are a wealth tax it is appropriate to recognise the limited economic potential of such land.

8. Auckland Council already achieves much of the effects of this proposal through its rates remission for Māori land. This provides a full remission of rates for Māori land that is:
   - undeveloped or unused (includes land that is subject to a Ngā Whenua Rāhui covenant)
   - used for a marae or urupā

Definition of unused Māori freehold land

9. Auckland Council seeks clarification whether section 4A (b)(iii) of the Bill excludes whanau camping and maintenance of the land. These activities could be considered to be consistent with section 4A (b) that “the entire rating unit is used in a similar manner to a reserve or conservation area.” Many reserves and some conservation areas allow visitors to camp, and more remote properties may not be accessible if camping is not permitted.

10. Auckland Council uses a similar definition for unused land as proposed in the Bill but also includes whanau camping and maintenance. The definition used by council allows the following uses:
   - the maintenance of the cultural traditions associated with the land, including visiting, cultural use, whanau camping, and the collection of kai, kai moana, medicinal, and cultural material
   - maintaining or improving the natural or historic heritage value of the land.

11. The ability to maintain the land was raised as a concern in submissions to the council’s remission scheme for unused Māori land.
Application to part of a rating unit

12. Auckland Council recommends the Bill be amended to treat any residual Rating Area that is unused as non-rateable for Māori land that has been divided into separate rating areas.

13. The Bill proposes that only rating units that are entirely unused are to be treated as non-rateable. The Bill also proposes to enable occupiers or owners of Māori freehold land to request the property be apportioned into separate rating areas so they can be rated directly only for the part of the property they use. This process may create a residual rating area. If this residual rating area is entirely unused, then it should be treated as non-rateable.

14. The Auckland Council remission scheme for unused land can be applied to a part of the property. This has been used in circumstances where large parts of the property are in bush. In Auckland, 15 properties currently receive a remission for unused Māori land for part of the property.

15. In general, most categories of land use that qualify as non-rateable under Schedule One of the Local Government (Rating) Act 2002 can be applied to part of a property. Auckland Council frequently apportions properties where the non-rateable use applies to part of the property.

16. The option of treating unused parts of a property as non-rateable was not recommend by the DIA due to the potential administrative burden and risk to finances for some local authorities. As Māori land only makes up a very small part of the Auckland rating base, this is not an issue for Auckland Council. Auckland Council acknowledges that districts with larger amounts of Māori freehold land may face greater difficulties in assessing parts of properties as non-rateable.

17. The administrative burden and financial risk could be reduced by limiting the application of non-rateability to unused residual Rating Areas for properties that have been apportioned into separate rating areas. The approach would have the following advantages:

- additional administration would be minimal, as the unused part of the property would be assessed when the separate rating areas are created
- provides an incentive for occupiers of Māori freehold land to establish separate rating areas, and enter into a rating relationship with council
- provides an incentive for land to be brought into part use without the risk of the whole property becoming rateable. This may result in a reduction of the number of fully unused rating units and an increase in the rating base.

Application to land not in Māori freehold land title

18. Auckland Council recommends that unused land in general title is treated as non-rateable where that land

- meets the criteria of the section 62 A (1) and (2) of the Bill for land converted to general title under the Māori Affairs Amendment Act 1967;
- was returned for cultural redress under an act of Settlement.
19. Auckland Council’s Māori land Rates Remission and Postponement Policy can be applied to land that is not in Māori freehold title, but which has similar characteristics to this land. The policy requires such land to be in multiple ownership by Māori and held in accordance with tikanga Māori values. This enables the policy to apply to:

- marae on general title land
- land that was formerly Māori freehold land, but which was converted to general title in 1967 under the Māori Affairs Amendment Act

20. Auckland Council has identified five general land properties within its region that were returned under settlement for cultural redress that is fully rateable but currently unused. Of these properties, three are land locked, and one an islet, so have significant barriers to development. There are a further three properties that are unused; one of which is land locked, that may meet the criteria of land converted to general title under the Māori Affairs Amendment Act 1967 (MAAA 1967). Whether these properties are still held by descendants of the original owners would need to be determined.

21. The Bill proposes to protect former Māori freehold land converted to general title under the MAAA 1967 from rating sales. It also seems unlikely that councils could successfully pursue such action for land returned for cultural redress. Given this, it would simplify administration and ensure equity of treatment if this land was treated the same as Māori freehold land where it is unused.

**Empowering local authorities to write off arrears**

22. Auckland Council supports the provision of powers to write off uncollectible arrears to local authorities. The total assessed rates for the 265 Māori freehold land rating units in Auckland was $910,000 in the current year. Most Māori landowners pay their rates. Currently 57 Māori freehold land properties in Auckland are in arrears. The total arrears for Māori freehold land in Auckland are $2.8 million, the majority of which is rates penalties.

23. Auckland Council offers a remission scheme for arrears on Māori land, where arrears will be written off if the current rates are paid for three years. This has encouraged a small number of landowners to enter into payment arrangements with council. However, feedback has been received that large arrears amounts are a barrier to landowners connecting with council. The power to write off uncollectable arrears will assist council with this issue.

**Rating units of Māori freehold land used as a single economic unit to be treated as single unit for rating purposes**

24. Auckland Council supports the amendment to enable Māori freehold land rating units that are used as a single economic unit to be treated as a single rating unit for the application of fixed charges. The council already achieves this outcome by offering a remission of fixed charges to Māori land used as a single unit. This is part of a general remission scheme that is also available to rating units used as a single economic farm.
Separate Rating Areas

25. Auckland Council supports the proposal to enable the creation of separate rating areas for parts of Māori land that are occupied or used separately from the remainder of the rating unit. Separate rating areas would enable council to establish a relationship with those using the land and to invoice them directly for an appropriate share of the rates. It would also enable the occupiers of such land to access the rates rebate scheme.

26. The council seeks clarification of how section 98B (d) interacts with section 98 (f) of the Bill. 98B (d) specifies that if a fixed charge is set on a per Separately Used or Inhabited Part (SUIP) basis, then the charge should be applied to each of the separate rating areas, and to the residual.

27. Section 98 (f) then specifies that the “the sum of the apportionments of all rates for the separate rating areas and any residual rating area must equal the sum of all rates that would apply to the underlying rating unit without apportionment”. It may be the case that without the apportionments, the residual part of the property would not attract a fixed charge on per SUIP basis.

28. For example, a property mostly in bush that has a cleared area with two dwellings would attract two UAGCs under Auckland Council’s rating policy. If two separate rating areas are to be created for the dwellings, with the bush area as the residual, section 98B (d) suggests that council should apply three UAGC charges, one for each Separate Rating Area, and one for the residual. This is then inconsistent with section 98 (f).

29. Auckland Council recommends that the fixed charges applied on a per SUIP basis are only applied to the residual rating area if that area is identified as a separately used part of the underlying rating unit.

Notification of change in circumstances

30. Sections 30 to 33 of the Local Government (Rating) Act 2002 require the owner and/or ratepayer to notify the local authority of any change circumstance that will alter the ratepayer for the property. Until notice of the change circumstance is given, the ratepayer remains liable for rates under section 34.

31. The Bill does not propose any amendments to the above sections of the Rating Act. Auckland Council submits that a section should be added requiring the owner or ratepayer to give notice should there be a change in the person using the Separate Rating Area, or if the part of the property ceases to be used separately.

Remission of rates for Māori freehold land under development

32. Auckland Council does not offer a rates remission for Māori freehold land under development. This issue was considered during the development of Auckland Council’s rates remission policy for Māori land. At this time council considered grants to be a more effective mechanism for supporting Māori development. This is because grants offer greater flexibility in terms of the level and timing of support that is provided. They also offer greater transparency, as section 38 of the Local Government (Rating) Act 2002 restricts public access to information on individual remissions.

33. Auckland Council currently provides a grants programme specifically for marae and pākāinga (Māori housing) development through its Cultural Initiatives Fund. This provides grants of up to $150,000 per applicant to support:
• development of new papakāinga and marae by assisting with planning, design and financial evaluation costs

• existing marae by assisting with improvements and/or extensions to core marae infrastructure and buildings.

34. The grants are available to a range of not for profit Māori organisations and can also be used for development on land that is not in Māori freehold title. With rates for Māori freehold land rating units currently averaging $3,400, grants allow council to provide greater assistance, targeted towards the specified activities that enable development of marae and papakāinga.

Increased protection for Māori freehold land made general land under the Maori Affairs Amendment Act 1967

31 Auckland Council supports the proposal to protect Māori freehold land made general land under the Maori Affairs Amendment Act 1967 from rating sales. It is a step in rectifying the negative effects of the Maori Affairs Amendment Act 1967 on the retention of Māori land.

32 Auckland Council has identified 14 properties in Auckland that may fit the above criteria. The council has adopted a conservative approach in dealing with such land, largely treating it as it does Māori freehold land. Further clarification of the legal status of this land is welcome.

33 Auckland Council recommends be given to further alignment of rating of this class of land with Māori freehold land. Such land that remains in Māori ownership as set out in section 62A(1)(b) of the Bill, faces similar impediments to its use and development as Māori freehold land. These include multiple owners, lack of succession of owners and access issues.

34 If council is similarly proscribed from pursuing rating sales, then it would seem equitable to offer similar mechanisms for preventing the accumulation of arrears on both classes of land. Consideration should be given to whether such land should be:

• treated as non-rateable if the land is unused
• able have separate rating areas established where the land is used by separate occupiers.

35 Auckland Council notes that it can be difficult to identify whether land meets the criteria set out in section 62A(1) of the Bill. Any assistance that can be provided will be appreciated.

Amendments to Other Acts

Amendments to Rates Rebate Act 1973

36 The council considers that the Bill should be amended to provide for the residents of Māori housing developments (such as papakāinga) held under a licence to occupy to have access to the rates rebate scheme.

37 Auckland Council notes that in 2018 the Rates Rebate (Retirement Village Residents) Amendment Bill was enacted. This Bill enabled residents of retirement villages who occupied their properties under a licence to occupy tenancy to access the central government’s rates rebate scheme.
38 In Auckland, there is increasing use of licence to occupy tenancies for new Māori housing developments, and for social housing developments. Currently residents of such properties are unable to access the rates rebate scheme, even if the tenants are liable for rates under their tenancy agreement. Auckland Council submits that the situation for these tenants is directly comparable to residents of retirement villages and the different treatment is inequitable.

Implementation and administration by council

39 Auckland Council is able to implement and administer the proposed legislative amendments. The amendments will require changes to the council’s rating system. Auckland Council submits that the adoption of the Bill allows for a lead time of at least 6 months before the start rating year in which the changes will take effect.
Appendix B: Comparison of Amendments to Current Legislation and Council Policy

1. The following tables summarises the key amendments proposed in Local Government (Rating of Whenua Māori) Bill. It also sets out the current legislative position and Auckland Council’s policy approach to the issue.

Amendments Proposed to the Local Government (Rating) Act 2002

<table>
<thead>
<tr>
<th>Proposed Amendments</th>
<th>Current Legislative Position</th>
<th>Auckland Council approach</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Bill makes the following categories of land fully non-rateable:</td>
<td>Only marae on Māori reservations or Māori freehold land are non-rateable. Only the first two hectares of marae and urupā are non-rateable.</td>
<td>Auckland Council’s remission policy for Māori land offers a full remission for marae, urupa and unused Māori land. The remission for unused land also applies to Ngā Whenua Rāhui covenants. Remission can apply to Māori land not in Māori freehold title. The remission for unused land can apply to part of a property</td>
</tr>
<tr>
<td>• marae and urupā</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Māori freehold land rating units that are entirely unused</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• land that is subject to a Ngā Whenua Rāhui covenant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Bill empowers local authorities to write off uncollectable arrears on land in general, not just Māori land</td>
<td>Uncollectable arrears outstanding more than six years must be written off. Local authorities can remit arrears before six years if they have a policy to do this. Rates cannot be written off in other circumstances. Local elected representatives are personally liable under the Local Government Act if the &quot;local authority has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive&quot;.</td>
<td>Auckland Council’s remission policy for Māori land will remit all arrears on a Māori land rating unit if the current rates are paid for three years.</td>
</tr>
<tr>
<td>Proposed Amendments</td>
<td>Current Legislative Position</td>
<td>Auckland Council approach</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>The Bill enables separate rating areas to be established for Māori freehold land where parts of the land are being used separately. Local Authorities will then be able to invoice the users of the land for their share of the rates. The Bill also amends the Rates Rebate Act 1973 so that the ratepayer of separate rating area can access the rebates scheme.</td>
<td>The introduction of the Rating Act in 2002 removed council’s ability to create separately rated apportionments for part of a property. Rates must be invoiced to the owner of the property unless there is a registered lease in place.</td>
<td>Auckland Council is currently limited in its ability to assist the users of Māori land where they are not the ratepayer for the land.</td>
</tr>
<tr>
<td>The Bill proposes that where rating units of Māori freehold land are used as a single economic unit, for example a farm, they can be treated as a single rating unit for the setting of rates. This will reduce the number of fixed charges that will apply to these properties.</td>
<td>Multiple rating units are treated as a single unit for rating purposes where the land is in the same ownership and the land is adjoining or only separated by a road or a stream. Māori land often fails this test as ownership differs between blocks.</td>
<td>Auckland Council remits additional fixed charges for Māori land on multiple rating units that is used as a single economic unit through its general rates remission policy. This scheme is also available to farms generally.</td>
</tr>
</tbody>
</table>
| Council will be required to consider applications for remissions for Māori freehold land that is being developed. The council may choose to remit some or all of the rates after considering whether the development will benefit Auckland by creating housing, employment or providing support for marae. | Auckland Council must have a rates remission and postponement policy for Māori land. Legislation does not prescribe what remissions options must be considered in deciding on the form of the policy. | Auckland Council does not currently offer rates remissions to support development of Māori land. The council instead offers grants programmes for marae and papakāinga development through its Cultural Initiatives Fund. This provides grants of up to $150,000 per applicant to support:  
  - development of new papakāinga and marae by assisting with planning and evaluation costs  
  - existing marae by assisting with improvements and / or extensions to core marae infrastructure. |
<table>
<thead>
<tr>
<th>Proposed Amendments</th>
<th>Current Legislative Position</th>
<th>Auckland Council approach</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide protection to Māori freehold land made general land under the Māori Affairs Amendment Act 1967 (MAAA 1967). The MAAA 1967 required Māori freehold land with less than four owners to have its status changed to general land. This change in status was made without owner knowledge or consent. The MAAA 1967 was repealed in 1973 but affected land remained as general land. The current Bill proposes that where former Māori freehold land converted under the MAAA 1967 continues to be owned by the original landowner or their descendants, this land will be protected from rating sales by local authorities in the same way Māori freehold land is protected.</td>
<td>The introduction of the Rating Act in 2002 removed council's ability to create separately rated apportionments for part of a property. Rates must be invoiced to the owner of the property unless there is a registered lease in place.</td>
<td>Auckland Council has identified fourteen properties that possibly fit the above criteria. Such land is able to qualify for remission under the council's remission policy for Māori land. Officers have adopted a cautious approach to such land, deferring action until land status and ownership can be clarified.</td>
</tr>
</tbody>
</table>
Appendix C: Māori Land in Auckland

Land status determined by the Māori Land Court

1. The following table shows properties whose land status has been determined by the Māori Land Court to be Māori land under the Te Ture Whenua Rating Act 1993 and which has been included in the Māori Land Online database.

<table>
<thead>
<tr>
<th>Māori Land Status</th>
<th>Rating Units</th>
<th>Land Area (Hectares)</th>
<th>Total Assessed Rates 2019/2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Māori Freehold Land</td>
<td>265</td>
<td>8604</td>
<td>$910,000</td>
</tr>
<tr>
<td>Customary Land</td>
<td>29</td>
<td>107*</td>
<td>0</td>
</tr>
<tr>
<td>General land owned by Māori</td>
<td>2</td>
<td>33</td>
<td>0</td>
</tr>
</tbody>
</table>

*A third of customary land properties have not been surveyed so are not included in the land area

2. Māori Freehold Land is land where the beneficial ownership has been determined by the Māori Land Court by freehold order

3. Customary land is land that is held by Māori in accordance with tikanga Māori. It is land that has never had freehold title. Customary land in Auckland consists of offshore rocks and small islets mainly around Great Barrier Island. It is fully non-rateable.

4. General land owned by Māori is land in general title that is beneficially owned by a Māori or by a group of persons of whom a majority are Māori. The above table only includes such land which has been formally recognised and recorded by the Māori Land Court. Māori owned land described in the next section would also be classified as general land owned by Māori.

Other Māori Land

5. Rates officers have also identified a small number of Māori land properties in general title as shown below. This list is not a complete list of Māori owned general land in Auckland. It is instead land that has been identified for rating purposes, for example because it is non-rateable, or eligible for rates remission.

<table>
<thead>
<tr>
<th>Land in General Title</th>
<th>Rating Units</th>
<th>Land Area (Hectares)</th>
<th>Total Assessed Rates 2019/2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crown land reserved for Māori</td>
<td>3</td>
<td>1</td>
<td>$6,800</td>
</tr>
<tr>
<td>Land returned for Cultural Redress</td>
<td>13</td>
<td>77</td>
<td>$4,100</td>
</tr>
<tr>
<td>Former Māori Freehold Land in Māori ownership – possibly converted under MAAA 1967</td>
<td>14</td>
<td>286</td>
<td>$16,800</td>
</tr>
<tr>
<td>Maunga</td>
<td>12</td>
<td>204</td>
<td>$123,700</td>
</tr>
<tr>
<td>Urupā/Marae/Papakāinga/Māori Community Use</td>
<td>7</td>
<td>12</td>
<td>$28,700</td>
</tr>
<tr>
<td>Crown owned Māori land</td>
<td>3</td>
<td>42</td>
<td>$8,200</td>
</tr>
</tbody>
</table>
Māori freehold land by Local Board

6. The table below shows Māori freehold land in each local board area that has such land.

<table>
<thead>
<tr>
<th>Local Board</th>
<th>Rating units</th>
<th>Land Area (Hectares)</th>
<th>Total Assessed Rates 2019/2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Franklin</td>
<td>56</td>
<td>1,146.5</td>
<td>$119,016</td>
</tr>
<tr>
<td>Great Barrier</td>
<td>27</td>
<td>1,642.9</td>
<td>$32,466</td>
</tr>
<tr>
<td>Henderson-Massey</td>
<td>1</td>
<td>0.1</td>
<td>$2,321</td>
</tr>
<tr>
<td>Hibiscus and Bays</td>
<td>7</td>
<td>0.4</td>
<td>$12,293</td>
</tr>
<tr>
<td>Mangere-Otahuhu</td>
<td>22</td>
<td>10.3</td>
<td>$48,643</td>
</tr>
<tr>
<td>Orakei</td>
<td>18</td>
<td>65.7</td>
<td>$274,762</td>
</tr>
<tr>
<td>Otara-Papatoetoe</td>
<td>1</td>
<td>0.1</td>
<td>$1,997</td>
</tr>
<tr>
<td>Rodney</td>
<td>117</td>
<td>4,757.0</td>
<td>$232,325</td>
</tr>
<tr>
<td>Waiheke</td>
<td>6</td>
<td>980.2</td>
<td>$16,972</td>
</tr>
<tr>
<td>Waitakere Ranges</td>
<td>1</td>
<td>0.1</td>
<td>$2,867</td>
</tr>
<tr>
<td>Waitemata</td>
<td>9</td>
<td>0.3</td>
<td>$166,472</td>
</tr>
</tbody>
</table>
Auckland Council submission on the Accessible Streets Regulatory Package

File No.: CP2020/04388

Te take mō te pūrongo
Purpose of the report
1. To seek the approval of Auckland Council’s submission on the Accessible Streets Regulatory Package.

Whakarāpopototanga matua
Executive summary
The report would normally go before the Planning Committee, however, in light of COVID-19, it must now be considered by the Emergency Committee.

2. Waka Kotahi NZ Transport Agency is consulting on a collection of rule changes known as the Accessible Streets Regulatory Package. The package consists of nine proposals intended to support and improve accessible and affordable transport, safety and liveable cities.

3. The package will clarify:
   - the types of vehicles and devices allowed on footpaths, shared paths, cycle paths and cycle lanes
   - how devices can use these spaces
   - how road controlling authorities may regulate pedestrians, devices and spaces like footpaths
   - propose changes to the priority given to a range of road users to remove barriers to walking, device use and cycling.

4. The package generally aligns with the strategic direction of the council as set out in the Auckland Plan 2050 and other plans such as the draft Te Tāruke-ā-Tāwhiri: Auckland’s Climate Action Framework. The draft submission supports the intent of the package but seeks some changes to better achieve the intentions of the package and better align with council’s strategic goals.

5. Submissions on the proposed package close on 22 April 2020.

Ngā tūtohunga
Recommendation/s
That the Emergency Committee:

a) approve Auckland Council’s submission (Attachment A of the agenda report) on the Accessible Streets Regulatory Package which supports the intention of the package but requests that:
   i) amendments be made to some of the proposals
   ii) Waka Kotahi and/or the Ministry of Transport continue work to resolve some remaining issues outside of the scope of the package

b) delegate authority to the Chair and Deputy Chair of the Planning Committee and an Independent Māori Statutory Board member to authorise any minor amendments and corrections to finalise the submission on the Accessible Streets Regulatory Package.
Horopaki Context

The Accessible Streets Regulatory Package

6. On 9 March 2020 Waka Kotahi NZ Transport Agency released a collection of rule changes, known as the Accessible Streets Regulatory Package, for consultation. These rules are intended to:
   - make footpaths, shared paths, cycle lanes and cycle paths safer and more accessible
   - accommodate the increasing use of micro-mobility devices like e-scooters on streets and footpaths
   - encourage active modes of transport and support the creation of more liveable and vibrant towns and cities
   - make social and economic opportunities more accessible
   - make buses and active transport such as walking and cycling safer and more efficient.

7. Submissions on the package close on Wednesday, 22 April 2020.

8. The package contains nine proposals, summarised below.

9. **Proposal One:** Change current vehicle and device definitions and create new categories to allow better regulation of new and emerging devices and where and how they’re used. Broadly speaking the proposal would create the following categories:
   - pedestrians
   - powered wheelchairs
   - mobility devices
   - unpowered transport devices
   - powered transport devices
   - cycles and e-bikes.

10. **Proposal Two:** Change who is allowed on footpaths and introduce conditions that users need to follow when using the footpath. For the safety of others sharing the footpath, people riding on the footpath under the new rule must:
    - behave in a courteous and considerate manner
    - travel in a way that is not dangerous for other people using the footpath
    - give right of way to pedestrians
    - travel no faster than 15km/h
    - ride a device no wider than 750mm, unless it’s a wheelchair, so multiple people can still use the footpath.

11. **Proposal Three:** Clarify who is allowed on shared paths and cycle paths and introduce the conditions they need to follow. These changes will clarify that:
    - if a path is located beside a roadway, the speed limit on the path will match the roadway. If a path is not located beside a roadway, the speed limit will be 50km/h
    - all users must give way to pedestrians on shared paths
    - road controlling authorities can declare that a path is a shared path or cycle path by resolution.

12. **Proposal Four:** Allow transport devices, such as skateboards and e-scooters, to use cycle lanes and cycle paths.
13. **Proposal Five:** Introduce lighting and reflector requirements for powered transport devices at night. This proposed change would only permit transport devices on roads and paths at night if they are fitted with:
   - a headlamp
   - a rear facing position light
   - a reflector (or if the user is wearing reflective material).

14. **Proposal Six:** Change the priority of road users by:
   - allowing cycles and transport devices to:
     - ride straight ahead from a left turn lane
     - pass slow-moving vehicles on the left
   - clarifying that turning traffic must give way to all people using separated lanes, including buses, if those people are travelling straight through at an intersection
   - giving greater priority to people on footpaths and shared paths when they’re crossing side roads with minimum markings (two white lines).

15. **Proposal Seven:** Mandate a minimum overtaking gap (on the road) for motor vehicles overtaking cycles, transport devices, horses, mobility devices and pedestrians of:
   - 1 metre, when the posted speed limit is 60km/h or less
   - 1.5 metres, when the posted speed limit is over 60km/h.

16. **Proposal Eight:** Clarify what is needed for road controlling authorities to restrict parking on berms and remove the need for signs. The proposed method is for a road controlling authority to pass a resolution and register the restriction with Waka Kotahi.

17. **Proposal Nine:** Require road users to give way to signalling buses pulling out of bus stops in urban areas, when the speed limit is 60km/h or less.

**Links to strategies, policies and plans**
18. The intention of the proposed changes is consistent with the strategic direction of the Auckland Plan 2050, which aims to:
   - encourage walking, cycling and public transport use by making these modes more accessible, reliable, safe and attractive
   - maximise safety for people in our transport system
   - minimise the environmental and health impacts of the transport system
   - increase genuine travel choices for a healthy, vibrant and equitable Auckland.

19. The intentions of the package are also well aligned with the draft Te Tāruke-ā-Tāwhiri: Auckland’s Climate Action Framework and with the in-principle changes to this framework endorsed by the Environment and Climate Change Committee (ECC/2020/12).

**Tātaritanga me ngā tohutohu**

**Analysis and advice**
20. A recommended position on the proposals contained in the package is summarised in the below table. This is further elaborated on in the draft submission.
<table>
<thead>
<tr>
<th>Proposal</th>
<th>Recommended Position</th>
<th>Comments</th>
</tr>
</thead>
</table>
| **One: Change current vehicle and device definitions**                   | Support               | Support the attempt to clarify the status and categories of small transport devices and bicycles within the current legislative framework. However, the package does not change the status of powered transport devices not already declared to not be a motor vehicle (a list which to date only consists of e-scooters, YikeBikes and e-bikes). Neither does it remove the unsuitable use of power level as the primary means of categorisation and control. Addressing these matters will require further/broader changes outside the scope of the package. These changes should include:  
  • removal, or at least replacement, of the current regulatory process required to declare a powered device not a motor vehicle, and the removal of the current 300W and 600W limits used in the Land Transport Act  
  • introduction of a new legislative and regulatory framework that is focused on the main harm-reduction/safety factors – the speed and weight of the transport devices. |
| **Two: Change who is allowed on footpaths and introduce conditions that users need to follow when using the footpath** | Partial support       | Support the intention of the proposal to give as many people as possible safe spaces to travel while maintaining and prioritising pedestrian access. Also support the new, clearer rules for people riding on the footpath. While the proposal will improve the safety of cyclists and promote cycle use this will have some detrimental impact on the real or perceived safety of pedestrians. The alternative proposal suggested by Waka Kotahi (allowing cyclists up to 16 years old to use the footpath) strikes a more appropriate balance between the needs of pedestrians and cyclists is supported.  
  The exemption allowing footpath cycling should also include:  
  • permit users over the age of 65  
  • accompanying caregivers  
  Staff consider that if an age limit is placed on the use of footpaths by cyclists this rule should:  
  • allow accompanying caregivers to also use the footpath; and  
  • apply equally to powered transport devices.  
  Staff are also considering whether the proposed 15km/h speed limit is appropriate or should be lower (10 or 12 km/h). |
<table>
<thead>
<tr>
<th>Proposal</th>
<th>Recommended Position</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Three: Clarify who is allowed on shared paths and cycle paths and introduce the conditions they need to follow</td>
<td>Partial support</td>
<td>Support the attempts to clarify the status and rules for shared paths. Changes should however be made to:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• the default speed limit so that it is not tied to the adjacent roadway. A standard default limit should apply to all shared paths (25 km/h) and cycle paths (50 km/h) to reduce the risk to the more vulnerable users of these spaces</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• give priority to cyclists over powered transport device users to recognise the importance of active transport and the physical effort required of these users to regain momentum</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• require speed limit signs where the speed limit differs from the default.</td>
</tr>
<tr>
<td>Four: Allow transport devices to use cycle lanes and paths</td>
<td>Support</td>
<td>The proposal to allow transport devices similar to cycles in cycle lanes and paths will improve the safety of these device users. This may be negated to some degree by more conflicts between users on devices and cycles travelling at different speeds; though this is considered preferable to having these conflicts occur between device users and cars.</td>
</tr>
<tr>
<td>Five: Introduce lighting and reflector requirements for powered transport devices at night</td>
<td>Partial support</td>
<td>Support the safety intentions of this proposal.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The rationale in applying a consistent approach to the lighting and reflector requirements for both cycles and powered transport devices is supported. It is unclear though why unpowered transport devices are not covered by a similar consistent approach.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>It is also likely that the proposal will indirectly prevent the use of some devices at night. For instance, currently unpermitted devices like e-skateboards may, if approved in future, be unable to meet these requirements. Waka Kotahi states that the safety benefits will likely outweigh the costs yet given the unknown range of possible future designs and their level of popularity, it is difficult to know if this will be the case.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>It is requested that Waka Kotahi consider whether different lighting requirements could be acceptable for devices using footpath at night compared to other parts of the road.</td>
</tr>
<tr>
<td>Proposal</td>
<td>Recommended Position</td>
<td>Comments</td>
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<tr>
<td>Six: Change the priority of road users by:</td>
<td></td>
<td><strong>a. and b. allowing cycles and transport devices to engage in common, safe behaviours that are currently illegal</strong> Support These rules will improve the safety of cyclists by legalising safer behaviors. This could be improved by extending and also introducing the ability for cyclists and device users to use the pedestrian phase of signalized intersections.</td>
</tr>
<tr>
<td>c. clarifying that turning traffic must give way to all people travelling straight ahead using separated lanes</td>
<td>Support</td>
<td>This proposal will improve the safety of cyclists and other cycle path users, such as e-scooter users, by giving them clear right of way in these circumstances.</td>
</tr>
<tr>
<td>d. giving greater priority to people on footpaths and shared paths when they’re crossing side roads with minimum markings</td>
<td>Partial support?</td>
<td>Support moves to give priority to more vulnerable and sustainable modes. However, the proposal will likely only see this priority applied in a small number of locations seeing little change in priority for most users. The rules should instead be applied more widely, preferably to all intersections. AT have advised that the introduction of this form of priority as a blanket rule for all intersections will, in their view, necessitate a regionwide intersection upgrade programme bearing a significant cost.</td>
</tr>
<tr>
<td>Seven: Mandate a minimum overtaking gap</td>
<td>Partial support</td>
<td>Support the mandating of minimum passing distances and the minimum passing distance of 1.5m for roads with speed limits over 60km/h. However, changes should me made so that: • the minimum 1.5m passing distance apply to roads with speed limits up to 60km/r as well • the minimum passing distance also applies to passing cyclists in unprotected cycle lanes. Staff are currently considering the suitability of the proposed 1m passing distance for roads up to a speed limit of 60km/h and whether it should be increased to 1.5m.</td>
</tr>
<tr>
<td>Eight: Clarify berm parking situation</td>
<td>Support</td>
<td>Clarification of the rules and requirements for restricting parking on berms will enable a focus on implementing and enforcing these restrictions rather than arguing the legalities. Some suggestions for improvements are made.</td>
</tr>
<tr>
<td>Nine: Require give way to signalling buses pulling out of bus stops</td>
<td>Support</td>
<td>This will enable the more efficient operation of Auckland’s bus network, reduce delays for bus passengers and reduce operating costs.</td>
</tr>
</tbody>
</table>
Alignment of the proposals with the council’s strategic direction

21. There is general alignment between the stated intentions of the package and the strategic direction of the council as set out in the Auckland Plan 2050 and other plans such as the draft Te Tāruke-ā-Tāwhiri: Auckland’s Climate Action Framework. Changes suggested to the proposals in the package are made to better achieve the intentions.

22. More detailed advice as to the alignment of the proposals with the council’s strategic direction, and any amendments that could be made to further improve that alignment, will be provided at the committee meeting.

Tauākī whakaaweawe āhuarangi
Climate impact statement

23. The transport sector is the largest contributor to greenhouse gas emissions in the Auckland region with around 40 per cent of Auckland’s total emissions. Increased support and prioritisation of no and low emissions modes of transport, such as active transport, micromobility modes and public transport, will help reduce these emissions.

24. This reduction would support the council’s ability to achieve its climate goals and is well aligned with the draft Te Tāruke-ā-Tāwhiri: Auckland’s Climate Action Framework and with the in-principle changes to this framework endorsed by the Environment and Climate Change Committee (ECC/2020/12).

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera
Council group impacts and views

25. Relevant parts of the council, such as the Auckland Design Office, are engaged in establishing the recommended position and developing the submission. Engagement and feedback from the E-Scooter Steering Group (consisting of executive members of Auckland Council and Auckland Transport (AT)) is helping inform the recommended position.

26. As road controlling authority responsible for administering these changes in the Auckland region, AT will be particularly impacted by the proposed changes. AT are preparing their own submission on the package. We are working closely with AT staff and are part of their working group.

27. AT reporting and approval timeframes differ from the council’s and as such there are no updates on AT’s position at the time of writing. An update on AT’s position will be provided at the committee meeting.

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

28. The reporting timeline is insufficient to enable local boards to provide formal feedback to inform this paper. Nevertheless, it is noted that changing “the give way rule at side street crossings to favour pedestrians” is identified as a key initiative by the Waitematā Local Board in the Waitematā Local Board Plan 2017 and as an advocacy area in the 2019/20 Waitematā local board agreement.

29. A memo was sent to all local board members on 19 March 2020 outlining the content of the package and with a link to the consultation material. Local boards have been invited to send their feedback through by Friday 17 April 2020. Any feedback will be appended to the main submission.
Troiki whakaaweawe Māori
Māori impact statement

30. The success of the package in achieving its goals of supporting and promoting active transport, micro-mobility modes and public transport would likely have some small positive impacts on Māori through:
   • improving the safety of Māori who are overrepresented in pedestrian related injuries
   • reducing transport emissions as Māori have higher exposure to air pollutants than other ethnic groups due to pre-existing social inequities, resulting in higher rates of chronic respiratory and cardiovascular disease.

31. Proposals which prioritise cyclists over other road users may have some negative impact on Māori who make up a relatively low proportion of Auckland’s cyclists. The main proposal where this may be an issue is Proposal Two. As previously mentioned, the proposed position of allowing only young and old cyclists to use the footpath attempts to strike an appropriate balance between the safety of cyclists and pedestrians.

32. A memo was sent to the Independent Māori Statutory Board members of the Planning Committee outlining the content of the package and with a link to the consultation material. Some questions and comments were consequently received, and this has helped inform the position reached in the draft submission.

Ngā ritenga ā-pūtea
Financial implications

33. There are no financial implications arising from submitting on the package.

34. As the road controlling authority for Auckland, the financial impact of the package’s introduction is likely to fall primarily on AT. The package does not directly require changes to infrastructure design and from this perspective, adoption of the package should have minimal financial impact on AT.

35. However, changes to the way people use and behave on the transport network could necessitate changes in design standards and an increased level of infrastructure upgrades and improvements. Furthermore, application of the greater powers and responsibilities granted by the proposals, to prevent the use of devices in certain locations and to set local speed limits for footpaths, shared paths and cycle paths, could have financial implications for AT.

36. Other proposals will help offset some of these costs, such as proposal nine which could reduce delays to buses by almost 30 hours per day helping reduce bus service operational expenditure.

37. If more specific information is available from AT in time, this will be made available at the committee meeting.

Ngā raru tūpono me ngā whakamaurutanga
Risks and mitigations

38. Based on the initial review of the package the main risk with all the proposals is that people do not follow the new rules. For instance, riders on footpaths could exceed the speed limit or act recklessly around pedestrians, or car drivers could not give way to footpath users crossing a side street where they have right of way.

39. To mitigate this a significant public education and awareness campaign should occur before the new rules come into force. A specific focus on education and, if necessary, enforcement of these rules from the police should also be considered until new norms are established. The draft submission includes a point to this effect.
Ngā koringa ā-muri

Next steps

40. It is recommended that the committee delegates authority to the Chair and Deputy Chair of the Planning Committee and an Independent Māori Statutory Board member for approval of the final submission.

41. The approved submission will be submitted to Waka Kotahi by 22 April 2020.

Ngā tāpirihanga

Attachments

<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Page</th>
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</thead>
<tbody>
<tr>
<td>A4</td>
<td>Draft Submission</td>
<td>45</td>
</tr>
</tbody>
</table>

Ngā kaihaina

Signatories

<table>
<thead>
<tr>
<th>Author</th>
<th>Authorisers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alastair Cribbens - Principal Transport Advisor</td>
<td>Jacques Victor – General Manager Auckland Plan Strategy and Research</td>
</tr>
<tr>
<td></td>
<td>Megan Tyler - Chief of Strategy</td>
</tr>
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<td></td>
<td>Phil Wilson - Governance Director</td>
</tr>
</tbody>
</table>
Submission to Waka Kotahi NZ Transport Agency
In the matter of the Accessible Streets Regulatory Package
Auckland Council, April 2020
Mihimihi

Ka mihia ake ai ki ngā maunga here kōrero, ki ngā pari whakarongo tai, ki ngā awa tuku kiri o ōna manawhenua, ōna mana ā-iwi taketake mai, tauiwi atu. Tāmaki – makau a te rau, murau a te tini, wenerau a te mano. Kahore tō rite i te ao.

I greet the mountains, repository of all that has been said of this place, there I greet the cliffs that have heard the ebb and flow of the tides of time, and the rivers that cleansed the forebears of all who came those born of this land and the newcomers among us all. Auckland – beloved of hundreds, famed among the multitude, envy of thousands. You are unique in the world.
Title: Auckland Council Submission on the Accessible Streets Regulatory Package

Submission to Waka Kotahi NZ Transport Agency

Key Points

1. Auckland Council strongly supports the intent of the proposed Accessible Streets Regulatory Package. Auckland Council also supports most of the proposals as put forward by Waka Kotahi but seeks some changes so that they better contribute to the government and council’s shared strategic goals.

2. The overarching intentions of the proposed changes, to encourage active transport, increase genuine travel choice, and improve safety, are consistent with the strategic direction of the Auckland Plan 2050 and the shared priorities of the Auckland Transport Alignment Project (ATAP) 2018. They are also well aligned with the agreed priorities of the draft Te Tāruke-ā-Tāwhiri: Auckland’s Climate Action Framework, and integral to both the council and government meeting their climate change commitments.

3. Auckland Council does however seek some changes to proposals 2, 3, 5, 6d, 7 and 8 to better achieve the intentions of the package and better align with the council’s strategic goals.

4. Auckland Council also supports the attempts made in the package to clarify existing regulatory provisions and better categorise new types of transport devices. However, as noted in the consultation material, only some of the issues relating to vehicle definitions and categorisation can be addressed through changes to the Land Transport Rules. Auckland Council strongly recommends that Waka Kotahi and the Ministry of Transport continue with a detailed review of this matter, including possible legislative changes.
Auckland Council’s response to the Accessible Streets Regulatory Package

Introduction

5. Auckland Council would like to thank Waka Kotahi for the opportunity to provide feedback on the Accessible Streets Regulatory Package. Auckland Council is pleased to see the release of the package and the work Waka Kotahi and the Ministry of Transport have put into its preparation.

6. Auckland Council’s submission is based on the strategic goals and commitments of the Auckland Plan 2050 as well as other council strategies and policies such as the draft of Te Tāruke-a-Tawhiri: Auckland’s Climate Action Framework (ACAF).

7. This submission has been approved by the Auckland Council Emergency Committee [decision reference to be inserted].

Overall response to the package

8. Auckland Council supports the intentions of the Accessible Streets Regulatory Package and broadly supports the proposals contained in it. The intentions of the package are aligned with the Auckland Council’s strategic objectives and climate change goals; and delivering on the intentions described will support Auckland Council’s ability to achieve its goals.

9. The Auckland Plan 2050 (AP2050) is a statutory 30-year spatial plan for Auckland and its key strategic document. It describes the key challenges faced and outcomes sought by Auckland over the next 30 years and guides Auckland Council’s decision making on most matters. The plan identifies six key outcomes against which Auckland needs to make significant progress, and several focus areas describing how this can be achieved.

10. One of these outcome areas is that of ‘Transport and Access: Aucklanders will be able to get where they want to go more easily, safely and sustainably’. Some of the focus areas identified to achieve this are to:

- encourage walking, cycling and public transport use by making these modes more accessible, reliable, safe and attractive
- maximise safety for people in our transport system
- minimise the environmental and health impacts of the transport system
- increase genuine travel choices for a healthy, vibrant and equitable Auckland.

11. All of these are well aligned with the intentions of the package and can be facilitated by the proposals it contains.
12. Since the adoption of AP2050 Auckland Council has stated publicly that it will take bold action on climate change. It has recommitted to its membership of C40 (which committed the Auckland region to act to keep climate change to within 1.5 degrees Celsius above pre-industrial levels), declared a climate emergency, and developed and consulted on a draft of Te Tāruke-a-Tawhiri: Auckland’s Climate Action Framework (ACAF). While this plan is still being finalised, at its most recent meeting the Environment and Climate Change Committee reaffirmed its “commitment to a plan consistent with a 1.5 degree rise, an interim target of halving Auckland’s emissions by 2030, and a precautionary approach to planning for change” [ECC/2020/12].

13. To achieve these ambitious targets a substantial mode shift to walking, cycling, and other means of transport with low and zero emissions is required. Auckland Council and Auckland Transport are prioritising investment in these modes, but this alone will not suffice. This investment needs to be supported by a legislative and regulatory framework which prioritises and protects these users of the transport network. The proposals contained in the Accessible Streets Regulatory Package broadly do this.

**Auckland Council’s response to the proposals**

14. This section sets out Auckland Council’s position on each of the proposals, focussing on several suggested amendments that it believes will better align the proposals with intentions of the package and with the strategic goals listed in paragraph ten.

15. One matter which is applicable to all the proposals and needs highlighting here is the need for a high-profile public information campaign for the new rule package. The main risk with all the proposals is that people do not follow the new rules. For instance, riders on footpaths could exceed the speed limit or act recklessly around pedestrians, or car drivers could not give way to footpath users crossing a side street where they have right of way.

16. To mitigate this Auckland Council encourages Waka Kotahi to undertake a significant public education and awareness campaign before the new rules come into force. A specific focus on education and, if necessary, enforcement of these rules by the police should also be considered for as long as necessary until new norms are established.

17. The table below summarises Auckland Council’s proposition for each proposal, with additional commentary being provided in the subsequent text.
### Summary of Auckland Council’s position

<table>
<thead>
<tr>
<th>Proposal</th>
<th>Auckland Council position</th>
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<tbody>
<tr>
<td><strong>One</strong>: Change current vehicle and device definitions</td>
<td><strong>Support</strong>. However, Auckland Council considers that further legislative change is required to provide a clear and fit-for-purpose regulatory framework. The use of specific vehicle power limits in the Land Transport Act (1998) should be removed and replaced by controls focussed on the main determinants of the outcome of a crash – the speed and weight of the device.</td>
</tr>
<tr>
<td><strong>Two</strong>: Change who is allowed on footpaths and introduce conditions that users need to follow when using the footpath</td>
<td><strong>Support</strong> the new conditions for footpath use. <strong>Partially support</strong> the alternative proposal from Waka Kotahi. Auckland Council supports allowing cyclists up to the age of 16 to ride on the footpath, subject to amendments to allow over 65s and caregivers to also use footpaths.</td>
</tr>
</tbody>
</table>
| **Three**: Clarify who is allowed on shared paths and cycle paths and introduce the conditions they need to follow | **Partially support**. Auckland Council proposes that changes should be made to:  
- the default speed limit so that it is not tied to the adjacent roadway. A default of 25km/h for shared paths and 50km/h for cycle paths is proposed  
- give priority to cyclists over users of powered transport devices  
- require speed limit signs where the speed limit differs from the default. |
<p>| <strong>Four</strong>: Allow transport devices to use cycle lanes and paths           | <strong>Support</strong>                                                                 |
| <strong>Five</strong>: Introduce lighting and reflector requirements for powered transport devices at night | <strong>Partially support</strong>. Auckland Council supports the consistency of approach between powered transport devices and cycles but raises some points for consideration. |
| <strong>Six</strong>: Change the priority of road users by:                           |                                                                                         |</p>
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<tbody>
<tr>
<td><strong>a.</strong> and <strong>b.</strong> allowing cycles and transport devices to engage in common, safe behaviours that are currently illegal</td>
<td><strong>Support.</strong> Auckland Council requests that Waka Kotahi consider extending these improvements to allow cyclists and device users to use the pedestrian phase of signalised intersections.</td>
</tr>
<tr>
<td><strong>c.</strong> clarifying that turning traffic must give way to all people travelling straight ahead using separated lanes</td>
<td><strong>Support.</strong></td>
</tr>
<tr>
<td><strong>d.</strong> giving greater priority to people on footpaths and shared paths when they’re crossing side roads with minimum markings</td>
<td><strong>Partially support.</strong> Auckland Council supports greater priority for footpath users but seeks that this be applied in a comprehensive fashion rather than only to marked intersections.</td>
</tr>
</tbody>
</table>

**Seven:** Mandate a minimum overtaking gap

**Partially support.** Auckland Council proposes that changes should be made so that the gap applies to motor vehicles passing users of cycle lanes, and the so that the 1.5m gap applies at all speeds.

**Eight:** Clarify what is needed for road controlling authorities to restrict parking on berms

**Partially support.** Auckland Council proposes that changes should be made to further clarify several matters and to allow existing resolutions passed by road controlling authorities to be recognised under the new regulations.

**Nine:** Require road users to give way to signalling buses pulling out of bus stops

**Support.**

**Proposal One:** Change current vehicle and device definitions and create new categories to allow better regulation of new and emerging devices and where and how they’re used

18. Auckland Council supports proposal one which seeks to clarify the status and categories of powered wheelchairs, small transport devices and cycles within the current legislative framework.

19. Recent technological advancements have seen an increase in the types and range of designs of small personal transport devices. The development of small electric motors has enabled new mobility devices and powered versions of existing devices at relatively affordable prices. However, the regulation of these devices has not kept pace and the
categorisation of the devices, as well as where and under what circumstances they can be used, is currently unclear and inconsistent.

20. Auckland Council supports the proposal which recognises the on-going development of new types of small, often powered, transport devices and the fact that they are no longer used primarily by children and for recreation. The proposal would introduce more logical categories for the classification of small transport devices and cycles, allowing a better rule framework to be developed (as is done in the following proposals).

21. The proposed categories and distinctions between them are logical and are supported.

22. However, Auckland Council is concerned that the Accessible Streets Regulatory Package does not change the status of those powered transport devices not already declared to not be a motor vehicle (a list which to date only consists of e-scooters, YikeBikes and e-bikes). This leaves the use of many popular devices, such as e-skateboards, e-unicycles and seated e-scooters, to be illegal. Auckland Council is also concerned that power level remains the primary means of categorisation and control through the specification of 300W and 600W limits in the Land Transport Act (1998). Auckland Council’s position is that the primary focus of classification and control should be based on the safety outcomes desired, which are primarily determined by the speed and weight of the devices and their users.

23. Addressing these matters will require further/broader changes outside the scope of the package and Auckland Council encourages Waka Kotahi and the Ministry of Transport to continue work on this matter. Further comment on this is provided in a following section.

24. While speed and weight are the primary, overarching characteristics which should be controlled, Auckland Council acknowledges the likely need to control or limit other design features in certain circumstances. One of these is the width of vehicles using the footpath, to ensure footpath users have space to pass each other. Auckland Council notes Waka Kotahi’s plan to review the mobility device category in future and requests that consideration is given to limiting the width of all devices on footpaths.

**Proposal Two:** Change who is allowed on footpaths and introduce conditions that users need to follow when using the footpath

25. Auckland Council supports the new conditions proposed for footpath users. Auckland Council also supports, with amendments, the alternative proposal from Waka Kotahi that would allow cyclists up to the age of 16 to ride on the footpath.
26. Currently most children over the age of six are unable to legally ride on the footpath and, legally, must ride on the road. Likewise, beginner, slower and less confident cyclists also have little option but to use the road. Without a safe, legal space to ride many of these individuals may avoid cycling altogether. Alternatively, if they still want to cycle, they may have to make the decision to break the law and ride on the footpath.

27. The introduction of a rule allowing cyclists to use the footpath would improve the real and perceived safety of cyclists by allowing less confident cyclists to ride on the footpath rather than the road. This would likely increase cycling numbers and support the cycling aspirations of Auckland Council and the government.

28. However, while enabling cyclists to use footpaths will benefit cyclists, Auckland Council is concerned that it is likely to have a negative impact on other footpath users. An increase in the number of cyclists on footpaths will increase the incidences of conflict between cyclists and other users. While the extent of this increase may be relatively small, and will be mitigated by the proposed conditions of footpath use, Auckland Council remains concerned about the potential impact on more vulnerable footpath users.

29. Of particular concern to Auckland Council is the likely impact on the perception of safety of more vulnerable pedestrians, such as older people and people with visual impairments, as well as other current vulnerable footpath users (such as children on push scooters). Many of these users are heavily dependent on the footpath for their independent travel needs as they are unable to drive. This impact on the perception of safety is difficult to quantify, but anecdotal evidence suggests that some people have already been put off from walking by the increase in use of e-scooters on footpaths. This impact can be mitigated to some degree by the proposed conditions of footpath use but will likely remain.

30. Auckland Council believes that striking an appropriate balance is important here, and the alternative Waka Kotahi proposal would do this, subject to some minor amendments. Auckland Council believes that the proposal should be extended to include:
   - people who are over the age of 65, who may wish to cycle but may often struggle to travel fast enough to feel comfortable cycling on the road
   - caregivers accompanying people permitted to cycle on the footpath so that they are not forced to travel separately.

31. As such, we recommend that the alternative proposal be explored further, as it would be targeted at those cyclists whose safety is at most at risk, while taking into account the safety and needs of pedestrians.
32. Auckland Council also supports road controlling authorities having the ability to restrict cycles or devices from using certain footpaths or areas of footpaths. This could be a useful power for road controlling authorities to have where there are identified issues with the use of a footpath/s and infrastructural solutions are not possible. However, it must be used sparingly to avoid inconsistency both within and across regions, which would result in confusion, may lead to difficulties in enforcement, and could end up discouraging the use of active modes.

33. Auckland Council is also concerned about the implications of central government granting road controlling authorities more responsibility without a corresponding increase in funding. Even if the authority wishes to use the power sparingly, the additional responsibility will likely raise public expectations, which will have resourcing and financial implications for these authorities. To mitigate this risk Auckland Council seeks that the guidance to be prepared by Waka Kotahi to guide decisions makes it clear that the ability to restrict devices should be used sparingly and describes clearly in what limited circumstances it may be appropriate.

34. These concerns apply equally to the additional powers proposed to be granted to road controlling authorities under Proposals Three and Four to control the use of shared and cycle paths. Auckland Council’s request for tight and clear guidance from Waka Kotahi applies equally to the application of these powers.

**Proposal Three:** Establish a national framework for the use of shared paths and cycle paths

35. Auckland Council supports the proposal to clarify the status and rules for shared paths.

36. While it is preferable to separate pedestrians from other users, this is not always possible. In these cases, the proposed changes are important to increase safety for all shared path and cycle path users

37. However, Auckland Council proposes that the following changes be made to the proposal:

- the default speed limit should be changed so that it is not tied to the adjacent roadway. A standard default limit should apply to all shared paths (25km/h) and cycle paths (50km/h). This would better recognise that these spaces are shared with more vulnerable users, such as pedestrians and children on cycles or transport devices, and reduce the level of risk to which they are exposed
- with this reduced speed limit, road controlling authorities should have the ability to raise speed limits as well as lower, for instance along a stretch of wide shared path sparingly used by pedestrians
- priority should be given to cyclists and e-cyclists over powered transport device users to recognise the importance of active transport and the physical effort required by these users to regain momentum
- speed limit signs should be required where the speed limit differs from the default to ensure users are clearly aware of this.

Proposal Four: Enable transport devices to use cycle lanes and cycle paths

38. Auckland Council supports the proposal to allow transport devices similar to cycles in cycle lanes and paths, as this will improve the safety of these device users compared to their use on the road.

39. Auckland Council notes that the safety of cyclists in cycle lanes and cycle paths may be marginally impacted, due to more conflicts between users on transport devices and cycles travelling at different speeds. However, this is considered preferable to having these conflicts occur between device users and other cars on the road, or pedestrians on the footpath. The amount of kinetic energy involved in the use of transport devices and cycles is much more similar than compared to general motor traffic or to walking. Cycle lanes and cycle paths are currently the most suitable location for the use of transport devices.

Proposal Five: Introduce lighting and reflector requirements for powered transport devices at night

40. Auckland Council supports the safety intentions of this proposal. Given their similarities, the application of a consistent approach to the lighting and reflector requirements for both cycles and powered transport devices is supported. However, Auckland Council has some concerns and comments on the proposal.

41. Firstly, it is unclear why unpowered transport devices are not covered by a similar, consistent approach. The rest of the proposals contained in the Accessible Streets Regulatory Package treat powered and unpowered transport devices the same. This proposal has, however, looked to introduce new requirements solely for powered devices. All the analysis contained in the consultation material for applying this requirement to powered devices could equally apply to unpowered devices; for instance, someone riding a larger push scooter on the road or footpath at night. Auckland Council requests that Waka Kotahi consider whether these requirements should be extended to unpowered devices operating at night.

42. Secondly, Auckland Council remains concerned that, as it may not be possible to fit the required equipment to all devices, some devices will be precluded from night-time use. The consultation material states that the safety benefits will likely outweigh the costs; yet
given the level of recent innovation in transport device design and the unknown range of possible future designs, it is difficult to know if this will be the case.

43. Thirdly, to potentially mitigate some of the above concerns Auckland Council suggests that different lighting requirements may be appropriate for footpath use versus road, cycle and shared path use.

44. On footpaths most cyclists and transport device users will already be mindful of unlit travellers, such as pedestrians, and should therefore be travelling slower than they might otherwise and no faster than 15km/h (with the proposed new speed limit imposed). They will still generally be the faster traveller on these paths though, doing the passing rather than being passed themselves. In these situations, a front light should be required, although a rear light or reflector may not be necessary.

45. On the other hand, transport device users on roads, cycle paths and shared paths will generally be the slowest users and other users of the road or path will generally have lights and reflectors. In these cases, users should be required to have the lighting and reflector requirements proposed.

Proposal Six: Change the priority of road users by allowing cycles and transport devices users to:

a. …ride straight ahead from a left turn lane; and b. …pass slow-moving vehicles on the left

46. Auckland Council supports these proposals. They will enable cyclists and transport device users to engage in common behaviours that improve their safety but that are currently illegal.

47. Auckland Council also seeks that the priority and safety of cyclists and transport device users is improved by allowing them to cross intersections during the pedestrian phase, subject to the same conditions for footpath use set out in Proposal Two. This would allow cyclists and transport device users to gain momentum and improve their stability, increase their visibility for drivers, and give greater priority to these modes which the government and Auckland Council are seeking to encourage.
c. …clarifying that turning traffic must give way to all people travelling straight ahead using separated lanes

48. Auckland Council supports this proposal. The proposal will improve the safety of cyclists and other cycle path users, such as e-scooter users, by giving them clear right of way in these circumstances.

d. …giving priority to people on footpaths and shared paths when they’re crossing side roads where the necessary markings are installed

49. Auckland Council supports giving priority to footpath, shared path and cycle path users over turning traffic.

50. However, Auckland Council does not support the limited introduction to only specifically marked intersections. It proposes that this rule is applied to all intersections, whether they are marked or not.

51. As is acknowledged in the background reports for this proposal, there is little comparable safety data from New Zealand and overseas on which to base an informed decision. With little to no data to support this position, the justification for requiring road markings primarily consists of suppositions that crashes will increase if the rule is introduced too widely.

52. Auckland Council acknowledges that there is a similar lack of evidence that a blanket rule would improve safety, yet in this absence of fuller data it is useful to consider:

a) the extent to which the different options will address the problem
b) whether there is broader evidence of problems with the rule in comparable jurisdictions where it applies (such as media coverage or expert discussion).

53. The problem identified in the consultation material is that path users do not have precedence over turning vehicles when crossing side streets. This reduces the attractiveness of active transport and runs contrary to the government’s objective of “supporting a mode shift for trips in urban areas from private vehicles to more efficient, low cost modes like walking, cycling”.

54. While applying the rule where markings are introduced will help address this problem in some locations, this will leave pedestrian users of most intersections without this priority. Waka Kotahi state in the Preliminary Regulatory Impact Statement that “100-200 intersections are expected to be addressed in the next five years”. This is a fraction of one percent of the total number of urban intersections.
55. The most effective approach to provide as many pedestrians as possible with priority at intersections is to introduce a blanket rule for all intersections. Unless it can be shown from overseas examples that pedestrian safety will be unacceptably affected, this approach should be adopted.

56. In terms of both road design and cultural (transport) views, Australia is our most comparable jurisdiction. A similar blanket rule giving priority to footpath users crossing side streets over turning traffic has been in place in Australia for many years. While no comparable intersection crash data is available, it is notable that there have been no significant problems identified with the rule, and there are no plans to remove it. Per capita pedestrian fatality rates differ year to year between the two countries but have been roughly the same over the past 15 years.

57. Auckland Council’s position is that a blanket give way rule should be introduced as it will better benefit all footpath users and provide a legislative priority that is in keeping with the road user hierarchy and stated active transport prioritisation objectives of the government.

58. Auckland Council is of the view that any change to priority should be supported by a change in the legislation to place greater responsibility on road users towards the most vulnerable users. For instance, in the case of collisions, the onus should be on drivers to show they could not in the circumstances have given way to the pedestrian and fault should be presumed to lie with the driver, unless it can be clearly proven otherwise. This would help reinforce the expectations on drivers and provide extra protection for those more vulnerable and higher priority users.

59. Alternatively, if blanket application of the rule is not acceptable, Auckland Council seeks the ability for road controlling authorities to introduce the rule without the road markings in clearly signposted areas. As part of their ‘Residential Speed Management programme’, Auckland Transport is installing a combination of speed calming measures in certain residential areas. These areas are clearly signposted and, through a combination of speed calming and speed limit reduction, are intended to make the roads safer for all road users. In clearly delineated areas such as these, the use of signs at the entrance to the area should be enough to give priority. This will also help people get used to the rule and looking out for vulnerable road users without the widespread use of additional road markings.
Proposal Seven: Mandate a minimum overtaking gap for motor vehicles passing cycles, transport devices, horses, mobility devices and pedestrians on the road

60. Auckland Council supports the mandating of minimum passing distances for motor vehicles overtaking more vulnerable road users. The council also supports the minimum passing distance of 1.5m for roads with speed limits over 60km/h.

61. Auckland Council however opposes the exclusion of the rule applying to the overtaking of people travelling in a cycle lane by a motor vehicle. There is no physical difference between a person travelling in a cycle lane and one travelling in a general traffic lane; both are equally exposed to the possibility and consequences of drivers passing too close. Every reason given in the consultation material for this rule to be brought in applies equally to users in cycle lanes; in particular, without this rule applying to cycle lanes there will be no change in the perceived risk of cycling in these lanes. This rule may also create the perverse outcome that a cyclist/transport device user travelling in the general traffic lane next to a cycle lane is afforded greater protection by the rules than if they were travelling in the cycle lane.

62. While Auckland’s design standards should ensure enough room in new cycle lanes for them to be passed at a safe distance by a car in the neighbouring lane, this is not always the case. The width of many existing cycle lanes do not meet current standards, with some measuring as little as one metre, while often even in wider cycle lanes, the drainage channel, utility covers, drains and general debris can require a cyclist to travel close to the edge of the lane, putting them in close proximity to cars in the neighbouring lane.

63. Including users of cycle lanes would also provide greater clarity – a driver overtaking a cyclist would know automatically to give them the required distance. Without this rule the driver would have to also check to see whether or not they are in a cycle lane.

64. Additionally, Auckland Council does not support the proposed 1m passing distance for roads up to a speed limit of 60km/h. Auckland Council is of the view that the existing, well-established guidance contained in the road code, that drivers should allow at least 1.5 metres on all roads, should be made the mandatory minimum overtaking gap. If a graduanted overtaking gap is still preferred, Auckland Council recommends that the graduation point be changed from 60km/h to 30 km/h.

Proposal Eight: Clarify what is needed for road controlling authorities to restrict parking on berms and remove the need for signs

65. Auckland Council supports the proposed clarification of the rules and requirements for restricting parking on berms.
66. Auckland Council appreciates the move by Waka Kotahi to resolve this issue which will focus efforts on implementing and enforcing appropriate restrictions rather than arguing over the legalities. Given part of the difference of opinion to date has centred on the definition of ‘footpath’ and whether it includes the berm, an amendment to this definition to make clear it does not should be considered.

67. Auckland Council is also concerned that by introducing this new requirement Waka Kotahi is requiring all road controlling authorities to undertake a new process to restrict parking on berms. Many road controlling authorities have already undertaken a public consultation and approval process like that specified in the proposal. Requiring these authorities to repeat this process will simply add unnecessary operational cost and delay.

68. Auckland Council seeks that the proposal is amended to allow road controlling authorities to “carryover” these existing restrictions where the authority can demonstrate that they met the consultation requirements of the new proposed section 6.2 and that it was approved/adopted by a resolution of the authority.

69. Auckland Council notes that Auckland Transport still has some concerns as to the enforceability of the rule and we encourage Waka Kotahi to continue to liaise with them and make any necessary changes to ensure the enforceability of the rule.

Proposal Nine: Require road users to give way to signalling buses pulling out of bus stops

70. This is supported by Auckland Council. As is stated by Waka Kotahi in the consultation material, this could reduce delays to Auckland buses by almost 30 hours per day. This reduction in delays will enable the more efficient operation of Auckland’s bus network, reduce travel times for bus passengers and reduce operating costs at a time when the council and Auckland Transport are facing increasing financial pressure in relation to bus operating costs.

Further work required

71. As is acknowledged in the consultation material, the definition, classification and regulation of powered devices, as well as where and under what circumstances they can be used, is unclear and inconsistent. The package goes some way to resolving this through Proposals 1-4, however the extent of possible change is limited by the existing legislation which cannot be changed through this process.

72. It is Auckland Council’s view that legislative change is required to provide a clear and fit-for-purpose regulatory framework.
73. The new regulations should be drafted to control the main factors which contribute to the safety of transport device and cycle use, and those which determine the severity of a crash. To avoid inadvertently limiting or preventing new designs lesser or secondary characteristics (such as the power of the motor) should not be explicitly described and/or controlled without good reason.

74. The main determinates of the outcome of a crash are the speed and weight of the people and vehicles/devices involved. Combined, these determine the level of energy involved in any crash. The aim of regulation and infrastructure design should be to separate modes as much as possible by their different levels of kinetic energy. This should be the focus of a more complete review.

75. For these reasons it is Auckland Council's view that the Land Transport Act (1998) needs to be reviewed and the use of specific vehicle power limits removed.

76. This submission will not go into further detail on this matter given it lies outside the scope of the package. However, Auckland Council would welcome the opportunity to discuss this matter further with Waka Kotahi1.

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1 Auckland Council's approach to the regulation and control of micromobility devices is in keeping with that set out by the International Transport Forum in their recent report 'Safe Micromobility', released 17 February 2020. The council recommends consideration of the categorisations and recommendations contained in this document as part of any review.
Emergency Committee
16 April 2020

Exclusion of the Public: Local Government Official Information and Meetings Act 1987

That the Emergency Committee

a) exclude the public from the following part(s) of the proceedings of this meeting.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution follows.

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by section 6 or section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public, as follows:

<table>
<thead>
<tr>
<th>Reason for passing this resolution in relation to each matter</th>
<th>Particular interest(s) protected (where applicable)</th>
<th>Ground(s) under section 48(1) for the passing of this resolution</th>
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<td>The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.</td>
<td>s7(2)(h) - The withholding of the information is necessary to enable the local authority to carry out, without prejudice or disadvantage, commercial activities. s7(2)(i) - The withholding of the information is necessary to enable the local authority to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations). In particular, the report contains information around potential financial implications and emerging financial risks of COVID-19 in a highly uncertain environment. The release of this information could prejudice the position of the council and CCOs in sensitive commercial arrangements and negotiations.</td>
<td>s48(1)(a) The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.</td>
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