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

**Date:** Tuesday, 1 September 2020  
**Time:** 10.00am  
**Meeting Room:** via Skype for Business  
**Venue:**

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**Kōmiti Whakahaere ā-Ture/ Regulatory Committee**

**OPEN AGENDA**

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**MEMBERSHIP**

Chairperson  
Cr Linda Cooper, JP

Deputy Chairperson  
Cr Josephine Bartley

Members  
Cr Dr Cathy Casey  
Cr Fa’anana Efeso Collins  
Cr Shane Henderson  
Cr Daniel Newman, JP  
Cr Sharon Stewart, QSM  
IMSB Chair David Taipari  
Member Glenn Wilcox  
Cr Paul Young

Ex-officio  
Deputy Mayor Cr Bill Cashmore  
Mayor Hon Phil Goff, CNZM, JP

(Quorum 5 members)

---

**Maea Petherick**  
Kaitohutohu Mana Whakahaere Matua / Senior Governance Advisor

26 August 2020

Contact Telephone: 021583018  
Email: maea.petherick@aucklandcouncil.govt.nz  
Website: 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

The committee is responsible for regulatory hearings (required by relevant legislation) on behalf of the council. The committee is responsible for appointing independent commissioners to carry out the council’s functions or delegating the appointment power (as set out in the committee’s policy). The committee is responsible for regulatory policy and bylaws. Where the committee’s powers are recommendatory, the committee or the appointee will provide recommendations to the relevant decision-maker.

The committee’s key responsibilities include:

- decision-making (including through a hearings process) under the Resource Management Act 1991 and related legislation
- hearing and determining objections under the Dog Control Act 1996
- decision-making under the Sale and Supply of Alcohol Act 2012
- hearing and determining matters regarding drainage and works on private land under the Local Government Act 1974 and Local Government Act 2002 (this cannot be sub-delegated)
- hearing and determining matters arising under bylaws
- appointing independent hearings commissioners to a pool of commissioners who will be available to make decisions on matters as directed by the Regulatory Committee
- deciding who should make a decision on any particular matter including who should sit as hearings commissioners in any particular hearing
- monitoring the performance of regulatory decision-making
- where decisions are appealed or where the committee decides that the council itself should appeal a decision, directing the conduct of any such appeals
- considering and making recommendations to the Governing Body regarding the regulatory and bylaw delegations (including to Local Boards)
- recommending bylaws to the Governing Body for consultation and adoption
- reviewing local board and Auckland water organisation proposed bylaws and making recommendations to the Governing Body
- appointing panels to hear and deliberate on public feedback related to regulatory policy and bylaw matters
- deciding regulatory policies that are not otherwise the responsibility of another committee
- deciding regulatory policies, standards and controls associated with bylaws including those delegated to the former Regulatory and Bylaws Committee, under resolution GB/2012/157 (dogs) and GB/2014/121 (alcohol)
- receiving local board feedback on bylaw and regulatory policy development and review
- adopting or amending a policy or policies and making any necessary sub-delegations relating to any of the above areas of responsibility to provide guidance and transparency to those involved.

Not all decisions under the Resource Management Act 1991 and other enactments require a hearing to be held and the term “decision-making” is used to encompass a range of decision-making processes including through a hearing. “Decision-making” includes, but is not limited to, decisions in relation to applications for resource consent, plan changes, notices of requirement, objections, existing use right certificates, certificates of compliance, regulatory policy and bylaws and also includes all necessary related decision-making.

In adopting a policy or policies and making any sub-delegations, the committee must ensure that it retains oversight of decision-making and that it provides for councillors to be involved in decision-making in appropriate circumstances.
For the avoidance of doubt, these delegations confirm the existing delegations (contained in the chief executive’s Delegations Register) to hearings commissioners and staff relating to decision-making under the RMA and other enactments mentioned below but limits those delegations by requiring them to be exercised as directed by the Regulatory Committee.

**Relevant legislation includes but is not limited to:**

All Bylaws  
Biosecurity Act 1993  
Building Act 2004  
Dog Control Act 1996  
Fencing of Swimming Pools Act 1987  
Gambling Act 2003  
Health Act 1956  
Land Transport Act 1998  
Local Government Act 1974  
Local Government Act 2002  
Local Government (Auckland Council Act) 2009  
Maritime Transport Act 1994  
Psychoactive Substances Act 2013  
Resource Management Act 1991  
Sale and Supply of Alcohol Act 2012  
Waste Minimisation Act 2008

Related Regulations

**Powers**

(i) **All powers necessary to perform the committee’s responsibilities.**

   Except:

   (a) powers that the Governing Body cannot delegate or has retained to itself (section 2)

   (b) where the committee’s responsibility is limited to making a recommendation only.

(ii) **Power to establish subcommittees.**
Exclusion of the public – who needs to leave the meeting

Members of the public

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

Those who are not members of the public

General principles

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

Members of the meeting

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

Independent Māori Statutory Board

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

Staff

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

Local Board members

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

Council Controlled Organisations

• Representatives of a Council Controlled Organisation can remain only if required to for discussion of a matter relevant to the Council Controlled Organisation.
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1 Apologies

An apology from Mayor P Goff has been received.

2 Declaration of Interest

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

3 Confirmation of Minutes

That the Regulatory Committee:

a) confirm the ordinary minutes of its meeting, held on Tuesday, 28 July 2020, 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."
Property Maintenance and Nuisance Bylaw: 2020 Review Findings

File No.: CP2020/08020

Te take mō te pūrongo
Purpose of the report
1. To agree that the review of the Te Ture ā-rohe Tiaki Rawa me Ngā Mahi Whakaporearea 2015 / Property Maintenance and Nuisance Bylaw 2015 is complete and to request an options report that responds to the findings.

Whakarāpopototanga matua
Executive summary
2. Staff have prepared a findings report to enable the Regulatory Committee to complete the review of the Property Maintenance and Nuisance Bylaw 2015.
3. The review of the Bylaw must be completed by 24 September 2020, or it will expire on 24 September 2022, potentially leaving a regulatory gap.
4. Key findings from the review are:
   • a bylaw is still the most appropriate way to manage specific activities and behaviour on private property that may cause a public health risk or nuisance (including the risk of Legionnaires’ disease from industrial cooling towers)
   • there are limitations to the Bylaw’s effectiveness, it cannot address visual amenity and resolving safety and nuisance problems can be difficult and expensive
   • the current Bylaw approach is appropriate but could be improved, by redrafting parts of the Bylaw to make it easier to understand and enforce
   • the current Bylaw does not give rise to any unjustified Bill of Rights implications.
5. Staff recommend that the committee endorse the findings report to complete the statutory review and request an options report. This will allow consideration and proposal of statutory options to confirm, amend, replace or revoke the Bylaw.
6. There is a low risk that some people may express concern about suggested Bylaw improvements or engagement to date. This risk is mitigated by future public consultation on any proposed changes to the Bylaw.
7. If approved, staff will develop options that respond to the findings in this report in the second quarter of the 21/22 financial year.

Ngā tūtohunga
Recommendation/s
That the Regulatory Committee:

a) endorse the property maintenance and nuisance findings in Attachment A of the agenda report.

b) agree that the statutory review of the Property Maintenance and Nuisance Bylaw 2015, is complete including that:
   i) a bylaw is still the most appropriate way to manage specific activities and behaviour on private property that may cause a public health risk or public nuisance
   ii) the current Bylaw does not give rise to any implications and is not inconsistent with the New Zealand Bill of Rights Act 1990
   iii) the current bylaw structure and wording could be improved.
c) request that staff as delegated by the Chief Executive prepare an options report in response to the findings in Attachment A of the agenda report.

Horopaki Context
The Property Maintenance and Nuisance Bylaw seeks to protect public health and prevent nuisance

8. Te Kaunihera o Tāmaki Makaurau Te Ture ā-rohe Tiaki Rawa me Ngā Mahi Whakaporearea 2015 / Auckland Council Property Maintenance and Nuisance Bylaw 2015 was adopted by the Governing Body on 24 September 2015 (GB/2015/104).

9. The Bylaw regulates matters related to private property maintenance that can create public health risks or nuisances by:
   • regulating overgrown vegetation, deposited materials, and abandoned buildings
   • regulating the feeding of wild animals
   • requiring registration, maintenance and testing of industrial cooling tower water systems (industrial cooling towers) to reduce the risk of Legionnaires’ disease.

10. The Bylaw is aligned with the following strategic directions in the Auckland Plan:

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<th>Direction / Focus area</th>
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| Belonging and Participation | Direction 2: Improve health and wellbeing for all Aucklanders by reducing harm and disparities in opportunities.  
Alignment: The Bylaw reduces activities that could cause public health risks. |
| Homes and Places          | Direction 1: Develop a quality compact urban form to accommodate Auckland’s growth.  
Focus area 5: Create urban places for the future.  
Alignment: The Bylaw aims to minimise nuisance and reduce public health risks in increasingly intensified residential areas. |

11. The Bylaw is only one of several central and local government regulations which govern the impact of activities and behaviours on private property, for example the:
   • Property Law Act 2007 regulates vegetation on private property that can cause a danger or obstruct views
   • Litter Act 1979 regulates litter on private property and allows for its removal based on visual amenity
   • Summary of Offences Act 1981 regulates antisocial behaviour by people entering abandoned buildings on private property
   • Building Act 2004 regulates mechanical cooling tower systems associated with air conditioning or ventilation.

Statutory review of Bylaw required

12. A statutory review of the Bylaw must be completed by 24 September 2020 determining whether the current Bylaw is:
   • still necessary
   • well drafted
   • meets the requirements of the New Zealand Bill of Rights Act 1990.¹

¹ Section 160(1) and (2), Local Government Act 2002.
13. If a findings review is not completed on time, the Bylaw will expire on 24 September 2022 and council must (if a bylaw is still necessary) make a new bylaw to avoid a regulatory gap.\(^2\)

14. Following the findings review, the council can consider statutory options to confirm, amend, replace or revoke the Bylaw using a public consultative process.\(^3\)

15. Between August 2019 and July 2020 staff engaged with a range of stakeholders and carried out research to develop the findings report in Attachment A, including:
   - face-to-face interviews with council compliance officers and building consents staff
   - face-to-face interviews with Auckland Regional Public Health Service staff
   - a People’s Panel survey asking Aucklanders about their recent experiences with property maintenance related nuisance
   - a survey of owners of industrial cooling towers
   - analysis of property maintenance related complaints to council
   - assessment of other councils’ approaches to property maintenance.

Tātaritanga me ngā tohutohu
Analysis and advice
Growing pest numbers may be driving complaints, but visual amenity a key concern

16. Complaints to council relating to overgrown vegetation, deposited materials, abandoned buildings and feeding of wild animals have increased:
   - from 685 in 2016 to a projected 1,255 in 2019
   - 3,573 complaints have been received in the four years following the Bylaw’s adoption.

17. Based on both complaints data and responses to the People’s Panel survey:
   - overgrown vegetation is the most common problem
   - the impact of ‘visual nuisance’ was most frequently cited by survey respondents
   - health risks (from pests and animal excrement) was the next highest impact identified in the survey
   - 26 percent of all survey respondents experienced overgrown vegetation
   - 88 per cent of all complaints received are about the presence of vermin and pests.

18. This survey response and complaints reflect a growing pest problem in Auckland and visual amenity as key concerns.

19. Health risks relating to pest animals are of greater concern to council than visual nuisance. The council does not have a mandate to regulate visual amenity on private property through a bylaw.

Most Aucklanders don’t contact council about nuisances

20. The survey found that on average only one in five people who experienced a nuisance as a result of one of the regulated problems reported it to council. Reasons for this may include:
   - low awareness of what the Bylaw regulates
   - preference for resolving issues privately
   - lacking confidence that council can solve the problem.

Ongoing property maintenance problems require regulation, but the Bylaw has limitations

21. A bylaw is still the most appropriate way to manage problems arising from poor private property maintenance.
22. The Bylaw provides a necessary legal basis for the council to address the problems that are not regulated by other legislation.

23. Compliance staff do investigate public complaints that suggest a breach has occurred – particularly where there is a serious risk to public health and safety or where nuisances are severe or persistent – and consider the Bylaw an essential tool.

24. If the Bylaw did not exist, there would be a regulatory gap for some of the problems the Bylaw addresses and lesser penalties.

25. Staff advise that responsibility for addressing fire hazards arising from property maintenance issues were transferred to Fire and Emergency New Zealand in 2017.

**Ongoing risk of Legionnaires’ disease and regulation to protect health still required**

26. The Building Act 2004 does not require cooling tower water systems associated with industrial processes (only mechanical ventilation and air conditioning systems) to be registered and monitored for legionella bacteria.

27. The Bylaw sets requirements for industrial systems to avoid a regulatory gap.

28. To prevent the risk of Legionnaires' disease, which can be fatal, the Bylaw requires owners of industrial cooling tower water systems:
   - to register their systems annually
   - regularly test, clean and maintain their water tanks.

29. Staff noted a decrease in industrial cooling systems registered with the council from around 400 systems in 2015 to around 120 in 2020. Reasons for this are unclear, although system decommissioning and administrative changes are likely to be key contributing factors.

30. There have been no complaints about industrial cooling towers and no enforcement action has been taken.

31. There have been no outbreaks of Legionnaires' disease since the Bylaw was adopted in 2015.

32. The Bylaw is currently the only regulation that applies to industrial cooling towers. The testing standards are aligned with the Building Act 2004 and considered best practice.

33. The risk of Legionnaires' disease has not materially changed since the Bylaw was adopted in 2015. Staff consider industrial cooling towers still require regulation to help prevent the risk of Legionnaires' disease.

**The current Bylaw approach is needed, appropriate but could be improved**

34. The current Bylaw is appropriate but could be improved. Suggested improvements will be considered as part of an options report, and include:
   - clarifying the definition of nuisance to make it easier to understand and enforce, including that the council cannot regulate visual amenity
   - whether the feeding of wild animals may be more appropriately regulated through the Animal Management Bylaw 2015
   - clarifying registration and regulatory requirements for industrial cooling towers
   - reviewing the frequency of registration, testing and cleaning of industrial cooling towers
   - making the Bylaw easier to read and understand by applying the council’s best practice drafting standards.

**Many nuisances are low-risk and addressing them can be difficult and expensive**

35. There are limitations to the Bylaw’s effectiveness to manage these issues:
   - there are low levels of public understanding of what constitutes a breach, meaning many problems experienced by Aucklanders cannot be addressed by the Bylaw
• compliance staff use the council’s risk-based graduated enforcement approach to triage requests for service; these problems create mainly low-level, low-risk nuisances and therefore complaints are typically lower priority
• it can be difficult to track down owners of vacant property, and it is too costly for the council to remediate issues directly
• council is unable to issue infringement fines – this would require legislative change – meaning only notices can be served, followed by prosecution
• prosecution is time-consuming and costly, and gathering sufficient evidence for court action can be a challenge.

The current Bylaw does not give rise to any unjustified Bill of Rights implications
36. The Bylaw could potentially limit rights under the New Zealand Bill of Rights Act 1990. Any limitation, however, is justified. The Bylaw addresses matters related to its purpose, is regulated proportionally, and no more than necessary.
37. For example, requiring the removal of deposited materials or vegetation could be construed as a limitation of freedom of expression. However, this limitation is justified to prevent a risk to public health and avoid causing nuisance.

Staff recommend the committee endorse the findings, complete the statutory review and request an options report
38. The findings report (Attachment A) establishes that there are still problems arising from private property maintenance in Auckland, and that the Bylaw is still necessary but could be improved.
39. Staff recommend that the committee endorse the findings report, complete the statutory review and request an options report. The options report will evaluate and propose statutory options to confirm, amend, replace or revoke the Bylaw.

Tauākī whakaaweawe āhuarangi
Climate impact statement
40. The Bylaw does not create any climate impacts, but climate change may affect the problems regulated by the Bylaw. In particular, higher average temperatures over the last decade may have given pest species an advantage over native species and worsened Auckland’s pest problem, and this trend is expected to continue in future. Warmer temperatures also exacerbate the growth of legionella bacteria.

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera
Council group impacts and views
41. The Bylaw impacts the operations of council teams involved in property maintenance. Relevant staff provided feedback to the review and suggested improvements to the definitions and scope. These have been incorporated into the findings.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe
Local impacts and local board views
42. This Bylaw has no impact on local governance because it regulates activities on private property and received low levels of public feedback in the last review.
43. Local boards will have an opportunity to provide their views on any proposed changes to the Bylaw following public feedback.
Tauākī whakaaweawe Māori
Māori impact statement
44. A previous literature review of key documents and two hui with Māori found that specific property maintenance problems and regulatory responses have no specific impacts on Māori and are not of particular interest or significance.
45. Staff will proactively engage with mana whenua and mataawaka during any future public consultation to ensure Māori are able to provide their views on any proposed changes to the Bylaw.

Ngā ritenga ā-pūtea
Financial implications
46. There are no financial implications to council from a decision to complete the statutory review. The options report will be completed within current budgets.

Ngā raru tūpono me ngā whakamaurutanga
Risks and mitigations
47. There is a low risk that some people may express concern about the suggested Bylaw improvements or stakeholder engagement to date as contained in this report. This risk is mitigated by future public consultation on any proposed changes to the Bylaw.

Ngā koringa ā-muri
Next steps
48. If approved, staff will prepare an options report and proposal for the committee in the second quarter of the 21/22 financial year. This delay is due to current staff levels and other work programme priorities.

Ngā tāpirihanga
Attachments

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Ngā kaihaina
Signatories

<table>
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<tr>
<th>Author</th>
<th>Caroline Stephens - Graduate Policy Advisor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authorisers</td>
<td>Kataraina Maki – General Manager - Community &amp; Social Policy</td>
</tr>
<tr>
<td>Authorisers</td>
<td>Craig Hobbs - Director Regulatory Services</td>
</tr>
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Property Maintenance and Nuisance Bylaw

2020 Review Findings Report
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1 Summary of key findings

Te Tūranga Rawa me Ngā Mahi Whakaponoa 2015 / the Property Maintenance and Nuisance Bylaw 2015 addresses five problem areas related to property maintenance which can create nuisances (particularly attracting pests) and/or public health risks:

- overgrown vegetation
- deposited materials
- abandoned buildings
- feeding of wild animals
- industrial cooling tower water systems (ICTWS)

The Bylaw was made to address the public health and nuisance impacts related to the five problems and avoid a narrow regulatory gap. For example, the Building Act 2004 regulates mechanical cooling tower systems associated with air conditioning or ventilation, but not industrial systems.

Licensing and Regulatory Compliance staff administer and enforce the Bylaw and Building Consents staff administer the ICTWS regime. Compliance staff respond to public complaints using a risk-based graduated enforcement model that prioritises serious breaches.

Australians are still experiencing the problems the Bylaw regulates, particularly overgrown vegetation, and a growing pest problem may be driving higher numbers of complaints. ‘Visual nuisance’ is the most common nuisance experienced as a result of the problems, but the council does not have a mandate to regulate visual amenity through a bylaw.

Most Australians who experience a nuisance related to these problems do not act on it, and only one in five people report it to council, with most preferring to resolve it another way.

Most complaints are not seen to be adequately resolved. Possible reasons for this include:

- many reported complaints are not technically breaches of the Bylaw
- it can be challenging to track down an owner of a vacant property, and the cost of council remediating breaches directly can be prohibitive
- many complaints are about low-level nuisances which are not an enforcement priority.

The ICTWS regime is largely working as intended, but registrations have dropped and the reasons for this are unknown; enforcement is not carried out as no complaints are received.

The Bylaw however provides the only legal basis for the council to address these issues. Staff do investigate public complaints where a breach has occurred – particularly where there is a serious risk to public health and safety or where nuisances are severe or persistent.

The review’s statutory findings under section 160(1) of the Local Government Act 2002 are:

- a bylaw is still the most appropriate way to manage these problems and address the resulting public health risks or public nuisance
- the Bylaw has limitations, for example low awareness of what constitutes a breach
- the current Bylaw approach is appropriate but could be improved, for example clarifying the definition of nuisance
- the current Bylaw does not give rise to any unjustifiable Bill of Rights implications.
2 Introduction

2.1 This report provides findings of a statutory bylaw review

This report outlines findings from a statutory review of Te Ture ā-rohe Tiaki Rawa me Ngā Mahi Whakaporearea 2015 / the Property Maintenance and Nuisance Bylaw 2015 (the Bylaw).

Auckland Council has a responsibility under the Local Government Act 2002 to complete a statutory findings review of the Bylaw by 24 September 2020.¹ To complete the statutory findings review, council must determine whether a bylaw is still appropriate, well drafted and meets the requirements of the New Zealand Bill of Rights Act 1990.²

Following the statutory findings review, the council can propose the Bylaw be confirmed, amended, revoked or replaced using the special public consultation procedure.³

2.2 The review analyses six key questions

The review asked the following key questions to meet council’s statutory review requirements under section 160(1) of the Local Government Act 2002:

- Is there still a problem?
- Has the problem changed, or do any new problems need to be addressed?
- Have the Bylaw’s desired outcomes changed?
- Has the Bylaw helped achieve the outcome?
- Could the Bylaw be improved?
- Does the Bylaw comply with legislation?

2.3 The review used a research and engagement methodology

Staff undertook research and engagement to answer the key questions. Methods included:

- interviews with the key stakeholders: council compliance staff, Building Consents, Environmental Services and the Auckland Regional Public Health Service (ARPHS)
- an online survey of Aucklanders, via the People’s Panel (2,735 responses received)
- an online survey sent to registered owners of industrial cooling tower water systems in Auckland (28 responses received)
- research into how other councils in New Zealand manage similar complaints relating to private property
- analysis of council data on public complaints and requests for service (from November 2015 to September 2019).

¹ Local Government Act 2002, section 158
² Local Government Act 2002, sections 160(1) and (2)
³ Local Government Act 2002, section 160(3)
2.4 There are limitations to the information collected

There are limitations to the data and information collected through this review. These include:

- the People’s Panel participants are self-selected, and therefore not a geographically or demographically representative sample of Aucklanders
- it is not possible to directly compare the People’s Panel survey data from 2015 and 2019, because different questions were asked (for example in 2015, respondents were asked whether they were concerned about the problems; in 2019 they were asked whether they have personally experienced the problems)
- internal data only covers complaints lodged with Auckland Council, but analysis of 2019 People’s Panel survey responses suggests fewer than half of the issues being experienced by Aucklanders are reported to the council
- complaints data is categorised according to legacy council areas prior to the adoption of the Bylaw in 2015, and local board areas following the adoption, meaning clustering of complaints cannot be directly compared geographically
- complaints data relating to abandoned buildings is difficult to analyse because some complaints concern issues relating to vacant land, which are out of scope for the Bylaw; for analysis purposes, only complaints specifically referencing unoccupied buildings have been included
- complaints and complaint outcomes data are currently recorded in separate and incompatible systems, so although technology integration is planned in future, at this time we are not able to determine how complaints are resolved.
3 About the Bylaw

3.1 Key findings

The Bylaw covers five key problems related to private property maintenance, each of which can create nuisances and/or public health risks:

- overgrown vegetation
- deposited materials
- abandoned buildings
- feeding of wild animals
- industrial cooling tower water systems (ICTWS)

The key nuisance common to the first four problems is the attraction of vermin and other pests, which can carry diseases hazardous to human health.

The Bylaw was made to replace two legacy bylaws and to avoid creating a regulatory gap.

It is narrow in scope because other regulatory tools already manage several closely related matters. For example, the impact of overgrown vegetation on visual amenity is already addressed under the Property Law Act 2007, and overhanging vegetation obstructing footpaths is covered by the Public Safety and Nuisance Bylaw 2015.

3.2 The purpose of the Bylaw is to protect public health and avoid nuisance in relation to maintenance of private property

Aucklanders’ comfort and safety at home are influenced by other people’s activities, particularly those of their neighbours. This is especially true in urban areas, where the population density is higher and activities on a property are more likely to affect others nearby.

Auckland Council has a legislative mandate under the Local Government Act 2002 and the Health Act 1966 to protect and promote public health and reduce nuisance.

This Bylaw regulates matters related to private property maintenance that can create public health risks or nuisances. These include problems related to overgrown vegetation, the storage of materials and unsecured abandoned buildings.

The Bylaw also regulates the feeding of wild or feral animals on private land and requires the annual registration and regular testing and maintenance of industrial cooling tower water systems to prevent Legionnaires’ disease.

If not regulated, these matters can attract vermin and other pests, cause offensive odours, generate animal noise and excrement and/or cause serious disease.

Although the behaviours and activities regulated through this Bylaw are disparate, there are overlapping connections between the problems and their effects.
3.3 The Bylaw was made to help address the problem

Te Ture ā-rohe Tiaki Rawa me Ngā Mahi Whakaporearea 2015 / the Property Maintenance and Nuisance Bylaw 2015 was made on 24 September 2015 (GB/2015/104).

The Bylaw was created to contribute to two primary objectives:

- to protect public health by reducing the risk of diseases carried by animals or caused by legionella bacteria, and preventing public access to abandoned buildings
- to prevent nuisances caused by some activities on private property, particularly where these attract vermin and other pests.

The Bylaw draws on the relevant parts of the Health Act 1956’s definition of nuisance:

**Nuisance** means: a person, animal, thing, or circumstance causing unreasonable interference with the peace, comfort, or convenience of another person.

This includes but is not limited to:

(b) where there exists on any land or premises any condition giving rise or likely to give rise to the breeding of pests or vermin or is suitable for the breeding of pests or vermin, which are capable of causing or transmitting disease;

(c) where there exists on any land or premises any condition or activity that creates or is likely to create an odour that is objectionable or offensive at or beyond the boundary of the land;

(d) where any premises, including any accumulation or deposit of any material or thing thereon, are in such a state as to harbour or to be likely to harbour pests or vermin.\(^4\)

The Bylaw aimed to achieve its objectives by:

- requiring people to maintain their private property in a way that it is secure and does not attract pests, creating a health risk or nuisance – Part 2, Clause (6), (1a), (b), and (2)
- preventing the active feeding of any wild bird or animal so it does not create a health risk or nuisance – Part 2 Clause (6), (1c)
- requiring all properties in Auckland with industrial cooling tower water systems to register with the council, regularly test the towers for legionella bacteria, and mitigate the risk of exposing people to legionella bacteria – Part 2 Clause (7), (1-5).

---

\(^4\) Part 2 Section 29 Health Act 1956
3.4 The problem covers five topic areas

Table 3.4.1: Deposited materials

<table>
<thead>
<tr>
<th>Deposited materials refer to things left outside on a private property, for example:</th>
</tr>
</thead>
<tbody>
<tr>
<td>building materials</td>
</tr>
<tr>
<td>paper</td>
</tr>
<tr>
<td>plastic</td>
</tr>
<tr>
<td>vehicles</td>
</tr>
<tr>
<td>litter or waste.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Nuisances from deposited materials:</th>
</tr>
</thead>
<tbody>
<tr>
<td>can cause offensive smells</td>
</tr>
<tr>
<td>potential to harbour pests, particularly vermin, which can also cause offensive smells and/or damage to property by chewing through wiring, timber, pipes, and brickwork</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Health risks from deposited materials:</th>
</tr>
</thead>
<tbody>
<tr>
<td>diseases carried by vermin (such as Leptospirosis, Salmonellosis and Rat Bite Fever) that can cause fever and diarrhoea in humans</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>What the Bylaw says:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) A person must not:</td>
</tr>
<tr>
<td>(a) allow any material or thing to be deposited, accumulated, used, processed or stored on any private property under their control in a manner that causes or may cause a nuisance</td>
</tr>
</tbody>
</table>

Part 2 Section 6

---

5 https://www.kiwicare.co.nz/advice/pests/diseases-from-rats-and-mice/
### Table 3.4.2: Overgrown vegetation

<table>
<thead>
<tr>
<th>Overgrown vegetation</th>
<th>What the Bylaw says:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refers to grass, plants, shrubs, or trees on private property that have grown to the point that they cause a problem to neighbouring properties.</td>
<td>(1) A person must not:</td>
</tr>
<tr>
<td></td>
<td>(b) allow any private property under their control to become so overgrown with vegetation that it causes or may cause a nuisance</td>
</tr>
<tr>
<td></td>
<td><strong>Part 2 Section 6</strong></td>
</tr>
</tbody>
</table>

### Nuisances from overgrown vegetation:
- potential to harbour pests, particularly vermin, which can cause offensive smells and damage to property
- encroachment of weeds into neighbouring properties

### Health risks from overgrown vegetation:
- diseases carried by vermin

### Table 3.4.3: Abandoned buildings

<table>
<thead>
<tr>
<th>Abandoned buildings</th>
<th>What the Bylaw says:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refer to temporary or permanent structures intended for occupation by people, animals, or machinery that are empty, deserted, or uninhabited.</td>
<td>(2) The owner of any building that is abandoned or that is wholly or partly unoccupied, whether permanently or temporarily, must ensure that the building or the unoccupied part thereof is secured so as not to allow access by the public.</td>
</tr>
<tr>
<td></td>
<td><strong>Part 2 Section 6</strong></td>
</tr>
</tbody>
</table>

### Nuisances from abandoned buildings:
- potential to harbour pests, particularly vermin

### Health risks from abandoned buildings:
- diseases carried by vermin
- unsecured buildings can pose a danger to the public, if entered
Table 3.4.4 Feeding of wild animals

The feeding of wild animals means a person feeding wild animals (usually birds), or feral animals (usually cats) on their property.

This only refers to active feeding; leaving food scraps or rubbish that wild animals are eating would not fall under this section of the Bylaw.

Animals refer to any member of the animal kingdom apart from humans and dogs.

<table>
<thead>
<tr>
<th>Nuisances from the feeding of wild animals:</th>
<th>What the Bylaw says:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• animal excrement deposited on neighbouring properties</td>
<td>(1) A person must not:</td>
</tr>
<tr>
<td>• noise from large numbers of animals</td>
<td>(c) allow the active feeding of any wild or feral animal on any private property under their control in a manner that causes or may cause a nuisance.</td>
</tr>
</tbody>
</table>

Part 2 Section 6

Table 3.4.5 Industrial cooling tower water systems (ICTWS)

Cooling tower water systems are used in centralised building ventilation and air conditioning and to support industrial processes where water cooling is needed, such as in meat processing factories and steel refineries.

The Building Act 2004 regulates the mechanical cooling tower water systems used in building ventilation and air conditioning, but not industrial cooling tower water systems (ICTWS), which are covered in this Bylaw to avoid a regulatory gap.

<table>
<thead>
<tr>
<th>Health risks from ICTWS:</th>
<th>What the Bylaw says:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Legionnaires’ disease, caused by the inhalation of Legionella bacteria present in the system</td>
<td>Council requires the regular registration, cleaning maintenance and testing of industrial cooling tower water systems to prevent legionella bacteria.</td>
</tr>
</tbody>
</table>

Part 2 Section 7, 1-5
3.5 The Bylaw is narrow in scope because it fills a regulatory gap; other regulations and agencies manage related issues

The Bylaw was made to replace two legacy bylaws and avoid creating a regulatory gap. It is narrow in scope because it is only one regulatory tool used to manage several closely related issues, and the council is only one of several public agencies with overlapping responsibilities in this area.

Because the legislative and management framework is complex, it is important to clearly define the specific scope of this Bylaw to differentiate it from those other tools and responsibilities.

A key scope constraint is that this Bylaw only covers activities and behaviours on private property, not in public areas such as parks or footpaths.

Further, only specific problems causing specific nuisance effects or public health risks can be enforced by compliance staff using the statutory powers to administer this Bylaw.

The same compliance staff may attend properties to deal with closely related matters, in order to enforce rules using powers to administer other bylaws or legislation.

Table 3.5.1: Bylaw Scope: problems and their nuisance effects / public health risks

<table>
<thead>
<tr>
<th>Problem</th>
<th>This Bylaw regulates only these nuisance effects or public health risks:</th>
<th>This Bylaw does not regulate these nuisance effects or public health risks:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overgrown vegetation on private property</td>
<td>Potential of vegetation to harbour pests, particularly vermin</td>
<td>Any other matter related to overgrown vegetation:</td>
</tr>
<tr>
<td></td>
<td>Encroachment of weeds into neighbouring property</td>
<td>• visual amenity (unsightliness, ‘creating an eyesore’)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• hanging over a boundary fence onto public property</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• obstructing a footpath</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• creating a fire hazard</td>
</tr>
<tr>
<td>Material or debris stored on private property</td>
<td>Potential of materials to harbour pests and/or generate offensive odours</td>
<td>Any other matter:</td>
</tr>
<tr>
<td></td>
<td>Encroachment of materials into neighbouring property</td>
<td>• dumped rubbish or waste</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• visual amenity (i.e. unsightly stored materials)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• materials creating an environmental or fire hazard</td>
</tr>
<tr>
<td>The feeding of wild birds and feral animals</td>
<td>Animal excrement</td>
<td>Feeding of domestic pets or kept birds or animals (such as chickens)</td>
</tr>
<tr>
<td>on private property</td>
<td>Noise from large numbers of birds or animals</td>
<td>Feeding of wild animals on public property (such as parks)</td>
</tr>
</tbody>
</table>
### 4 Wider regulatory and strategic framework

#### 4.1 Key findings

The Bylaw is part of a wider regulatory and strategic framework. This includes central government legislation, local plans and other bylaws, including the Fire and Emergency New Zealand Act 2017, Building Act 2004 and Public Safety and Nuisance Bylaw 2017.

The Bylaw’s objectives aligned with the Auckland Plan 2030 outcome to enable a ‘fair, safe, and healthy Auckland’, by regulating activities that cause public health risks and nuisances.

#### 4.2 The Bylaw is part of a wider regulatory and strategic framework

**Complex regulatory framework spans central and local government**

The Bylaw forms part of a wider regulatory framework for managing nuisances and public health risks that arise from private property.

The central government legislation, local plans and bylaws that govern closely related matters out of scope for this Bylaw are outlined in Table 4.2.1 and Table 4.2.2. The relationships between the problems and all applicable regulation is shown diagrammatically in Figure 4.2.3.
### Table 4.2.1 Central government legislation governing closely related matters

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Closely related matters regulated by other legislation, that are out of scope for this Bylaw</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Act 2004</td>
<td>Mechanical cooling tower water systems</td>
</tr>
<tr>
<td></td>
<td>Dangerous or insanitary buildings</td>
</tr>
<tr>
<td>Fire and Emergency New Zealand Act 2017</td>
<td>Vegetation or deposited materials that pose a fire risk on private or public property</td>
</tr>
<tr>
<td>Litter Act 1979</td>
<td>Litter created or left on private or public land</td>
</tr>
<tr>
<td>Local Government Act 1974</td>
<td>Vegetation that obstructs the road or a public place</td>
</tr>
<tr>
<td>Property Law Act 2007</td>
<td>Vegetation that poses a danger to health or property, or unreasonable interference with enjoyment of property (including visual amenity)</td>
</tr>
<tr>
<td>Resource Management Act 1991</td>
<td>Materials stored on private property that could have adverse effects on the environment</td>
</tr>
<tr>
<td>Summary of Offences Act 1981</td>
<td>Vandalism and graffiti on private or public property</td>
</tr>
<tr>
<td>Trespass Act 1980</td>
<td>Trespassing on private property</td>
</tr>
</tbody>
</table>

### Table 4.2.2 Local plans and bylaws that govern related matters

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Closely related matters regulated by other Plans and Bylaws, that are out of scope for this Bylaw</th>
</tr>
</thead>
<tbody>
<tr>
<td>Animal Management Bylaw 2015</td>
<td>Nuisance arising from domestic animals cared for on private property</td>
</tr>
<tr>
<td>Auckland Unitary Plan (operative in part)</td>
<td>Noise and odour nuisances arising from public and private property</td>
</tr>
<tr>
<td></td>
<td>Light spillage and glare impacting adjoining properties</td>
</tr>
<tr>
<td>Public Safety and Nuisance Bylaw 2017</td>
<td>Vegetation that obstructs the road or a public place</td>
</tr>
<tr>
<td></td>
<td>Antisocial behaviour</td>
</tr>
<tr>
<td>Waste Management and Minimisation Bylaw 2019</td>
<td>Disposal of waste on private and public property</td>
</tr>
</tbody>
</table>
The 2015 Bylaw also aligns with the outcomes in the Auckland Plan

The Auckland Plan sets a strategic direction for Auckland and its communities that integrates social, economic, environmental, and cultural objectives. It provides a framework to guide decision-making, by ensuring all council plans, policies and bylaws are aligned.

The Bylaw’s objectives aligned with the Auckland Plan 2030 outcome to enable a ‘fair, safe, and healthy Auckland’, by regulating activities that may cause public health risks and nuisances.

The 2015 Statement of Proposal for this Bylaw also noted an intention to:

- “address the issues faced in our communities, and contribute to making Auckland the world’s most liveable city”, and
- “deliver a balance between personal freedom of expression and the wider social impacts and outcomes of an individual’s lifestyle choices”.
5 Implementation of the Bylaw

5.1 Key findings

Auckland Council’s Licensing and Regulatory Compliance team administer and enforce the Bylaw, and Building Consents administer the industrial cooling tower water systems register.

Compliance staff respond to public complaints using a risk-based graduated enforcement model. This means prioritising threats to public health and safety over lower-risk nuisances.

Staff encourage voluntary compliance before issuing a formal notice. If neither warnings nor formal notice are successful in achieving compliance, staff can consider prosecution.

5.2 Licensing and Regulatory Compliance unit implements the Bylaw

Auckland Council’s Licensing and Regulatory Compliance unit is responsible for administering four of the five activities regulated by the Bylaw.

The exception is the registration, maintenance and testing regime relating to industrial cooling tower water systems (ICTWS), which is administered by the council’s Building Consents team.

Licensing and Regulatory Compliance enforcement officers are responsible for enforcement relating to all five activities.

5.3 Risk-based graduated enforcement approach to compliance

Licensing and Regulatory Compliance staff only enforce the Bylaw in response to complaints made by the public, usually lodged through the council call centre. Staff do not carry out proactive monitoring in relation to the problems regulated in the Bylaw.

Once a complaint is received, staff will assess the information provided in each case to determine the level of risk posed to public safety.

In line with the council’s Risk-based Graduated Enforcement approach, higher risk activities to public health and safety are responded to quickly, while others, particularly low-level nuisances, are accorded lesser priority (see Figure 5.3.1).\(^6\)

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\(^6\) Agenda of Regulatory Committee - 12 October 2017
### Figure 5.3.1 Risk-based Prioritisation Matrix

## Risk Prioritisation Matrix

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk of harm to human health/environment</td>
<td>Fatal, safety matter that could cause a fatality to human or wildlife</td>
<td>Injury or illness causing permanent/irreversible impairment to human health or wildlife, or impracticable damage to infrastructure/habitats/ecosystems/Mana Whenua</td>
<td>Injury or illness requiring treatment (human or wildlife), with no long-term effect</td>
<td>Remediable damage to infrastructure/habitats/ecosystems/Mana Whenua or effects have ceased</td>
<td>An injury/discomfort (human/wildlife) that does not require treatment. No discernible effects to infrastructure/habitats/ecosystems/Mana Whenua or effects have ceased</td>
</tr>
</tbody>
</table>

### Likelihood of event occurring

<table>
<thead>
<tr>
<th>1. Rare</th>
<th>2. Unlikely</th>
<th>3. Possible</th>
<th>4. Likely</th>
<th>5. Almost certain</th>
</tr>
</thead>
<tbody>
<tr>
<td>Could happen but probably never will</td>
<td>Not likely to occur in a normal (controlled) environment</td>
<td>May occur at some time</td>
<td>Expected to occur at some time</td>
<td>Expected to occur in normal (controlled) circumstances</td>
</tr>
</tbody>
</table>

### Detecting Bylaw breaches during site visits

If a complaint justifies action, enforcement staff make a site visit to determine if there is a breach of the Bylaw. When visiting a property, staff look for different evidence depending on the complaint.
Table 5.3.1: Evidence staff look for by problem type

<table>
<thead>
<tr>
<th>Problem</th>
<th>Evidence staff look for during a site visit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overgrown vegetation</td>
<td>• Vegetation or materials in a state that suggests they are harbouring or likely to harbour pests or vermin</td>
</tr>
<tr>
<td>Deposited materials</td>
<td>• A food source for pests or vermin</td>
</tr>
<tr>
<td></td>
<td>• A noticeable smell or odour</td>
</tr>
<tr>
<td>Feeding of wild animals</td>
<td>• Leftover food source indicating active feeding</td>
</tr>
<tr>
<td></td>
<td>• Large numbers of animals in the area</td>
</tr>
<tr>
<td></td>
<td>• Significant amounts of excrement</td>
</tr>
<tr>
<td>Abandoned buildings</td>
<td>• Evidence of unauthorised entry (broken windows or doors)</td>
</tr>
</tbody>
</table>

Council’s graduated enforcement model is based on attitude to compliance

If a breach can be detected, council then uses a graduated model to enforce the Bylaw, which is based on the attitude to compliance displayed by the offending property owner (see Figure 5.3.2).

![Figure 5.3.2 Graduated enforcement model](image)

Staff always try to encourage voluntary compliance in the first instance, by warning the offending property owner of their obligations under the Bylaw before taking any further action.

If the warning is unsuccessful, staff can issue a formal notice of the need to comply. If neither the warning or notice are successful in achieving compliance, staff can serve another notice or consider prosecution.
The majority of breaches are low-level nuisances and present a low risk to the public, and would rarely justify the expense of a court prosecution.

Staff advise it can be challenging to gather sufficient evidence of a nuisance to meet the required threshold for court action. Video or photographic evidence is preferred. If the presence of vermin is strongly suspected but can't be confirmed during a site visit, a pest contractor can be engaged to investigate the property.

6 Is there still a problem, and has it changed?

Note: Sections 6-9 discuss four of the five topics outlined at 3.4 above, as these are closely related and have overlapping causes and impacts. The fifth topic, industrial cooling tower water systems (ICTWS), is of a niche and technical nature and is covered separately in Section 10.

6.1 Key findings

Complaints to council relating to three of the four problems covered by the Bylaw (overgrown vegetation, deposited materials, and abandoned buildings) are increasing.

Eighty-eight per cent of the complaints received reference pests and vermin. This reflects a growing pest problem in Auckland, which may be driving higher numbers of complaints.

Based on responses to a People’s Panel survey, Aucklanders are still experiencing the problems the Bylaw regulates. Overgrown vegetation is the most commonly cited, representing 26 per cent of all respondents to the survey and 84 per cent of those who reported experiencing a problem.

‘Visual nuisance’ was the most common nuisance experienced by respondents as a result of overgrown vegetation, deposited materials, and abandoned buildings, which is significant as the council does not have a mandate to regulate visual amenity through a bylaw.

The problem has not materially changed since the Bylaw was adopted in 2015, although Fire and Emergency New Zealand has taken responsibility for addressing fire hazards arising from overgrown vegetation, deposited materials and abandoned buildings since 2017.

6.2 Council complaints data show problems are still occurring

The council has received 3,573 complaints related to the problems regulated by the Bylaw between January 2016 and October 2019. Complaints have increased each year over the period 2016 to 2018. However, projected data for the 2019 year suggests numbers may have plateaued since the largest increase, observed in 2018 (see Figure 6.2.1 and Table 6.2.1).
Table 6.2.1 Complaints per year by problem topic

<table>
<thead>
<tr>
<th>Complaints related to:</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019 (Projected)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overgrown vegetation</td>
<td>402</td>
<td>480</td>
<td>717</td>
<td>692</td>
</tr>
<tr>
<td>Deposited materials</td>
<td>174</td>
<td>292</td>
<td>425</td>
<td>392</td>
</tr>
<tr>
<td>Abandoned buildings</td>
<td>63</td>
<td>49</td>
<td>130</td>
<td>155</td>
</tr>
<tr>
<td>Feeding of wild animals</td>
<td>45</td>
<td>15</td>
<td>8</td>
<td>16</td>
</tr>
</tbody>
</table>

Complaints referencing overgrown vegetation have the highest totals. Complaints regarding abandoned buildings and deposited materials are increasing at the fastest rate, but still represent a low proportion of complaints overall (see Figure 6.2.2).

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*Projected data has been extrapolated from the nine months’ data currently available for that year.*
In terms of the specific nuisance reported as a result of these problems, complaints referencing the presence of pests or vermin account for 88 per cent of the total.

Figure 6.2.3 Total complaints by type of nuisance
The rise in complaints may be due to Auckland’s growing rodent problem

The general upward trend in complaints data may reflect population growth. Auckland’s population has increased by 11 per cent between the 2013 and 2018 census\(^8\) and housing density is also increasing in many areas.

The overall increase in complaints however, as shown Figure 6.2.3, appears to be driven by complaints about vermin and pests. The number of complaints referencing fire or odour nuisances are less frequent, and relatively unchanged between 2016 and 2019.

Pest problems are on the rise all over New Zealand. In June 2019, Forest & Bird stated:

> We are seeing some really alarming numbers [of rodents] coming through from our trapping groups around the country. 2019 is what we are calling a ‘mega mast’ year, which means our native trees are fruited really heavily and normally that would have fed our bird population, but these days it’s feeding rats instead.\(^9\)

The likelihood that rodent populations are increasing in Auckland as elsewhere in the country would explain the rise in related public complaints.

Climate change may make Auckland’s pest problems worse

Animals tend to breed faster when it is warmer\(^10\). Higher average temperatures over the last decade may have given pest species an advantage over native species and worsened Auckland’s pest problem, and this trend is expected to continue in future.

The council commissioned the National Institute of Water and Atmospheric Research (NIWA) to prepare climate change projections and impacts for the Auckland region. In January 2018, NIWA’s report stated:

> Exotic organisms are advantaged: As climate changes, existing indigenous species may be disadvantaged relative to exotic organisms better suited to new prevailing climates. Warmer and drier winters are already observed to extend the breeding seasons of some mammalian predators (e.g. rodents, goats, pigs and possums)\(^11\).

Reducing habitat on private land is one effective strategy to address pest problem

Auckland Council’s Regional Pest Management Strategy provides a regional framework for addressing Auckland’s pest problem, with one key outcome to “minimise actual and potential adverse and unintended effects associated with the targeted pests”.

The Strategy states that, “the primary responsibility for management of pest plants and animals rests with landowners/occupiers.” The Bylaw provides a key tool to address problems on private land, by regulating behaviours and activities that can harbour or provide food for pest animals.

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\(^9\) NZ Herald article by Megan Harvey: [https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objid=12242246](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objid=12242246)

\(^10\) Key stakeholder interview with Dr. Imogen Bassett, Biosecurity Principal Advisor, Environmental Services

The Ministry of Health recommends an effective strategy for property owners to reduce rodent populations is to reduce their habitat, by “[removing] weeds, overgrown grass, rubbish and other materials that could provide hiding places for rodents.”

6.3 Survey data confirms Aucklanders are experiencing nuisances related to these problems

In 2019, the council invited members of the People’s Panel to complete a survey relating to four of the five problems regulated by the Bylaw (excluding ICTWS) and received 2,735 responses.

It is important to note that the People’s Panel respondents are self-selected and therefore not a geographically or demographically representative sample of Aucklanders.

For example, 90 per cent of respondents identified as European (compared with 53.5\textsuperscript{13} per cent in the Auckland population). More details regarding sample demographics and geographic distribution are provided in Appendix 2.

Around a third of Aucklanders surveyed had experienced a problem

Around thirty-two per cent\textsuperscript{14} of survey respondents said they had experienced one or more of the problems addressed by the Bylaw:

**Figure 6.3.1 Survey respondents who experienced a problem regulated in the Bylaw**

Overgrown vegetation was the most common problem experienced

The most common problem respondents reported experiencing was overgrown vegetation, representing 26 per cent of total respondents and an estimated 84 per cent of those who had experienced a problem.\textsuperscript{15}


\textsuperscript{14} As this question was not asked directly in the survey, this percentage has been extrapolated by excluding those who said (1) that they had not experienced one of the problems listed (2) those who were not sure and (3) those who experienced a problem not described in the Bylaw. As respondents were able to select more than one response, the category for “other problem, not listed” was filtered to exclude those who had not also selected a Bylaw problem.

\textsuperscript{15} Note: Survey respondents could select more than one problem.
Visual nuisance was a key concern, but can’t be regulated by a Bylaw

Respondents to the People’s Panel survey were asked to identify the particular types of nuisance or impacts they had experienced as a result of the problems covered by the Bylaw. Most people said that they had experienced a ‘visual nuisance’ (i.e. unsightliness, or an ‘eyesore’) as a result of overgrown vegetation, deposited materials, or abandoned buildings.

On average, visual nuisance accounted for 77 per cent of the impacts people identified across three of the problem topics (overgrown vegetation, deposited materials, and abandoned buildings). This is significant, because the council does not have a legislative mandate under the Local Government Act to regulate visual amenity through a bylaw (see Figure 6.3.3).\textsuperscript{16}

\textsuperscript{16} Note: the percentages above represent the proportion of respondents who said they’d experienced a particular nuisance as a result of each problem. For example, 26 per cent of total survey respondents (724 people) experienced an overgrown vegetation problem, and 76 per cent of those 724 people identified the impact of that problem as a visual nuisance. The graph displays the latter percentage. Respondents could select more than one nuisance category for each problem they’d experienced.
Health risks can be regulated, and may be more likely to generate complaints

On average, health risks (for example, from the presence of rats and other pests, or animal droppings) were the second most commonly experienced impact cited by respondents.

As noted earlier, complaints data shows the most common nuisances reported to the council for enforcement action relate to the presence of pests and vermin, at 88 per cent of total complaints.

Taken at face value, there is a discrepancy between the complaints data (which overwhelmingly feature pests and vermin) and survey data (which overwhelmingly feature visual nuisance).

However, the most likely explanation is that Aucklanders don’t consider unsightly properties serious enough to justify contacting the council, or if they do, are advised that the council doesn’t regulate visual amenity.

Health risks are of greater concern, and therefore more likely both to trigger action, and to lead to a complaint being lodged. This is discussed further in Section 8.3 below.

6.4 The problem has not substantively changed since Bylaw adopted

Complaints data from legacy councils show similar problems

The two legacy council areas with a comparable bylaw prior to amalgamation were Auckland City and North Shore City. These bylaws remained in force until the current regional Bylaw was adopted in 2015.
Historically, complaints regarding overgrown vegetation were the most common problem identified in these areas, and as noted these continue to be the most frequent type of complaint under the current Bylaw.

Complaints regarding deposited materials were the second most frequent type of complaint in the legacy council areas, and this trend has also continued under the current Bylaw.

The numbers of complaints regarding abandoned buildings and feeding wild animals are very small, and historical complaints data are only available for the Auckland City Council area. As a result, comparisons with current complaints data for these problems are of limited use for this review.

The Bylaw no longer regulates in relation to fire hazards

While complaints still reference the potential for overgrown vegetation, deposited materials or abandoned buildings to cause fire hazards, compliance staff are no longer able to take enforcement action for a fire hazard. This responsibility was transferred to Fire and Emergency New Zealand in 2017.

No new problems or effects related to the Bylaw purpose have been identified

No new causes, problems, effects or impacts related to the Bylaw’s purpose have been identified through the review.
7 Have the Bylaw’s desired outcomes changed?

7.1 Key findings

The Bylaw’s desired objectives have not changed since the Bylaw was adopted in 2015. Although the Auckland Plan has since been refreshed, the desired outcomes remain similar.

7.2 There have been no changes to the objectives

In 2015 the Statement of Proposal stated the Bylaw objectives were to “reduce the risk to the health of the population of Auckland and avoid nuisance to persons on neighbouring properties and public places from activities and behaviours on private property”.

These overall objectives remain the same. Aucklanders are still experiencing nuisance and health risks associated with the maintenance of private property, and the Bylaw still aims to help address these problems.

7.3 There have been minor changes to the desired outcomes following adoption of the Auckland Plan 2050

The Bylaw’s objectives continue to align with the strategic outcomes in the Auckland Plan. In 2015, the Bylaw’s objectives aligned with the Auckland Plan 2030 outcomes to enable a ‘fair, safe, and healthy Auckland’, by regulating activities that could cause public health risks and nuisances.

Following a refresh of the Auckland Plan in 2018, the Bylaw’s objectives continue to align with equivalent directions in the new Auckland Plan 2050, as shown in Table 7.3.1.

Table 7.3.1 The Bylaw’s alignment with the Auckland Plan 2050

<table>
<thead>
<tr>
<th>Outcome</th>
<th>Direction / Focus area</th>
</tr>
</thead>
</table>
| Belonging and Participation | Direction 2: Improve health and wellbeing for all Aucklanders by reducing harm and disparities in opportunities.  
Alignment: The Bylaw reduces activities that could cause public health risks. |
| Homes and Places          | Direction 1: Develop a quality compact urban form to accommodate Auckland’s growth.  
Focus area 5: Create urban places for the future.  
Alignment: The Bylaw aims to minimise nuisance and reduce public health risks in increasingly intensified residential areas. |
8 Has the Bylaw helped achieve the outcome?

8.1 Key findings

Based on the People’s Panel survey findings, most Aucklanders who experience a nuisance as a result of a problem regulated by the Bylaw do nothing in response. On average, only one in five people report a problem to council, with most preferring to resolve it another way.

Of those who did complain to council, most did not feel the problem was adequately resolved.

Compliance staff suggested possible reasons for this finding, including:

- many reported complaints are not technically breaches of the Bylaw
- it can be challenging to track down an owner of a vacant property
- the cost of council remediating breaches can be prohibitive, and
- many of these complaints are low level nuisances, and as such are given a low-level priority based on the risk-based graduated enforcement model.

However, the Bylaw does provide a legal basis for the council to try to address the problems, and staff do investigate public complaints where a breach has occurred – particularly where there is a serious risk to public health and safety or where nuisances are severe or persistent.

If the Bylaw did not exist there would be a regulatory gap, and compliance staff consider the Bylaw an essential tool to support them in their enforcement work.

8.2 Data limitations make it difficult to determine effectiveness

Due to data limitations, the review has relied on proxy indicators to assess the effectiveness of the Bylaw at addressing the problems and contributing to the outcome of improving Aucklanders’ health and wellbeing.

8.3 Most people do not report nuisances to council; most who do complain feel the problem is not resolved

Most Aucklanders do nothing when they experience nuisances

For each of the four problem topics outlined in Sections 6 and 7, the People’s Panel survey found that Aucklanders’ most common response to experiencing a nuisance was to ‘do nothing’.

Of respondents who said they had experienced a nuisance from an abandoned building, 57 per cent reported that they did nothing; this was the highest across all four categories.

Aucklanders more likely to take other actions than to complain to the council

Across three of the problem topics (overgrown vegetation, abandoned buildings, and feeding wild animals), no more than one in five people said that their response to the resulting nuisance was to report it to the council.
Respondents were most likely to make complaints about deposited materials to the council – approximately one in four people who had experienced a nuisance from this problem lodged a complaint (see Figure 8.3.1).  

The reasons for low levels of reporting nuisances to council in particular are unclear, but possible explanations are that:

- people prefer to resolve the problem privately (for example, take the issue up with their neighbours)
- people do not consider the problem is significant enough to complain about
- there are low levels of awareness of the council’s ability to take action
- people are unwilling to complain to the council
- people don’t have confidence that the council will resolve the problem.

**Figure 8.3.1 People’s Panel action taken in response to problem topic**

**HOW AUCKLANDERS Respond TO PROBLEMS**

<table>
<thead>
<tr>
<th>Action</th>
<th>Number of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nothing / I put up with it</td>
<td>30%</td>
</tr>
<tr>
<td>Talked to my neighbour but was not able to resolve it</td>
<td>20%</td>
</tr>
<tr>
<td>Other</td>
<td>15%</td>
</tr>
<tr>
<td>Reported it to Auckland Council</td>
<td>10%</td>
</tr>
<tr>
<td>Resolved it myself without dealing with my neighbour</td>
<td>5%</td>
</tr>
<tr>
<td>Resolved it directly with my neighbour</td>
<td>5%</td>
</tr>
<tr>
<td>Told my landlord or property manager</td>
<td>5%</td>
</tr>
<tr>
<td>Reported it to an organisation that wasn’t Auckland Council or e.g. the police, Auckland Transport,...</td>
<td>5%</td>
</tr>
<tr>
<td>I don’t know / can’t remember</td>
<td>5%</td>
</tr>
</tbody>
</table>

**Aucklanders do not feel that the council resolves their complaints**

Of the average of one in five respondents who did report a nuisance to council, the majority did not believe the council resolved the issue.

Only 19 per cent of respondents reported that council resolved their complaint regarding deposited materials, but this was still the highest positive result across all four categories.

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Note: the percentages are of the total number of respondents who experienced a particular problem.
8.4 Insights from compliance staff suggest reasons for the low-resolution rates reported by Aucklanders

Discussions with compliance staff have provided possible explanations for why the majority of survey respondents may feel the council does not adequately resolve nuisance complaints:

- most complaints are not about breaches of the Bylaw
- it is challenging to find property owners to enforce the Bylaw
- the cost of remediying breaches directly or pursuing court action is prohibitive
- the risk-based graduated enforcement model prioritises high-risk breaches.

**Most complaints are not about breaches of the Bylaw**

Council compliance staff believe a key reason why the council often can’t resolve people’s complaints is because technically no breach of the Bylaw has occurred, and therefore no action is able to be taken.

Staff report that most site visits conducted to investigate complaints do not find a breach of the Bylaw, or insufficient evidence to prove a breach. In these cases, customers are more likely to feel dissatisfied with the outcome.

This is strongly correlated with the fact that ‘visual nuisance’ is the most common type of nuisance Aucklanders report experiencing relating to overgrown vegetation, deposited materials and abandoned buildings.

Council is unable to action these complaints, as the Bylaw does not regulate visual amenity of private property. The council’s mandate is only to address health and safety and nuisance.
It is challenging to find offending property owners to enforce the Bylaw

Staff report that one of the biggest obstacles in resolving a breach of the Bylaw can be tracking down the owner of the property to fix the problem, especially if the owner does not live in New Zealand.

Many of the properties generating complaints related to overgrown vegetation and deposited materials are unoccupied.

If staff are unable to trace the owner, the only option is to try to resolve the issue directly, which can represent a considerable expense to council.

Costs of remediying breaches directly or taking court action are prohibitive

Staff report that to secure an abandoned building by boarding it up costs around $5,000. If the site is being used for anti-social behaviour, the boards are often torn off or removed.

Council no longer removes overgrown vegetation in breach of the Bylaw. This can be expensive, only resolves the issue in the short term and can create an expectation that the council will continue to maintain the property.

More recently, removal of vegetation has only been carried out to remEDIATE potential fire hazards, and as noted this responsibility was transferred to Fire and Emergency New Zealand in 2017.

Staff estimate around 80 per cent of property owners do remedy a problem after receiving a formal notice. However, if property owners do not comply after being served with notices, prosecution through the courts is the only remaining course of action available to the council. Infringement fines cannot be issued under a Local Government Act bylaw.

Given the expense incurred, only the most serious cases will warrant court action. Two cases have been prosecuted under the Bylaw since 2015 (one case regarding the feeding of wild animals and one case regarding overgrown vegetation).

Risk-based graduated enforcement model prioritises high-risk breaches

Staff must also decide which complaints to action across a large portfolio of competing compliance responsibilities (since they enforce multiple bylaws), guided by the council’s risk-based graduated enforcement model.

As already noted, this requires staff to prioritise responding to complaints based on relative risk to public health and safety. Lower-level nuisances are frustrating for the people experiencing them, but they may not justify enforcement action (or prompt action) when compared with other priorities.

8.5 Other councils do not regulate these issues through a bylaw

This review investigated how other councils within New Zealand deal with problems arising from property maintenance and found only Waimate District Council has a specific bylaw to address these problems. Other councils appear to either not consider the matters require regulation in their district or rely on national legislation such as the Health Act 1956. Relying on the Health Act
can be considered less effective than the current Bylaw in terms of lower penalties and potentially higher evidence thresholds.

8.6 Although public perceptions of the Bylaw’s effectiveness are discouraging, it remains an important regulatory tool

The survey data suggests a public perception that the council does not effectively respond to the nuisances they experience related to poorly maintained private property.

The central challenges however appear to be a low level of awareness about the Bylaw's scope (for example, what actually constitutes a breach) and the difficulty in achieving a satisfactory resolution in many cases, for the reasons outlined above.

Although these matters are largely operational in nature rather than being a defect of the Bylaw itself, some potential improvements to support implementation are outlined below.

Critically, the Bylaw does provide a legal basis for the council to try to address the problems, and staff do investigate public complaints that suggest a breach has occurred—particularly where there is a serious risk to public health and safety or where nuisances are severe or persistent.

Compliance staff therefore consider the Bylaw an essential tool to support them in their enforcement work.

If the Bylaw did not exist, there would be a regulatory gap for some of the problems the Bylaw addresses and the council would have and lesser penalties intervene to protect the public from the specific health risks and nuisances it aims to address.

9 Could the bylaw be improved?

9.1 Key findings

Three possible improvements to the Bylaw should be investigated as part of an options report:
- clarifying the definition of nuisance to make it easier to understand and enforce, including emphasising that the council cannot regulate visual amenity through a Bylaw
- considering whether the feeding of wild animals may be more appropriately regulated through the Animal Management Bylaw 2015
- make the Bylaw easier to read and understand by applying the council’s best practice drafting standards.

All the suggested improvements outlined in this section will be investigated at the Options stage.

9.2 Improvements to definition of nuisance suggested

Both compliance staff and Aucklanders surveyed through the People’s Panel suggested the current definition of nuisance in the Bylaw is unclear and not easily enforced.
Comments from survey respondents included:

- **Define what nuisance means?**
- **It is tricky to define what causes a nuisance.**
- **You should define nuisance better, or degrees of nuisance.**
- **Clarify the definition of “manner that cause or may cause a nuisance”**.

Proposals from staff included:

- **Drafting a clearer definition of nuisance** that supports field assessment and can be communicated more easily to the public. The Bylaw is enforced according to a prescribed definition of nuisance which is not readily understood by the public. Staff investigating complaints must also consider whether and how a particular action or inaction by a property owner relates to this definition.

- **Expanding the definition of nuisance:**
  - to allow more complaints to be lodged and actioned. For example, if the complainant’s property is not directly adjacent to the offending property, it is difficult to prove nuisance as presently defined. The greater the distance a complainant is from the place where the nuisance occurs, the weaker their case for proving that a nuisance exists.
  - to consider negative impacts, not only what is ‘injurious to health’. ‘Injury to health’ sets a high bar and is very difficult to prove in court. The onus is on the enforcement entity or the complainant to prove that a nuisance under the Bylaw exists (for example, in a case where a resident was feeding pigeons, the council needed to prove how the feeding of pigeons was likely to be injurious to public health). The nuisance should just need to have an unreasonable impact on the complainant. This could lead to increased compliance.

- **Stating clearly that the Bylaw does not regulate visual amenity issues relating to private property**. Staff believe most of the public complaints where no Bylaw breach is found to have occurred concern visual amenity, something the Bylaw does not regulate. Most respondents to the survey described the nuisance they experienced from overgrown vegetation, deposited materials and abandoned buildings as a ‘visual nuisance’.

### 9.3 Feeding of wild animals could be regulated by Animal Management Bylaw 2015

The Animal Management Bylaw 2015 already regulates the nuisance caused by animals a person owns or cares for, and rules about human interaction with animals on public land.

The scope of the Animal Management Bylaw could incorporate rules on feeding wild or feral animals on private property. Compliance staff point out that feeding can take place on public or
private land, and the distinction between the two may not be relevant to the nuisance it can cause.

The Animal Management Bylaw may also be a more logical fit for this topic, and both members of the public and call centre staff may assume this is the correct Bylaw to consult for guidance.

9.4 The Bylaw is not written in a way that meets current best practice

The Bylaw could be improved to meet council’s current best practice drafting standards, which are intended to make bylaws easier to read and understand.

10 Industrial Cooling Tower Water Systems

This section provides a specific assessment for industrial cooling tower water systems (ICTWS) in relation to the problem, Bylaw effectiveness and possible improvements.

10.1 Key findings

The Building Act 2004 requires cooling tower water systems associated with mechanical ventilation and air conditioning systems to be registered and monitored for legionella bacteria, but not those associated with industrial processes.

To prevent the risk of Legionnaires’ disease, the Bylaw requires owners of industrial cooling tower water systems (ICTWS) in Auckland to register their systems annually, and regularly test, clean and maintain their water tanks. Building Consents staff administer the regime in coordination with the Auckland Regional Public Health Service.

Staff noted a decrease in ICTWS registered with the council from around 400 systems in 2015 to around 120 in 2020. Reasons for this are unclear, although system decommissioning and a change from registering individual tanks to whole sites are likely to be contributing factors.

The council only takes enforcement action in response to complaints, and as there have been no complaints about ICTWS, no enforcement action has been taken.

In a 2020 survey of ICTWS owners 57 per cent of respondents said there should be no changes to the Bylaw requirements, while 29 per cent suggested changes including a shift to self-regulation, two or three-yearly registration or less frequent cleaning protocols.

The Bylaw is currently the only regulation that applies to ICTWS. The testing standards are aligned with the Building Act 2004 and considered best practice. There have been no outbreaks of Legionnaires’ disease since the Bylaw was adopted in 2015.
10.2 Cooling water tower systems used in ventilation, air conditioning and industrial processes can harbour legionella bacteria

Cooling water towers are used:
- in centralised building ventilation and air conditioning systems
- to support industrial processes where water cooling is needed, such as in meat processing factories and steel refineries.

The nature of these systems means there is always a risk that legionella bacteria can grow and circulate, presenting a risk to people living or working in the buildings. Inhalation of legionella bacteria can cause Legionnaires’ disease.

Legionnaires’ disease can be fatal

Legionnaires’ disease can last several weeks, with symptoms including high fever, headache, loss of strength, difficulty breathing, delirium and renal failure. The fatality rate of Legionnaires’ disease can reach up to 40 to 80 per cent.18

The largest outbreak of Legionnaire’s disease in New Zealand was in 2005, with 19 confirmed cases and three deaths.

To prevent this risk to human health, it is important that the water tanks associated with cooling towers are regularly tested, cleaned and maintained.

An outbreak of Legionnaire’s disease identified a regulatory gap for industrial systems

In 2012, there was an outbreak of Legionnaire’s disease in Auckland. The species of the legionella bacteria was one associated with warm-water systems, and this led to an investigation into cooling water tower systems.

It was discovered that the Building Act 2004’s Warrant of Fitness requires cooling tower water systems associated with mechanical ventilation and air conditioning systems to be registered and monitored, but not those associated with industrial processes.

Industrial cooling tower water systems are a small proportion of the overall number of cooling tower water systems. It is estimated that there are between 120 and 400 industrial systems in Auckland, including scrubbing towers and mobile cooling systems.

10.3 Bylaw requires industrial systems to be registered and tested

It was agreed that the Property Maintenance and Nuisance Bylaw 2015 would set requirements for industrial systems to avoid a regulatory gap, in line with the Bylaw’s purpose to protect the public from health risks arising from private property maintenance.

The Bylaw requires owners of industrial cooling tower water systems (ICTWS) to:
- register their system with the council each year by 1 July, and notify any changes (such as decommissioning or change of ownership)

18 The Prevention of Legionellosis in New Zealand, Ministry of Health
- carry out testing based on the type of tank (either automatic or manual chemical dosing)
- carry out cleaning and maintenance on a regular basis.

The key Bylaw clauses are shown in the box below.

**Part 2 Section 7**

1. The owner of an industrial cooling tower water system must ensure that it is registered with the council by 1 July of each year.

2. The owner of an industrial cooling tower water system must notify the council if the system is decommissioned or where there is a change in owner (within one month of this occurring).

3. The owner of an industrial cooling tower water system with auto chemical dosing must carry out: (a) testing as per Table 1, Schedule 1 of this bylaw; and (b) the control strategies in Table 3.1 and Table 3.2 of Schedule 1 of this bylaw.

4. The owner of an industrial cooling tower water system without automatic chemical dosing must carry out: (a) testing as per Table 1, Schedule 1 of this bylaw; and (b) the tests specified in Table 2, Schedule 1 of this bylaw; and (c) the control strategies in Tables 3.1 and 3.2 of Schedule 1 of this bylaw.

5. The owner of an industrial cooling tower water system must ensure as part of a regular routine maintenance programme such systems are cleaned. Cleaning shall include the physical cleaning of the industrial cooling tower water system at intervals not exceeding six months.

10.4 Council sets regulations and manages the ICTWS database, but other agencies are involved if health risks are identified

A register of all owners of ICTWS in Auckland is maintained by staff from the council’s Building Consents unit. The council informs owners of the requirement to regularly test their tanks for legionella bacteria, and requests test results are notified to council annually.

Staff write to registered owners each year, reminding them to join or update the register before 1 July. Staff send additional reminders to previously registered owners who have not re-registered or notified the council that their system has been decommissioned. Staff inform the owner that by not registering they are in breach of the Bylaw and legal action can be taken.

The council can take enforcement action, including site inspections, if owners fail to register their systems and/or undertake the testing, cleaning and maintenance required by the Bylaw.

**Positive tests must be reported to Auckland Regional Public Health Service**

An independent qualified tester must take the sample for legionella bacteria. The sample is then sent to an independent laboratory which conducts the test.

If a test comes back above the acceptable level, the owner of the ICTWS and the laboratory must notify the Auckland Regional Public Health Service (ARPHS).
If the test finds a new type of legionella bacteria, they must also update the Institute for Environmental and Scientific Research’s Legionella Reference Laboratory based in Wellington.

**Legionnaire’s disease cases must be reported to ARPHS, who notify council and WorkSafe**

Legionnaire’s disease is a notifiable disease in New Zealand, which means if there is a confirmed case doctors must report it to the Medical Officer at ARPHS.

It can be difficult to determine the cause of an outbreak, as cooling towers are only one source of legionella bacteria, and ICTWS are a small subset of the cooling towers in Auckland.

However, when a case occurs, ARPHS notifies the council and accesses the register as part of their efforts to try and trace the infection. Where a case is linked to (or suspected to be linked to) a workplace, then ARPHS must also notify WorkSafe New Zealand.

The information held in the ICTWS register includes the registered owner, their address and contact details, the laboratory that conducts tests at the site, and test results from previous years.

If requested by ARPHS, council staff can contact ICTWS owners and instruct them to shock dose their systems.

### 10.5 Is there still a problem?

Council records show that there are at least 120 cooling tower water systems in Auckland that are classified as industrial. The Bylaw is currently the only regulation that applies to these systems.

Although their industrial setting means that the risk to human health is lower, careful management is still required. The 2012 outbreak of Legionnaire’s disease in Auckland shows that there is an ongoing need to regulate these systems to protect public health.

Rising temperatures due to climate change may also facilitate the spread and growth of legionella bacteria in ICTWS. Legionella bacteria has an optimal range of replication between 32 and 44 degrees Celsius. Warmer temperatures will cause the water stored in tanks to heat and potentially make the growth of legionella bacteria harder to control.

### 10.6 Has the problem changed?

There are fewer ICTWS registered with council than in 2015

Building Consents staff have noticed a decrease in the amount of ICTWS registered with the council each year. Staff estimate around 400 industrial systems were registered in 2015, but in 2020 only around 120 continue to update the register. Reasons for this decrease are unclear.

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19 The Prevention of Legionellosis in New Zealand, Guidelines for the Control of *Legionella* Bacteria (Ministry of Health)
Owners are required to notify council if their industrial system is decommissioned or changes ownership, but staff do not believe decommissioning of systems would adequately account for the reduction seen since 2015.

Another possible reason for the decrease is a changed registration requirement, from per tower to per site. Some sites that have multiple towers are now only listed once on the register. Again, staff believe this will account for some but not all of the reduction in registrations.

Alternatively, the decrease may be due in part to lower voluntary compliance with the Bylaw requirements, but this would require further investigation and/or enforcement action to confirm.

10.7 Has the Bylaw helped achieve the outcome?

The Bylaw fills a regulatory gap, and there have been no further outbreaks

Although ICTWS are a relatively low risk source of legionella bacteria, the maintenance and testing regime specified in the Bylaw is an important preventative measure to help manage this risk.

The Bylaw is the only tool to regulate ICTWS because these systems are not covered by the Building Act 2004 Warrant of Fitness requirements.

The testing standards for ICTWS are aligned with those specified for other cooling tower systems in the Act, which are considered best practice.

There have been no outbreaks of Legionnaires’ disease since the Bylaw was adopted in 2016.

Data limitations make it difficult to determine the Bylaw’s effectiveness

This review could not draw more definitive conclusions about the effectiveness of the Bylaw because two typical sources of intelligence on effective implementation are not available in this case, for the reasons given:

- there is no complaints data associated with ICTWS, because:
  - the public are unlikely to be aware of the presence of (or potential health risks from) cooling tower systems, or owners’ obligations under the Bylaw
  - owners are unlikely to complain about their own cooling tower systems

- the council takes enforcement action in response to complaints, and as there have been no complaints, no enforcement action has been taken. As a result, there is no compliance data (for example findings from site assessments).

A survey was carried out to understand views of ICTWS owners

As part of the review, in July 2020 a survey was conducted of the currently registered ICTWS owners. Twenty-eight responses were received.

The owners were asked for their views on the current rules and the majority (57 per cent) indicated there should be no changes, with 14 per cent unsure.
Positive comments from submitter included:

- Current legislation is sufficient.
- At the moment [the regime] is unobtrusive and seems to be working effectively.
- We seem to be under control at the moment. Keep it simple.

Two survey respondents expressed a preference for self-regulation:

- Since it is the owner’s responsibility to do all the testing and retain documentation, why do we need to register every year and keep sending information to council? We should be able to self-regulate.
- This is not council’s job.

10.8 Could the Bylaw be improved?

All the suggested improvements outlined in this section will be investigated at the Options stage.

ICTWS owners suggest less frequent cleaning requirement and registration

Owners of ICTWS who believed there should be changes to the current rules (29 per cent) provided the following suggestions for improvements:

- Cooling towers could be cleaned every 12 months rather than six-monthly as currently required; one respondent queried the ‘requirement for six-monthly cleaning for industrial facilities which operate 24/7 with limited shutdown opportunities, especially where systems are well looked after and... within guidelines’
- Annual registration is too frequent, two- or three-yearly registration may be sufficient.

Council staff suggested minor amendments to the Bylaw

Building Consents staff provided the following suggestions for improvements to the Bylaw:

- More clarity is needed around the difference between mechanical (regulated by Building Act) and industrial (regulated by Bylaw). People were unaware that if they had both types of systems there were two different pieces of legislation that regulated them
- Towers designed before 2004 should be tested more frequently
- It needs to be clearer that the systems are tied to the registered owners, and not the land or property they are on.

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11 Does the bylaw comply with legislation?

11.1 Key findings

The Bylaw is able to be made under the Local Government Act 2002 and the Health Act 1956. The Bylaw does not contradict any other New Zealand legislation and does not have any implications under the New Zealand Bill of Rights Act 1990.

11.2 The Bylaw is authorised by statute

The Bylaw is able to be made under the Local Government Act 2002 and the Health Act 1956 (see Table 11.2.1 and Figure 11.2.1).

Table 11.2.1 Legislative mandate to make this Bylaw

<table>
<thead>
<tr>
<th>Health Act 1956</th>
<th>Local Government Act 2002</th>
</tr>
</thead>
</table>
| It is the duty of every local authority to improve, promote and protect public health within its district... Every local authority is empowered and directed to make bylaws for the protection of public health. Section 23 | A territorial authority may make bylaws for one or more of the following purposes: 
  - protecting public from nuisance 
  - protecting, promoting, and maintaining public health and safety.  
Section 145 (a) and (b) |

Local [authorities] may make bylaws for:

- improving, promoting, or protecting public health, and preventing or abating nuisances
- preventing the outbreak or spread of disease by agency of flies, mosquitoes, or other insects, or of rats, mice, or other vermin.

Section 64 1(a) and 1(u)
11.3 The Bylaw does not contradict other legislation

Bylaws must not directly or indirectly conflict with any other New Zealand statutes (they must not be ‘repugnant’). The Bylaw meets this requirement, as:

- Auckland Council has a legislative mandate to make bylaws about public health and nuisance
- the Bylaw is not inconsistent with the Local Government Act 2002, the Health Act 1956 or the Litter Act 1979.

11.4 The Bylaw has no implications under the Bill of Rights Act 1990

Under the Local Government Act 2002, a bylaw review must consider whether a bylaw has any implications under the New Zealand Bill of Rights Act 1990. Legally a bylaw may not be inconsistent with the Act. This requires consideration of:

- whether the Bylaw limits any of the rights or freedoms contained in the Act
- if so, whether this limitation is “demonstrably justifiable in a free and democratic society”.

PMN Bylaw 2015 clauses
Part 2
Section 6
1a: deposited materials
1b: overgrown vegetation
1c: feeding of wild animals
2: abandoned buildings
Section 7
1: registration
2: decommissions or change in owner
3-4: testing of tanks
5: regular maintenance
Part 3
Section 9
1: removal of material or things
2: recovery of cost
Section 10
1: removal of construction
Section 11
1: liable to penalty under LGA 2002, HA 1956, and/or LA 1979

Local Government Act 2002
Section 145
a: protect public from nuisance
b: protect, promote, and maintain public health

Health Act 1956
Section 23
e: protection of public health
Section 64
1a: improving, promoting, or protecting public health
1u: preventing outbreak or spread of disease

Figure 11.2.1 The Bylaw and its enabling legislation
The Bylaw may limit freedom of expression, but this is justifiable

The Bylaw allows council to require the removal of deposited materials or the maintenance of vegetation, both of which could be considered forms of expression.

For a limitation to be justifiable in a free and democratic society, it must serve a sufficiently important purpose.

The Bylaw’s potential limits on freedom of expression are justifiable because the limits to freedom of expression are based the Bylaw’s purpose to protect public health and safety, and are not based on visual amenity. The Bylaw cannot require the removal of deposited materials or vegetation based on appearance, but only their potential to cause nuisance and health risks.

The Bylaw is not inconsistent with the freedom from unreasonable search and seizure

This review also considered if the Bylaw limits the freedom from unreasonable search and seizure.

The Bylaw is not inconsistent with this freedom because council’s enforcement is reactive, not proactive. Council must receive a complaint before visiting a site, therefore the search is not unreasonable.

Council can access private land under the Local Government Act 2002 section 171, General Powers of Entry.

12 The statutory review finds that the bylaw is still needed, but could be improved

In terms of the statutory findings bylaw review requirements under section 160(1) of the Local Government Act 2002, the research and engagement contained in this report finds that:

- a bylaw is still the most appropriate way to manage specific activities and behaviour on private property that may cause a public health risk or public nuisance (for example, risk of Legionnaires’ disease from industrial cooling tower water systems)
- there are limitations to the Bylaw’s effectiveness, for example people are not aware the Bylaw can’t address visual amenity and that resolving the problems can be difficult and expensive
- the current Bylaw approach is appropriate but could be improved, for example by redrafting parts of the Bylaw to make it easier to understand and enforce
- the current Bylaw does not give rise to any unjustified Bill of Rights implications.
Appendices

Appendix 1: Property Maintenance and Nuisance Bylaw 2015
Property Maintenance and Nuisance Bylaw 2015

Te Ture ā-rohe Tiaki Rawa me Ngā Mahi Whakaporearea 2015

Governing Body of Auckland Council made by resolution on

24 September 2015

The Governing Body of Auckland Council makes the following bylaw pursuant to the Local Government Act 2002 and the Health Act 1956.
Acknowledgement

Auckland Council acknowledges New Zealand Standards for allowing reference to Standards published by Standards New Zealand under Licence 001109, in particular, provisions of Australian/New Zealand Standard (AS/NZS) 3666: the dip-slide tests for industrial cooling tower water systems with auto chemical dosing and industrial cooling tower water systems without automatic chemical dosing.

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Additional Information to Property Maintenance and Nuisance Bylaw 2015 ...............1
1 Title

This bylaw is the Property Maintenance and Nuisance Bylaw 2015.

2 Commencement

This bylaw comes into force on 1 November 2015.

3 Application

This bylaw applies to Auckland.

Part 1

Preliminary provisions

4 Purpose

The purpose of this bylaw is to:
(a) require private property to be maintained in such a manner that it does not create a nuisance;
(b) prevent the active feeding of any bird or animal on private property in a manner that causes or may cause a nuisance;
(c) protect, promote and maintain public health and safety by requiring all industrial cooling tower water systems in Auckland to be registered with the council and regularly tested and where appropriate maintained to mitigate against the risk of exposure to Legionella bacteria often linked to outbreaks of Legionnaire’s disease.

5 Interpretation

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

- abandoned means empty, deserted, derelict, or uninhabited

- animal means any member of the animal kingdom, including any mammal, bird, finfish, shellfish, reptile, amphibian, insect or invertebrate, and includes their young or eggs and the carcass or its constituent parts, but does not include humans or dogs

- biocide means a physical or chemical agent capable of killing micro-organisms, including Legionella

- building means a temporary or permanent moveable or immovable structure including a structure intended for occupation by people, animals, machinery or chattrois

- cfu means colony-forming unit (10³ cfu/L equals 1 cfu/mL)

- council means the Governing Body of the Auckland Council or any person delegated to act on its behalf

- diverted material has the meaning given in the Waste Minimisation Act 2008
**industrial cooling tower water system** means cooling towers associated with industrial processes (including scrubbing towers and mobile cooling systems) that are not part of a building as defined in the Building Act 2004 which are therefore not required to be inspected, maintained or recorded in accordance with a compliance schedule made under the Building Act 2004.

**litter** has the meaning given in the Litter Act 1979.

**material or thing** means, but is not limited to:
(a) building material or equipment associated with building activities
(b) diverted material
(c) household goods / furniture
(d) litter
(e) manure
(f) metal
(g) paper
(h) plastics
(i) timber
(j) tyres
(k) vehicles
(l) waste
(m) asbestos

**nuisance** means, a person, animal, thing, or circumstance causing unreasonable interference with the peace, comfort, or convenience of another person. This includes but is not limited to:
(a) where any accumulation or deposit of material or thing is in such a state or is so situated as to be offensive or likely to be injurious to health;
(b) where there exists on any land or premises any condition giving rise or likely to give rise to the breeding of pests or vermin or is suitable for the breeding of pests or vermin, which are capable of causing or transmitting disease;
(c) where there exists on any land or premises any condition or activity that creates or is likely to create an odour that is objectionable or offensive at or beyond the boundary of the land;
(d) where any premises, including any accumulation or deposit of any material or thing thereon, are in such a state as to harbour or be likely to harbour pests or vermin;
(e) where any premises are so situated, or are in such a state, as to be offensive or likely to be injurious to health;
(f) where any buildings or premises used for the keeping of animals are so constructed, situated, used, or kept, or are in such a condition, as to be offensive or likely to be injurious to health;
(g) where any animal, or any carcass or part of a carcass, is so kept or allowed to remain as to be offensive or likely to be injurious to health;
(h) where any street, road, right of way, passage, yard, premises, or land is in such a state as to be offensive or likely to be injurious to health.

**occupier** means the inhabitant occupier of that property or premises.

**owner** means the person entitled to receive the rack rent of the property or premises, or who would be so entitled if the property or premises were let to a tenant at a rack rent.

**pests or vermin** means all animals, wild, feral, farm or domestic, and any species of caged or feral bird that may attack or infest or are parasitic on living beings and plants, and includes, but is not limited to:
(a) ants
(b) cockroaches
(c) ferrets
(d) flies
(e) mice
(f) mosquitoes
(g) mites
(h) pigeons
(i) possums
(j) rats
(k) stoats
(l) ticks
(m) wasps

Explanatory note: For the purposes of this bylaw, feral birds are those that have escaped from domestication and have managed to establish breeding populations in the wild.

**property** means any parcel of land and/or building capable of being transferred, sold, rented, leased, or otherwise disposed of separately from any other parcel of land and/or building(s)

**vehicle** has the same meaning given by the Land Transport Act 1998

**waste** has the meaning given in the Waste Minimisation Act 2008.

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

(3) The Interpretation Act 1999 applies to this bylaw.

(4) To avoid doubt, compliance with this bylaw does not remove the need to comply with all other applicable Acts, regulations, bylaws, and rules of law.

(5) Unless the context requires another meaning, a term or expression that is defined in the Local Government Act 2002 or the Health Act 1956 and used in this bylaw, but not defined, has the meaning given by that Act.

### Part 2

#### Control measures

6 Property maintenance

(1) A person must not:
   (a) allow any material or thing to be deposited, accumulated, used, processed or stored on any private property under their control in a manner that causes or may cause a nuisance;
   (b) allow any private property under their control to become so overgrown with vegetation that it causes or may cause a nuisance;
   (c) allow the active feeding of any wild or feral animal on any private property under their control in a manner that causes or may cause a nuisance.
(2) The owner of any building that is abandoned or that is wholly or partly unoccupied, whether permanently or temporarily, must ensure that the building or the unoccupied part thereof is secured so as not to allow access by the public.

7 Registration, maintenance and testing of industrial cooling tower water systems

(1) The owner of an industrial cooling tower water system must ensure that it is registered with the council by 1 July of each year.

(2) The owner of an industrial cooling tower water system must notify the council if the system is decommissioned or where there is a change in owner (within one month of this occurring).

(3) The owner of an industrial cooling tower water system with auto chemical dosing must carry out:
   (a) testing as per Table 1, Schedule 1 of this bylaw; and
   (b) the control strategies in Table 3.1 and Table 3.2 of Schedule 1 of this bylaw.

(4) The owner of an industrial cooling tower water system without automatic chemical dosing must carry out:
   (a) testing as per Table 1, Schedule 1 of this bylaw; and
   (b) the tests specified in Table 2, Schedule 1 of this bylaw; and
   (c) the control strategies in Tables 3.1 and 3.2 of Schedule 1 of this bylaw.

(5) The owner of an industrial cooling tower water system must ensure as part of a regular routine maintenance programme such systems are cleaned. Cleaning shall include the physical cleaning of the industrial cooling tower water system at intervals not exceeding six months.

Part 3

Enforcement, offences and penalties

8 Enforcement of this bylaw

The council may use its powers under the Local Government Act 2002 and/or the Health Act 1956 and/or the Litter Act 1979 to enforce this bylaw.

Explanatory note: For any nuisance on communal ground of a property the Body Corporate will be deemed liable in the first instance. In instances where there is no Body Corporate each individual property owner/ tenant shall be deemed equally liable.

9 Removal of material or things
(1) In addition to the powers conferred on it by any other enactment, the council may remove or cause to be removed from any private property any material or thing found on that private property in breach of the bylaw.

(2) The council may recover from the person who committed the breach of this bylaw the appropriate costs in connection with the removal of the material or thing.

10 Removal of construction

(1) The council may, pursuant to section 163 of the Local Government Act 2002, remove or alter a work or thing that has been constructed in breach of this bylaw and may recover any costs of removal or alteration from the person who committed the breach.

11 Bylaw breaches

(1) A person who fails to comply with this bylaw commits a breach of this bylaw and is liable to a penalty under the Local Government Act 2002 and/or the Health Act 1956 and/or the Litter Act 1979.

Part 4

Savings provisions

12 Savings

(1) Until such time as the lighting requirements of the proposed Auckland Unitary Plan have legal effect the definitions in clause 13.1 and clauses 13.5.1 to 13.5.6 of the Auckland City Council Environmental Protection Bylaw 2008 referred to in Schedule 5 of this bylaw are confirmed and remain in force as a transitional measure in the Auckland City area.

(2) For the avoidance of doubt, the definitions in clause 13.1 and clauses 13.5.1 to 13.5.6 of the Auckland City Council Environmental Protection Bylaw 2008 referred to in Schedule 5 of this bylaw are revoked when the requirements of the proposed Auckland Unitary Plan relating to lighting have legal effect.

13 Revocation

(1) The following bylaws are revoked:

(a) Auckland City Council Bylaw No 13 Environmental Protection 2008, with the exception of the definitions in clause 13.1 and clauses 13.5.1 to 13.5.6;

(b) North Shore City Council Bylaw 2000 Part 7 Environmental Protection – Nuisances Arising On Private Land;

(c) Waitakere City Council Control of Intruder Alarm Systems Bylaw 2010.
Schedule 1

Table 1: Industrial cooling tower water system with auto chemical dosing

<table>
<thead>
<tr>
<th>Cooling tower with auto chemical dosing</th>
<th>Time</th>
<th>Test method</th>
<th>Test result levels</th>
<th>Control strategies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legionella</td>
<td>Monthly</td>
<td>AS / NZS 3896</td>
<td>AS / NZS 3666.3</td>
<td>Table 3.1</td>
</tr>
<tr>
<td>Heterotrophic micro-organisms</td>
<td>Monthly</td>
<td>AS 4276.3.1</td>
<td>AS / NZS 3666.3</td>
<td>Table 3.2</td>
</tr>
</tbody>
</table>

Table 2: Industrial cooling tower water system without auto chemical dosing

<table>
<thead>
<tr>
<th>Cooling tower without auto chemical dosing</th>
<th>Time</th>
<th>Test method</th>
<th>Test result levels</th>
<th>Control strategies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heterotrophic micro-organisms</td>
<td>Weekly</td>
<td>Dip-slide</td>
<td>AS / NZS 3666.3</td>
<td>Table 3.2</td>
</tr>
</tbody>
</table>

Table 3.1: Control strategies for the presence of legionellae

<table>
<thead>
<tr>
<th>Test result, cfu/mL</th>
<th>Required control strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2. Investigate problem</td>
</tr>
<tr>
<td></td>
<td>Review water treatment programme</td>
</tr>
<tr>
<td></td>
<td>Take necessary remedial action including immediate on-line disinfection in accordance with Schedule 2.</td>
</tr>
<tr>
<td>Detected as &lt;1000</td>
<td>3. Retest water within 3 to 7 days of plant operation:</td>
</tr>
<tr>
<td></td>
<td>(a) If not detected, continue to retest water every 3 to 7 days until two consecutive samples return reading of not detected and repeat control strategy 1.</td>
</tr>
<tr>
<td></td>
<td>(b) If detected at &lt;100 cfu/mL repeat control strategy 2.</td>
</tr>
<tr>
<td></td>
<td>(c) If detected at ≥ 100 cfu/mL Investigate problem and review water treatment programme, immediately carry out on-line decontamination in accordance with Schedule 3.</td>
</tr>
<tr>
<td></td>
<td>(d) If detected at ≥ 1000 cfu/mL undertake control strategy 4.</td>
</tr>
<tr>
<td>Detected as ≥1000</td>
<td>4. Investigate problem Review water treatment programme and notify the Auckland Council and a Medical Officer of Health at the Auckland Regional Public Health Service within 48 hours. Take necessary remedial action including immediate on-line decontamination in accordance with Schedule 3 and undertake control strategy 5.</td>
</tr>
<tr>
<td></td>
<td>5. Retest water within 3 to 7 days of plant operation:</td>
</tr>
<tr>
<td></td>
<td>(a) If not detected continue to retest water every 3 to 7 days until two consecutive samples return readings of not detected and repeat control strategy 1.</td>
</tr>
</tbody>
</table>
Table 3.2: Control strategies for the presence of other heterotrophic microorganisms

<table>
<thead>
<tr>
<th>Test result, cfu/mL</th>
<th>Required control strategy</th>
</tr>
</thead>
</table>
| < 100 000           | 1. Maintain monthly monitoring  
                      | Maintain water treatment programme |
| ≥ 100 000 < 5 000 000 | 2. Investigate problem  
                     | Review water treatment programme  
                     | Take necessary remedial action including immediate on-line disinfection in accordance with Schedule 2 |
|                     | 3. Retest water within 3 to 7 days of plant operation:  
                     | (a) If test result is <100 000 cfu/mL, repeat control strategy 1.  
                     | (b) If test result is ≥100 000 cfu/mL but <5 000 000 cfu/mL, repeat control strategy 2.  
                     | (c) If test result ≥ 5 000 000 cfu/mL, undertake control strategy 4. |
| ≥ 5 000 000         | 4. Investigate problem  
                     | Review water treatment programme  
                     | Take necessary remedial action including immediate on-line disinfection in accordance with Schedule 2 and undertake control strategy 5. |
|                     | 5. Retest water within 3 to 7 days of plant operation:  
                     | (a) If test result is <100 000 cfu/mL, repeat control strategy 1.  
                     | (b) If test result is ≥100 000 cfu/mL but < 5 000 000 cfu/mL, repeat control strategy 4.  
                     | (c) If test result ≥ 5 000 000 cfu/mL, investigate problem and review water treatment programme, carry out immediate on-line decontamination in accordance with Schedule 3. |
Schedule 2

2.1 Scope
This schedule sets out the procedure for the on-line disinfection of industrial cooling tower water systems.

2.2 Biodispersants
Prior to on-line disinfection a bio-dispersant shall be circulated.

Some biocides may have inherent biodispersant properties and this step may not be required.

2.3 Disinfection
Dose the cooling tower water system with a biocide or different chemical composition, or similar composition but increased concentration to that of the regular water treatment programme.

2.4 Circulation
Circulate the biocide through the cooling tower water system for the time specified by the biocide manufacturer.

2.5 Operation
Return the system to its normal operation.

2.6 Record Keeping
Record all actions and observations in the maintenance report.
Schedule 3

On-line decontamination shall be carried out in accordance with the following procedure:

3.1 Dose the recirculating water with a biodispersant and a halogen-based compound, equivalent to at least 5 mg/L of free residual chlorine for at least one hour, whilst maintaining an appropriate pH and monitor at intervals of 15 minutes.

3.2 Review the water treatment programme, tower operation and maintenance programme.

3.3 Correct any faults and implement any changes.

3.4 Record all actions and observations in the maintenance report.

3.5 Recommission and repassivate the circulating cooling water system, and reinstate the water treatment programme.
Schedule 4

System decontamination shall be carried out in accordance with the following procedure:

4.1 Isolate and cooling tower fans to prevent operation.

4.2 Dose the recirculating water with a biocides and a halogen-based compound, equivalent to at least 5 mg/L of free residual chlorine for at least one hour, whilst maintaining an appropriate pH, and monitor at intervals of 15 minutes.

4.3 Isolate the cooling tower pumps and drain to the sewer /trade waste in accordance with the requirements of the Auckland Council Trade Waste Bylaw 2013.

4.4 Open all system drains temporarily, to flush drain lines with disinfected water.

4.5 Clean all wetted surfaces of the cooling tower in accordance with the supplier’s instructions or by using water spray and mechanical cleaning as necessary. Exercise care to avoid damage to components.

4.6 Refill the industrial cooling tower water system and restart water circulation pumps.

4.7 Dose the recirculating water with a biocides and a halogen-based compound, equivalent to at least 1 to 5 mg/L of free residual chlorine for at least 30 minutes, whilst maintaining an appropriate pH, and monitor at intervals of 15 minutes.

4.8 Record all actions and observations in the maintenance report.

4.9 Recommission and repassivate the circulating industrial cooling tower water system, and reinstate the water treatment programme.
Schedule 5

Auckland City Council Environmental Protection Bylaw 2008 - lighting provisions

Until such time as the lighting requirements of the proposed Auckland Unitary Plan have legal effect, the following definitions contained in clause 13.1 and clauses 13.5.1 to 13.5.6 of the Auckland City Council Environmental Protection Bylaw 2008 are confirmed and remain in force as a transitional measure in the Auckland City area (the clauses numbers refer to the original bylaw clause numbers):

13.1 General

13.1.1 In this bylaw unless the context requires otherwise:

Added illuminance means that illuminance added by the use of the artificial lighting in question to the background lighting level in the absence of that artificial lighting.

13.5 Lighting

Spill lighting

13.5.1 A person shall not use on any premises between the hours of 7am to 10pm any artificial lighting so as to cause an added illuminance in excess of 100 lux, measured horizontally or vertically at any point on or directly above the boundary of any adjacent land which is zoned residential, in a residential precinct or land unit, or used for residential purposes.

Lighting hours

13.5.2 A person shall not use on any premises between the hours of 10pm on one day and 7am on the next day, any artificial lighting so as to cause an added illuminance in excess of 10 lux measured horizontally or vertically at any point on or directly above any adjacent boundary of any adjacent land which is zoned residential, in a residential precinct or land unit or used for residential purposes.

13.5.3 A person shall not use on any premises between dusk and dawn any artificial lighting so as to cause an added illuminance in excess of 50 lux measured horizontally or vertically at any point on or directly above a street kerbline or the edge of the roadway where the kerb has been moved to create a vehicle parking area or bus or taxi stopping bay. Notwithstanding this requirement, artificial lighting arising from Ports of Auckland Limited operations shall not exceed an added illuminance of 50 lux measured horizontally or vertically at any point on or directly above the kerbline:

a. On the western side of Brigham Street or the southern side of Jellicoe Street, Quay Street or Tamaki Drive for any artificial lighting arising from the Port of Auckland;
b. On the northern side of Onehunga Harbour Road for any artificial lighting arising from the Port of Onehunga.

Exterior lighting to limit glare

13.5.4 The exterior lighting on any property adjacent to a road or adjacent to land on which there is a residential use shall be so selected, located, aimed, adjusted and screened as to ensure
that glare resulting from the lighting does not cause an unreasonable and appreciable level of discomfort to any persons. The standards of Tables 2.1 and 2.2 of Australian Standards AS 4282 - 1997 (Control of the Obtrusive Effects of Outdoor Lighting) may be used to determine glare and discomfort.

13.5.5
In circumstances where measurements of any added illuminance cannot be made due to the fact that the owner will not turn off artificial lighting, measurements may be made in areas of a similar nature which are not affected by the artificial light. The result of these measures may be used for the purposes of determining the effect of the artificial light.

Exemptions

13.5.6
Where an authorised officer is satisfied that compliance with clauses 13.5.1, 13.5.2, 13.5.3, or 13.5.4 would be unreasonable, impractical or without benefit to the occupiers of adjacent land or in the case of clause 13.5.4 of little benefit to road users or neighbouring properties the authorised officer may grant an exemption in whole or in part with such modifications or conditions as may be appropriate.
Additional Information to Property Maintenance and Nuisance Bylaw 2015

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

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

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<td>5  Offences and Penalties</td>
<td>6</td>
</tr>
</tbody>
</table>
### History of Bylaw

<table>
<thead>
<tr>
<th>Action</th>
<th>Description</th>
<th>Date of Decision</th>
<th>Decision Reference</th>
<th>Commencement</th>
</tr>
</thead>
</table>
| Made   | The following Environmental Protection bylaws in force on 31 Oct 2010 deemed to have been made by Auckland Council  
(a) Auckland City Council Bylaw No 13 Environmental Protection 2008  
(b) North Shore City Council Bylaw 2000 Part 7 Environmental Protection – Nuisances Arising On Private Land  
(c) Waitakere City Council Control Of Intruder Alarm Systems Bylaw 2010 | 01 Nov 2010 | Section 63 Local Government (Auckland Transitional Provisions) Act 2010 | 01 Nov 2010 |
| Revoke | (a) Auckland City Council Bylaw No 13 Environmental Protection 2008, except for the definitions in clause 13.1 and clauses 13.5.1 to 13.5.6  
(b) North Shore City Council Bylaw 2000 Part 7 Environmental Protection – Nuisances Arising On Private Land  
(c) Waitakere City Council Control Of Intruder Alarm Systems Bylaw 2010 | 24 Sept 2015 | GB/2015/104 | 1 Nov 2015 |
### Section 2

<table>
<thead>
<tr>
<th>Related Documents</th>
<th>Description of Document</th>
<th>Location of Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision Minutes and Agenda</td>
<td>Decisions on submissions to proposed Property Maintenance and Nuisance bylaw</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
<tr>
<td>Hearings Report</td>
<td>Background and summary of submissions to proposed Property Maintenance and Nuisance bylaw</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
<tr>
<td>Property Maintenance and Nuisance Statement of Proposal</td>
<td>Provides background to issues of nuisance on private land or a private property</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
<tr>
<td>Long Term Plan</td>
<td>Outlines financial plans</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
<tr>
<td>The Local Government Act 2002</td>
<td>Provides certain functions, duties, powers and penalties to make and enforce this bylaw</td>
<td><a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a></td>
</tr>
<tr>
<td>Clause</td>
<td>Function, Duty, Power to be Delegated</td>
<td>Delegated Authority</td>
</tr>
<tr>
<td>--------</td>
<td>--------------------------------------</td>
<td>------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>6</td>
<td>All powers, duties and functions.</td>
<td>Licensing and Compliance Services Tier 4 (Managers) Tier 5 (Team Leaders) Tier 6 (Bylaws Enforcement Officers)</td>
</tr>
<tr>
<td>7</td>
<td>All powers, duties and functions.</td>
<td>Building Control Tier 4 (Managers), Tier 5 (Team Leaders, Inspections) Tier 6 (Building Control Inspectors)</td>
</tr>
<tr>
<td>Part 3 (clauses 8 to 11)</td>
<td>All powers, duties and functions.</td>
<td>Licensing and Compliance Services Tier 4 (Managers) Tier 5 (Team Leaders) Tier 6 (Bylaws Enforcement Officers) Building Control Tier 4 (Managers), Tier 5 (Team Leaders, Inspections) Tier 6 (Building Control Inspectors)</td>
</tr>
</tbody>
</table>
### Section 4

<table>
<thead>
<tr>
<th>Legislative Provision</th>
<th>Description of Legislative Provision</th>
</tr>
</thead>
</table>
| Part 8 of Local Government Act 2002 | 162 Injunctions restraining commission of offences and breaches of bylaws  
163 Removal of works in breach of bylaws  
164 Seizure of property not on private land  
165 Seizure of property from private land  
168 Power to dispose of property seized and impounded  
171 General power of entry  
172 Power of entry for enforcement purposes  
173 Power of entry in cases of emergency  
175 Power to recover for damage by wilful or negligent behaviour  
176 Costs of remediying damage arising from breach of bylaw  
178 Enforcement officers may require certain information  
183 Removal of fire hazards  
185 Occupier may act if owner of premises makes default  
186 Local authority may execute works if owner or occupier defaults  
187 Recovery of cost of works by local authority  
188 Liability for payments in respect of private land |
Section 5: Offences and penalties

<table>
<thead>
<tr>
<th>Legislative provision</th>
<th>Description of offence</th>
<th>Fine</th>
<th>Infringement fee</th>
<th>Other penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clauses 6 and 7</td>
<td>A person who fails to comply with this bylaw commits a breach of this bylaw and is liable to a penalty under the Local Government Act 2002 and/or the Health Act 1956.</td>
<td>Under section 242 of the Local Government Act 2002 a person who is convicted of an offence against a bylaw is liable to a fine not exceeding $20,000. Under section 66 of the Health Act 1958, any person who breaches a bylaw is liable to a fine not exceeding $500 and, in the case of a continuing offence, to a further fine not exceeding $50 for every day on which the offence has continued.</td>
<td>nil</td>
<td></td>
</tr>
<tr>
<td>Clause 6</td>
<td>A person who commits a breach of this bylaw that is an offence under the Litter Act 1979 is liable to a penalty under that Act.</td>
<td>Under section 15(1) of the Litter Act 1979, in the case of an individual, to a fine not exceeding $5,000 or, in the case of a body corporate, to a fine not exceeding $20,000. Under section 15(2) of the Litter Act 1979, if it is of such a nature as is likely to endanger any person or to cause physical injury or disease or infection to any person coming into contact with it- (a) in the case of an individual, to imprisonment for a term not exceeding 1 month, or to a fine not exceeding $7,500, or to both; or (b) in the case of a body corporate, to a fine not exceeding $30,000</td>
<td>$100 - $400 (Regulatory and Bylaws Committee Resolution number RB/2012/22 dated 10 October 2012)</td>
<td>Under section 15(2) of the Litter Act 1979 to imprisonment for a term not exceeding 1 month</td>
</tr>
</tbody>
</table>
Appendix 2: People’s Panel December 2019 Statistics

1. Ethnicity (n = 2508)

![Ethnicity Reported Chart]

2. Living arrangements (n = 2735)

![Living Arrangements Reported Chart]
3. Type of area lived in (n = 2735)

![AREA REPORTED](image)

4. Local Board area (n = 2735)

<table>
<thead>
<tr>
<th>Local Board</th>
<th>Number of respondents per local board</th>
<th>Per cent of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albert-Eden</td>
<td>223</td>
<td>8%</td>
</tr>
<tr>
<td>Devonport-Takapuna</td>
<td>160</td>
<td>6%</td>
</tr>
<tr>
<td>Franklin</td>
<td>174</td>
<td>6%</td>
</tr>
<tr>
<td>Great Barrier</td>
<td>2</td>
<td>0%</td>
</tr>
<tr>
<td>Henderson-Massey</td>
<td>144</td>
<td>5%</td>
</tr>
<tr>
<td>Hibiscus and Bays</td>
<td>219</td>
<td>8%</td>
</tr>
<tr>
<td>Howick</td>
<td>220</td>
<td>8%</td>
</tr>
<tr>
<td>Kaipatiki</td>
<td>168</td>
<td>6%</td>
</tr>
<tr>
<td>Mangere-Otahuhu</td>
<td>51</td>
<td>2%</td>
</tr>
<tr>
<td>Manurewa</td>
<td>85</td>
<td>3%</td>
</tr>
<tr>
<td>Maungakiekie-Tamaki</td>
<td>119</td>
<td>4%</td>
</tr>
<tr>
<td>Orakei</td>
<td>197</td>
<td>7%</td>
</tr>
<tr>
<td>Otara-Papatoetoe</td>
<td>41</td>
<td>1%</td>
</tr>
<tr>
<td>Papakura</td>
<td>91</td>
<td>3%</td>
</tr>
<tr>
<td>Puketapapa</td>
<td>61</td>
<td>2%</td>
</tr>
<tr>
<td>Rodney</td>
<td>179</td>
<td>7%</td>
</tr>
<tr>
<td>Upper Harbour</td>
<td>114</td>
<td>4%</td>
</tr>
<tr>
<td>Waiteke</td>
<td>36</td>
<td>1%</td>
</tr>
<tr>
<td>Waitakere Ranges</td>
<td>129</td>
<td>5%</td>
</tr>
<tr>
<td>Waitakere</td>
<td>202</td>
<td>7%</td>
</tr>
<tr>
<td>Whau</td>
<td>120</td>
<td>4%</td>
</tr>
<tr>
<td>NET Central</td>
<td>802</td>
<td>29%</td>
</tr>
<tr>
<td>NET Gulf</td>
<td>38</td>
<td>1%</td>
</tr>
<tr>
<td>NET West</td>
<td>393</td>
<td>14%</td>
</tr>
<tr>
<td>NET North</td>
<td>840</td>
<td>31%</td>
</tr>
<tr>
<td>NET South</td>
<td>442</td>
<td>16%</td>
</tr>
</tbody>
</table>
Te take mō te pūrongo

Purpose of the report

1. To recommend the Governing Body adopt a proposal to amend the Te Ture a Rohe Whakararata Waipiro / Alcohol Control Bylaw for public consultation and appoint a bylaw panel.

Whakarāpopototanga matua

Executive summary


3. Staff seek a recommendation that the Governing Body adopt the attached Statement of Proposal containing an amended Bylaw for public consultation.

4. The amended Bylaw continues to enable alcohol bans in public places to reduce crime and disorder caused or made worse by alcohol consumed there. It complies with statutory requirements, is appropriate and is not inconsistent with key legislation.

5. The main amendment is the inclusion of new temporary alcohol bans for major events at Mount Smart Stadium, Western Springs Stadium, Eden Park and Auckland Domain.

6. Local board and Auckland Domain Committee views were sought in July and August 2020. All those with a view supported public consultation on the Statement of Proposal.

7. There are risks that the proposal does not reflect the views of the public and that a COVID-19 outbreak prevents in-person public consultation. These risks are partly mitigated by the opportunity for public feedback, online or phone-based ‘Have Your Say’ events and bylaw panel deliberations.

8. Adoption of the Statement of Proposal will start the statutory process to amend the Bylaw including public consultation scheduled for October 2020. A bylaw panel will consider any public feedback, deliberate, and make recommendations to the Governing Body in March 2021. A final decision is expected to be made in April 2021.

Ngā tūtohunga

Recommendation/s

That the Regulatory Committee:

a) note that this committee completed the review of the Alcohol Control Bylaw 2014 in April 2019 and determined that a bylaw about the consumption or possession of alcohol in public places is still the most appropriate way to address crime or disorder in certain public places caused or made worse by alcohol consumed there.

b) recommend the Governing Body adopt the statement of proposal in Attachment A of this agenda report for public consultation, and confirm that the proposed amended Alcohol Control Bylaw 2014:

i) is the most appropriate form of bylaw

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

c) recommend the Governing Body forward to the Independent Māori Statutory Board the statement of proposal in clause b) for their advice.
d) recommend the Governing Body forward to local boards this agenda report and attachments for their information.
ed) appoint a chair and two bylaw panel members selected from the Governing Body and the Independent Māori Statutory Board to attend ‘Have Your Say’ events and to deliberate and make recommendations to the Governing Body on public feedback to the statement of proposal in clause b).
f) delegate authority to the Regulatory Committee chairperson to make replacement appointments to the bylaw panel if a panel member is unavailable.
g) delegate authority through the Chief Executive to a manager responsible for bylaws:
   i) to appoint staff to receive public feedback at ‘Have Your Say’ events
   ii) to make any amendments to the proposal in clause b) to correct errors, omissions or to reflect decisions made by the Regulatory Committee or the Governing Body.

Horopaki Context

The Alcohol Control Bylaw enables council to make alcohol bans in public places

9. Te Ture a Rohe Whakararata Waipiro 2014 / Alcohol Control Bylaw 2014 (Bylaw) aims to reduce crime or disorder in certain public places caused or made worse by alcohol consumed there.

10. The Bylaw achieves this by providing a framework that enables alcohol bans to be made by resolution of the relevant delegated authorities – the Regulatory Committee, local boards and the Auckland Domain Committee.

11. Alcohol bans are enforced by the New Zealand Police.

The Regulatory Committee decided to amend the Alcohol Control Bylaw

12. The Regulatory Committee requested staff commence the process to amend the Bylaw on 9 May 2019 (REG/2019/28). This decision followed completion of a statutory bylaw review under the Local Government Act 2002 and consideration of the review findings and four options.

13. Council must use the special consultative procedure to amend the Bylaw, including to:
   • determine that the amended bylaw meets legislative criteria
   • adopt a statement of proposal, including the proposed amended bylaw, for public consultation
   • decide on any bylaw amendments after having considered public feedback.

Tātaritanga me ngā tohutohu
Analysis and advice

Bylaw amendments make new event-based alcohol bans and improve understanding

14. The Statement of Proposal (Attachment A) implements the committee’s decision to amend the Bylaw to improve the status quo. The proposal amends the Bylaw to make:
   • new event-based temporary alcohol bans for major events at regional venues

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4 See Local Government Act 2002, s158.
6 In Council’s Events Policy, major events have a regional, national and international profile.
• the Bylaw easier to read and understand.

Summary of proposed Bylaw amendments

<table>
<thead>
<tr>
<th>Proposed changes</th>
<th>Reason for change</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Make new event-based temporary alcohol bans for all major events at Mount Smart Stadium, Western Springs Stadium, Eden Park and Auckland Domain in the Bylaw.</td>
<td>New event-based temporary alcohol bans made in the Bylaw:</td>
</tr>
<tr>
<td>• The new event-based temporary alcohol bans will replace existing event-based temporary alcohol bans made by resolution⁷ for Mount Smart Stadium, Eden Park and Auckland Domain for 'Christmas in the Park' and the Lantern Festival. Changes to these existing resolutions would:</td>
<td>• more easily enables a preventative approach to alcohol-related crime or disorder at or near event venues used for major events</td>
</tr>
<tr>
<td>o for Mount Smart Stadium extend the ban to apply to all major events, not just concerts</td>
<td>• removes time and cost to process individual requests for event-based temporary alcohol bans where:</td>
</tr>
<tr>
<td>o for Eden Park extend the ban to include Eden Park stadium, and two fan trails if they are activated as part of an event⁸</td>
<td>o the event venue has been and will continue to be used for major events</td>
</tr>
<tr>
<td>o for Auckland Domain extend the ban to all major events (not just the Lantern Festival) and extend the times of the ban to start and finish one hour earlier (between 6am and 6am instead of 7am and 7am).</td>
<td>o a ban has been used in the past for major events at the event venue and Police and event organisers indicate a ban is needed in the future.</td>
</tr>
<tr>
<td>The ban for the Auckland Domain 'Christmas in the Park' event would remain unchanged.</td>
<td>• creates more consistent event-based temporary alcohol ban times and application.</td>
</tr>
<tr>
<td>• Use a related information note to replace clauses about alcohol ban signage and about legislative decision-making criteria.</td>
<td>Replacing some clauses with related information notes and providing clarifications:</td>
</tr>
<tr>
<td>• Clarify exceptions to alcohol bans for licensed premises and the transport of alcohol, council’s ability to make temporary alcohol bans and Bylaw wording.</td>
<td>• removes provisions that are useful as extra information but are not required in the Bylaw because they are addressed in legislation or elsewhere outside of the Bylaw</td>
</tr>
<tr>
<td></td>
<td>• provides rules that are easier to read and understand.</td>
</tr>
</tbody>
</table>

The proposal complies with statutory requirements and best practice drafting

15. The amended Bylaw has been prepared in accordance with statutory requirements as:

• it has no implications under, and is not inconsistent with, the New Zealand Bill of Rights Act 1990
• it enables a preventative approach to alcohol-related crime or disorder⁹
• it will be easier to read and understand which will make compliance easier
• it includes event-based temporary alcohol bans for major events at certain venues which are a reasonable limitation on people’s rights and freedoms because the bans only apply temporarily to a limited area for large scale events
• implementation relating to making any new alcohol ban requires any ban to be justified, appropriate and proportionate under the Local Government Act 2002.

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⁷ MT/2017/144 (Mt Smart); AE/2015/119 (Eden Park); RBC/2015/41 and WTM/2016/110 (Christmas in the Park); ADC/2017/43 (Lantern Festival).
⁸ There are two Eden Park Fan Trails designed for fans to walk to Eden Park. One starts at Ponsonby Road (activated on ‘match days’) and one starts from the bottom of Queen Street (last used during the 2011 Rugby World Cup).
⁹ Section 147A of the Local Government Act 2002.
Staff recommend the committee commence the process to amend the Bylaw

16. Staff seek the Regulatory Committee recommend to the Governing Body to adopt the attached Statement of Proposal containing an amended Bylaw for public consultation.

17. The Committee can appoint a bylaw panel to attend ‘Have Your Say’ events as appropriate, deliberate and make recommendations to the Governing Body on public feedback to the proposal.

18. It is also recommended that staff be delegated authority to receive public feedback at ‘Have Your Say’ events as appropriate or in case a panel member cannot attend.

Tauākī whakaaweawe āhuarangi
Climate impact statement

19. There are no implications for climate change arising from this decision.

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

20. The proposal impacts the operation of units across the council group involved in events, processing alcohol ban requests and alcohol ban signage. Those units are aware of the impacts of the proposal and their implementation role.

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

21. Staff sought the views of all local boards and the Auckland Domain Committee on a draft proposal in July and August 2020. The Bylaw is important as they have the delegated authority to make local alcohol bans.\(^\text{10}\)

22. Nineteen local boards provided views, all in support of public consultation. A summary of local board and domain committee views, staff responses and any changes made to the proposal are in Attachment B.

23. Four local boards suggested changes including to improve understanding, enable local board input on proposed major event-based bans, add a local crate day and a North Harbour Stadium event-based ban, and to amend the area of proposed major event-based bans.

24. Staff updated the draft proposal to improve understanding and amend the area of proposed major event-based bans. Other suggested changes are not recommended as local board input already occurs in relation to major events, Police and event organisers do not consider a North Harbour Stadium event-based ban to be necessary, and Police have indicated a local crate day ban is unlikely to be required after December 2020.

Tauākī whakaaweawe Māori
Māori impact statement

25. The Bylaw has significance for Māori as users and kaitiaki / guardians of public space. Māori are also over-represented in alcohol-related hospital visits, the criminal justice system and as victims of crime.

26. Māori health advocacy organisations, Te Puni Kōkiri and the Maunga Authority support the use of alcohol bans as a tool to reduce alcohol-related harm.

27. Mana whenua and mataawaka will have the opportunity to give feedback on the proposal during public consultation.

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\(^{10}\) GB/2014/121 for local boards and GB/2016/237 for the Auckland Domain Committee.
Ngā ritenga ā-pūtea

Financial implications

28. There are no financial implications arising from this decision as public notification and engagement costs are provided within existing budgets.

Ngā raru tūpono me ngā whakamaurutanga

Risks and mitigations

29. There are risks that the proposal does not reflect the views of the public and that a COVID-19 outbreak prevents in-person public consultation. These risks are partly mitigated by the opportunity for public feedback, online or phone-based ‘Have Your Say’ events and bylaw panel deliberations.

Ngā koringa ā-muri

Next steps

<table>
<thead>
<tr>
<th>1 September 2020</th>
<th>24 September 2020</th>
<th>October 2020</th>
<th>Dec 2020 or Feb 2021 (tbc)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulatory Committee finalises proposal, recommends adoption for public consultation and appointment of bylaw panel</td>
<td>Governing Body adopts proposal for public consultation</td>
<td>Public consultation (four weeks)</td>
<td>Public feedback report circulated to local boards and the Auckland Domain Committee (ADC)</td>
</tr>
<tr>
<td>Dec 2020 or Feb 2021 (tbc)</td>
<td>March 2021</td>
<td>April 2021</td>
<td></td>
</tr>
<tr>
<td>Local boards and the ADC resolve formal input on public feedback to Regulatory Committee</td>
<td>Opportunity for local boards and the ADC to present input directly to the bylaw panel</td>
<td>Bylaw panel deliberates</td>
<td>Governing Body receives bylaw panel report, finalises and adopts bylaw</td>
</tr>
</tbody>
</table>

Ngā tāpirihanga

Attachments

<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Statement of proposal to amend the Alcohol Control Bylaw</td>
<td>87</td>
</tr>
<tr>
<td>B</td>
<td>Views of local boards and the Auckland Domain Committee</td>
<td>139</td>
</tr>
</tbody>
</table>

Ngā kaihaina

Signatories

| Author | | |
|--------|-------------------------|
| | Elizabeth Osborne - Policy Analyst |
| Authorisers | Kataraina Maki – General Manager - Community & Social Policy |
| | Craig Hobbs - Director Regulatory Services |
Helping to protect the public

Reducing alcohol-related crime and disorder

Enabling alcohol bans to be made that prohibit alcohol in certain public places where crime or disorder is caused or made worse by alcohol consumed there
1 Have your say

Helping to protect the public

Australians drink alcohol in public places every day, for example at a family picnic, licensed venue or concert. Most people drink responsibly and without having any negative impact on others.

Sometimes drinking in public places can cause or worsen crime or disorder there. For example, drinkers may make too much noise, leave litter or graffiti, urinate in public, commit vandalism or theft, intimidate or assault others, trespass, or use vehicles recklessly. This can negatively affect nearby residents’ sleep, reduce the recreational or visual amenity of the place, make people feel unsafe, and place drinkers or those around them in danger of physical harm.

How Auckland Council keeps you safe

We use a bylaw to enable us to make alcohol bans that prohibit alcohol in certain public places (for example a park).

The current ability to make alcohol bans is included in the Te Kauwhata o Tāmaki Makaurau Te Ture ā-Rohe Whakaratarata Waiāpio 2014 / Auckland Council Alcohol Control Bylaw 2014.

Improving how we make alcohol bans

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

We propose changes to the Bylaw that would:

• make new event-based temporary alcohol bans for major events at Mount Smart Stadium, Western Springs Stadium, Eden Park and the Auckland Domain in the Bylaw
• use related information notes to replace clauses about alcohol ban signage and to replace clauses that duplicate legislative decision-making criteria
• clarify exceptions to alcohol bans for licensed premises and the transport of alcohol, and to clarify council’s ability to make temporary alcohol bans
• make the Bylaw wording easier to read and understand.

Other key aspects of the current Bylaw and its implementation will remain unchanged, for example:

• all local boards, the Auckland Domain Committee and the Regulatory Committee will continue to have delegated authority to make alcohol bans
• no changes to current alcohol bans (except for the event-based temporary alcohol bans above).

We want to know what you think

Starting on [date] through to [date], we want you to tell us what you think about the proposed amendments to the Auckland Council Alcohol Control Bylaw 2014.

Visit www.aucklandcouncil.govt.nz/have-your-say for more information, to give your feedback and to find out where you can drop in to a ‘have your say’ event.
2 What is the Bylaw

The Te Kaunihera o Tāmaki Makaurau Te Ture ā-Rohe Whakararata Waipiro 2014, Auckland Council Alcohol Control Bylaw 2014, was made on 30 October 2014.

The purpose of the Bylaw is to reduce crime or disorder in certain public places that is caused or made worse by alcohol consumed there. The Bylaw seeks to achieve this by enabling council to make alcohol bans that prohibit alcohol in those public places (including in a vehicle).

Alcohol Control Bylaw 2014 framework
### What council proposes to change

#### Improving how we make alcohol bans

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

Council is proposing to better reduce alcohol-related crime and disorder in public places by making amendments to the Alcohol Control Bylaw 2014. The proposed amendments are listed below.

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>

If you want to know more, Appendix A shows what the proposed amended Alcohol Control Bylaw would look like. Appendix B provides a copy of the existing Alcohol Control Bylaw 2014. Appendix C provides a summary of the differences between the existing and amended bylaw.

1 MTI/2017/144 (Mt Smart), AE/2015/119 (Eden Park), RBC/2015/41 and WTM/2016/110 (Christmas in the Park), ADC/2017/43 (Lantern Festival).

2 There are two Eden Park Fan Trails designed for fans to walk to Eden Park. One starts at Ponsonby Road (activated on ‘match days’) and one starts at Queen Street (last used during the 2011 Rugby World Cup).
4 How we implement the Bylaw

Making decisions using evidence

Council uses evidence to decide whether to make, amend or replace an alcohol ban by resolution. Before making an alcohol ban by resolution, the Local Government Act 2002 requires council to be satisfied that there is evidence of a high level of crime or disorder in the area which has been caused by or made worse by alcohol consumption in that same area.

Evidence can include witness accounts of crime or disorder, photos of litter or damage, and callouts to council noise control and the Police. The Local Government Act 2002 also requires any alcohol ban to be appropriate and proportionate in terms of the nature and scale of the crime or disorder and justifiable as a reasonable limitation on people’s rights and freedoms.

Erecting and maintaining signage

Council erects and maintains alcohol ban signage. Signage informs people of the alcohol ban area and hours. An internal policy guides the form and placement of alcohol ban signage.

Police enforcement of alcohol bans

The New Zealand Police are responsible for enforcing alcohol bans made under the Bylaw. Anyone can report a breach of an alcohol ban to the Police. Police respond to reports of alcohol ban breaches as soon as possible depending on the nature of the issues and other priorities.

Police may use powers of search, seizure and arrest under the Local Government Act 2002 to enforce alcohol bans. For breaches of alcohol bans, the Police may issue an infringement fee of $250.
5 How we got here

Decisions leading to the proposed changes

The [Local Government Act 2002](#) requires the council to review its bylaws periodically to determine whether they are effective, efficient and still necessary to address the problem. We also check that the Bylaw is not inconsistent with the [New Zealand Bill of Rights Act 1990](#).

Auckland Council reviewed the existing Bylaw by engaging with stakeholders and undertaking research. Council reported its findings and considered options in response to the findings at meetings in April and May 2019.

This statement of proposal was approved for public consultation by the Governing Body in September 2020. This begins the formal process to make amendments to the Alcohol Control Bylaw 2014.

Bylaw review and approval process

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Findings report</td>
<td>Options report</td>
<td>Proposal developed</td>
<td>Local board and Auckland Domain Committee (ADC) Input</td>
<td>Proposal finalised</td>
</tr>
<tr>
<td>Review of how well the current bylaw is working (REG/2019/19)</td>
<td>Considered whether to keep the bylaw, improve it, make a new bylaw or have no bylaw (REG/2019/28)</td>
<td>Statement of Proposal developed to amend Alcohol Control Bylaw 2014</td>
<td>Local boards and the ADC provide formal input on proposal ahead of public consultation</td>
<td>Regulatory Committee finalises proposal and Governing Body adopts it for consultation</td>
</tr>
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Go to: [www.aucklandcouncil.govt.nz/have-your-say](http://www.aucklandcouncil.govt.nz/have-your-say) if you would like to view more information about the above decisions, including the findings from the statutory bylaw review and options we considered to respond to those findings.

Council engaged with a range of stakeholders including the Tūpuna Maunga Authority, the New Zealand Police, Alcohol Harm Watch, Health Promotion Agency, Auckland Regional Public Health Service, To Puni Kōtiri and Māori public health advocates.
6 We want your input

You have an opportunity to tell us your views.

We would like to know what you think about the proposed amendments to the Alcohol Control Bylaw. Anyone can give feedback on the proposal, including individuals, organisations and businesses.

Give us your feedback

Starting on ### month 2020 through to ### month 2020 we are asking for feedback on proposed amendments to the Auckland Council Alcohol Control Bylaw 2014. Anyone can give feedback.

You can give your feedback:

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

Visit www.aucklandcouncil.govt.nz/have-your-say for more information.

Online services are available at our libraries.

Your name and feedback will be available to the public in our reports and online. All other personal details will remain private.
Appendix A: Proposed amended Auckland Council Alcohol Control Bylaw 2020
Te Ture ā-Rohe
Whakarararata Waipiro 2014
Alcohol Control Bylaw 2014

(as at dd month 2021)

made by the Governing Body of Auckland Council

in resolution GB/2014/121

on 30 October 2014

Bylaw made under sections 145 and 147 of the Local Government Act 2002.
Summary
This summary is not part of the Bylaw but explains the general effects.
Sometimes drinking in public places can cause or worsen crime or disorder there. For example, drinkers may make too much noise, leave litter or graffiti, urinate in public, commit vandalism or theft, intimidate or assault others, trespass, or use vehicles recklessly.
This can negatively affect nearby residents' sleep, reduce the recreational or visual amenity of the place, make people feel unsafe, and place drinkers or those around them in danger of physical harm.
The purpose of this Bylaw is to reduce crime or disorder in certain public places that is caused or made worse by alcohol consumed there, by –
- using alcohol bans to prohibit people from consuming, bringing or possessing alcohol in certain public places at certain times (clause 6)
- setting out how council may make a new alcohol ban by resolution (clauses 7 and 8)
- specifying event-based temporary alcohol bans (Schedule 1)
- referencing the full list of alcohol bans and maps (viewable on council's website).
Other parts of this Bylaw assist with its administration by –
- stating its name, when it comes into force and where it applies (clauses 1, 2 and 3)
- stating the purpose of this Bylaw and defining key terms (clauses 4 and 5)
- referencing the powers of the New Zealand Police to enforce this Bylaw, including the issue of $250 infringement fines (Part 4)
- ensuring existing resolutions continue to apply and incomplete enforcement action can continue where relevant (Part 5).

Cover page reformatted and Summary inserted in accordance with Clause 2(2).
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1 Title

(1) This Bylaw is the Te Ture ā-Rohe Whakararata Waipiro 2014 / Alcohol Control Bylaw 2014.

Clause 1 amended in accordance with Clause 2(2).

2 Commencement

(1) This Bylaw comes into force on 18 December 2014.

(2) Amendments to this Bylaw by resolution GB/###/### come into force on 01 June 2021.

Related information about amendments

Council decided on **dd month year** to make various amendments to the Bylaw. The majority of the amendments were to make the Bylaw easier to read and understand. Key changes included:

- making new event-based temporary alcohol bans in Schedule 1
- using related information notes to replace clauses about alcohol ban signage and to replace clauses that duplicate legislative decision-making criteria
- clarifying exceptions to alcohol bans for licensed premises and the transport of alcohol, and clarifying council’s ability to make temporary alcohol bans.

A comparison of the Bylaw before and after the amendments were made can be viewed in Item # of the Auckland Council Governing Body meeting agenda dated **dd month year**.

Clause 2 amended in accordance with Clause 2(2).

3 Application

(1) This Bylaw applies to Auckland.

Part 1

Preliminary provisions

4 Purpose

(1) The purpose of this Bylaw is to reduce crime or disorder in certain public places that is caused or made worse by alcohol consumed there.

Clause 4 amended in accordance with Clause 2(2).

5 Interpretation

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

**Alcohol** has the meaning given by section 5(1) of the Sale and Supply of Alcohol Act 2012.
Auckland has the meaning given by section 4(1) of the Local Government (Auckland Council) Act 2009.

Related information
The Local Government (Auckland Council) Act 2009 enabled the Local Government Commission to determine Auckland’s boundaries in a map titled LGC-4k-R1. The boundaries were formally adopted by Order in Council on 15 March 2010, and came into effect on 1 November 2010.

Christmas/New Year holiday period means Christmas Eve (the day before Christmas Day) to the day after New Year’s Day as determined by the Holidays Act 2003.

Council means the Governing Body of the Auckland Council or any person delegated or authorised to act on its behalf.

Related information about who can make an alcohol ban
Council has delegated the making of alcohol bans by resolution under clause 7 to –
- local boards for local parks, streets and carparks as at 30 October 2014 (GB/2014/121)
- the Regulatory Committee for areas of regional significance as at 30 October 2014 (GB/2014/121)
- the Auckland Domain Committee for the Auckland Domain as at 1 November 2016 (GB/2016/237).

The Governing Body of Auckland Council is responsible for making alcohol bans in all other public places, and for any alcohol bans in Schedule 1.

Public holiday has the same meaning given in the Holidays Act 2003.

Public place has the meaning given by section 147 of the Local Government Act 2002.

Related information
The Local Government Act 2002 (as reprinted on 1 July 2018) states a public place –
(a) means a place that is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from it; but
(b) does not include licensed premises.

Vehicle has the meaning given by section 2(1) of the Land Transport Act 1998.

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

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

Clause 5 amended in accordance with Clause 2(2).
Part 2
Alcohol consumption and possession in public places

6 Alcohol prohibited in public places where an alcohol ban applies

(1) A person must not consume, bring or possess alcohol in any public place or in any vehicle in any public place where–

(a) an alcohol ban made by council in accordance with clause 7 of this Bylaw applies; or

(b) an alcohol ban in a Schedule of this Bylaw applies.

(2) However, subclause (1) does not apply in those circumstances described in section 147(4) or section 147(1)(b) of the Local Government Act 2002.

Related information about alcohol bans
A list of all alcohol bans made using clause 7 and related maps is attached at the end of this Bylaw for information only, and can be viewed on council’s website.

Related information about exceptions – Transport of alcohol
In section 147(4) of the Local Government Act 2002 (as reprinted on 26 March 2020), an alcohol ban does not apply in the case of alcohol in an unopened container to,—

“(a) the transport of the alcohol from licensed premises next to a public place, if—

(i) it was lawfully bought on those premises for consumption off those premises; and
(ii) it is promptly removed from the public place; or

(b) the transport of the alcohol from outside a public place for delivery to licensed premises next to the public place; or

(c) the transport of the alcohol from outside a public place to premises next to a public place by, or for delivery to, a resident of the premises or his or her bona fide visitors; or

(d) the transport of the alcohol from premises next to a public place to a place outside the public place if—

(i) the transport is undertaken by a resident of those premises; and
(ii) the alcohol is promptly removed from the public place.”

This may include for example, transporting alcohol from a supermarket to your home, from your home to a BYO restaurant or from your home to a friend’s house.

Related information about exceptions – Licensed premises
In section 147(1)(b) of the Local Government Act 2002 (as reprinted on 26 March 2020), exceptions apply to an alcohol ban where a licence is held under the Sale and Supply of Alcohol Act 2012 (Subpart 1 of Part 2). This may include for example, buying alcohol at an event at a park that holds a special licence or dining on the footpath at a restaurant that holds an on-licence providing for BYO alcohol.

Clause 6 amended in accordance with Clause 2(2).
7 Council may make an alcohol ban

(1) Council may make an alcohol ban for the purpose of prohibiting or otherwise regulating or controlling, either generally or for one or more specified periods, any or all of the following:

(a) the consumption, bringing or possession of alcohol in public places; and
(b) in conjunction with (a), the presence or consumption of alcohol in vehicles, or vehicles of stated kinds or descriptions, in public places.

(2) Council may amend, replace or revoke an alcohol ban in accordance with clause 8 with all necessary modifications.

Clause 7 amended in accordance with Clause 2(2).

8 Procedure for making an alcohol ban

(1) Council must, before making an alcohol ban in clause 7 –

(a) comply with decision-making requirements under the Local Government Act 2002; and

(b) consider using one of the following standard times where appropriate in relation to the requirements in subclause 2(a) –

(i) 24 hours, 7 days a week (at all times alcohol ban);
(ii) 7pm to 7am daily (evening alcohol ban);
(iii) 10pm to 7am daylight saving and 7pm to 7am outside daylight saving (night-time alcohol ban);
(iv) 7pm on the day before to 7am on the day after any weekend, public holiday or Christmas / New Year holiday period (weekend and holiday alcohol ban).

Related information about making an alcohol ban
- An alcohol ban may be permanent or temporary:
  - a permanent alcohol ban applies to a place for long periods (for example a town centre or park 24 hours 7 days a week or 7pm to 7am daily)
  - a temporary alcohol ban applies to large scale events (for example a major concert, festival or sporting event).
- Council may make a permanent or temporary alcohol ban under clause 7 at a meeting of a local board, the Auckland Domain Committee or the Regulatory Committee or directly in a bylaw. The process to amend, replace or revoke an alcohol ban is similar to the process that made the ban. The Local Government Act 2002 (as reprinted on 26 March 2020) prescribes the criteria to make an alcohol ban in sections 147B (for resolutions) and 147A (for bylaws). The criteria cannot be changed by council.
- For alcohol bans made by resolution or in a bylaw, the statutory criteria requires:
Item 9

Related information about making an alcohol ban – making a request
- Members of the public (for example community groups, businesses and the New Zealand Police) may request council to make an alcohol ban at any time, with supporting evidence.

Related information about alcohol ban signage
- Council uses alcohol ban signage to inform, educate and assist with enforcement.
- The Governor General may use section 147C of the Local Government Act 2002 (as reprinted on 26 March 2020) to make rules about alcohol ban signage. No rules have been made to date.

Part 4
Enforcement powers, offences and penalties

9 Police can use statutory powers and other methods to enforce this Bylaw
(1) A Police constable may use their powers under the Local Government Act 2002 to enforce this Bylaw.

Related information about enforcement
The New Zealand Police are responsible for enforcing alcohol bans and have powers relating to search, seizure and arrest under sections 169 and 170 of the Local Government Act 2002 (as reprinted on 26 March 2020).

Clause 9 amended in accordance with Clause 2(2).
10 **A person can be penalised for not complying with this Bylaw**

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

**Related information about penalties**
A person who breaches an alcohol ban commits an offence and is liable to an infringement fee of $250 under [section 4](#) of the Local Government (Alcohol Ban Breaches) Regulations 2013 (as printed on 18 December 2013).

Clause 10 amended in accordance with Clause 2(2).

---

**Part 5**

**Savings and transitional provisions**

11 **Existing resolutions continue to apply**

(1) This clause applies to all resolutions made under this Bylaw prior to amendments in clause 2(2) coming into force.

(2) Every resolution made continues to apply as if made after the amendments to this Bylaw until the expiration date specified in the resolution or until amended, replaced or revoked by council, whichever comes first.

Clause 11 inserted in accordance with Clause 2(2).

12 **Existing inquiries to be completed under this Bylaw**

(1) Any compliance or enforcement action by council under this Bylaw that was not completed prior to amendments in clause 2(2) coming into force will continue to be actioned under this Bylaw as if the amendments had not been made.

Clause 12 inserted in accordance with Clause 2(2).
## Schedule 1

### Event-Based Temporary Alcohol Bans

<table>
<thead>
<tr>
<th>Name</th>
<th>Alcohol Ban Area</th>
<th>Operative Time</th>
<th>Map number</th>
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| • Auckland Domain major events alcohol ban (excluding ‘Christmas in the Park’) | • Auckland Domain  
• Associated carpark areas and sports fields | 6am on the day of any major event at Auckland Domain to 6am on the day after that event | 1 |
| • Auckland Domain ‘Christmas in the Park’ alcohol ban | • Auckland Domain  
• Associated carpark areas, sports fields and surrounding streets | 4pm on the Friday before any ‘Christmas in the Park’ event at the Auckland Domain to 8am on the following Monday after that event | 2 |
| • Eden Park major events alcohol ban | • Eden Park  
• Surrounding streets | 12 hours before any major event at Eden Park to 12 hours after that event | 3 |
| | • Fan Trail 1: Ponsonby Road to Eden Park or Fan Trail 2: Queen Street to Eden Park, if activated as part of the event | | 3A 3B |
| • Mt Smart Stadium major events alcohol ban | • Mt Smart Stadium  
• Surrounding streets | 6am on the day of any major event at Mt Smart Stadium to 6am on the day after that event | 4 |
| • Western Springs Stadium major events alcohol ban | • Western Springs Stadium  
• Western Springs Lakeside  
• Western Springs Outer Fields  
• Surrounding streets | 6am on the day of any major event at Western Springs Stadium to 6am on the day after that event | 5 |

### In this Schedule:
- “Major events” has the same meaning as “large scale events” in section 147A of the Local Government Act 2002.
- The alcohol bans in the table above apply if a major event is held on all or part of a venue stated.

### Related information about event-based (temporary) alcohol bans
- More information on major events can be found in council’s [Events Policy](#). The policy describes major events as events that have a regional, national and international profile. Examples of major events where a temporary alcohol ban could apply include concerts (Six60 at Western Springs), festivals (Lantern Festival at Auckland Domain), and sporting events (Warriors at Mount Smart).
- There are two Eden Park Fan Trails. One is a 2.3 kilometre walking route to Eden Park activated on “match days”, starting at Western Park on Ponsonby Road. The second was activated last during the 2011 Rugby World Cup and is a 4 kilometre walking route to Eden Park from Queen Street.
Item 9

Auckland Domain - Christmas in the Park

Regional

Hours of Operation: From 4pm on the Friday before the event to 8am on the following Monday after the event.

Alcohol ban does not apply to areas covered by a Sale and Supply of Alcohol Act 2012 licence.
Proposal to amend the Alcohol Control Bylaw 2014
Proposal to amend the Alcohol Control Bylaw 2014
## Related information, Bylaw history

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<td>Commencement of legacy bylaws about alcohol control (Section 63, Local</td>
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<td>Review of legacy bylaws about alcohol control completed (RBC/2014/27)</td>
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<tr>
<td>31 July 2014</td>
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<td>bylaws (GB/2014/70)</td>
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<td>30 October 2014</td>
<td>Made the Auckland Council Alcohol Control Bylaw 2014 (GB/2014/121)</td>
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<tr>
<td>19 November 2014</td>
<td>Public notice of making of the Auckland Council Alcohol Control Bylaw</td>
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<td>2014 and revocation of legacy bylaws</td>
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<td>18 December 2014</td>
<td>Commencement of Auckland Council Alcohol Control Bylaw 2014 and</td>
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## Related information, next bylaw review

This Bylaw must be reviewed by 11 April 2029. If not reviewed by this date, the Bylaw will expire on 11 April 2031.
Alcohol Control Bylaw 2014

Te Ture a Rohe Whakararata Waipiro 2014

(as at 30 October 2014)

Made by Governing Body of Auckland Council

Resolution in Council

30 October 2014

Pursuant to section 145 and 147 of the Local Government Act 2002, the Governing Body of Auckland Council makes the following bylaw about alcohol control matters.
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Part 1
Preliminary provisions

1 Title
(1) This bylaw is the Alcohol Control Bylaw 2014.

2 Commencement
(1) This bylaw comes into force on 18 December 2014.

3 Application
(1) This bylaw applies to Auckland.

4 Purpose
(1) The purpose of this bylaw is to control the consumption or possession of alcohol in public places to reduce alcohol related harm.

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

Auckland has the meaning given by the Local Government (Auckland Council) Act 2010.

Explanatory Note: As at 20 September 2011, the definition in section 4 of the Local Government (Auckland Council) Act 2009 "...means the area within the boundaries determined by the Local Government Commission under section 33(1) (as that determination is given effect to by Order in Council under section 35(1))".

Alcohol has the meaning given by section 5(1) of the Sale and Supply of Alcohol Act 2012.

Explanatory Note: As at 01 April 2014, the definition in section 5(1) of the Sale and Supply of Alcohol Act 2012 "... means a substance—
(a) that—
(i) is or contains a fermented, distilled, or spirituous liquor; and
(ii) at 20°C is found on analysis to contain 1.15% or more ethanol by volume; or
(b) that—
(i) is a frozen liquid, or a mixture of a frozen liquid and another substance or substances; and
(ii) is alcohol (within the meaning of paragraph (a)) when completely thawed to 20°C; or
(c) that, whatever its form, is found on analysis to contain 1.15% or more ethanol by weight in a form that can be assimilated by people."

Christmas / New Year holiday period means Christmas Eve (the day before Christmas Day) to the day after New Year’s Day as determined by the Holidays Act 2003.

Explanatory Note: As at 01 April 2014, section 45 of the Holidays Act 2003 specifies that where the public holiday falls on a Saturday or Sunday, the
public holiday must be treated as falling on the following Monday or Tuesday respectively.

**Community-focused solutions** mean alternative or complementary measures to an alcohol ban to reduce alcohol related harm. Examples include crime prevention through environmental design, local community initiatives, discussions with nearby licensees, youth and leadership development programmes, and partnering with Police, Ministry of Justice, sports clubs and town centre / business associations.

**Council** means the Governing Body of the Auckland Council or any person delegated to act on its behalf.

**Explanatory Note:** A list of delegations may be attached to this bylaw for information only purposes.

**Licensed premises** has the meaning given by section 5(1) of the Sale and Supply of Alcohol Act 2012.

**Explanatory Note:** As at 01 April 2014, the definition in section 5(1) of the Sale and Supply of Alcohol Act 2012 “... means any premises for which a licence [under the Sale and Supply of Alcohol Act 2012] is held.”

**Public holiday** has the same meaning given in the Holidays Act 2003.

**Explanatory Note:** As at 01 January 2014, the definition of public holiday in section 44 of the Holidays Act 2014 means “...

(a) Christmas Day;
(b) Boxing Day;
(c) New Year’s Day;
(d) 2 January;
(e) Waitangi Day;
(f) Good Friday;
(g) Easter Monday;
(h) ANZAC Day;
(i) the birthday of the reigning Sovereign (observed on the first Monday in June);
(j) Labour Day (being the fourth Monday in October);
(k) the day of the anniversary of a province or the day locally observed as that day.”

**Public place** has the meaning given by section 147 of the Local Government Act 2002.

**Explanatory Note:** As at 01 April 2014, the definition in section 147 of the Local Government Act 2002 “…

(a) means a place that is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from it; but
(b) does not include licensed premises.”
(2) The Interpretation Act 1999 applies to this bylaw.

(3) Explanatory notes and additional information attached at the end of this bylaw are for information purposes only, do not form part of this bylaw, and may be made, amended, revoked or replaced by the council at any time without a formal process.

**Part 2**

**Control of alcohol**

6  **Alcohol bans**

(1) Every person is prohibited from consuming, bringing into, or possessing alcohol in any public place (including in a vehicle) in contravention of an alcohol ban made by the council in accordance with clause 7(1).

*Explanatory note: As at 01 April 2014 under section 147(4) of the Local Government Act 2002, the prohibition in clause 6(1) does not apply to alcohol in an unopened container in the following circumstances "...

(a) the transport of the alcohol from licensed premises next to a public place, if—
   (i) it was lawfully bought on those premises for consumption off those premises; and
   (ii) it is promptly removed from the public place; or

(b) the transport of the alcohol from outside a public place for delivery to licensed premises next to the public place; or

(c) the transport of the alcohol from outside a public place to premises next to a public place by, or for delivery to, a resident of the premises or his or her bona fide visitors; or

(d) the transport of the alcohol from premises next to a public place to a place outside the public place if—
   (i) the transport is undertaken by a resident of those premises; and
   (ii) the alcohol is promptly removed from the public place.”

7  **Making alcohol bans**

(1) The council may make an alcohol ban for the purpose of prohibiting or otherwise regulating or controlling, either generally or for one or more specified periods, any or all of the following:

(a) the consumption, bringing into or possession of alcohol in public places; and

(b) in conjunction with (a), the presence or consumption of alcohol in vehicles, or vehicles of stated kinds or descriptions, in public places.

(2) The council must, before making an alcohol ban in clause 7(1)—

(a) be satisfied that the alcohol ban gives effect to the purpose of the bylaw; and

(b) comply with the decision-making requirements under Subpart 1 of Part 6 of the Local Government Act 2002; and
(c) comply with the criteria under section 147B of the Local Government Act 2002 as follows
   (i) be satisfied that there is documented evidence that the area to which the alcohol ban will apply has experienced a high level of crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area; and
   (ii) be satisfied that the alcohol ban is appropriate and proportionate in light of the evidence and can be justified as a reasonable limitation on people’s rights and freedoms; and

(e) investigate and where appropriate, implement community-focused solutions as an alternative to or to complement an alcohol ban; and

(f) consider the views of the New Zealand Police; and

(g) consider the views of Maori; and

(h) consider the views of owners, occupiers, or persons that council has reason to believe are representative of the interests of owners or occupiers, of premises within the area to which the alcohol ban will apply; and

(i) consider the following times, where appropriate and not contrary to the requirements in subclause (2)(c) –
   (i) 24 hours, 7 days a week (at all times alcohol ban);
   (ii) 7pm to 7am daily (evening alcohol ban);
   (iii) 10pm to 7am daylight saving and 7pm to 7am outside daylight saving (night time alcohol ban);
   (iv) 7pm on the day before to 7am on the day after any weekend, public holiday or Christmas / New Year holiday period (weekend and holiday alcohol ban).

Explanatory note: The times in clause 7(2)(f) are a guide to improve consistency in times across Auckland, but recognises that in some instances use of the times specified may be clearly disproportionate to the evidence of the problem and therefore contrary to the statutory requirements in clause 7(2)(c) that requires alcohol bans be proportionate in light of the evidence.

(3) The council may, at any time, amend or revoke an alcohol ban in accordance with clause 7(1) and 7(2) with the necessary modifications.

8 Signage

(1) The council may make controls on any or all of the following in relation to signage for alcohol ban areas subject to compliance with any regulations under section 147C of the Local Government Act 2002:
   (a) require the council to erect and maintain signs indicating the existence or boundaries of an alcohol ban;
   (b) describe the placement of the signs
   (c) prescribe kinds of signs required to be erected and maintained (including, without limitation, content, images, maps, size, lettering, symbols, and colouring).
Part 3

Enforcement, offences, penalties

9 Enforcement
(1) A constable may use their powers under the Local Government Act 2002 to enforce this bylaw.

(2) In addition to their general powers under sections 169 and 170 of the Local Government Act 2002, the Police may exercise the power under section 170(2) of that Act (to search a container or vehicle immediately and without further notice) on specified dates or in relation to specified events notified in accordance with section 170(3) of that Act.

Explanatory note: As at 01 April 2014 under section 169 and 170 of the Local Government Act 2002, a constable has powers of arrest, search and seizure in relation to alcohol bans.

10 Offences and penalties
(1) Every person who breaches this bylaw commits an offence.

(2) Every person who commits an offence under this bylaw is liable to a penalty under the Local Government Act 2002.

Explanatory note: As at 29 October 2013 the penalty for breaching an alcohol ban is an infringement fee of $250 under the Local Government (Alcohol Ban Breaches) Regulations 2013.
Additional Information to
Alcohol Control Bylaw 2014

This document contains matters for information purposes only and does not form part of any bylaw. It includes matters made pursuant to a bylaw and other matters to assist in the ease of understanding, use and maintenance of a bylaw. The information contained in this document may be updated at any time.

<table>
<thead>
<tr>
<th>Section Description</th>
<th>Page</th>
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<td>2</td>
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<td>3 Delegations for matters contained in bylaw</td>
<td>3</td>
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<tr>
<td>4 Register of Alcohol Bans</td>
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<tr>
<td>5 Enforcement Powers</td>
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<td>6 Offences and Penalties</td>
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<tr>
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</tr>
</tbody>
</table>

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### Section 1

**History of Bylaw**

<table>
<thead>
<tr>
<th>Action</th>
<th>Description</th>
<th>Date of Decision</th>
<th>Decision Reference</th>
<th>Commencement</th>
</tr>
</thead>
</table>
| Make   | Following liquor control bylaws in force on 31 Oct 2010 deemed to have been made by Auckland Council:  
- Auckland City Council, Part 14  
- Franklin District Council, Liquor Control Bylaw 2008  
- Manukau City Council, Chapter 11 Liquor Control  
- North Shore City Council, Part 24 Control of consumption of liquor  
- Papakura District Council, Liquor Control in Public Places Bylaw 2008  
- Rodney District Council, Chapter 16 Liquor Bylaw  
| Lapse  | Previous liquor control bylaws (and consequently any resolutions made pursuant to those bylaws) to be allowed to lapse. | 30 Oct 2014 | GB/2014/121 | 31 Oct 2015 |
| Make   | Review of liquor control bylaws resulted in replacing the seven previous liquor control bylaws with the Alcohol Control Bylaw 2014. | 30 Oct 2014 | GB/2014/121 | 18 Dec 2014 |

### Section 2

**Related Documents**

<table>
<thead>
<tr>
<th>Document Title</th>
<th>Description of Document</th>
<th>Location of Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agenda</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="http://infocouncil.aucklandcouncil.govt.nz">http://infocouncil.aucklandcouncil.govt.nz</a></td>
</tr>
</tbody>
</table>
# Section 3

## Delegations for matters contained in bylaw

<table>
<thead>
<tr>
<th>Function, Duty, Power to be Delegated</th>
<th>Delegated Authority</th>
<th>Date of Delegation Decision</th>
<th>Decision Reference</th>
<th>Commencement of Delegation</th>
</tr>
</thead>
<tbody>
<tr>
<td>n/a Oversight of regulatory performance</td>
<td>The Regulatory Committee</td>
<td>7 Nov 2013</td>
<td>GB/2013/132 and GB/2016/237</td>
<td>7 Nov 2013</td>
</tr>
<tr>
<td>CI 7 Make, amend revoke permanent<em>1 and temporary</em>2 alcohol ban.</td>
<td>Regulatory Committee in relation to any public place described in *3</td>
<td>30 Oct 2014</td>
<td>GB/2014/121</td>
<td>18 Dec 2014</td>
</tr>
<tr>
<td>Make, amend or revoke permanent<em>1 and temporary</em>2 alcohol ban.</td>
<td>Local boards in relation to any public place excluding those public places described in *3</td>
<td>30 Oct 2014</td>
<td>GB/2014/121</td>
<td>18 Dec 2014</td>
</tr>
</tbody>
</table>
Permanent means an alcohol ban that applies for an indefinite period (e.g. 24/7, daily 9pm to 6am, public holidays).

A temporary alcohol ban applies on specified dates or in relation to specified events (e.g. Christmas in the park). Decisions on temporary alcohol bans may authorise the use of enhanced search provisions under section 170(2) of the Local Government Act 2002.

The Regulatory and Bylaws Committee has decision-making responsibility in relation to alcohol bans on –
(a) Any public place for which the Governing Body retains decision-making for non-regulatory activities as contained in the Long Term Plan.
(b) Any regional park, including any associated park, road, beach or foreshore area.
(c) All Tūpuna Maunga over which the Tūpuna Maunga o Tāmaki Makaurau Authority is the Administering Authority, including the Tūpuna Maunga vested in the Tūpuna Taonga o Tāmaki Makaurau Trust under the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014.

Section 4
Register of current alcohol bans

Refer to council website for all alcohol ban maps (https://www.aucklandcouncil.govt.nz/licences-regulations/alcohol-bans-policies/Pages/alcohol-ban-maps.aspx).

Section 5
Enforcement powers for matters contained in bylaw

<table>
<thead>
<tr>
<th>Legislative Provision</th>
<th>Description of Legislative Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 169 and 170 of the Local Government Act 2002</td>
<td>A constable has powers of arrest, search and seizure in relation to alcohol bans.</td>
</tr>
</tbody>
</table>

Section 6
Offences and penalties for matters contained in bylaw

<table>
<thead>
<tr>
<th>Provision</th>
<th>Description of Offence</th>
<th>Fine</th>
<th>Infringement Fee</th>
<th>Other Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>cl 6</td>
<td>Breach of bylaw</td>
<td>n/a</td>
<td>$250*</td>
<td>n/a</td>
</tr>
</tbody>
</table>

* Local Government (Alcohol Ban Breaches) Regulations 2013

Section 7
Monitoring and review for matters contained in bylaw

<table>
<thead>
<tr>
<th>Performance Indicator</th>
<th>Measured By</th>
<th>Target</th>
</tr>
</thead>
</table>

* None attached at this time.
Appendix C: Comparison of existing Alcohol Control Bylaw and proposed amended Bylaw

The table below shows the current text of the Alcohol Control Bylaw 2014 compared with proposed amendments.

The proposed amendments in Appendix A prevail in the event of differences between the proposed bylaw in Appendix A and the table below.

<table>
<thead>
<tr>
<th>Existing Bylaw</th>
<th>Bylaw with proposed amendments</th>
<th>Reasons</th>
</tr>
</thead>
</table>

**Summary**

This summary is not part of the Bylaw but explains the general effects. Sometimes drinking in public places can cause or worsen crime or disorder there. For example, drinkers may make too much noise, leave litter or graffiti, urinate in public, commit vandalism or theft, intimidate or assault others, trespass, or use vehicles recklessly. This can negatively affect nearby residents' sleep, reduce the recreational or visual amenity of the place, make people feel unsafe, and place drinkers or those around them in danger of physical harm.

The purpose of this Bylaw is to reduce crime or disorder in certain public places that is caused or made worse by alcohol consumed there, by –

- using alcohol bans to prohibit people from consuming, bringing or possessing alcohol in certain public places at certain times (clause 6)
- setting out how council may make a new alcohol ban by resolution (clauses 7 and 8)
- specifying event-based temporary alcohol bans (Schedule 1)
- referencing the full list of alcohol bans and maps (viewable on council’s website).

Other parts of this Bylaw assist with its administration by –

- stating its name, when it comes into force and where it applies (clauses 1, 2 and 3)
- stating the purpose of this Bylaw and defining key terms (clauses 4 and 5)
- referencing the powers of the New Zealand Police to enforce this Bylaw, including the issue of $250 infringement fines (Part 4)
- ensuring existing resolutions continue to apply and incomplete enforcement action can continue where relevant (Part 5).

Cover page reformatted and Summary inserted in accordance with Clause 2(2).
### Existing Bylaw

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>Title</strong>&lt;br&gt;(1) This bylaw is the Alcohol Control Bylaw 2014.</td>
</tr>
<tr>
<td>2</td>
<td><strong>Commencement</strong>&lt;br&gt;(1) This bylaw comes into force on 18 December 2014.</td>
</tr>
<tr>
<td>3</td>
<td><strong>Application</strong>&lt;br&gt;(1) This bylaw applies to Auckland.</td>
</tr>
</tbody>
</table>

### Bylaw with proposed amendments

|   | **Title**<br>(1) This Bylaw is the Te Ture A-Rohe Whakararata Waipiro 2014 / Alcohol Control Bylaw 2014. |
|   | **Commencement**<br>(1) This Bylaw comes into force on 18 December 2014. |
|   | **Application**<br>(1) This Bylaw applies to Auckland. |

### Reasons
- Use of te reo Māori implements council’s Māori Language Policy.
- Improves certainty about what amendments were made and commencement date.

---

**Related Information about amendments**

Council decided on **dd month year** to make various amendments to the Bylaw. The majority of the amendments were to make the Bylaw easier to read and understand. Key changes included:

- making new event-based (temporary) alcohol bans in Schedule 1
- using related information notes to replace clauses about alcohol ban signage and to replace clauses that duplicate legislative decision-making criteria
- clarifying exceptions to alcohol bans for licensed premises and the transport of alcohol, and clarifying council’s ability to make temporary alcohol bans.

A comparison of the Bylaw before and after the amendments were made can be viewed in Item 1 of the Auckland Council Governing Body meeting agenda dated **dd month year**.

Clause 2 amended in accordance with Clause 2(2).

---

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td><strong>Application</strong>&lt;br&gt;(1) This Bylaw applies to Auckland.</td>
</tr>
<tr>
<td>Existing Bylaw</td>
<td>Bylaw with proposed amendments</td>
</tr>
<tr>
<td>----------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td><strong>Part 1</strong></td>
<td><strong>Part 1</strong></td>
</tr>
<tr>
<td>Preliminary provisions</td>
<td>Preliminary provisions</td>
</tr>
<tr>
<td><strong>4 Purpose</strong></td>
<td><strong>4 Purpose</strong></td>
</tr>
<tr>
<td>(1) The purpose of this bylaw is to control the consumption or possession of alcohol in public places to reduce alcohol related harm.</td>
<td>(1) The purpose of this Bylaw is to reduce crime or disorder in certain public places that is caused or made worse by alcohol consumed there. Clause 4 amended in accordance with Clause 2(2).</td>
</tr>
<tr>
<td><strong>5 Interpretation</strong></td>
<td><strong>5 Interpretation</strong></td>
</tr>
<tr>
<td>(1) In this bylaw, unless the context otherwise requires, -</td>
<td>(1) In this Bylaw, unless the context otherwise requires, -</td>
</tr>
<tr>
<td><strong>Alcohol</strong> has the meaning given by section 5(1) of the Sale and Supply of Alcohol Act 2012. Explanatory Note: As at 01 April 2014, the definition in section 5(1) of the Sale and Supply of Alcohol Act 2012 &quot;... means a substance— (a) that— (i) is or contains a fermented, distilled, or spirituous liquor; and (ii) at 20°C is found on analysis to contain 1.15% or more ethanol by volume; or (b) that— (i) is a frozen liquid, or a mixture of a frozen liquid and another substance or substances; and (ii) is alcohol (within the meaning of paragraph (a)) when completely thawed to 20°C; or (c) that, whatever its form, is found on analysis to contain 1.15% or more ethanol by weight in a form that can be assimilated by people.&quot;</td>
<td><strong>Alcohol</strong> has the meaning given by section 5(1) of the Sale and Supply of Alcohol Act 2012.</td>
</tr>
<tr>
<td>Existing Bylaw</td>
<td>Bylaw with proposed amendments</td>
</tr>
<tr>
<td>----------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td><strong>Auckland</strong> has the meaning given by the <em>Local Government (Auckland Council) Act 2010.</em></td>
<td><strong>Auckland</strong> has the meaning given by <a href="https://www.govt.nz">section 4(1)</a> of the <em>Local Government (Auckland Council) Act 2009.</em></td>
</tr>
<tr>
<td><strong>Explanatory Note:</strong> As at 20 September 2011, the definition in section 4 of the <em>Local Government (Auckland Council) Act 2009</em> “...means the area within the boundaries determined by the Local Government Commission under section 33(1) (as that determination is given effect to by Order in Council under section 33(1))”.</td>
<td><strong>Related Information</strong> The <em>Local Government (Auckland Council) Act 2009</em> enabled the Local Government Commission to determine Auckland’s boundaries in a map titled <a href="https://www.govt.nz">LGC-AK-RT</a>. The boundaries were formally adopted by <a href="https://www.govt.nz">Order in Council</a> on 15 March 2010, and came into effect on 1 November 2010.</td>
</tr>
<tr>
<td><strong>Christmas / New Year holiday period</strong> means Christmas Eve (the day before Christmas Day) to the day after New Year’s Day as determined by the <em>Holidays Act 2003</em></td>
<td><strong>Christmas / New Year holiday period</strong> means Christmas Eve (the day before Christmas Day) to the day after New Year’s Day as determined by the <a href="https://www.govt.nz">Holidays Act 2003</a>.</td>
</tr>
<tr>
<td><strong>Explanatory Note:</strong> As at 01 April 2014, section 45 of the <em>Holidays Act 2003</em> specifies that where the public holiday falls on a Saturday or Sunday, the public holiday must be treated as falling on the following Monday or Tuesday respectively.</td>
<td></td>
</tr>
<tr>
<td><strong>Community-focused solutions</strong> mean alternative or complementary measures to an alcohol ban to reduce alcohol related harm. Examples include crime prevention through environmental design, local community initiatives, discussions with nearby licensees, youth and leadership development programmes, and partnering with Police, Ministry of Justice, sports clubs and town centre / business associations.</td>
<td></td>
</tr>
</tbody>
</table>
### Existing Bylaw

**Council** means the Governing Body of the Auckland Council or any person delegated to act on its behalf.

**Explanatory Note:** A list of delegations may be attached to this bylaw for information only purposes.

### Bylaw with proposed amendments

**Council** means the Governing Body of the Auckland Council or any person delegated or authorised to act on its behalf.

**Related information about who can make an alcohol ban**

Council has delegated the making of alcohol bans by resolution under clause 7 to:
- local boards for local parks, streets and carparks as at 30 October 2014 (GB/2014/121)
- the Regulatory Committee for areas of regional significance as at 30 October 2014 (GB2/2014/121)
- the Auckland Domain Committee for the Auckland Domain as at 1 November 2016 (GB2/2016/237).

The Governing Body of Auckland Council is responsible for making alcohol bans in all other public places, and for any alcohol bans in Schedule 1.

### Reasons

- Improves certainty.
- Term not used in amended bylaw.
- Brevity as meaning is common knowledge.
<table>
<thead>
<tr>
<th>Existing Bylaw</th>
<th>Bylaw with proposed amendments</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) the birthday of the reigning Sovereign (observed on the first Monday in June);</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(j) Labour Day (being the fourth Monday in October);</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(k) the day of the anniversary of a province or the day locally observed as that day.”</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public place has the meaning given by section 147 of the Local Government Act 2002.</td>
<td><strong>Public place</strong> has the meaning given by section 147 of the Local Government Act 2002.</td>
<td>• Easier to read and understand.</td>
</tr>
<tr>
<td>Explanatory Note: As at 01 April 2014, the definition in section 147 of the Local Government Act 2002 “... (a) means a place that is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from it; but (b) does not include licensed premises.”</td>
<td>Related information The Local Government Act 2002 (as reprinted on 1 July 2018) states a public place – (a) means a place that is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from it; but (b) does not include licensed premises.</td>
<td></td>
</tr>
<tr>
<td>Vehicle has the meaning given by section 2(1) of the Land Transport Act 1998.</td>
<td></td>
<td>• Improves certainty.</td>
</tr>
<tr>
<td>(2) The Interpretation Act 1999 applies to this bylaw.</td>
<td>(2) Related information and links do not form part of this Bylaw and may be inserted, changed or removed without any formality.</td>
<td>• Easier to read and understand.</td>
</tr>
<tr>
<td>(3) Explanatory notes and additional information attached at the end of this bylaw are for information purposes only, do not form part of this bylaw, and may be made, amended, revoked or replaced by the council at any time without a formal process.</td>
<td>(3) The Interpretation Act 1999 applies to this Bylaw. Clause 5 amended in accordance with Clause 2(2).</td>
<td></td>
</tr>
</tbody>
</table>

### Part 2

<table>
<thead>
<tr>
<th>Control of alcohol</th>
<th>Alcohol consumption and possession in public places</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Item 9

<table>
<thead>
<tr>
<th>Existing Bylaw</th>
<th>Bylaw with proposed amendments</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 Alcohol bans</td>
<td>Alcohol prohibited in public places where an alcohol ban applies</td>
<td>- Easier to read and understand when alcohol is prohibited in public places.</td>
</tr>
<tr>
<td>(1) Every person is prohibited from consuming, bringing into, or possessing alcohol in any public place (including in a vehicle) in contravention of an alcohol ban made by the council in accordance with clause 7(1).</td>
<td>(1) A person must not consume, bring or possess alcohol in any public place or in any vehicle in any public place where –</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) an alcohol ban made by council in accordance with clause 7 of this Bylaw applies; or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) an alcohol ban in a Schedule of this Bylaw applies.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2) However, subclause (1) does not apply in those circumstances described in section 147(4) or section 147(1)(b) of the Local Government Act 2002.</td>
<td></td>
</tr>
<tr>
<td>Explanatory note: As at 01 April 2014 under section 147(4) of the Local Government Act 2002, the prohibition in clause 6(1) does not apply to alcohol in an unopened container in the following circumstances “…</td>
<td>Related information about alcohol bans</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) the transport of the alcohol from licensed premises next to a public place, if —</td>
<td>A list of all alcohol bans made using clause 7 and related maps is attached at the end of this Bylaw for information only, and can be viewed on council’s <a href="#">website</a>.</td>
</tr>
<tr>
<td></td>
<td>(i) it was lawfully bought on those premises for consumption off those premises; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(ii) it is promptly removed from the public place; or</td>
<td>Related information about exceptions – Transport of alcohol</td>
</tr>
<tr>
<td></td>
<td>(b) the transport of the alcohol from outside a public place for delivery to licensed premises next to the public place, or</td>
<td>In section 147(4) of the Local Government Act 2002 (as reprinted on 26 March 2020), an alcohol ban does not apply in the case of alcohol in an unopened container to,—</td>
</tr>
<tr>
<td></td>
<td>(c) the transport of the alcohol from outside a public place to premises next to a public place by, or for delivery to, a resident of the premises or his or her bona fide visitors; or</td>
<td><em>(a) the transport of the alcohol from licensed premises next to a public place, if—</em></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(i) it was lawfully bought on those premises for consumption off those premises; and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ii) it is promptly removed from the public place; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) the transport of the alcohol from outside a public place for delivery to licensed premises next to the public place, or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) the transport of the alcohol from outside a public place to premises next to a public place by, or for delivery to, a resident of the premises or his or her bona fide visitors; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(d) the transport of the alcohol from premises next to a public place to a place outside the public place if—</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(i) the transport is undertaken by a resident of those premises; and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ii) the alcohol is promptly removed from the public place.”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Related information about exceptions – Licensed premises</td>
</tr>
<tr>
<td></td>
<td></td>
<td>In section 147(13b) of the Local Government Act 2002 (as reprinted on 26 March 2020), exceptions apply to an alcohol ban where a licence is held under the Sale and Supply of Alcohol Act 2012 (Subpart 1 of Part 2). This may include for example, buying alcohol at an event at a park that holds a special licence or dining on the footpath at a restaurant that holds an on-licence providing for BYO alcohol.</td>
</tr>
</tbody>
</table>

Clause 6 amended in accordance with Clause 2(2).
## Existing Bylaw

| Alcohol from premises next to a public place to a place outside the public place if—
|:—|
| (i) the transport is undertaken by a resident of those premises; and |
| (ii) the alcohol is promptly removed from the public place.* |

## Bylaw with proposed amendments

<table>
<thead>
<tr>
<th>7 Making alcohol bans</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The council may make an alcohol ban for the purpose of prohibiting or otherwise regulating or controlling, either generally or for one or more specified periods, any or all of the following:</td>
</tr>
<tr>
<td>(a) the consumption, bringing into or possession of alcohol in public places; and</td>
</tr>
<tr>
<td>(b) in conjunction with (a), the presence or consumption of alcohol in vehicles, or vehicles of stated kinds or descriptions, in public places.</td>
</tr>
<tr>
<td>(2) The council must, before making an alcohol ban in clause 7(1)—</td>
</tr>
<tr>
<td>(a) be satisfied that the alcohol ban gives effect to the purpose of the bylaw; and</td>
</tr>
<tr>
<td>(b) comply with the decision-making requirements under Subpart 1 of Part 6 of the Local Government Act 2002; and</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>7 Council may make an alcohol ban</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Council may make an alcohol ban for the purpose of prohibiting or otherwise regulating or controlling, either generally or for one or more specified periods, any or all of the following:</td>
</tr>
<tr>
<td>(a) the consumption, bringing or possession of alcohol in public places; and</td>
</tr>
<tr>
<td>(b) in conjunction with (a), the presence or consumption of alcohol in vehicles, or vehicles of stated kinds or descriptions, in public places.</td>
</tr>
<tr>
<td>(2) Council may amend, replace or revoke an alcohol ban in accordance with clause 8 with all necessary modifications.</td>
</tr>
</tbody>
</table>

Clause 7 amended in accordance with Clause 2(2). |

## Procedure for making an alcohol ban |

| 7 Council must, before making an alcohol ban in clause 7— |
| (a) comply with decision-making requirements under the Local Government Act 2002; and |
| (b) consider using one of the following standard times where appropriate in relation to the requirements in subclause 2(a)— |
| (i) 24 hours, 7 days a week (at all times alcohol ban); |
| (ii) 7pm to 7am daily (evening alcohol ban); |
| (iii) 10pm to 7am daylight saving and 7pm to 7am outside daylight saving (night-time alcohol ban); |
| (iv) 7pm on the day before to 7am on the day after any weekend, public holiday or Christmas / New Year holiday period (weekend and holiday alcohol ban). |

- Easier to read and understand how council may make an alcohol ban. |
- Removes unnecessary detail (for example, matters that are addressed in legislation) to improve clarity.
<table>
<thead>
<tr>
<th>Existing Bylaw</th>
<th>Bylaw with proposed amendments</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>(c) comply with the criteria under section 147B of the Local Government Act 2002 as follows</td>
<td><strong>Related information about making an alcohol ban</strong>&lt;br&gt;• An alcohol ban may be permanent or temporary:&lt;br&gt;  - a permanent alcohol ban applies to a place for long periods (for example a town centre or park 24 hours 7 days a week or 7pm to 7am daily)&lt;br&gt;  - a temporary alcohol ban applies to large scale events (for example a major concert, festival or sporting event).&lt;br&gt;• Council may make a permanent or temporary alcohol ban under clause 7 at a meeting of a local board, the Auckland Domain Committee or the Regulatory Committee directly in a bylaw. The process to amend, replace or revoke an alcohol ban is similar to the process that made the ban. The Local Government Act 2002 (as reprinted on 26 March 2020) prescribes the criteria to make an alcohol ban in sections 147B (for resolutions) and 147A (for bylaws). The criteria cannot be changed by council.&lt;br&gt;• For alcohol bans made by resolution or in a bylaw, the statutory criteria requires:&lt;br&gt;  - evidence of a high level of crime or disorder in the area caused by or made worse by alcohol consumption in that same area&lt;br&gt;  - the ban to be appropriate and proportionate in light of the crime or disorder&lt;br&gt;  - the ban to be justified as a reasonable limitation on people’s rights and freedoms.&lt;br&gt;• For temporary alcohol bans in Schedule 1, the statutory criteria requires the alcohol ban to be justified as a reasonable limitation on people’s rights and freedoms.&lt;br&gt;• Before making a decision, council must also comply with the general decision-making requirements under Subpart 2 of Part 1 of the Local Government Act 2002 (as reprinted on 26 March 2020). This could include considering—&lt;br&gt;  - complementary or alternative solutions to an alcohol ban, for example locking gates, public bins, lighting, CCTV and Māori or Pacific Wardens&lt;br&gt;  - views of people likely to be affected by or interested in the alcohol ban, for example nearby residents or businesses, community groups, and the New Zealand Police&lt;br&gt;  - the nature, severity and frequency of alcohol-related crime or disorder&lt;br&gt;  - whether the crime or disorder is a result of displacement from an existing alcohol ban&lt;br&gt;  - whether an alcohol ban would result in displacement of the crime or disorder&lt;br&gt;  - whether a Crime Prevention through Environmental Design assessment is needed.&lt;br&gt;• Council must under clause 8 consider standard times to improve consistency in Auckland, however it may also consider other times more appropriate and proportionate in light of evidence.&lt;br&gt;<strong>Related information about making an alcohol ban – making a request</strong>&lt;br&gt;• Members of the public (for example community groups, businesses and the New Zealand Police) may request council to make an alcohol ban at any time, with supporting evidence.</td>
<td>&lt;br&gt;<strong>(e) investigate and where appropriate, implement community-focused solutions as an alternative to or to complement an alcohol ban; and</strong>&lt;br&gt;<strong>(f) consider the views of the New Zealand Police, and</strong>&lt;br&gt;<strong>(g) consider the views of Māori; and</strong>&lt;br&gt;<strong>(h) consider the views of owners, occupiers, or persons that council has reason to believe are representative of the interests of owners or occupiers, of premises within the area to which the alcohol ban will apply; and</strong>&lt;br&gt;<strong>(i) consider the following times, where appropriate and not contrary to the requirements in subclause (2)(c)—</strong>&lt;br&gt;<strong>(l) 24 hours, 7 days a week (at all times alcohol ban);</strong>&lt;br&gt;<strong>(ii) 7pm to 7am daily (evening alcohol ban);</strong>&lt;br&gt;&lt;br&gt;Clause 8 replaced in accordance with Clause 2(3).</td>
</tr>
</tbody>
</table>
### Existing Bylaw

(iii) 10pm to 7am daylight saving and 7pm to 7am outside daylight saving (night time alcohol ban).

(iv) 7pm on the day before to 7am on the day after any weekend, public holiday or Christmas / New Year holiday period (weekend and holiday alcohol ban).

**Explanatory note:** The times in clause 7(2)(f) are a guide to improve consistency in times across Auckland, but recognises that in some instances use of the times specified may be clearly disproportionate to the evidence of the problem and therefore contrary to the statutory requirements in clause 7(2)(c) that requires alcohol bans be proportionate in light of the evidence.

(3) The council may, at any time, amend or revoke an alcohol ban in accordance with clause 7(1) and 7(2) with the necessary modifications.

### Bylaw with proposed amendments

#### 8 Signage

(1) The council may make controls on any or all of the following in relation to signage for alcohol ban areas subject to compliance with any regulations under section 147C of the Local Government Act 2002:

(a) require the council to erect and maintain signs indicating the existence or boundaries of an alcohol ban;

(b) describe the placement of the signs;

(c) prescribe kinds of signs required to be erected and maintained (including, without limitation, content, images, maps, size, lettering, symbols, and colouring).

- Signage requirements are already addressed outside of the Bylaw.
<table>
<thead>
<tr>
<th>Part 3</th>
<th>Existing Bylaw</th>
<th>Bylaw with proposed amendments</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Enforcement, offences, penalties</td>
<td>Enforcement powers, offences and penalties</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Enforcement</td>
<td>9 Police can use statutory powers and other methods to enforce this Bylaw</td>
<td>Easier to read and understand enforcement powers.</td>
</tr>
<tr>
<td></td>
<td>(1) A constable may use their powers under the Local Government Act 2002 to enforce this Bylaw.</td>
<td>(1) A Police constable may use their powers under the Local Government Act 2002 to enforce this Bylaw.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2) In addition to their general powers under sections 169 and 170 of the Local Government Act 2002, the Police may exercise the power under section 170(2) of that Act (to search a container or vehicle immediately and without further notice) on specified dates or in relation to specified events notified in accordance with section 170(3) of that Act.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Explanatory note: As at 01 April 2014 under section 169 and 170 of the Local Government Act 2002, a constable has powers of arrest, search and seizure in relation to alcohol bans.</td>
<td>Clause 9 amended in accordance with Clause 2(2).</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Offences and penalties</td>
<td>10 A person can be penalised for not complying with this Bylaw</td>
<td>Easier to read and understand penalties for non-compliance.</td>
</tr>
<tr>
<td></td>
<td>(1) Every person who breaches this bylaw commits an offence.</td>
<td>(1) A person who fails to comply with Part 2 of this Bylaw commits an offence and is liable to a penalty under the Local Government Act 2002.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2) Every person who commits an offence under this bylaw is liable to a penalty under the Local Government Act 2002. Explanatory note: As at 29 October 2013 the penalty for breaching an alcohol ban is an infringement fee of $250 under the Local Government (Alcohol Ban Breaches) Regulations 2013.</td>
<td>Related information about penalties</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Explanatory note: As at 29 October 2013 the penalty for breaching an alcohol ban is an infringement fee of $250 under the Local Government (Alcohol Ban Breaches) Regulations 2013 (as printed on 18 December 2013).</td>
<td>A person who breaches an alcohol ban commits an offence and is liable to an infringement fee of $250 under section 4 of the Local Government (Alcohol Ban Breaches) Regulations 2013.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Clause 10 amended in accordance with Clause 2(2).</td>
<td>Clause 10 amended in accordance with Clause 2(2).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Part 5</td>
<td>Savings and transitional provisions</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Existing resolutions continue to apply</td>
<td></td>
<td>Ensures existing resolutions continue to apply after amendments are made.</td>
</tr>
<tr>
<td></td>
<td>(1) This clause applies to all resolutions made under this Bylaw prior to amendments in clause 2(2) coming into force.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2) Every resolution made continues to apply as if made after the amendments to this Bylaw until the expiration date specified in the resolution or until amended, replaced or revoked by council, whichever comes first.</td>
<td>Clause 11 inserted in accordance with Clause 2(2).</td>
<td></td>
</tr>
</tbody>
</table>

*Related information about penalties*

A person who breaches an alcohol ban commits an offence and is liable to an infringement fee of $250 under section 4 of the Local Government (Alcohol Ban Breaches) Regulations 2013 (as printed on 18 December 2013).
### Existing Bylaw

#### 12 Existing inquiries to be completed under this Bylaw

(1) Any compliance or enforcement action by council under this Bylaw that was not completed prior to amendments in clause 2(2) coming into force will continue to be actioned under this Bylaw as if the amendments had not been made.

Clause 12 inserted in accordance with Clause 2(2).

---

### Schedule 1

**Event-Based (Temporary) Alcohol Bans**

<table>
<thead>
<tr>
<th>Name</th>
<th>Alcohol Ban Area</th>
<th>Operative Time</th>
<th>Map number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auckland Domain major events alcohol ban</td>
<td>Auckland Domain</td>
<td>6am on the day of any major event at Auckland Domain to 6am on the day after that event</td>
<td>1</td>
</tr>
<tr>
<td>'Christmas in the Park'</td>
<td>Associated carpark areas and sports fields</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Auckland Domain</td>
<td>Auckland Domain</td>
<td>4pm on the Friday before any 'Christmas in the Park' event at the Auckland Domain to 6am on the following Monday after that event</td>
<td>2</td>
</tr>
<tr>
<td>'Christmas in the Park'</td>
<td>Associated carpark areas, sports fields and surrounding streets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eden Park major events alcohol ban</td>
<td>Eden Park</td>
<td>12 hours before any major event at Eden Park to 12 hours after that event</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Surrounding streets</td>
<td></td>
<td>3A, 3B</td>
</tr>
<tr>
<td></td>
<td>Fan Trail 1: Ponsonby Road to Eden Park or Fan Trail 2: Queen Street to Eden Park, if activated as part of the event</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mt Smart Stadium major events alcohol ban</td>
<td>Mt Smart Stadium</td>
<td>6am on the day of any major event at Mt Smart Stadium to 6am on the day after that event</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Surrounding streets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Western Springs Stadium major events alcohol ban</td>
<td>Western Springs Stadium</td>
<td>6am on the day of any major event at Western Springs Stadium to 6am on the day after that event</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Western Springs Lakeside</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Western Springs Outer Fields</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Surrounding streets</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**In this Schedule:**

- "Major events" has the same meaning as "large scale events" in section 147A of the Local Government Act 2002.
- The alcohol bans in the table above apply if a major event is held on all or part of a venue stated.
### Related information about event-based (temporary) alcohol bans

- More information on major events can be found in council’s [Events Policy](#). The policy describes major events as events that have a regional, national and international profile. Examples of major events where a temporary alcohol ban could apply include concerts (Six60 at Western Springs), festivals (Lantern Festival at Auckland Domain), and sporting events (Warriors at Mount Smart).
- There are two Eden Park Fan Trails. One is a 2.3 kilometre walking route to Eden Park activated on “match days”, starting at Western Park on Ponsonby Road. The second was activated last during the 2011 Rugby World Cup and is a 4 kilometre walking route to Eden Park from Queen Street.
Attachment B – Views of local boards and the Auckland Domain Committee

This attachment contains the views of local boards and the Auckland Domain Committee on a draft proposal to amend the Alcohol Control Bylaw 2014 and changes made as a result.

Views of local boards that suggested changes to the draft proposal

The local boards in the table below supported the draft proposal and suggested changes.

<table>
<thead>
<tr>
<th>View of local board</th>
<th>Changes included in proposal in response to views</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albert-Eden Local Board (AE/2020/67)</td>
<td></td>
</tr>
<tr>
<td>a) note the draft statement of proposal in Attachment A of this agenda report to amend the Auckland Council Alcohol Control Bylaw 2014 for public consultation.</td>
<td>Changed the alcohol ban area for major events at Western Springs Stadium (Map 5) to include area requested in (b) to help reduce alcohol-related harm that may be associated with major events at the stadium.</td>
</tr>
<tr>
<td>b) request that the area covered by the Alcohol Ban for Western Springs – Major Events is extended to include up to and including Premier Avenue on Great North Road and including Western Springs Garden, on 956 – 990 Great North Road, and the block bounded by Duncan McLean Link, 69-133 and 46-124 Western Springs Road and Mountain View Road given the short walking distance and a history of residents’ complaints to local board members related to alcohol use in surrounding streets before and after major events at Western Springs Stadium and request that this is included in the Statement of Proposal.</td>
<td></td>
</tr>
<tr>
<td>c) thank Elizabeth Osborne – Policy Analyst, for her attendance via Skype-for-Business.</td>
<td></td>
</tr>
<tr>
<td>Hibiscus and Bays Local Board (HB/2020/91)</td>
<td></td>
</tr>
<tr>
<td>a) support, in principal, the draft statement of proposal for the Auckland Council Alcohol Control Bylaw 2014 with the following amendments:</td>
<td>Changed proposal to include further information on permanent and temporary alcohol bans and the process to make an alcohol ban to improve understanding as requested in (a)(i).</td>
</tr>
<tr>
<td>i) request that the Bylaws Team give further consideration to the use of plain English in the proposed Auckland Council Alcohol Control Bylaw before any public consultation</td>
<td>Note: information available during public consultation (for example on council’s website) will use plain language as requested in (a)(ii) and (iii).</td>
</tr>
<tr>
<td>ii) request that a plain English summary of the proposed Auckland Council Alcohol Control Bylaw is provided as an introduction to the Bylaw online</td>
<td>No change made in response to resolution (b) because Police have advised that they are unlikely to request a Crate Day alcohol ban after 2020.</td>
</tr>
<tr>
<td>iii) request that consideration is given to how the proposed Auckland Council Alcohol Control Bylaw information will be communicated to the public</td>
<td>Note: the process to make an alcohol ban requires criteria set in section 174B of the Local Government Act 2002 to be met. These criteria set a high threshold before an alcohol ban can be made.</td>
</tr>
<tr>
<td>b) request the inclusion of temporary liquor bans for beach foreshore and adjoining public reserves across Auckland for the annual gathering on the first Saturday of December for those who congregate for the purpose of consuming liquor under the banner of Crate Day</td>
<td></td>
</tr>
</tbody>
</table>
### View of local board

<table>
<thead>
<tr>
<th>Changes included in proposal in response to views</th>
</tr>
</thead>
<tbody>
<tr>
<td>b) request that provision be made for communities to be able to seek permanent liquor bans and that the process be more user-friendly and streamlined.</td>
</tr>
<tr>
<td>Waitematā Local Board (WTM/2020/161 and WTM/2020/162)</td>
</tr>
<tr>
<td>a) support the draft statement of proposal in Attachment A of this agenda report to amend the Auckland Council Alcohol Control Bylaw 2014 for public consultation subject to the amendments sought and comments made below.</td>
</tr>
<tr>
<td>b) note that the draft statement of proposal uses the Governing Body decision-making authority to make new major event-based temporary alcohol bans at Western Springs Stadium and the Auckland Domain in the Waitematā Local Board area.</td>
</tr>
<tr>
<td>c) request that the local board continues to be informed sufficiently in advance of upcoming major events at Western Springs Stadium and the Auckland Domain and have the opportunity to provide input.</td>
</tr>
<tr>
<td>d) request that Map 5 of the proposed bylaw be amended to only apply to major events held at Western Springs Stadium and not Western Springs Lakeside or Western Springs Outer Fields.</td>
</tr>
<tr>
<td>e) recommend that family centered events not automatically have a temporary alcohol ban applied and are considered on a case by case basis.</td>
</tr>
<tr>
<td>Changed proposal to clarify that the Western Springs major events alcohol ban only applies to major events at the stadium as requested in (d).</td>
</tr>
<tr>
<td>No changes made to proposal in response to (c) and (e) for the following reasons:</td>
</tr>
<tr>
<td>As part of the event organisation process, Auckland Tourism, Events and Economic Development notifies local boards of proposed events and provides an opportunity for them to input into the process. Further focus on family-centred events is unnecessary because Police and event organisers have already identified the types of events needing a temporary alcohol ban and Council’s Events Policy provides for the consistent application of event-based temporary alcohol bans to major events. Other family-centred events (for example ‘Movies in Parks’ or ‘Music in Parks’) that may occur at Western Springs Outer Fields or Lakeside are not included in the ban.</td>
</tr>
</tbody>
</table>

The Māngere-Ōtāhuhu Local Board supported public consultation on the proposal, deferred comment to after consideration of public feedback, and suggested changes.

### View of Māngere-Ōtāhuhu Local Board

<table>
<thead>
<tr>
<th>Changes Included in proposal in response to view</th>
</tr>
</thead>
<tbody>
<tr>
<td>Māngere-Ōtāhuhu Local Board (MO/2020/112)</td>
</tr>
<tr>
<td>a) support the draft statement of proposal in Attachment A of this agenda report to amend the Auckland Council Alcohol Control Bylaw 2014 for public consultation.</td>
</tr>
<tr>
<td>b) defer local board comment until after it has considered the public feedback on the proposal.</td>
</tr>
<tr>
<td>c) note the board would like to include the North Harbour Stadium in the Auckland Council Alcohol Control Bylaw 2014 for public consultation.</td>
</tr>
<tr>
<td>No changes made to proposal in response to (c). Police and event organisers do not consider a temporary alcohol ban for major events at North Harbour Stadium is unnecessary.</td>
</tr>
</tbody>
</table>
Views of local boards that supported the draft proposal

The local boards in the table below supported the draft proposal in its entirety and suggested no changes with the resolution below.

“support the draft statement of proposal in Attachment A of this agenda report to amend the Auckland Council Alcohol Control Bylaw 2014 for public consultation”.

<table>
<thead>
<tr>
<th>Local board</th>
<th>Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aotea / Great Barrier Local Board</td>
<td>GBI/2020/85</td>
</tr>
<tr>
<td>Franklin Local Board</td>
<td>FR/2020/64</td>
</tr>
<tr>
<td>Henderson-Massey Local Board</td>
<td>HM/2020/98</td>
</tr>
<tr>
<td>Howick Local Board</td>
<td>HW/2020/109</td>
</tr>
<tr>
<td>Manurewa Local Board</td>
<td>MR/2020/94</td>
</tr>
<tr>
<td>Maungakiekie-Tāmaki Local Board</td>
<td>MT/2020/99</td>
</tr>
<tr>
<td>Ōrākei Local Board</td>
<td>OR/2020/79</td>
</tr>
<tr>
<td>Otara-Papatoetoe Local Board</td>
<td>OP/2020/114</td>
</tr>
<tr>
<td>Papakura Local Board</td>
<td>PPK/2020/115</td>
</tr>
<tr>
<td>Rodney Local Board</td>
<td>RD/2020/85</td>
</tr>
<tr>
<td>Waiheke Local Board</td>
<td>WHK/2020/103</td>
</tr>
<tr>
<td>Waitākere Ranges Local Board</td>
<td>WTK/2020/75</td>
</tr>
<tr>
<td>Whau Local Board</td>
<td>WH/2020/82</td>
</tr>
</tbody>
</table>

The following local boards also supported the draft proposal with no changes suggested as shown in the table below.

<table>
<thead>
<tr>
<th>Local board</th>
<th>Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Puketūpapa Local Board</strong></td>
<td>PKTPP/2020/91</td>
</tr>
<tr>
<td>a) note that the board’s Healthy Puketūpapa - Health and Wellbeing Strategic Framework seeks to reduce the use of harmful substances, such as alcohol. It identifies that alcohol is the board area’s most accessible harmful substance; it causes cancer and is a causal factor in more than 200 diseases and injury conditions.</td>
<td></td>
</tr>
<tr>
<td>b) support the proposed amendments to the bylaw, which make it clearer to understand.</td>
<td></td>
</tr>
<tr>
<td>c) support the proposal for public consultation, without changes.</td>
<td></td>
</tr>
<tr>
<td><strong>Devonport-Takapuna Local Board</strong></td>
<td>DT/2020/102</td>
</tr>
<tr>
<td>a) support the draft statement of proposal in Attachment A of this agenda report to amend the Auckland Council Alcohol Control Bylaw 2014 for public consultation.</td>
<td></td>
</tr>
<tr>
<td>b) receive the letter from the Regulatory Committee to the Minister of Local Government</td>
<td></td>
</tr>
<tr>
<td>c) note that temporary alcohol ban areas are being set up around four named parks in the Auckland Council area under section 147 of the Local Government Act 2002</td>
<td></td>
</tr>
<tr>
<td>d) request that officers of Auckland Council give requests for liquor bans, in other parts of Auckland, similar positive support in a way that will also enable communities to see their requests for liquor bans satisfied. [Refer note to resolution by Hibiscus and Bays Local Board]</td>
<td></td>
</tr>
</tbody>
</table>

The Auckland Domain Committee supported public consultation on the proposal

The Auckland Domain Committee supported public consultation on the proposal in resolution (ADC/2020/16): “supports public consultation on the draft statement of proposal, as it relates to the Auckland Domain, in Attachment A of this agenda report, to amend the Auckland Council Alcohol Control Bylaw 2014”.

Local boards that chose to defer comment

The following local boards chose to not include the report on their business meeting agenda.

- Kaipātiki Local Board
- Upper Harbour Local Board
Te take mō te pūrongo
Purpose of the report
1. To recommend the Governing Body adopt a proposal to amend the Te Ture ā-Rohe mo ngā Wāhi Tapu me ngā Whare Tahu Tupāpaku / Cemeteries and Crematoria Bylaw for public consultation and appoint a bylaw panel.

Whakarāpopototanga matua
Executive summary
3. Staff seek a recommendation that the Governing Body adopt the attached Statement of Proposal containing an amended Bylaw for public consultation.
4. The main proposed change is to clarify the Bylaw wording to make it easier to read, understand and comply with. It complies with statutory requirements, is appropriate and is not inconsistent with key legislation.
5. The amended Bylaw continues to enable council to make a separate cemeteries and crematoria code of practice to manage activities at council cemeteries and crematoria.
6. The Aotea / Great Barrier Local Board governance is impacted, and their view was sought and support gained for the Statement of Proposal.
7. There are risks that the proposal does not reflect the views of the public and that a COVID-19 outbreak prevents in-person public consultation. These risks are partly mitigated by the opportunity for public feedback, online or phone-based ‘Have Your Say’ events and bylaw panel deliberations.
8. Adoption of the Statement of Proposal will start the statutory process to amend the Bylaw including public consultation scheduled for October 2020. A bylaw panel will consider any public feedback, deliberate, and make recommendations to the Governing Body in March 2021. A final decision is expected to be made in April 2021.

Ngā tūtohunga
Recommendation/s
That the Regulatory Committee:

a) note that this committee determined in April 2019 that a bylaw about council cemeteries and crematoria is still the most appropriate way to manage activities that may cause public safety hazards, damage to property, and unnecessary distress to mourners or relatives.

b) recommend the Governing Body adopt the statement of proposal in Attachment A of this agenda report for public consultation, and confirm that the proposed amended Cemeteries and Crematoria Bylaw 2014:

i) is the most appropriate form of bylaw

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

c) recommend the Governing Body forward to the Independent Māori Statutory Board the proposal in clause b) for their advice.
d) recommend the Governing Body forward to local boards this agenda report and attachment for their information.

e) appoint a chair and two bylaw panel members selected from the Governing Body and the Independent Māori Statutory Board to attend ‘Have Your Say’ events and to deliberate and make recommendations to the Governing Body on public feedback to the proposal in clause b).

f) delegate authority to the Regulatory Committee chairperson to make replacement appointments to the bylaw panel if a panel member is unavailable.

g) delegate authority through the Chief Executive to a manager responsible for bylaws:
   i) to appoint staff to receive public feedback at ‘Have Your Say’ events
   ii) to make any amendments to the proposal in clause b) to correct errors, omissions or to reflect decisions made by the Regulatory Committee or the Governing Body.

Horopaki Context

Committee decided in May 2019 to amend the Cemeteries and Crematoria Bylaw

9. Te Ture ā-Rohe mo ngā Wāhi Tapu me ngā Whare Tahu Tupāpaku 2014 / Cemeteries and Crematoria Bylaw 2014 (Bylaw) manages activities at council cemeteries and crematoria.

10. This approach helps to minimise public safety risks, distress, nuisance, damage to property and heritage, and interference with ground maintenance and operational activities.

11. The Bylaw achieves this by providing a framework that enables council to make rules in a separate Cemeteries and Crematoria Code of Practice (Code).

12. The Regulatory Committee requested staff commencement the process to amend the Bylaw on 9 May 2019 (REG/2019/27). This decision followed completion of a statutory bylaw review under the Local Government Act 2002 and consideration of the review findings and options.

13. Council must use the special consultative procedure to amend the Bylaw, including to:
   • determine that the amended bylaw meets legislative criteria
   • adopt a statement of proposal, including the proposed amended bylaw, for public consultation
   • decide on any bylaw amendments after consideration of public feedback.

Tātaritanga me ngā tohutohu

Analysis and advice

The Bylaw amendments clarify wording and make it easier to understand

14. The Statement of Proposal (Attachment A) implements the committee’s decision to amend the Bylaw to clarify its wording to make it easier to read, understand and comply with.

15. The amended Bylaw has been prepared in accordance with statutory requirements. It:
   • is a more appropriate form of bylaw because it uses a structure and words that are easier to read and understand, and make compliance easier
   • has no implications under, and is not inconsistent with, the New Zealand Bill of Rights Act 1990.

---

11 See Local Government Act 2002, s158.
Tauākī whakaaweawe āhuarangi
Climate impact statement
16. There are no implications for climate change arising from this decision.

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera
Council group impacts and views
17. The proposal impacts the operation of units across the council group involved in cemeteries, crematoria and heritage. Those units are aware of the impacts of the proposal and their implementation role.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe
Local impacts and local board views
18. In preparing the proposal, staff sought the views of the Aotea / Great Barrier Local Board in July 2020 on a draft version because the Bylaw impacts local governance.14
19. The local board supported the draft proposal for public consultation (GBI/2020/66).

Tauākī whakaaweawe Māori
Māori impact statement
20. The Bylaw has significance for Māori as urupā are wāhi tapu.
21. Mana whenua, and mataawaka kaumatua and kuia raised concerns about the need for more land for mana whenua and council urupā, use of adornments, and ash scattering (particularly in waterways).
22. These concerns are not within the scope of the proposal:
   • land for urupā is addressed through the Auckland Unitary Plan
   • adornments will be addressed through amendments to the Code
   • ash scattering outside of council cemeteries and crematoria is being addressed through non-regulatory approaches (GB/2019/22). Advice is being sought from the Mana Whenua Kaitiaki Forum on mana whenua’s level of interest in discussing scattering of ashes with other cultures.
23. Mana whenua and mataawaka will have the opportunity to give feedback on the proposal during public consultation.

Ngā ritenga ā-pūtea
Financial implications
24. There are no financial implications arising from this decision as public notification and engagement costs are provided within existing budgets.

Ngā raru tūpono me ngā whakamaurutanga
Risks and mitigations
25. There are risks that the proposal does not reflect the views of the public and that a COVID-19 outbreak prevents in-person public consultation. These risks are partly mitigated by the opportunity for public feedback, online or phone-based ‘Have Your Say’ events and bylaw panel deliberations.

---

13 Limitations to freedoms of expression, manifestation of religion and belief, and of minorities to enjoy their culture and practice their religion are minor and justified to meet the Bylaw’s objective.
14 The Aotea / Great Barrier Local Board has delegated authority over open cemeteries in its local board area under Te Tahu Taungahuru Te Mahere Taungahuru 2018 – 2028, The 10-year Budget Long-Term Plan 2018 – 2028.
Ngā koringa ā-muri

Next steps

1 September 2020
Regulatory Committee finalises proposal, recommends adoption for public consultation and appointment of bylaw panel

24 September 2020
Governing Body adopts proposal for public consultation

October 2020
Public consultation (four weeks)
Online feedback and Have Your Say events

Dec 2020 or Feb 2021 (tbc)
Public feedback report circulated to local boards

Dec 2020 or Feb 2021 (tbc)
Local boards resolve formal input on public feedback to Regulatory Committee

March 2021
Opportunity for local boards to present input directly to the bylaw panel
Bylaw panel deliberates

April 2021
Governing Body receives bylaw panel report, finalises and adopts bylaw

Ngā tāpirihanga
Attachments

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<td>Statement of proposal to amend the Cemeteries and Crematoria Bylaw 2014</td>
<td>147</td>
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Ngā kaihaina
Signatories

<table>
<thead>
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<th>Author</th>
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<td>Author</td>
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<td>Author</td>
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</tbody>
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Proposal to amend the Cemeteries and Crematoria Bylaw 2014

Page 146
Helping to maintain and operate council cemeteries and crematoria

Minimising safety risks, distress, nuisance, damage and interference with operations

Enabling a Cemeteries and Crematoria Code of Practice to be made to manage activities at council owned or operated cemeteries and crematoria
1 Have your say

Helping to maintain and operate council cemeteries and crematoria

Aucklanders visit council owned or operated cemeteries and crematoria every day (for example Waitakere Cemetery or the Manukau Memorial Gardens), to farewell or visit loved ones or to enjoy the area as a park.

The use of council cemeteries and crematoria by the public and contractors can cause issues. For example, unsecured adornments, improperly installed monuments, and people who engage in anti-social behaviour such as drinking and driving on grass can cause public safety risks, distress, nuisance, damage to property and heritage, and interference with ground maintenance and operational activities.

How Auckland Council keeps you safe

We use a bylaw to enable us to make a code of practice that manages activities in council owned or operated cemeteries and crematoria.

The current ability to make a code of practice is included in the Te Kaunihera o Tāmaki Makaurau Te Ture ā-Rohe mo ngā Wāhi Tapu me ngā Whare Tahu Tūpāpaku 2014 / Auckland Council Cemeteries and Crematoria Bylaw 2014 (the Bylaw).

Improving how we make a Cemeteries and Crematoria Code of Practice

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

We propose changes that would make the Bylaw easier to read and understand.

Other key aspects of the current Bylaw and its implementation will remain unchanged, for example:

- our ability to make and amend a code of practice would be retained
- the existing Cemeteries and Crematoria Code of Practice 2014 would continue to apply
- the Bylaw would continue to only regulate activities on council cemeteries and crematoria
- the ability for all local boards and the Governing Body to make decisions about cemetery development and maintenance will remain.

We want to know what you think

Starting on [date] through to [date], we want you to tell us what you think about the proposed changes to the Auckland Council Cemeteries and Crematoria Bylaw 2014.

Visit www.aucklandcouncil.govt.nz/have-your-say for more information, to give your feedback and to find out where you can drop in to a ‘have your say’ event.
2 What is the Bylaw

The Te Kaunihera o Tāmaki Makaurau Te Ture ā-Rohe mo ngā Wāhi Tapu me ngā Whare Tahu Tūpāpaku 2014 / Auckland Council Cemeteries and Crematoria Bylaw 2014 (the Bylaw) was made on 31 July 2014.

The purpose of the Bylaw is to manage activities at council cemeteries and crematoria. This approach helps minimise public safety risks, distress, nuisance, damage to property and heritage, and interference with ground maintenance and operational activities.

The Bylaw seeks to achieve this by enabling us to make rules for activities at council cemeteries and crematoria in a separate Cemeteries and Crematoria Code of Practice.

Cemeteries and Crematoria Bylaw 2014 framework
What council proposes to change

Improving how we make a Cemeteries and Crematoria Code of Practice

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

We propose changes to the Cemeteries and Crematoria Bylaw 2014 to better minimise public safety risks, distress, nuisance, damage to property and heritage, and interference with ground maintenance and operational activities from the use of council cemeteries and crematoria.

The proposed changes are listed below.

<table>
<thead>
<tr>
<th>Proposed change</th>
<th>Reasons for proposed change</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Clarify Bylaw wording to make it easier to understand.</td>
<td>• Provides rules about how we make a code of practice that are easier to read and understand.</td>
</tr>
</tbody>
</table>

Other key aspects of the current Bylaw and its implementation will remain unchanged, for example:

• our ability to make and amend a code of practice would be retained
• the existing Cemeteries and Crematoria Code of Practice 2014 would continue to apply
• the Bylaw would continue to only regulate activities on council cemeteries and crematoria (for example, the Bylaw does not regulate burial, cremation or ash scattering outside of council cemeteries and crematoria, and does not regulate the funeral services sector)
• the ability for all local boards (for closed cemeteries), and the Governing Body and Aotea / Great Barrier Local Board (for open cemeteries) to make decisions about cemetery development and maintenance will remain.

If you want to know more, Appendix A shows what the proposed amended Cemeteries and Crematoria Bylaw would look like. Appendix B provides a copy of the existing Cemeteries and Crematoria Bylaw 2014. Appendix C provides a summary of the differences between the existing and amended bylaw.
4 How we implement the Bylaw

We make a Cemeteries and Crematoria Code of Practice

We made the existing Cemeteries and Crematoria Code of Practice in 2014 (GB/2014/67). The code of practice includes rules about burial, cremation, disinterment, monuments, adornments, Wāhi Tapu Māori Areas, ground maintenance and record-keeping at council cemeteries and crematoria.

The code of practice will be updated following the adoption of the amended Bylaw.

When making, amending or revoking the code of practice, council must comply with decision-making requirements under the Local Government Act 2002, for example assessing options and considering people’s views.

We enforce the Cemeteries and Crematoria Code of Practice

The Bylaw requires people to comply with the Cemeteries and Crematoria Code of Practice.

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

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

Decisions leading to the proposed changes

The [Local Government Act 2002](http://www.aucklandcouncil.govt.nz) requires the council to review its bylaws periodically to determine whether they are effective, efficient and still necessary to address the problem. We also check that the Bylaw is not inconsistent with the [New Zealand Bill of Rights Act 1990](http://www.aucklandcouncil.govt.nz).

We reviewed the existing Bylaw by engaging with stakeholders and undertaking research. We reported our findings and considered options in response to the findings at meetings in April and May 2019.

This statement of proposal was approved for public consultation by our Governing Body in September 2020. This begins the formal process to make changes to the Cemeteries and Crematoria Bylaw 2014.

Bylaw review and approval process

- **April 2019**
  - Findings report
  - Review of how well the current Bylaw is working (REG/2019/20)

- **May 2019**
  - Options report
  - Considered whether to keep the Bylaw, improve it, make a new bylaw or have no bylaw (REG/2019/27)

- **June 2020**
  - Proposal developed
  - Statement of Proposal developed to amend Cemeteries and Crematoria Bylaw 2014

- **July 2020**
  - Local board input
  - Aotea / Great Barrier Local Board provides formal input on proposal ahead of public consultation

- **Sept 2020**
  - Proposal finalised
  - Regulatory Committee finalises proposal and Governing Body adopts it for consultation

Go to: [www.aucklandcouncil.govt.nz/have-your-say](http://www.aucklandcouncil.govt.nz/have-your-say) if you would like to view more information about the above decisions, including the findings from the statutory bylaw review and options we considered to respond to those findings.
We want your input

You have an opportunity to tell us your views.

We would like to know what you think about the proposed changes to the Cemeteries and Crematoria Bylaw.

Anyone can give feedback on the proposal, including individuals, organisations and businesses.

Give us your feedback

Starting on #month 2020 through to #month 2020 we are asking for feedback on proposed changes to the Auckland Council Cemeteries and Crematoria Bylaw 2014. Anyone can give feedback.

You can give your feedback:

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

Visit www.aucklandcouncil.govt.nz/have-your-say for more information.

Online services are available at our libraries.

Your name and feedback will be available to the public in our reports and online. All other personal details will remain private.
Appendix A: Amended Auckland Council Cemeteries and Crematoria Bylaw 2014
Te Ture ā-Rohe mo ngā Wāhi Tapu me ngā Whare Tahu Tupāpaku 2014 Cemeteries and Crematoria Bylaw 2014

(as at dd month 2021)

made by the Governing Body of Auckland Council

in resolution GB/2014/67

on 31 July 2014

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

The use of council cemeteries and crematoria can result in issues including ground maintenance problems from unsecured adornments, public safety risks from improperly installed monuments and distress from antisocial behaviour.

The purpose of this Bylaw is to minimise public safety risks, distress, nuisance, damage to property and heritage, and interference with ground maintenance and operational activities from the use of council cemeteries and crematoria by the public and contractors by –

- using a code of practice to regulate activities on council owned or operated cemeteries and crematoria in clause 6
- setting out that council may make a code of practice in clause 7
- enabling council to prescribe fees for matters relating to council owned or operated cemeteries in clause 7.

Other parts of this Bylaw assist with its administration by –

- stating the name of this Bylaw, when it comes into force and where it applies in clauses 1, 2 and 3
- stating the purpose of this Bylaw and defining terms in clauses 4 and 5
- referencing council’s powers to enforce this Bylaw in clauses 8 and 9 and penalties in clause 10
- ensuring existing resolutions, approvals and other decisions under legacy bylaws and existing codes of practice continue to apply where relevant in Part 5.

Compliance with this Bylaw does not remove the need to comply with all other applicable statues, regulations, bylaws and rules of law. For example, the Burial and Cremation Act 1964.
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11 | Existing resolutions, approvals and other decisions continue to apply | 7
12 | Existing code of practice continues to apply | 8
13 | Existing inquiries to be completed under this Bylaw | 8
Title
(1) This Bylaw is the Te Ture ā-Rohe mo ngā Wāhi Tapu me ngā Whare Tahu Tupāpaku 2014 / Cemeteries and Crematoria Bylaw 2014.

Clause 1 amended in accordance with Clause 2(2).

Commencement
(1) This Bylaw comes into force on 1 November 2014.
(2) Amendments to this Bylaw by resolution GB/####/## come into force on 01 June 2021.

Related information about amendments
Council decided on dd month year to make various amendments to the Bylaw. The majority of the amendments were to make the Bylaw easier to read. Key changes included clarifying wording, structure and related information notes.
A comparison of the Bylaw before and after the amendments can be viewed in Attachment # to Item # of the Auckland Council Governing Body meeting agenda dated #.

Application
(1) This Bylaw applies to Auckland.

Part 1
Preliminary provisions

Purpose
(1) The purpose of this Bylaw is to minimise public safety risks, distress, nuisance, damage to property and heritage, and interference with ground maintenance and operational activities from the use of council cemeteries and crematoria by the public and contractors.

Clause 4 amended in accordance with Clause 2(2).

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

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

Related information
The Local Government (Auckland Council) Act 2009 enabled the Local Government Commission to determine Auckland’s boundaries in a map titled LGC-Ak-R1. The boundaries were formally adopted by Order in Council on 15 March 2010, and came into effect on 1 November 2010.
Council means the Governing Body of the Auckland Council or any person
delegated or authorised to act on its behalf.

Related information about who can make decisions
Council has delegated –
- the making, amending and revoking of a code of practice in clause 7 to the Regulatory
  Committee as at 1 November 2014 (GB/2014/67)
- responsibility for ensuring compliance with this Bylaw to Auckland Cemeteries, and to
  both Auckland Cemeteries and the Waikumete Urupe Komiti in relation to Waikumete
  Cemetery as at 1 November 2014 (GB/2014/67)
- authority to prescribe fees for matters relating to council owned or operated cemeteries to
  Auckland Cemeteries as at 1 November 2014 (GB/2014/67).
- under the Te Tahu Taungahuru Te Mahere Taungahuru 2018 – 2028, The 10-year
  Budget Long-term Plan 2018 – 2028, Volume 2, 3.5(b) and (c), decision-making on –
  o open cemeteries in Auckland (excluding Aotea Great Barrier Island) to the Governing
    Body
  o operational cemeteries on Aotea Great Barrier Island to the Aotea Great Barrier
    Local Board
  o cemeteries that are no longer in regular active use and are functioning as local parks
    to local boards.

(2) A term or expression defined in the Burial and Cremation Act 1964 and used in
this Bylaw has the same meaning as it has in that Act, unless defined differently
in this Bylaw.

Related information about terms and expressions in the Burial and Cremation Act 1964
The Burial and Cremation Act 1964 (as reprinted on 24 October 2019) defines the terms
cemeteries and crematoria.

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

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

Clause 5 amended in accordance with Clause 2[2].
Part 2

Activities in council cemeteries and crematoria

6 A person must comply with any cemeteries and crematoria code of practice

(1) A person must comply with any code of practice for council owned or operated cemeteries or crematoria made in accordance with clause 7.

(2) However, clause 6(1) does not apply to any person acting in compliance with a lawful direction of council.

Related information about council’s code of practice
- Any code of practice applies to both open and closed council owned or operated cemeteries and crematoria.
- Council owns and operates 29 open cemeteries and 25 closed cemeteries, including three crematoria. A full list of these cemeteries and crematoria can be found on council’s website.
- More information can be found on council’s website about council’s code of practice and fees relating to council owned or operated cemeteries and crematoria.

Clause 6 amended in accordance with Clause 2(2).

Part 3

Controls

7 Council may make a cemeteries and crematoria code of practice

(1) Council may make a code of practice and set fees to regulate activities on council owned or operated cemeteries and crematoria.

(2) Any code of practice made under clause 7(1) may prescribe rules and set fees for one or more of the following purposes –

(a) internment;
(b) disinterment;
(c) built structures;
(d) ground maintenance;
(e) records; and
(f) any other matters council considers relevant and reasonably necessary to achieve the purpose of the Bylaw.

Related information about the making of controls
- Council has delegated the making, amending and revoking of codes of practice by resolution under clause 7 to the Regulatory Committee as at 1 November 2014 (GB/2014/87).
- To make a decision, council must comply with the decision-making requirements under Subpart 1 of Part 6 of the Local Government Act 2002.

Clause 7 amended in accordance with Clause 2(2).
Part 4

Enforcement powers, offences and penalties

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

(1) Council may use its powers under the Burial and Cremation Act 1964 and Local Government Act 2002 to enforce this Bylaw.

<table>
<thead>
<tr>
<th>Related information about enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Council powers under the Burial and Cremation Act 1964 (as reprinted on 24 October 2019) and Local Government Act 2002 (as reprinted on 26 March 2020) include court injunction (section 162), removal of works (section 163), seizure and disposal of property (sections 164, 165, 168), powers of entry (sections 171, 172, 173), cost recovery for damage (sections 175, 176) and power to request name and address (section 178).</td>
</tr>
<tr>
<td>• Council can also use other methods as a service provider to encourage compliance, for example providing advice, information or warnings, or trespassing a person.</td>
</tr>
</tbody>
</table>

Clause 8 replaced in accordance with Clause 2(2).

9 Removal of materials or things

(1) Council may under section 163 of the Local Government Act 2002, remove or alter any material or thing in breach of this Bylaw and may recover any costs of removal or alteration from the person who committed the breach.

Clause 9 replaced in accordance with Clause 2(2).

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

(1) A person who fails to comply with Part 2 of this Bylaw commits an offence and is liable to a penalty under the Burial and Cremation Act 1964 or the Local Government Act 2002.

<table>
<thead>
<tr>
<th>Related information about penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>A person who is convicted of an offence against a bylaw is liable to a fine not exceeding $20,000 under section 242 of the Local Government Act 2002 (as reprinted on 26 March 2020).</td>
</tr>
<tr>
<td>Council has chosen not to set fines in this Bylaw at this time under the Burial and Cremation Act 1964.</td>
</tr>
</tbody>
</table>

Clause 10 replaced in accordance with Clause 2(2).

Part 5

Savings and transitional provisions

11 Existing resolutions, approvals and other decisions continue to apply

(1) This clause applies to things resolved, made or approved under –

(a) Rodney District Council General Bylaw: 1998 Chapter 2 Cemeteries
(b) North Shore City Council [Part 10] Cemeteries and Crematorium Bylaw 2000;
(c) Auckland City Council Bylaw No. 7 Cemeteries 2008;
(d) Waitakere City Council Public Places Bylaw 2010 Part 4 [12] Cemeteries and Crematoria;
(e) Waitakere City Council Urupa (Māori Burial Site) Bylaw 2010;
(f) Manukau City Council Chapter 4 Cemeteries and Crematoria of the Manukau City Consolidated Bylaw 2008;
(g) Papakura District Council Cemeteries Bylaw 2008;
(h) Franklin District Council Cemeteries Bylaw 2008.

(2) Every resolution or other decision made continues to apply until replaced or revoked by council.

(3) Every approval granted that applied on 31 May 2021 continues to apply until the expiration date specified in that approval or until replaced or revoked by council.

Clause 11 replaced in accordance with Clause 2(2).

12 Existing code of practice continues to apply

(1) This clause applies to any code of practice made under this Bylaw prior to amendments in clause 2(2) coming into force.

(2) Every code of practice made continues to apply as if made after the amendments to this Bylaw until replaced or revoked by council, whichever comes first.

Clause 12 replaced in accordance with Clause 2(2).

13 Existing inquiries to be completed under this Bylaw

(1) Any compliance or enforcement action by council under this Bylaw that was not completed prior to amendments in clause 2(2) coming into force will continue to be actioned under this Bylaw.

Clause 13 replaced in accordance with Clause 2(2).
### Related information, Bylaw history

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>01 November 2010</td>
<td>Made legacy bylaws about cemeteries and crematoria (Section 63 Local Government (Auckland Transitional Provisions) Act 2010)</td>
</tr>
<tr>
<td>01 November 2010</td>
<td>Commencement of legacy bylaws about cemeteries and crematoria (Section 63 Local Government (Auckland Transitional Provisions) Act 2010)</td>
</tr>
<tr>
<td>19 March 2014</td>
<td>Review of legacy bylaws about cemeteries and crematoria completed (RBC/2014/15)</td>
</tr>
<tr>
<td>27 March 2014</td>
<td>Proposal to make new bylaw about cemeteries and crematoria and to revoke legacy bylaws (GB/2014/29)</td>
</tr>
<tr>
<td>31 July 2014</td>
<td>Made the Auckland Council Cemeteries and Crematoria Bylaw 2014 (GB/2014/67)</td>
</tr>
<tr>
<td>19 November 2014</td>
<td>Public notice of making of the Auckland Council Cemeteries and Crematoria Bylaw 2014 and revocation of legacy bylaws</td>
</tr>
<tr>
<td>01 November 2014</td>
<td>Commencement of Auckland Council Cemeteries and Crematoria Bylaw 2014 and revocation of legacy bylaws (GB/2014/67)</td>
</tr>
<tr>
<td>11 April 2019</td>
<td>Review of Auckland Council Cemeteries and Crematoria Bylaw 2014 completed (REG/2019/20)</td>
</tr>
<tr>
<td>## month 2020</td>
<td>Proposal to make a new bylaw about cemeteries and crematoria (GB/2020/##)</td>
</tr>
<tr>
<td>## April 2021</td>
<td>Amended the Auckland Council Cemeteries and Crematoria Bylaw 2014 (GB/2021/##)</td>
</tr>
<tr>
<td>TBC</td>
<td>Public notice of amending the Auckland Council Cemeteries and Crematoria Bylaw 2014</td>
</tr>
<tr>
<td>## month 2021</td>
<td>Commencement of amendments to the Auckland Council Cemeteries and Crematoria Bylaw 2014 (GB/2021/##)</td>
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</tbody>
</table>


**Related information, next bylaw review**

This Bylaw must be reviewed by 11 April 2029. If not reviewed by this date, the Bylaw will expire on 11 April 2031.
Cemeteries and Crematoria Bylaw 2014

Te Ture ā-Rohe mo ngā Wāhi Tapu me ngā Whare Tahu Tupāpaku 2014

(Last updated: 31 July 2014)

Governing Body of Auckland Council

Resolution in Council

On
31 July 2014

Pursuant to the Local Government Act 2002 and the Burial and Cremation Act 1984, the Governing Body of Auckland Council makes the following bylaw.
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**Part 1**

**Preliminary provisions**

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<td>Purpose</td>
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<td>5</td>
<td>Interpretation</td>
<td>3</td>
</tr>
</tbody>
</table>
1 Title

(1) This bylaw is the Cemeteries and Crematoria Bylaw 2014.

2 Commencement

(1) This bylaw comes into force on 1 November 2014.

3 Application

(1) This bylaw applies to Auckland.

Part 1
Preliminary provisions

4 Purpose

(1) The purpose of this bylaw is to regulate activities to maintain, preserve, and embellish council owned or operated cemeteries and crematoria.

5 Interpretation

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

Cemetery means any land vested in or under the control of the council from time to time, and dedicated as a cemetery.

Council means the governing body of the Auckland council or any person delegated to act on its behalf.

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

(3) Unless the context requires another meaning, a term or expression that is defined in the Burial and Cremation Act 1964 and used in this bylaw, but not defined, has the meaning given by that Act.

(4) Any explanatory notes are for information purposes, do not form part of this bylaw, and may be inserted, amended or revoked without formality.

(5) The Interpretation Act 1999 applies to this bylaw.

Part 2
Regulation of cemeteries and crematoria

6 Cemeteries and Crematoria code of practice

(1) The council may make, amend or revoke a code of practice that establishes rules for using council owned or operated cemeteries and crematoria.
(2) Without limitation, a code of practice may include rules on:
   a) Interment;
   b) Disinterment;
   c) Built structures;
   d) Ground maintenance; and
   e) Records.

(3) Every person must comply with any code of practice made under this bylaw.

7 Procedure for making a code of practice

(1) The council must, before making, amending or revoking a code of practice in clause 6, –
   a) comply with the requirements under Subpart 1 of Part 6 of the Local Government Act 2002;
   b) consult with any affected operators;
   c) be satisfied that –
      i. the standards are the minimum necessary to ensure that the purpose of the bylaw will be met; and
      ii. the recommendations for best practice (if any) are appropriate; and
   d) have regard to –
      i. the feasibility and practicality of effecting a transition from current practices to new practices and any adverse effects that may result from such a transition; and
      ii. any other matters considered relevant by the council.

(2) A code of practice made, amended or revoked under subclause (1) must be publicly notified.

8 Fees

(1) The council may prescribe fees for matters relating to council owned or operated cemeteries and crematoria.

9 Exemptions

(1) A person is not in breach of this bylaw if their act or omission was in compliance with the directions of an authorised officer of the council.

Part 3
Enforcement, removal of things, offences, penalties

10 Enforcement
(1) The council may use its powers under the Local Government Act 2002 and the Burial and Cremation Act 1964 to enforce this bylaw.

11 Removal of material or things

(1) The council may require any person by written notice to remedy any breach of this bylaw.

(2) In addition to the powers conferred on it by any other enactment, the council may remove or cause to be removed from any cemetery or crematoria any material or thing in breach of the bylaw.

(3) The council may recover from the person who committed the breach of this bylaw the appropriate costs in connection with the removal of the material or thing.

12 Removal of construction

(1) The council may, pursuant to section 163 of the Local Government Act 2002, remove or alter a work or thing that has been constructed in breach of this bylaw and may recover any costs of removal or alteration from the person who committed the breach.

13 Offences and penalties

(1) A person who fails to comply with this bylaw commits a breach of this bylaw and is liable to a penalty under the Local Government Act 2002 and/or the Burial and Cremation Act 1964.

Part 4
Savings, transitional provisions and revocation

14 Savings and transitional provisions

(1) This clause applies to:

a) Rodney District Council General Bylaw: 1998 Chapter 2 Cemeteries;
b) North Shore City Council [Part 10] Cemeteries and Crematorium Bylaw 2000;
c) Auckland City Council Bylaw No. 7 Cemeteries 2008;
e) Waitakere City Council Urupa (Māori Burial Site) Bylaw 2010;
f) Manukau City Council Chapter 4 Cemeteries and Crematoria of the Manukau City Consolidated Bylaw 2008;
g) Papakura District Council Cemeteries Bylaw 2008;
h) Franklin District Council Cemeteries Bylaw 2008
(2) Any resolution or other decision made under the bylaws referred to in subclause (1) remains in force in the area to which it applied until revoked or replaced by an equivalent resolution or decision made by the council under this bylaw.

(3) Any licence, consent, permit, dispensation, permission or other form of approval made under the bylaws referred to in subclause (1) continues in force but:
   a) expires on the date specified in that approval; or
   b) if no expiry date is specified, expires 12 months from the date that this bylaw becomes effective; and
   c) can be renewed only by application made and determined under this bylaw.

(4) Any application for a consent, permit, dispensation, permission or other form of approval made under a bylaw referred to in subclause (1) that was filed the day before on which this bylaw commences must be dealt with by the council as if it had been made under this bylaw.

15 Revocations

(1) The bylaws referred to in clause 14(1) are revoked.
Additional Information to Cemeteries and Crematoria Bylaw 2014

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

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

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<td>Offences and Penalties</td>
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</tr>
</tbody>
</table>
## Section 1

### History of Bylaw

<table>
<thead>
<tr>
<th>Action</th>
<th>Description</th>
<th>Date of Decision</th>
<th>Decision Reference</th>
<th>Commencement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Make</td>
<td>Following cemeteries and crematoria bylaws in force on 31 Oct 2010 deemed to have been made by Auckland Council</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• North Shore City Council [Part 10] Cemeteries and Crematorium B bylaw 2000</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>• Auckland City Council B bylaw No. 7 Cemeteries 2008</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Waitakere City Council Public Places B bylaw 2010 Part 4 [12] Cemeteries and Crematoria</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Waitakere City Council Urupa (Maori Burial Site) B bylaw 2010</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Manukau City Council Chapter 4 Cemeteries and Crematoria of the Manukau City Consolidated B bylaw 2008</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Papakura District Council Cemeteries B bylaw 2008</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Franklin District Council Cemeteries B bylaw 2008</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• North Shore City Council [Part 10] Cemeteries and Crematorium B bylaw 2000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Auckland City Council B bylaw No. 7 Cemeteries 2008</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Waitakere City Council Public Places B bylaw 2010 Part 4 [12] Cemeteries and Crematoria</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Waitakere City Council Urupa (Maori Burial Site) B bylaw 2010</td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>• Manukau City Council Chapter 4 Cemeteries and Crematoria of the Manukau City Consolidated B bylaw 2008</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>• Papakura District Council Cemeteries B bylaw 2008</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Franklin District Council Cemeteries B bylaw 2008</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Section 2

### Related Documents

<table>
<thead>
<tr>
<th>Document Title</th>
<th>Description of Document</th>
<th>Location of Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cemeteries and Crematoria Code of Practice</td>
<td>Sets rules for using council owned or operated cemeteries and crematoria</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
<tr>
<td>Decision Minutes and Agenda</td>
<td>Decisions on submissions to proposed cemeteries and crematoria bylaw</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
<tr>
<td>Hearings Report</td>
<td>Background and summary of submissions to proposed cemeteries and crematoria bylaw</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
<tr>
<td>Cemeteries and Crematoria B bylaw Review Statement of Proposal</td>
<td>Provides background to the cemeteries and crematoria code of practice and bylaw</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
<tr>
<td>Long Term Plan</td>
<td>Outlines financial plans</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
<tr>
<td>Annual Plan</td>
<td>Sets cemeteries and crematoria fees</td>
<td><a href="http://www.aucklandcouncil.govt.nz">www.aucklandcouncil.govt.nz</a></td>
</tr>
<tr>
<td>The Local Government Act 2002</td>
<td>Provides certain functions, duties, powers and penalties to make and enforce this bylaw</td>
<td><a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a></td>
</tr>
<tr>
<td>The Burial and Cremation Act 1964</td>
<td>Provides certain functions, duties, powers and penalties to make and enforce this bylaw</td>
<td><a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a></td>
</tr>
<tr>
<td>Bylaws Act 1910</td>
<td>Provides for certain matters related to the validity of bylaws</td>
<td><a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a></td>
</tr>
<tr>
<td>Interpretations Act 2009</td>
<td>Provides for certain matters related to the interpretation of bylaws</td>
<td><a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a></td>
</tr>
</tbody>
</table>

## Section 3

### Delegations

<table>
<thead>
<tr>
<th>Clause</th>
<th>Function, Duty, Power to be Delegated</th>
<th>Delegated Authority</th>
<th>Date of Delegation Decision</th>
<th>Decision Reference</th>
<th>Commencement of Delegation</th>
</tr>
</thead>
<tbody>
<tr>
<td>All</td>
<td>All powers, duties and functions.</td>
<td>Cemetery Managers – Tier 6</td>
<td>31 July 2014</td>
<td>GB/2014/67</td>
<td>1 November 2014</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Waikumete</td>
<td>31 July 2014</td>
<td>GB/2014/67</td>
<td>1 November 2014</td>
</tr>
<tr>
<td>8</td>
<td>Prescribe fees for matters relating to council owned or operated cemeteries</td>
<td>Regional and Specialist Parks Department – Tier 5 (Manager,)</td>
<td>31 July 2014</td>
<td>GB/2014/67</td>
<td>1 November 2014</td>
</tr>
</tbody>
</table>
Section 4

<table>
<thead>
<tr>
<th>Legislative Provision</th>
<th>Description of Legislative Provision</th>
</tr>
</thead>
</table>
| Part 8 of Local Government Act 2002 | 162 Injunctions restraining commission of offences and breaches of bylaws  
163 Removal of works in breach of bylaws  
164 Seizure of property not on private land  
168 Power to dispose of property seized and impounded  
175 Power to recover for damage by wilful or negligent behaviour  
176 Costs of remediing damage arising from breach of bylaw  
178 Enforcement officers may require certain information  
186 Local authority may execute works if owner or occupier defaults  
187 Recovery of cost of works by local authority |
| Part 8 of Burial and Cremation Act 1964 | 54AA Offences concerning doctor’s certificate or certificate relating to stillbirth  
54 Offences concerning burials  
55 Unlawful exhumation  
56 Offences concerning cremation  
57 Trespass by animals |

Section 5

<table>
<thead>
<tr>
<th>Clause</th>
<th>Description of Offence</th>
<th>Fine</th>
<th>Infringement Fee</th>
<th>Other Penalty</th>
</tr>
</thead>
</table>
| All    | A person who fails to comply with Part 2 or Part 3 of this bylaw commits a breach of this bylaw and is liable to a penalty under the Local Government Act 2002 and / or the Burial and Cremation Act 1964. | Under section 242 of the Local Government Act 2002 person who is convicted of an offence against a bylaw is liable to a fine not exceeding $20,000.  
Under section 18 of the Burial and Cremation Act 1964, all bylaws made by a local authority under this Act shall be made in the same manner in all respects as if they were bylaws made pursuant to the Local Government Act. | $nil | }
**Appendix C: Comparison of existing Cemeteries and Crematoria Bylaw and proposed amended Bylaw**

The table below shows the current text of the Cemeteries and Crematoria Bylaw 2014 compared with proposed amendments.

The proposed amendments in Appendix A prevail in the event of differences between the proposed bylaw in Appendix A and the table below.

<table>
<thead>
<tr>
<th>Existing Bylaw</th>
<th>Bylaw with proposed amendments</th>
<th>Reasons</th>
</tr>
</thead>
</table>

**Summary**

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

The use of council cemeteries and crematoria can result in issues including ground maintenance problems from unsecured adornments, public safety risks from improperly installed monuments and distress from antisocial behaviour.

The purpose of this Bylaw is to minimise public safety risks, distress, nuisance, damage to property and heritage, and interference with ground maintenance and operational activities from the use of council cemeteries and crematoria by the public and contractors by –

- using a code of practice to regulate activities on council owned or operated cemeteries and crematoria in clause 6
- setting out that council may make a code of practice in clause 7
- enabling council to prescribe fees for matters relating to council owned or operated cemeteries in clause 7.

Other parts of this Bylaw assist with its administration by –

- stating the name of this Bylaw, when it comes into force and where it applies in clauses 1, 2 and 3
- stating the purpose of this Bylaw and defining terms in clauses 4 and 5
- referencing council’s powers to enforce this Bylaw in clauses 8 and 9 and penalties in clause 10
- ensuring existing resolutions, approvals and other decisions under legacy bylaws and existing codes of practice continue to apply where relevant in Part 5.

Compliance with this Bylaw does not remove the need to comply with all other applicable statues, regulations, bylaws and rules of law. For example, the Burial and Cremation Act 1964.
### Existing Bylaw

<table>
<thead>
<tr>
<th></th>
<th>Title</th>
<th>Bylaw with proposed amendments</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Title</td>
<td>(1) This Bylaw is the Te Ture a-Rohe mo ngā Wāhi Tapu me ngā Whare Tahu Tupāpaku 2014 / Cemeteries and Crematoria Bylaw 2014.</td>
<td>• Use of te reo Māori implements council’s Māori Language Policy.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Clause 1 amended in accordance with Clause 3(2).</td>
<td>• Improves certainty about what amendments were made and commencement date.</td>
</tr>
<tr>
<td>2</td>
<td>Commencement</td>
<td>(1) This Bylaw comes into force on 1 November 2014.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(1) This bylaw comes into force on 1 November 2014.</td>
<td>(2) Amendments to this Bylaw by resolution GB######## come into force on 01 June 2021.</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Application</td>
<td>(1) This bylaw applies to Auckland.</td>
<td></td>
</tr>
</tbody>
</table>

#### Related information about amendments

Council decided on dd month year to make various amendments to the Bylaw. The majority of the amendments were to make the Bylaw easier to read. Key changes included clarifying wording, structure and related information notes. A comparison of the Bylaw before and after the amendments can be viewed in Attachment # to Item # of the Auckland Council Governing Body meeting agenda dated #.

### Application

<table>
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<tr>
<th></th>
<th>Part 1 Preliminary provisions</th>
<th>Part 1 Preliminary provisions</th>
<th>Reasons</th>
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</thead>
<tbody>
<tr>
<td>4</td>
<td>Purpose</td>
<td>Purpose</td>
<td>• Clarifies purpose.</td>
</tr>
<tr>
<td></td>
<td>(1) The purpose of this bylaw is to regulate activities to maintain, preserve, and embellish council owned or operated cemeteries and crematoria.</td>
<td>(1) The purpose of this Bylaw is to minimise public safety risks, distress, nuisance, damage to property and heritage, and interference with ground maintenance and operational activities from the use of council cemeteries and crematoria by the public and contractors.</td>
<td></td>
</tr>
</tbody>
</table>

Clause 4 amended in accordance with Clause 3(2).
<table>
<thead>
<tr>
<th>Existing Bylaw</th>
<th>Bylaw with proposed amendments</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 Interpretation (1) In this bylaw, unless the context otherwise requires, –</td>
<td>5 Interpretation (1) In this Bylaw, unless the context otherwise requires, –</td>
<td>• Improves certainty.</td>
</tr>
</tbody>
</table>

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

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

**Cemetery** means any land vested in or under the control of the council from time to time, and dedicated as a cemetery.

**Council** means the governing body of the Auckland council or any person delegated to act on its behalf.

**Related information about who can make decisions**
Council has delegated –

- the making, amending and revoking of a code of practice in clause 7 to the Regulatory Committee as at 1 November 2014 (GBI/2014/67)
- responsibility for ensuring compliance with this Bylaw to Auckland Cemeteries, and to both Auckland Cemeteries and the Waikumete Urupe’ Komiti in relation to Waikumete Cemetery as at 1 November 2014 (GB1/2014/67)
- authority to prescribe fees for matters relating to council owned or operated cemeteries to Auckland Cemeteries as at 1 November 2014 (GB1/2014/67)
- under the Te Tahua Taungathuru Te Mahoro Taungahuru 2018 – 2028, The 10-year Budget Long-term Plan 2018 – 2028, Volume 2, 3.5(b) and (c), decision-making on –
  - open cemeteries in Auckland (excluding Aotea Great Barrier Island) to the Governing Body
  - operational cemeteries on Aotea Great Barrier Island to the Aotea Great Barrier Local Board
  - cemeteries that are no longer in regular active use and are functioning as local parks to local boards.

- Moved to clause 5(2) of amended bylaw for brevity.

- Improves certainty.
<table>
<thead>
<tr>
<th>Existing Bylaw</th>
<th>Bylaw with proposed amendments</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2) To avoid doubt, compliance with this bylaw does not remove the need to comply with all other applicable statutes, regulations, bylaws, and rules of law.</td>
<td>(2) A term or expression defined in the <strong>Burial and Cremation Act 1964</strong> and used in this Bylaw has the same meaning as it has in that Act, unless defined differently in this Bylaw.</td>
<td>• Moved to ‘Summary’ box as not necessary in clause.</td>
</tr>
<tr>
<td>(3) Unless the context requires another meaning, a term or expression that is defined in the Burial and Cremation Act 1964 and used in this bylaw, but not defined, has the meaning given by that Act.</td>
<td></td>
<td>• Removes unnecessary detail to improve certainty and provides related information for clarity.</td>
</tr>
<tr>
<td>(4) Any explanatory notes are for information purposes, do not form part of this bylaw, and may be inserted, amended or revoked without formality.</td>
<td>(3) Related information does not form part of this Bylaw and may be inserted, changed or removed without any formality.</td>
<td></td>
</tr>
<tr>
<td>(5) The Interpretation Act 1999 applies to this bylaw.</td>
<td>(4) The <strong>Interpretation Act 1999</strong> applies to this Bylaw. Clause 5 amended in accordance with Clause 2(2).</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Part 2</th>
<th>Activities in council cemeteries and crematoria</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 Cemeteries and Crematoria code of practice</td>
<td>6 A person must comply with any cemeteries and crematoria code of practice</td>
</tr>
<tr>
<td>(1) The council may make, amend or revoke a code of practice that establishes rules for using council owned or operated cemeteries and crematoria.</td>
<td>(1) A person must comply with any code of practice for council owned or operated cemeteries or crematoria made in accordance with clause 7.</td>
</tr>
<tr>
<td>(2) Without limitation, a code of practice may include rules on:</td>
<td>(2) However, clause 6(1) does not apply to any person acting in compliance with a lawful direction of council.</td>
</tr>
<tr>
<td>a) Interment;</td>
<td>Related information about council’s code of practice</td>
</tr>
<tr>
<td>b) Disinterment;</td>
<td>• Any code of practice applies to both open and closed council owned or operated cemeteries and crematoria.</td>
</tr>
<tr>
<td>c) Built structures;</td>
<td>• Council owns and operates 29 open cemeteries and 25 closed cemeteries, including three crematoria. A full list of these cemeteries and crematoria can be found on council’s website.</td>
</tr>
<tr>
<td>d) Ground maintenance; and</td>
<td>• More information can be found on council’s website relating to council owned or operated cemeteries and crematoria.</td>
</tr>
<tr>
<td>e) Records.</td>
<td>Clause 6 amended in accordance with Clause 2(2).</td>
</tr>
</tbody>
</table>

A person must comply with any cemeteries and crematoria code of practice.
<table>
<thead>
<tr>
<th>Existing Bylaw</th>
<th>Bylaw with proposed amendments</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>7 Procedure for making a code of practice</strong></td>
<td><strong>7 Council may make a cemeteries and crematoria code of practice</strong></td>
<td>• Clarifies how council may make a code of practice.</td>
</tr>
<tr>
<td>(1) The council must, before making, amending or revoking a code of practice in clause 6; –</td>
<td>(1) Council may make a code of practice and set fees to regulate activities on council owned or operated cemeteries and crematoria.</td>
<td></td>
</tr>
<tr>
<td>a) comply with the requirements under Subpart 1 of Part 6 of the Local Government Act 2002;</td>
<td>(2) Any code of practice made under clause 7(1) may prescribe rules and set fees for one or more of the following purposes –</td>
<td></td>
</tr>
<tr>
<td>b) consult with any affected operators;</td>
<td>(a) interment;</td>
<td></td>
</tr>
<tr>
<td>c) be satisfied that –</td>
<td>(b) disinterment;</td>
<td></td>
</tr>
<tr>
<td>i. the standards are the minimum necessary to ensure that the purpose of the bylaw will be met; and</td>
<td>(c) built structures;</td>
<td></td>
</tr>
<tr>
<td>ii. the recommendations for best practice (if any) are appropriate; and</td>
<td>(d) ground maintenance;</td>
<td></td>
</tr>
<tr>
<td>d) have regard to –</td>
<td>(e) records; and</td>
<td></td>
</tr>
<tr>
<td>i. the feasibility and practicality of effecting a transition from current practices to new practices and any adverse effects that may result from such a transition; and</td>
<td>(f) any other matters council considers relevant and reasonably necessary to achieve the purpose of the Bylaw.</td>
<td></td>
</tr>
<tr>
<td>ii. any other matters considered relevant by the council.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2) A code of practice made, amended or revoked under subclause (1) must be publicly notified.</td>
<td></td>
<td></td>
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<tr>
<td><strong>8 Fees</strong></td>
<td><strong>8</strong></td>
<td></td>
</tr>
<tr>
<td>(1) The council may prescribe fees for matters relating to council owned or operated cemeteries and crematoria.</td>
<td><strong>Clarifies how council may make a code of practice.</strong></td>
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</tr>
</tbody>
</table>

**Related information about the making of controls**

- Council has delegated the making, amending and revoking of codes of practice by resolution under clause 7 to the Regulatory Committee as at 1 November 2014 (GB/2014/47).
- To make a decision, council must comply with the decision-making requirements under Subpart 1 of Part 6 of the Local Government Act 2002.

Clause 7 amended in accordance with Clause 2(2).
### Attachment A

<table>
<thead>
<tr>
<th>Item 10</th>
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<table>
<thead>
<tr>
<th>Existing Bylaw</th>
<th>Bylaw with proposed amendments</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>9 Exemptions</strong>&lt;br&gt;(1) A person is not in breach of this bylaw if their act or omission was in compliance with the directions of an authorised officer of the council.</td>
<td></td>
<td>• Addressed in Clause 6 to be easier to read and understand.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Part 3&lt;br&gt;Enforcement, removal of things, offences, penalties</th>
<th>Part 4&lt;br&gt;Enforcement powers, offences and penalties</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>10 Enforcement</strong>&lt;br&gt;(1) The council may use its powers under the Local Government Act 2002 and the Burial and Cremation Act 1964 to enforce this bylaw.</td>
<td><strong>8 Council can use statutory powers and other methods to enforce this Bylaw</strong>&lt;br&gt;(1) Council may use its powers under the <em>Burial and Cremation Act 1964</em> and <em>Local Government Act 2002</em> to enforce this Bylaw.</td>
<td>• Clarifies enforcement powers.</td>
</tr>
</tbody>
</table>

**Related Information about enforcement**
- Council powers under the *Burial and Cremation Act 1964* (as reprinted on 24 October 2019) and *Local Government Act 2002* (as reprinted on 26 March 2020) include court injunction (section 162), removal of works (section 163), seizure and disposal of property (sections 164, 165, 168), powers of entry (sections 171, 172, 173), cost recovery for damage (sections 175, 176) and power to request name and address (section 178).
- Council can also use other methods as a service provider to encourage compliance, for example providing advice, information or warnings, or trespassing a person.

Clause 8 replaced in accordance with Clause 2(2).

| **11 Removal of material or things**<br>(1) The council may require any person by written notice to remedy any breach of this bylaw.<br>(2) In addition to the powers conferred on it by any other enactment, the council may remove or cause to be removed from any cemetery or crematoria any material or thing in breach of the bylaw.<br>(3) The council may recover from the person who committed the breach of this bylaw the appropriate costs in connection with the removal of the material or thing. | **9 Removal of materials or things**<br>(1) Council may under section 163 of the Local Government Act 2002, remove or alter any material or thing in breach of this Bylaw and may recover any costs of removal or alteration from the person who committed the breach. | • Removes unnecessary detail to improve clarity. |

Clause 9 replaced in accordance with Clause 2(2).
<table>
<thead>
<tr>
<th></th>
<th>Existing Bylaw</th>
<th>Bylaw with proposed amendments</th>
<th>Reasons</th>
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<tbody>
<tr>
<td>(1)</td>
<td>The council may, pursuant to section 163 of the Local Government Act 2002, remove or alter a work or thing that has been constructed in breach of this bylaw and may recover any costs of removal or alteration from the person who committed the breach.</td>
<td>10 A person can be penalised for not complying with this Bylaw (1) A person who fails to comply with Part 2 of this Bylaw commits an offence and is liable to a penalty under the Burial and Cremation Act 1964 or the Local Government Act 2002.</td>
<td>• Clarifies penalties for non-compliance.</td>
</tr>
<tr>
<td>13</td>
<td>Offences and penalties</td>
<td>Related Information about penalties A person who is convicted of an offence against a bylaw is liable to a fine not exceeding $20,000 under section 242 of the Local Government Act 2002 (as reprinted on 26 March 2020). Council has chosen not to set fines in this Bylaw at this time under the Burial and Cremation Act 1964.</td>
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<tr>
<td>Clause 10 replaced in accordance with Clause 2(2)</td>
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<tr>
<th>14</th>
<th>Savings and transitional provisions</th>
<th>Part 5 Savings and transitional provisions</th>
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</thead>
<tbody>
<tr>
<td>(1) This clause applies to:</td>
<td>(1) This clause applies to things resolved, made or approved under –</td>
<td>• Improves certainty.</td>
<td></td>
</tr>
<tr>
<td>c) Auckland City Council Bylaw No. 7 Cemeteries 2008;</td>
<td>c) Auckland City Council Bylaw No. 7 Cemeteries 2008;</td>
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</tr>
<tr>
<td>e) Waitakere City Council Urupa (Maori Burial Site) Bylaw 2010;</td>
<td>e) Waitakere City Council Urupa (Maori Burial Site) Bylaw 2010;</td>
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<tr>
<td>f) Manukau City Council Chapter 4 Cemeteries and Crematoria of the Manukau City Consolidated Bylaw 2008;</td>
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<td>g) Papakura District Council Cemeteries Bylaw 2008;</td>
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<tr>
<td>h) Franklin District Council Cemeteries Bylaw 2008</td>
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</table>
### Existing Bylaw

(2) Any resolution or other decision made under the bylaws referred to in subclause (1) remains in force in the area to which it applied until revoked or replaced by an equivalent resolution or decision made by the council under this bylaw.

(3) Any licence, consent, permit, dispensation, permission or other form of approval made under the bylaws referred to in subclause (1) continues in force but,

- a) expires on the date specified in that approval; or
- b) if no expiry date is specified, expires 12 months from the date that this bylaw becomes effective; and
- c) can be renewed only by application made and determined under this bylaw.

(4) Any application for a consent, permit, dispensation, permission or other form of approval made under a bylaw referred to in subclause (1) that was filed the day before on which this bylaw commences must be dealt with by the council as if it had been made under this bylaw.

### Bylaw with proposed amendments

(f) Manukau City Council Chapter 4 Cemeteries and Crematoria of the Manukau City Consolidated Bylaw 2008;

(g) Papakura District Council Cemeteries Bylaw 2008;

(h) Franklin District Council Cemeteries Bylaw 2008.

(2) Every resolution or other decision made continues to apply until replaced or revoked by council.

(3) Every approval granted that applied on 31 May 2021 continues to apply until the expiration date specified in that approval or until replaced or revoked by council.

Clause 11 replaced in accordance with Clause 2(2)

### Revocations

(1) The bylaws referred to in clause 14(1) are revoked.

### Existing code of practice continues to apply

(1) This clause applies to any code of practice made under this Bylaw prior to amendments in clause 2(2) coming into force.

(2) Every code of practice made continues to apply as if made after the amendments to this Bylaw until replaced or revoked by council, whichever comes first.

Clause 12 replaced in accordance with Clause 2(2)

### Existing inquiries to be completed under this Bylaw

(1) Any compliance or enforcement action by council under this Bylaw that was not completed prior to amendments in clause 2(2) coming into force will continue to be actioned under this Bylaw.

Clause 13 replaced in accordance with Clause 2(2)

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* Subclause unnecessary.

* Ensures existing code of practice continues to apply.

* Ensures existing compliance or enforcement action continues after amendments are made.
Request by the Lion Foundation 2008 Ltd that the Committee grant an exception to the council’s Class 4 Gambling (Pokie) Venue Policy

File No.: CP2020/11746

Te take mō te pūrongo
Purpose of the report
1. To seek a decision on a request by the Lion Foundation 2008 Ltd that the Committee grant an exception to the council’s Class 4 Gambling (Pokie) Venue Policy.

Whakarāpopototanga matua
Executive summary
2. On 15 June 2017 the Committee confirmed the Auckland Council’s Class 4 Gambling (Pokie) Venue Policy. In making this decision the Committee confirmed the following:
   • A 'sinking lid' policy on the number of venues, i.e. no new venues
   • A 'sinking lid' policy on the number of gaming machines
   • No relocations of class 4 venues.

3. On 21 July 2020 the Lion Foundation 2008 Ltd applied to the Auckland Council, and the Regulatory Committee specifically, for territorial consent under section 98(b) of the Gambling Act 2003 to establish a new class 4 venue at the premises of Ha'pai Vue Bar, Unit H, 24 Dunrobin Place, Pakuranga (letter attached). The premises would operate a maximum of nine gaming machines, which is the maximum number permitted for new venues by the Gambling Act 2003.

4. Lion Foundation 2008 Ltd previously held a class 4 gambling venue licence to operate nine gaming machines at the premises but surrendered that licence on 14 October 2019.

5. Lion Foundation 2008 Ltd have said that they intended to subsequently restore gambling at the venue and was entitled to do so if a new class 4 gambling venue licence application was submitted to the Department of Internal Affairs (DIA) by 13 April 2020.

6. Lion Foundation 2008 Ltd state in their letter to the Committee that the Alert Level 4 lockdown that occurred on 25 March 2020 prevented them from completing the licence application and submitting it to the DIA by 13 April 2020. They have not elaborated further.

7. The Class 4 Gambling (Pokie) Venue Policy is clear in not allowing the establishment of any new class 4 venues. The Policy also does not make any allowance for a departure from the Policy.

8. Lion Foundation 2008 Ltd asks the Committee, to make an exception to the Policy and grant territorial consent to them to establish a new class 4 gambling venue at the premises of Unit H, 24 Dunrobin Place, Pakuranga. In their letter of 21 July 2020, the Lion Foundation 2008 Ltd state:

   “It is acknowledged that Auckland Council has a sinking lid policy and in normal circumstances, a gambling venue consent application would not be granted. It is, however, possible for a consent to be granted that is contrary to the requirements of the policy in appropriate circumstances (such as timing issues caused by the Covid-19 lockdown), by using section 80 of the Local Government Act 2002. All that is required is that Council identifies and notes the inconsistency, and sets out the reasons for granting the consent.”
9. Section 80 of the Local Government Act 2002 stipulates that:

“(1) If decision of a local authority is significantly inconsistent with ... any policy adopted by the local authority ... the local authority must when making the decision clearly identify:

(a) The inconsistency; and

(b) The reasons for the inconsistency; and

(c) Any intention of the local authority to amend the policy ... to accommodate the decision.”

10. This means that if the Committee, contrary to the Policy, grants the Lion Foundation 2008 Ltd territorial consent to establish a new class 4 gambling venue it must at the same time state how that decision is inconsistent with the Policy, the reasons for the inconsistency and then whether or not they intend to make any amendment to the Policy to accommodate the decision.

11. Should the Committee determine to grant an exception to the Policy then two considerations are triggered. The Committee may conclude that the circumstances that led to their decision are unique to this situation and an exemption is granted on a one-off basis. Alternatively, the Committee may conclude the circumstances described are not particularly unusual and therefore amendments to the Policy may subsequently be required. The triggers will depend on the decision of the Committee and the reasons for it.

Ngā tūtohunga
Recommendation/s

That the Regulatory Committee:

a) agree that its response to the application by the Lion Foundation 2008 Ltd is to

EITHER  

decline to grant consent for the Lion Foundation 2008 Ltd to establish a new class 4 gambling venue at Unit H, 24 Dunrobin Place, Pakuranga.

OR  

grant consent for the Lion Foundation 2008 Ltd to establish a new class 4 gambling venue at Unit H, 24 Dunrobin Place, Pakuranga.

In doing so the Committee identifies that:

(i) The decision is inconsistent with the Auckland Council Class 4 Gambling (Pokie) Venue Policy which prohibits the establishment of any new class 4 gambling venues.

(ii) The reason(s) for making this inconsistent decision is/are - to be added by the Committee.

(iii) The Committee does / does not intend to amend the Class 4 Gambling (Pokie) Venue Policy to accommodate the decision.
Horopaki

Context

12. Lion Foundation 2008 Ltd previously held a class 4 gambling venue licence to operate nine gaming machines at the premises but surrendered that licence on 14 October 2020.

13. Lion Foundation 2008 Ltd have said that they intended to subsequently restore gambling at the venue and were entitled to do so if a new class 4 gambling venue licence application was submitted to the Department of Internal Affairs (DIA) by 13 April 2020.

14. The Council’s Alcohol Licensing Unit advise that the premises were bought and sold twice during 2019 and operated as a Tavern under temporary authority until 14 January 2020. At that time the latest purchaser closed the business.

15. The underlying alcohol licensee had originally applied to renew the alcohol licence in August 2019 with the intention of selling the premises but subsequently withdrew the alcohol licence renewal in July this year after the prospective purchaser left the premises earlier this year. The premises do not hold an alcohol licence and is not known to be trading.

16. Lion Foundation 2008 Ltd state in their letter to the Committee that the Alert Level 4 lockdown that occurred on 25 March 2020 prevented them from completing their class 4 gambling venue licence application and submitting it to the DIA by 13 April 2020. Lion Foundation have been asked to elaborate further and have been asked, “What specifically was it about the lockdown that prevented Lion completing and submitting the application to the DIA?” In reply Lion Foundation have stated:

“The venue in question was in the middle of a change in ownership when the lockdown occurred. The new owners did not have any prior gaming experience. The Department of Internal Affairs (and The Lion Foundation) has very high expectations regarding key person suitability and harm minimisation. The Lion Foundation representative, Mark Wallace, wished to meet with the new owners face to face in order to:

- Get to know the new owners and to obtain confidence that the new owners’ business methods and culture accorded with Lion Foundation’s high expectations;
- Go over in detail the harm minimisation policy and harm minimisation expectations;
- Go through the venue agreement, in particular the obligations included in the venue agreement regarding harm minimisation and regulatory compliance;
- Carefully explain the obligations of being appointed a formal venue manager (the responsibility for supervising the gambling and ensuring the bankings are done on time); and
- Assist the venue key persons complete their personal information forms. It is the Lion Foundation’s preference for the form and the various declarations to be explained to the venue key persons to ensure that full disclosure is made.

A physical venue inspection was required in order to confirm the floorplan layout. The licence application requires a The Lion Foundation representative to certify that the floorplan is true and correct.

It is also a requirement for the venue staff to undertake harm minimisation training prior to the venue being licensed. The initial training is always undertaken face to face to ensure maximum understanding and engagement.

Face to face meetings were prohibited under both level 3 and 4 (prohibited from 25 March 2020 to 12 May 2020).

The face to face meetings could only occur and staff training could only occur once Auckland returned to level 2 on 12 May 2020 (after the 13 April 2020 deadline).
17. An email has also been received from the Landlord for the venue Brendan McIlroy which says:

“Further to the Letter dated 21 July from Jarrod True from True Legal who act for The Lion Foundation 2018. The Elizabeth Trust is the owner of the above premises. We have had multiple Purchase agreements for the sale of Ha’apai Veu Bar at our premises fail because of the Timing of Covid-19 Restrictions for the Hospitality Industry. Had it not been for the affects of Covid-19 we would have had the Gaming Licence change to a New purchaser of the business within the time frame required by The Department of Internal Affairs. We have had 65% of our Rental Income affected by the situation and we are having to pay 65% of the outgoings that would normally be paid by our Tenant which is a financial burden for us. My Mother Betty McIlroy who is a Trustee of The Elizabeth Trust is 90 Years old and relays on the income generated from the building. Please could you help us to retain the Gambling Licence for the premises.”

18. In response to that email the following questions were put to the Landlord:

“Could you set out for the Committee exactly what the state of any gambling machine licence application was on 25 March 2020 and how the lockdown prevented that gaming machine licence application from being submitted to the Department of Internal Affairs.

Could you also confirm that the premises does not currently hold an alcohol licence and tell us when it was last open for business. Also could you give further details of how 65% of your Rental Income has been affected by the Lion Foundation 2008 Ltd not having a class 4 gambling venue licence for your premises.”

19. Mr McIlroy has replied:

“I can confirm that the Venue was in the process of changing owners when the lockdown occurred. My understanding is that the premises does not currently hold a liquor licence. My diary notes indicate that the prior owners ceased trading in late January 2020.

Our rental income has been affected by the business being closed. The prior business owners ceased paying Rent and Outgoings in early April 2020 (this equates to approximately 65% of our income from the building).”

20. In support of a decision allowing consent for a new venue Lion Foundation 2008 Ltd has amongst other things submitted:

• “Council is asked to take into account the timing issues that the Covid-19 lockdown caused,

• and grant the consent using section 80 of the Local Government Act, noting the following reasons for granting the consent:

  a. The Lion Foundation 2008 Ltd has a history of operating 9 machines at the venue. No new venue will be created by the granting of the consent;

  b. Without the disruption caused by Covid-19, a new licence application would have been submitted to the Department within the six-month period, avoiding the need to obtain a consent from Council. A consent is now only required due to the unprecedented and unexpected nationwide lockdown that was mandated due to a global pandemic; and

  c. The granting of the consent will enable the venue to be restored, generating local employment, and enabling local community grants to be made from the gaming machine proceeds.”
21. Lion Foundation 2008 Ltd says that it has been common for councils to use section 80 of the Local Government Act 2002 to grant gambling venue consents and has attached a list of examples to its letter.

22. Lion Foundation 2008 Ltd also points out that a previous Regulatory Committee used section 80 of the Local Government Act 2002 on 9 November 2017 and passed a resolution permitting the East Coast Bays RSA to relocate its gaming machines to a nearby venue after a fire.

Tātaritanga me ngā tohutohu
Analysis and advice

The Policy - Legislative framework

23. The Gambling Act 2003 requires Auckland Council to have a gambling venue policy in place that specifies:
   • whether or not class 4 gambling venues may be established within Auckland, and if so
   • where they can be located.

   The policy may also specify restrictions on the maximum number of gaming machines that can be operated at a class 4 venue.

   Under the Gambling Act 2003, to operate class 4 gambling, operators such as the Lion Foundation 2008 Ltd, are required to hold two licences:
   • a class 4 operator's licence, and
   • a class 4 venue licence for each venue that hosts its machines.

24. Under the Gambling (Harm Reduction) Amendment Act 2013, policies reviewed after 2013 must consider a relocation policy. A relocation policy sets out if and when Auckland Council will grant consent for a new venue within its district to replace an existing venue within the district.

Auckland Council’s Class 4 Gambling (Pokie) Venue Policy

25. Auckland Council’s Class 4 Gambling (Pokie) Venue Policy, as confirmed by the Regulatory Committee in June 2017 [REG/2017/50], seeks to:
   • control the growth of gambling in Auckland
   • minimise the harm caused by gambling in Auckland.

   In making this decision, the Regulatory Committee confirmed the following:
   • a ‘sinking lid’ policy on the number of venues
   • a ‘sinking lid’ policy on the number of gaming machines
   • no relocations of class 4 venues
   • limited provisions for mergers of club venues.

Policy Intent

26. The rationale and policy intent are to effectively manage the social impacts of gambling and reduce harm by overall reducing the number of gambling venues and machines in Auckland.

Implications of decision-making

27. New Venue or relocation: Rule 1 of the policy is clear that there is no provision for the establishment of new class 4 gambling venues or for a current venue to relocate. This applies to both club and non-club venues. Any decision to approve a new venue would be a departure from the policy.
Section 80 of the Local Government Act 2002

28. If a decision is made that departs from the Class 4 Gambling (Pokie) Venue Policy and its ‘sinking lid’ policy position, then the requirements of section 80 of the LGA need to be satisfied. The Committee will have to clearly identify the inconsistency with the pokie venue policy, the reasons for the inconsistency and any intention to amend the existing policy.

29. If, while considering this issue, decision-makers determine that they no longer agree with the ‘sinking lid’ and/or to the no relocation policy positions, then they should also consider whether a more coherent means of addressing this issue would be to amend the Class 4 Gambling (Pokie) Venue Policy.

30. To amend the existing policy, staff generally need to:
   - identify changes to the class 4 gambling venue policy that would improve the council’s ability to manage the impact of gambling
   - draft a new policy and statement of proposal to be approved for public notification by the Governing Body
   - use the special consultative procedure to consult with the public on the proposed changes
   - report back to the Governing body for a final decision on the amended policy.

31. The council Gambling Venue Policy 2013 was reviewed in 2016 and retained with no changes. As a statutory review is required every three years, another review of the policy is due (June 2020). This review has been delayed due to COVID-19 disruption. Policy staff advise that have nearly completed this review and the review findings and consideration of options will be reported to the Committee by November 2020.

Tauākī whakaaweawe āhuarangi
Climate impact statement

32. There is no climate impact from this report.

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

33. There are no council group impacts from this report.

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

34. Although not consulted for this particular item local boards were consulted in relation to the Class 4 Gambling (Pokie) Venue Policy itself and those consultations were reported to the Committee at its 15 June 2017 deliberations.

Tauākī whakaaweawe Māori
Māori impact statement

35. The Māori impact statement provided to the Committee on 15 June 2017 when considering the Policy was:
   - “Reducing the problem gambling prevalence rates for Māori is a goal highlighted in the Auckland Plan. High deprivation areas throughout Auckland have the highest concentration of gambling venues and pokie machines (Auckland Plan, Directive 1.7)
   - Māori are more likely than other ethnicities to engage in gambling activities associated with problem gambling. The New Zealand 2012 National Gambling Study (2014) estimated that problem gambling prevalence rate is the highest (2.3 per cent) for Māori compared to 1.6 per cent for Pacific island communities and 0.7 per cent for Asian communities
• Māori communities often bear additional costs as a result of problem gambling, including erosion of whanau values, the negligence of care giving responsibilities, and the loss of cultural capital.

• The disproportionate prevalence of Māori in problem gambling is linked to higher levels of deprivation. The Ministry of Health (2009) established that people living in the most deprived areas are more likely to become problem gamblers and are five times more likely to become problem gamblers than those living in the least deprived communities.

• During the review, staff conducted key informant interviews with Māori health providers to ensure Māori views were incorporated into the findings.

Ngā ritenga ā-pūtea
Financial implications
36. In the event that a revision of the policy was preferred, this process has not been budgeted. It would take approximately six months.

Ngā raru tūpono me ngā whakamaurutanga
Risks and mitigations
37. There is a risk that if consents by the Committee are granted contrary to the Policy, the Policy will be undermined.

Ngā koringa ā-muri
Next steps
38. Should the Committee determine to grant an exception to the Policy then two considerations are triggered. The Committee may conclude that the circumstances that led to their decision are unique to this situation and an exemption is granted on a one-off basis. Alternatively, the Committee may conclude the circumstances described are not particularly unusual and therefore amendments to the Policy may subsequently be required. The triggers will depend on the decision of the Committee and the reasons for it.

39. To amend the existing policy, staff generally need to:
• identify changes to the class 4 gambling venue policy that would improve the council’s ability to manage the impact of gambling
• draft a new policy and statement of proposal to be approved for public notification by the Governing Body
• use the special consultative procedure to consult with the public on the proposed changes
• report back to the Governing body for a final decision on the amended policy.

40. The council Gambling Venue Policy 2013 was reviewed in 2016 and retained with no changes. As a statutory review is required every three years, another review of the policy is due (June 2020). This review has been delayed due to COVID-19 disruption. Policy staff advise that have nearly completed this review and the review findings and consideration of options will be reported to the Committee by November 2020.
Regulatory Committee
01 September 2020

Ngā tāpirihanga
Attachments

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<tr>
<td>A</td>
<td>Ha'apai Veu Bar TA Consent Application <em>(Under Separate Cover)</em></td>
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Ngā kaihaina
Signatories

<table>
<thead>
<tr>
<th>Author</th>
<th>Rob Abbott - Principal Specialist Alcohol Licensing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authorisers</td>
<td>Peter Knight – Manager Alcohol Licensing</td>
</tr>
<tr>
<td></td>
<td>James Hassall – General Manager Licensing</td>
</tr>
<tr>
<td></td>
<td>Craig Hobbs - Director Regulatory Services</td>
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</tbody>
</table>
Resource Consent Appeals: Status Report 1 September 2020

File No.: CP2020/12020

Te take mō te pūrongo
Purpose of the report
1. To provide an update of all current resource consent appeals lodged with the Environment Court.

Whakarāpopototanga matua
Executive summary
2. This memorandum provides a summary of current resource consent appeals to which the Auckland Council is a party. It updates the report to the Regulatory Committee on 28 July 2020.
3. If committee members have detailed questions concerning specific appeals, it would be helpful if they could raise them prior to the meeting with Robert Andrews (phone: 353-9254) or email: robert.andrews@aucklandcouncil.govt.nz) in the first instance.

Ngā tūtohunga
Recommendation/s
That the Regulatory Committee:


Horopaki
Context
4. As at 24 August 2020, there are 17 resource consent appeals to which Auckland Council is a party. These are grouped by Local Board Area geographically from north to south as set out in Attachment A. Changes since the last report and new appeals received are shown in bold italic text.
5. The principal specialist planners - resource consents, continue to resolve these appeals expeditiously. In the period since preparing the previous status report on 13 July 2020, there has been one new appeal lodged and eight resolved.
6. The new appeal from Signature Developments Limited relates to the refusal of resource consent to establish and operate an early learning centre accommodating up to 120 children. The site at 3 Pua Street Massey is located in the Light Industry Zone where care centres are Discretionary Activity. The application was refused consent due to reverse sensitivity effects and the activity being contrary to the objectives and policies for the zone.

Tātaritanga me ngā tohutohu
Analysis and advice
7. To receive the report as provided.

Tauākī whakaaweawe āhuarangi
Climate impact statement
8. The report provides an update of consent appeals and seeks no resolution or consideration of the merits associated with them.
Item 12

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera
Council group impacts and views
9. Not applicable.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe
Local impacts and local board views
10. Not applicable.

Tauākī whakaaweawe Māori
Māori impact statement
11. The Resource Management Act 1991 includes a number of matters under Part 2, which relate to the relationship of Tangata Whenua to the management of air, land and water resources. Māori values associated with the land, air and freshwater bodies of the Auckland Region are based on whakapapa and stem from the long social, economic and cultural associations and experiences with such taonga.

Ngā ritenga ā-pūtea
Financial implications
12. Environment Court appeal hearings can generate significant costs in terms of commissioning legal counsel and expert witnesses. Informal mediation and negotiation processes seek to limit these costs. Although it can have budget implications, it is important that Auckland Council, when necessary, ensure that resource consents maintain appropriate environmental outcomes and remain consistent with the statutory plan policy framework through the appeal process.

Ngā raru tūpono me ngā whakamarutanga
Risks and mitigations
13. Not applicable.

Ngā koringa ā-muri
Next steps
14. Not applicable.

Ngā tāpirihanga
Attachments

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Signatories

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<tr>
<th>Author</th>
<th>Robert Andrews - Principal Specialist Planning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authorisers</td>
<td>Ian Smallburn - General Manager Resource Consents</td>
</tr>
<tr>
<td></td>
<td>Craig Hobbs - Director Regulatory Services</td>
</tr>
</tbody>
</table>
### RODNEY – Local Board Area (2 Appeals)

<table>
<thead>
<tr>
<th>Appellants</th>
<th>Bruce C McInnes</th>
<th>Received</th>
<th>2 March 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2020-AKL-000018</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Council: BUN20452891 (LUC60011787, SUB60036446, LUS60050703 &amp; DIS60048524)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicant:</td>
<td>Moir Hill Forestry Ltd</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address:</td>
<td>Matthew Road, Woodcocks, Warkworth</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties:</td>
<td>None</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description:</td>
<td>Appeal from submitter in relation to a hearings panel decision to grant consents to allow a subdivision to create 25 additional residential sites and 4 rural balance sites. The appeal relates specifically to the consideration of the effects upon the condition of Matthew Road and the users of the road.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments:</td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status:</td>
<td>Mediation took place on 1 July 2020. <em>The matter is subsequently resolved and the Court Issued a Consent Order 19 August 2020 that settles the appeal.</em></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Appellants</th>
<th>Jeanette Schimanski</th>
<th>Received</th>
<th>31 October 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2019-AKL-000284</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Council: BUN60333190 (LUC603332929, DIS60333191, DIS60333193 and DIS60333194)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicant:</td>
<td>Northland Waste Limited</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address:</td>
<td>183 Sandspit Road, Warkworth</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties:</td>
<td>There are four s274 parties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description:</td>
<td>Appeal to resource consents granted to allow the applicant to construct and operate a waste minimisation and sorting facility. The appellant owns an adjoining property that is to be subdivided to create three sites.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments:</td>
<td>None received</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status:</td>
<td>Court-assisted mediation took place on 11 February 2020. Further discussion is still taking place between the parties in relation to an altered layout for the waste minimisation and sorting facility and a set of conditions to be agreeable to the parties. <em>Agreement has now been reached and a draft consent order is with the Court for its consideration.</em></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### HIBISCUS AND BAYS - Local Board Area (1 Appeal)

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Auckland Council (Community Facilities)</th>
<th>Received</th>
<th>22 December 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2017-AKL-00075</td>
<td>Council – SUB60069647</td>
<td></td>
</tr>
<tr>
<td>Site address:</td>
<td>Orewa Beach Esplanade Reserve, between Kohu Street and Marine View</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties:</td>
<td>Four 274 parties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description:</td>
<td>Appeal by the applicant against council’s decision to refuse consent to the</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Region-wide Appeals Register – June 2020*
construction of a seawall, walkway and accessory access structures at the Orewa Beach Esplanade Reserve, between Kohu Street and Marine View.

Iwi comments
Cultural values assessments were prepared by Ngati Manuhiiri and Ngai Tai Ki Tamaki that confirmed conditional support for the application. The environment is highly modified and accidental discovery protocols are sought. The application was publicly notified and no submissions from Iwi were submitted.

Status
Court heard from the parties, and by minute of 22 February 2019 set the appeal down for a pre-hearing on jurisdiction over the right to appeal and determined that an amicus curiae should be appointed. Affidavits prepared for the pre-hearing set for 9 April 2018 that proceeded as scheduled. The Court on 2 May 2018 released its decision confirming jurisdiction over the Council’s right to appeal. A pre-hearing of 31 July 2018 discussed timetabling, possible mediation dates and sought the appellant to clarify the appeal issues. Court assisted mediation took place on the 21st and 22nd of February 2019. The substantive issues have been addressed and agreed between the main parties, some s.274 parties have not agreed. The matter proceeded to Court hearing for the full week of 6th May 2019 and on the proposal as redesigned following mediation. At hearing the experts for the respondent council had considered that the amendments addressed the reasons for council’s refusal of consent in relation to adverse effects on coastal processes, landscape and recreation. Primarily the seawall was moved landwards clear of the coastal marine area. The Court released its interim decision on 28 May 2020. Resource consents are granted to Community Facilities subject to finalising conditions of consent. Conditions were filed with the Court as per directions in the interim decision with section 274 parties’ comments. *The Court subsequently released its final decision with a set of consents conditions on 10 August 2020. Matter complete.*

HENDERSON - MASSEY – LOCAL BOARD AREA (2 APPEALS)

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Signature Developments Limited</th>
<th>Received</th>
<th>4 August 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2020-AKL-000143</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Council: BUN30581068</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicant</td>
<td>Signature Developments Limited</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>3 Pua Street, Massey</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>An appeal to the decline by council to establish and operate an early learning centre. The centre is proposed to accommodate up to 120 children and with 22 full time equivalent staff. The site is located in the Light Industry Zone where care centres are a Discretionary Activity. The application was declined due to reverse sensitivity effects and the activity being contrary to objectives and policies for the zone.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>New appeal. Parties requested by the Court to confirm whether they are accepting of mediation by 28 August 2020.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Region-wide Appeals Register – June 2020
<table>
<thead>
<tr>
<th>Appellant</th>
<th>Megadairy Limited</th>
<th>Received</th>
<th>17 April 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>References</strong></td>
<td>ENV-2020-AKL-000037</td>
<td>Council: BUN30581068</td>
<td></td>
</tr>
<tr>
<td><strong>Applicant:</strong></td>
<td>Yogi Divine Society NZ (Inc)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Site address</strong></td>
<td>28-30 Waipareira Avenue, Henderson</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Other parties</strong></td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Description</strong></td>
<td>An appeal by a submitter in relation to a hearing panel’s decision on behalf of council to grant consent to construct and operate a community cultural centre.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Iwi comments</strong></td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Status</strong></td>
<td>Mediation occurred 31 July. Parties seemed willing to come to an agreement. Traffic Engineers from both sides were meeting to finalise plans for the access. Appeal likely to be resolved as a result of mediation process.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**WAITAKERE – Local Board Area (1 Appeal)**

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Trustees of Forest Trust and Successors</th>
<th>Received</th>
<th>19 July 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Site address</strong></td>
<td>199 Anzac Valley Road, Waitakere</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Other parties</strong></td>
<td>None</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Description</strong></td>
<td>Appeal against hearing decision to uphold in part and dismiss in part a section 367 objection to conditions and costs of a subdivision resource consent (SUB-2011-63)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Iwi comments</strong></td>
<td>The application did not trigger any requirement for a Cultural Impact Assessment or raise any iwi or Treaty issues.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Status</strong></td>
<td>Appeal lodged on 26 July 2018. Environment Court decision to refuse appeal issued 18 December 2018. Appealed to the High Court however there is now a five-year stay imposed by the Court against any current or new appeals lodged by P. Mawhinney of the Forest Trust. No change.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**ALBERT-EDEN – Local Board Area (1 Appeal)**

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Panuku Development v Auckland Council</th>
<th>Received</th>
<th>04 September 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>References</strong></td>
<td>ENV-2017-AKL-000176</td>
<td>Council – LUC60303721 &amp; DIS60303722</td>
<td></td>
</tr>
<tr>
<td><strong>Site address</strong></td>
<td>198-202 and 214-222 Dominion Road and 113-117 Valley Road, Mt Eden</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Description</strong></td>
<td>Appeal against a hearing commissioner’s decision to refuse resource consent for a mixed-use development comprising four new buildings with</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Region-wide Appeals Register – June 2020
102 residential units, nine retail units and 115 carparks. The commissioner’s grounds for refusal related to the bulk and scale of the proposal and the associated visual, shading and dominance effects, and the adverse effects on Special Character values from the loss of the Universal Building (a character-supporting building).

Iwi comments
The application did not trigger any requirement for a Cultural Impact Assessment, attract submissions from Iwi or raise Treaty issues.

Status
Appeal regarding a development that has generated media, political and local interest. Council has met on a without prejudice basis with the appellant (18 and 24 September 2018). Court assisted mediation occurred on 31 October 2018, no agreement reached between the parties. Further informal discussion between the parties (December 2018). Second court-assisted mediated on 16 January 2019. Mediation agreement reached – subject to various conditions being satisfied. Council to report back to the Court as to progress by 15 February 2019. A number of the s274 parties have requested further time to consider their positions. Council has filed a memorandum with the Court seeking a judicial conference on the first available date after 15 March 2019. Pre-hearing conference scheduled for 2 April 2019. The pre-hearing conference held on 2 April 2019 confirmed that the matter will proceed to a hearing on or after 15 July 2019. A timetable for evidence exchange has been issued. The Court has issued a notice of hearing confirming that the hearing will commence of 18 August 2019. Hearing commenced 20 August and was adjourned 27 August. Closing submissions to be filed with the Court by 25 September 2019. The Court issued an interim decision on 9 March 2020. The Court determined that the parties should be given an opportunity to reconsider what is proposed to avoid, remedy or mitigate adverse construction noise and vibration effects in accordance with the issues the Court has identified as problematic in the section of its interim decision about construction noise and vibration issues. A court-facilitated meeting between the parties was held on 23 June 2020. Further expert conferencing is scheduled for 1 July 2020 and a second court-facilitated meeting is scheduled for 22 July 2020. The second court-facilitated meeting was held on 4 August 2020. The parties were unable to reach agreement on a revised set of conditions to address noise and vibration issues. The parties are to circulate memoranda outlining their final positions. The memoranda, and any reply by Panuku, will all be provided to the Court by Panuku on 2 September 2020.

WAIHEKE – Local Board Area (3 Appeals)

<table>
<thead>
<tr>
<th>Appellants</th>
<th>Cable Bay Wines Ltd v Auckland Council</th>
<th>Received</th>
<th>2 February 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2017-AKL-000010</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Council – LUC60127798</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>12 Nick Johnston Drive, Waiheke Island</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicant</td>
<td>Cable Bay Wines Limited</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>Stephen &amp; Suzanne Edwards, Julie Loranger &amp; Lindsay Niemann, Michael &amp; Christine Poland.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>Cable Bay appeal Council’s decision to refuse retrospective consent relating to the unlawful establishment and use of an additional dining area known as ‘The Verandah’. The principal issues in contention relate to the scale and intensity of the activity and the general amenity / noise effects associated with the use of the</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Region-wide Appeals Register – June 2020
<table>
<thead>
<tr>
<th>Iwi comments</th>
<th>The application was limited-notified to neighbours. No iwi group indicated a need for a cultural impact assessment. The Hearing Commissioners considered the application in accordance with the requirements of the RMA 1991 and in particular, Part 2 of the RMA.</th>
</tr>
</thead>
</table>
| Status | The Environment Court directed court-assisted mediation after the expiry of the section 274 period on 15 March 2018. Three s274 parties have joined. Environment Court mediation held on 2 July 2018 on both the consent appeal and the enforcement order application. No agreements reached between the parties. Caucusing between noise experts to on 5 July 2018. No agreement reached at second mediation. The Court has confirmed a joint resource consent appeal and enforcement order hearing commencing on 7 November 2018. The appellant’s evidence is due by 7 September and the Council’s evidence is due by 21 September. Council to call Planning and Noise expert witnesses. Council’s evidence was filed with the Court on 21 September 2018. The hearing commenced on 7 November 2018 and an interim decision on the resource consent was issued on 21 November to convey the Court’s refusal of part of the application, particularly in relation to the use of the lawn for outdoor dining and drinking, and make further directions about the refinement of conditions of consent to aspects of the proposal which might attract consent. An interim decision on the application for enforcement order was issued on 28 November 2018 ordering Cable Bay to undertake various steps to limit their activities. The Court intends that the orders will substantially mirror the final resource consent conditions. Further monitoring and testing work order by the Court is ongoing. A second interim decision on the resource consent appeal was issued 22 February 2019 confirming the Court’s earlier decision to refuse consent in part. Further collaborative noise monitoring and assessment has been undertaken by the parties’ acoustic engineers and a report on this work is to be provided to the Court by 8 March 2019. This will assist the court in determining whether or not consent can be granted to a modified proposal for the restaurant, alfresco dining and outdoor functions. A judicial teleconference held on 28 March 2019. A further 1-2-day hearing to be scheduled after June. The Court has indicated that the hearing will resume for 2 days in the week of 26 August 2019. A timetable for evidence exchange issued. Evidence has been exchanged and the hearing was re-convened on 29 and 30 August 2019. The court issued a third interim decision on 15 October 2019, indicating that consent to the activity is possible, subject to the finalisation of conditions after the grant of any building consents and resolution of the dispute about ongoing conditions attaching to the 2006 consent. The parties are to provide their comments to the Court on the remaining issues by 29 November 2019. The Court issued a fourth interim decision on 10 June 2020 following consideration of the various sets of consent conditions put forward by the parties, confirming that consent is likely to be granted in part, subject to the finalisation of conditions as set out in the interim decision. The Council is directed to provide an updated version of the draft conditions by 30 June 2020 to satisfy the Court’s express requirements. **Awaiting the Court’s final decision.**

*Region-wide Appeals Register – June 2020*
<table>
<thead>
<tr>
<th>Appellants</th>
<th>1. Walden v Auckland Council 2. SKP Incorporated v Auckland Council</th>
<th>Received</th>
<th>9 June 2017 9 June 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site address</td>
<td>Donald Bruce Road, Kennedy Point, Waiheke Island</td>
<td>-----------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>Applicant</td>
<td>Kennedy Point Boat Harbour Limited</td>
<td>-----------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>Other parties</td>
<td>Over 30 parties have joined the appeal under section 274 of the RMA.</td>
<td>-----------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>Description</td>
<td>Two separate appeals opposing the construction, maintenance and use of a 186-berth marina within the coastal marine area adjacent to Kennedy Point. The marina includes floating attenuators for wave protection and floating pontoons for car parking, office and a public/cafeteria building. The council hearing canvased a large range of issues and potential effects including landscape, traffic and transport, ecology.</td>
<td>-----------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>Iwi comments</td>
<td>The applicant consulted with iwi, including Ngati Paoa Iwi Trust and Ngai Tai ki Tamaki Tribal Trust. A cultural values assessment was provided by Ngati Paoa Iwi Trust and a cultural impact assessment from Ngai Tai ki Tamaki. Iwi sought to have input into conditions, but no submissions were lodged by iwi. The independent hearing commissioners had regard to all the information before them and considered the application in accordance with the relevant statutory requirements and in particular Part 2 of the RMA 1991.</td>
<td>-----------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>Status</td>
<td>The Environment Court has set down the appeals for a court-assisted mediation on 4 and 7 August 2017. Mediation on 4 and 7 August 2017 has now been completed. Mediation narrowed down some issues but did not resolve all the issues for the appellants and request for adjournment, all the section 274 parties. A timetable for exchange of evidence, caucusing of expert witnesses and Environment Court hearing date has been confirmed. All evidence and witness caucusing are complete with the hearing set for the week of 26 February 2018. Hearing commenced on Monday 26 February 2018. Hearing completed. Environment Court decision received dated 30 May 2018 granting consent to the application for a marina subject to a comprehensive set of conditions. On 31 August 2018 appellant Save Kennedy Point Inc. (SKP) filed a late appeal to High Court and an application for rehearing in the Environment Court for reasons of lack of consultation by the applicant and Council with Ngati Paoa Trust Board. High Court declined SKP Inc. application to appeal to the High Court out of time on 24 April 2019. Further reasons filed by SKP Inc on 12 August 2019 and 23 August 2019 relating to cultural grounds, traffic and costal processes. On September 2019 SKP Inc also files request to recuse the Judge, adjournment and inclusion of Maori Land Court Judge on the Court panel. Environment Court in a decision dated 5 October 2019, declined the request for recusal of the judge, adjournment of hearing and appointment of a Maori land Court judge. In a decision dated 13 December 2019, the Environment Court declined SKP Inc. application for a rehearing. At the same time Ngati Paoa Trust Board’s earlier application to join the Environment Court proceedings was also declined. SKP Inc. appealed the Environment Court decisions to the High Court on 24 January 2020. The High Court in its decision dated 19 June 2020 has dismissed the appeal by SKP. SKP has now sought leave to appeal the High Court decision to the Court of Appeal.</td>
<td></td>
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</tr>
</tbody>
</table>

Region-wide Appeals Register – June 2020
### WAITEMATÅ–Local Board Area (2 appeals)

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Received</th>
<th>3 July 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2020-AKL-000081</td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>74-80 Wellesley Street West, Auckland</td>
<td></td>
</tr>
<tr>
<td>Applicant</td>
<td>Hotel Grand Chancellor (Auckland) Limited</td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>An appeal by a neighbour submitter against a decision to consent an application to demolish existing buildings &amp; construct &amp; operate a new hotel in a 12-storey building plus partial basement. Issues raised include proximity and loss of sunlight to apartments in the adjacent building.</td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>The application did not trigger any requirement for a Cultural Impact Assessment or raise any iwi or Treaty issues.</td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>New appeal. A judicial teleconference was held on 5 August 2020. Directions were made to the applicant to circulate a statement of issues by 19 August 2020, with the Council to add to the statement by 26 August 2020, and the appellant to do the same by 11 September. A timetable to a hearing has been set.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Appellants</th>
<th>Received</th>
<th>30 January 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site address</td>
<td>31 Westhaven Drive, Auckland Central</td>
<td></td>
</tr>
<tr>
<td>Other Parties</td>
<td>Ngāti Te Ata</td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>Appeal against the decision of hearing commissioners to grant resource consents for the redevelopment of existing pile moorings within the Westhaven Marina, including land reclamation, installation of new pile berths, a new car park, and a new observation deck and public open space area</td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>The applications were publicly notified. Submissions from appellant iwi were received, along with other iwi who have not lodged an appeal against these decisions.</td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>ENV-2019-AKL-000014 and ENV-2019-AKL-000015 were withdrawn on 13 January 2019. Mediation scheduled with remaining appellant (Ngāti Whātau Orakei Whaia Maia Limited) and s274 parties on the 29 April 2019. Mediation for 29 April cancelled at the agreement of all parties, appeal will proceed to a hearing, to be held on or after 19 August. A s116 application was made to allow consents to commence while appeal is determined, this was approved by EC on</td>
<td></td>
</tr>
</tbody>
</table>

Region-wide Appeals Register – June 2020
the 27 March 2019. Following a judicial conference in late June it was determined that:

- The Westhaven Marina appeal, and the related Mooring Dolphin appeal will be heard together;
- A declaration will be filed by Ngāti Whātua Ōrākei that addresses the jurisdictional issue as to whether the Environment Court has the jurisdiction to determine primacy issues where relating to the wording of consent conditions. This will be determined prior to the appeal proceedings being heard.

The current status is that the appeal is on hold. The Court has released its decision on the preliminary jurisdictional question of primacy of mana whenua status regarding the setting of mana whenua conditions of consent. This decision has been appealed by iwi groups to the High Court.

### ORAKEI –Local Board Area (2 appeals)

<table>
<thead>
<tr>
<th>Appellants</th>
<th>Drive Holdings Limited v Auckland Council</th>
<th>Received</th>
<th>21 October 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>References</strong></td>
<td>ENV-2019-AKL-000283</td>
<td>BUN60324987</td>
<td></td>
</tr>
<tr>
<td><strong>Site address</strong></td>
<td>75-79, 81-87, &amp; 89-97 Tamaki Drive, 6, 8-10, 12 and 14 Patteson Avenue, 28, 28, and 30 Marau Crescent, Mission Bay</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Applicant</strong></td>
<td>Drive Holdings Limited</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Other parties</strong></td>
<td>A. Nathan, S. O. Family Trust, Mission Bay Kohimarama Residents Association Inc, Support Mission Bay Inc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Description</strong></td>
<td>An appeal against a decision to refuse an application to construct a mixed-use development comprising basement carparking, servicing, storage and circulation areas, seven multi-level buildings, commercial, entertainment and residential activities.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Iwi comments</strong></td>
<td>The resource consent application was publicly notified and determined by commissioners in accordance with the RMA. No submissions from iwi.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Status</strong></td>
<td>New appeal. The first mediation occurred on 5 February 2020. The appellant advised that design changes would be explored and presented to the parties ahead of the second mediation scheduled for 16 March 2020. They were unable to promote the settlement of the appeal. The Court has directed that a pre-hearing conference be held on 28 August 2020 to discuss the outstanding issues and make timetable directions required to progress the appeal to a hearing.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Appellant       | Anuj Gupta | Received | 17 April 2020 |
|-----------------|------------|----------|              |
| **References**  | ENV-2020-AKL 000034 | Council – LUC60330205, SUB60330206, WAT60330207 and WAT60344977 | |
| **Site address**| 88 Remuera Road, Remuera |          |              |
| **Applicant**   | Anuj Gupta |          |              |
| **Other parties**| The original submitter joined as a section 274 party but later withdrew. |          |              |
| **Description** | An appeal against a decision to refuse consent for a new 5 storey apartment |          |              |

*Region-wide Appeals Register – June 2020*
building with basement parking in the Business Mixed Use zone. The application was limited notified to one adjoining neighbour who made a submission and appeared at the hearing. The application was refused consent due to the effects on the infringement on the submitter. The main issue related to the height in relation to boundary infringement.

Iwi comments
The application did not raise any iwi issues. The commissioners considered the application in accordance with the requirements of the RMA 1991 and in particular Part 2 of the RMA.

Status
After the lodgement of the appeal, the applicant revised its proposal to fully comply with the height in relation to boundary. The section 274 party withdrew their interest in the appeal. Based on the revised proposal which addressed the Hearing Commissioners’ concerns, agreement was reached on the revised plans. A draft consent order has been filed with the Environment Court on 10 June 2020 to settle the appeal. Consent order granting consent subject to conditions was approval by the Environment Court on 1 July 2020. File closed.

HOWICK—Local Board Area (1 appeal)

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Box Property Investments Limited</th>
<th>Received</th>
<th>9 September 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2019-AKL-000176</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>30 &amp; 40 Sandspit Road and 2 &amp; 4 Reydon Place, Shelly Beach, Auckland</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Parties</td>
<td>Reydon Place Residents Society Incorporated; Howick Ratepayers and Residents Assn.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>An appeal against a decision declining an application for consent for a 71-unit residential development.</td>
<td></td>
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</tr>
<tr>
<td>Iwi comments</td>
<td>The application was limited-notified to neighbours. No iwi group indicated a need for a cultural impact assessment. The Hearing Commissioners considered the application in accordance with the requirements of the RMA 1991 and in particular, Part 2 of the RMA.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>Appeal proceeded to a brief mediation on 26 November 2019. The appellant has informed the court that they seek to place the appeal on hold and explore a revised design by way of new application. The applicant has now lodged a revised application with council for a 60-unit development with a request for direct referral. The applicant is currently seeking to resolve all further information request issues prior to notification.</td>
<td></td>
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</tr>
</tbody>
</table>

PAPAKURA – Local Board Area (2 Appeals)

<table>
<thead>
<tr>
<th>Appellant</th>
<th>HFT Limited</th>
<th>Received</th>
<th>25 May 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2020-AKL-000053</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Council – BUN60304805, LUC60304921, SUB60328123</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>28 Inlet Road, Takanini</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicant</td>
<td>HFT Limited</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>Stuart Monteith</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>An appeal against a decision to decline consent for the construction and</td>
<td></td>
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</table>

Region-wide Appeals Register – June 2020
establishment of 17 two storey units across three blocks that will contain a mix of industrial, residential, office and storage activities. Each unit is proposed to provide for a mix of activities within the unit either being a combination of industrial and residential or industrial and commercial (office/storage) on a Business-Light Industry Zone site. The consent was publicly notified, with 2 submissions in opposition received and 7 in support.

Iwi comments
No iwi group indicated a need for a cultural impact assessment and no submissions were received from iwi. The commissioners considered the application in accordance with the requirements of the RMA 1991 and in particular Part 2 of the RMA.

Status
New appeal - mediation set down for 13 July 2020. *Mediation was held and the matter is going forward to a hearing. An evidence exchange timetable has been filed with the Court.*

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Wallace Group Limited, BJ Wallace Trust and SJ Wallace Trust</th>
<th>Received</th>
<th>14 March 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>References</td>
<td>ENV-2019-AKL 000043 Council – LUC60311805, DIS60303201, DIS60303159</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site address</td>
<td>3 Popes Road, Takanini</td>
<td></td>
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</tr>
<tr>
<td>Applicant</td>
<td>Alpha Dairy Limited</td>
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<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>Spark NZ Ltd</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>An appeal against a decision to grant consents for the construction, operation and maintenance of a new dairy processing facility for the production of infant formula on a Business-Light Industry Zone site with an area of 22,372m². The consent was publicly notified, with 4 submissions in opposition received.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iwi comments</td>
<td>No iwi group indicated a need for a cultural impact assessment and no submissions were received from iwi. The commissioners considered the application in accordance with the requirements of the RMA 1991 and in particular Part 2 of the RMA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>Mediation set down for 28 May has since been vacated. High Court proceedings on related matters scheduled for October 2019. High Court hearing held 7-9 October. Further report to the Environment Court on the appeal required 10 days following the release of the High Court decision. Decision of the High Court on CIV-2018-404-2455 was issued on 30 June and therefore a minute to the Env Court will be filed imminently. <em>The consent holder has applied to Council to surrender their consents which will close the appeal matter.</em></td>
<td></td>
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</tr>
</tbody>
</table>
Te take mō te pūrongo
Purpose of the report
1. To approve the Regulatory Committee’s forward work programme.

Whakarāpopototanga matua
Executive summary
2. This committee is responsible for regulatory hearings (required by relevant legislation), regulatory policy, bylaws and is also responsible for appointing independent commissioners to carry out the council’s functions or delegating the appointment power (as set out in the committee’s policy).
3. Where possible, timeframes for items coming before the Regulatory Committee have been identified.
4. Following the disruption of Covid-19 lockdown and Emergency Budget considered, staff have confirmed the forward work programme’s content and timeframes.
5. Staff will keep the forward work programme updated and complete a review of the forward work programme every six months.
6. The forward work programme will be appended as an information item on every committee agenda.
7. Note that, unlike an agenda decision report, staff will not be present to answer questions about these items referred to in this summary. Committee members should direct any questions to the authors.

Ngā tūtohunga
Recommendation/s
That the Regulatory Committee:

a) approve the Regulatory Committee forward work programme (Attachment A of the agenda report)

Ngā tāpirihanga
Attachments

<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Page</th>
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</thead>
<tbody>
<tr>
<td>A1</td>
<td>Regulatory Committee Forward Work Programme</td>
<td>207</td>
</tr>
</tbody>
</table>

Ngā kaihaina
Signatories

<table>
<thead>
<tr>
<th>Author</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maea Petherick</td>
<td>Kaitohutohu Mana Whakahaere Matua / Senior Governance Advisor</td>
</tr>
<tr>
<td>Authorisers</td>
<td>Craig Hobbs - Director Regulatory Services</td>
</tr>
</tbody>
</table>
### Alcohol Licensing
**Licensing & Regulatory Compliance**

Report on the revenue received and the costs incurred for the alcohol licensing process – required by regulation 19 of the Sale and Supply of Alcohol (Fees) Regulations 2013.

**Committee role**
- **Note**: that the majority of alcohol licensing costs were recovered from the existing default licensing fees regime for the twelve months to 30 June
- **Confirm**: continuance of the default licensing fees regime
- **Review**: the default licensing fees regime after a suitable period of time has elapsed following the implementation of the Local Alcohol Policy

**Expected timeframes**
- **January**: ✓

### Animal Management
**Licensing & Regulatory Compliance**


**Committee role**
- **Note**: that the Animal Management Annual Report is required under Section 10A of the Dog Control Act 1996 and staff will provide the 2019/2020 report to the Secretary of Local Government

**Expected timeframes**
- **August**: ✓

### Boarding Houses Inspection
**Licensing and Compliance Services**

Update on the Auckland proactive boarding houses inspections programme. Increase inspections from one to a minimum of three per year.

**Committee role**
- **Update**: memo to Regulatory Committee and the Parks, Arts, Community and Events Committee

### Earthquake Prone, Dangerous & Insanitary Buildings Policy 2011 -2016 Review
**Building Consents**

2011 – Auckland Council was required under s131 of the Building Act 2004 to adopt a policy on earthquake prone, dangerous and insanitary buildings

2018 – Due to the Building (Earthquake-Prone Buildings) Amendment Act 2016, Auckland Council’s management of earthquake-prone buildings now falls under the national policy and methodology set by MBIE. Our ongoing work programme for issuing statutory EPB notices, receiving seismic assessments, and identifying residual potential EPBs is being carried out on this basis.

**Committee role**
- **Update**: on the progress made in implementing Auckland Council’s regulatory obligations with regard to earthquake-prone buildings within its jurisdiction.

**Expected timeframes**
- **July 2020**: ✓
<table>
<thead>
<tr>
<th>Area of work and Lead Department</th>
<th>Reason for work</th>
<th>Committee role (decision and/or direction)</th>
<th>Expected timeframes Highlight the month(s) this is expected to come to committee in 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcohol Control Bylaw review</td>
<td>This Bylaw provides the structure for creating alcohol bans. Individual boards use it to make decisions about local bans. Council has a statutory obligation to review this Bylaw under the Local Government Act 2002.</td>
<td><strong>Recommend</strong> a Statement of Proposal to the Governing Body to amend bylaw. <strong>Appoint</strong> Bylaw Panel to make recommendations to the Governing Body on the proposal after hearing and deliberating on public feedback and local board input. Development of proposal to amend bylaw to commence in February 2020.</td>
<td>Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec</td>
</tr>
<tr>
<td>Animal management Bylaw Review</td>
<td>This Bylaw promotes responsible animal ownership, including minimising impact on neighbours, the public and preventing damage.</td>
<td><strong>Decision</strong> on whether a bylaw still needed and whether any changes should be made and to confirm, amend, replace or revoke the bylaw (findings and options reports). March 2020 decision.</td>
<td>✓</td>
</tr>
<tr>
<td>Bylaw Review 2020-22 initiation</td>
<td>Initiation of new bylaw reviews. Includes ‘Local Board Involvement in Regional Policy, Plans and Bylaws - Agreed Principles and Processes 2019’ Council has a statutory obligation to periodically review its bylaws.</td>
<td><strong>Decision</strong> on the initiation of bylaw reviews that must be completed by October 2022. Report will for each bylaw: set out scope legislative constraints/enablers (if any) relevance to LBs proposed process (including LB involvement) key timeframes public consultation approach whether a joint working group for early bylaw/policy development is proposed and initiate appointment process if necessary. February 2020 decision.</td>
<td>✓</td>
</tr>
<tr>
<td>Cemeteries Bylaw Review</td>
<td>This Bylaw and code of practice protects health and safety and minimises potential offensive behaviour. Council has a statutory obligation to review this Bylaw under the Local Government Act 2002.</td>
<td><strong>Recommend</strong> a Statement of Proposal to the Governing Body to amend bylaw. <strong>Appoint</strong> Bylaw Panel to make recommendations to the Governing Body on the proposal after hearing and deliberating on public feedback and local board input. Development of proposal to amend bylaw to commence in February 2020.</td>
<td>Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec</td>
</tr>
</tbody>
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**BYLAWS**

- Alcohol Control Bylaw review
  - Community & Social Policy
- Animal management Bylaw Review
  - Community and Social Policy
- Bylaw Review 2020-22 initiation
  - Community and Social Policy
- Cemeteries Bylaw Review
  - Community and Social Policy

---

**Recommend** a Statement of Proposal to the Governing Body to amend bylaw.

**Appoint** Bylaw Panel to make recommendations to the Governing Body on the proposal after hearing and deliberating on public feedback and local board input.

Development of proposal to amend bylaw to commence in February 2020.

April 2019 decision
May 2019 decision

---

**Decision** on whether a bylaw still needed and whether any changes should be made and to confirm, amend, replace or revoke the bylaw (findings and options reports).

March 2020 decision.

---

**Decision** on the initiation of bylaw reviews that must be completed by October 2022. Report will for each bylaw:

- set out scope
- legislative constraints/enablers (if any)
- relevance to LBs
- proposed process (including LB involvement)
- key timeframes
- public consultation approach
- whether a joint working group for early bylaw/policy development is proposed and initiate appointment process if necessary.

February 2020 decision.

---

**Recommend** a Statement of Proposal to the Governing Body to amend bylaw.

**Appoint** Bylaw Panel to make recommendations to the Governing Body on the proposal after hearing and deliberating on public feedback and local board input.

Development of proposal to amend bylaw to commence in February 2020.

April 2019 decision
May 2019 decision.
<table>
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<tr>
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</thead>
<tbody>
<tr>
<td><strong>Freedom Camping</strong>&lt;br&gt;Community and Social Policy</td>
<td>This Bylaw replaces legacy requirements to manage freedom camping in vehicles, under the Freedom Camping Act. The legacy bylaws expiry on 29 October 2022.</td>
<td><strong>Decision</strong> on options to progress a council approach for a Statement of Proposal on freedom camping in vehicles. Governing Body October 2020</td>
<td>Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec</td>
</tr>
<tr>
<td><strong>Gambling Policy Reviews</strong>&lt;br&gt;Community and Social Policy</td>
<td>The Gambling Act 2003 and the Racing Act 2003 (the Acts) regulate gambling in New Zealand. The Acts require the policies to be reviewed every three years. Auckland Council (Council) first adopted these policies in 2013. Council reviewed them in 2017, found they were generally effective and retained both with no changes.</td>
<td><strong>Decision</strong>: start of the Class 4 Gambling (pokie) Venue Policy and the Racing Board (TAB) Venue Policy reviews in 2020. March 2020 <a href="#">decision</a></td>
<td>✓</td>
</tr>
<tr>
<td><strong>Navigation Safety Bylaw Review</strong></td>
<td>This Bylaw sets out the rules for all vessels and people using Auckland's waters to ensure their safety. Council has a statutory obligation to review this Bylaw under the Local Government Act 2002.</td>
<td><strong>Decision</strong> on whether a bylaw still needed and whether any changes should be made and to confirm, amend, replace or revoke the bylaw (findings and options reports). March 2020 <a href="#">decision</a>. June 2020 <a href="#">decision</a></td>
<td>✓ ✓</td>
</tr>
<tr>
<td><strong>Outdoor Fire Safety Bylaw Review</strong>&lt;br&gt;Community and Social Policy</td>
<td>This Bylaw applies to a range of outdoor fire activities, including outdoor cooking and heating fires, sky lanterns, traditional cooking fires, open air fires and incinerator fires. This Bylaw expires on 18 December 2021 and must (if necessary) be replaced to avoid a regulatory gap.</td>
<td><strong>Decision</strong> on whether a bylaw is still needed and whether any changes should be made and to confirm, amend, replace or revoke the bylaw (findings and options reports).</td>
<td></td>
</tr>
<tr>
<td><strong>Property Maintenance Nuisance Bylaw Review</strong>&lt;br&gt;Community and Social Policy</td>
<td>This Bylaw requires private property to be maintained well enough that doesn’t create a nuisance or risk health and safety. Council has a statutory obligation to review this Bylaw under the Local Government Act 2002.</td>
<td><strong>Decision</strong> on whether a bylaw still needed.</td>
<td></td>
</tr>
<tr>
<td><strong>Signage Bylaw Review</strong>&lt;br&gt;Community and Social Policy</td>
<td>This is a joint bylaw with Auckland Transport that regulates promotional signs to ensure public safety and prevent nuisance from poorly maintained or located signage.</td>
<td><strong>Decision</strong> on whether a bylaw still needed and whether any changes should be made and to confirm, amend, replace or revoke the bylaw (findings and options reports). June 2020 <a href="#">decision</a></td>
<td>✓</td>
</tr>
<tr>
<td>Area of work and Lead Department</td>
<td>Reason for work</td>
<td>Committee role (decision and/or direction)</td>
<td>Expected timeframes Highlight the month(s) this is expected to come to committee in 2020</td>
</tr>
<tr>
<td>---------------------------------</td>
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<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Stormwater Bylaw Healthy Waters</td>
<td>The primary purpose of the Bylaw is to regulate land drainage including to protect, manage and maintain an efficient and effective public stormwater network, as well as the ensure the maintenance and operation of private stormwater systems.</td>
<td><strong>Decision</strong> on whether a bylaw is the most appropriate regulatory tool to protect Auckland’s stormwater networks. July 2020 <strong>decision</strong></td>
<td>Jan</td>
</tr>
<tr>
<td>Trading and Events Bylaw Review</td>
<td>This Bylaw regulates businesses and events that use public spaces to make sure everyone can use them fairly and safely. This Bylaw expires on 22 February 2022 and must (if necessary) be replaced to avoid a regulatory gap.</td>
<td><strong>Decision</strong> on whether a bylaw is still needed and whether any changes should be made and to confirm, amend, replace or revoke the bylaw (findings and options reports).</td>
<td></td>
</tr>
<tr>
<td>Traffic Bylaw Review</td>
<td>This Bylaw regulates the use of vehicles on council-controlled land that is not part of the Auckland transport system, like parks and beaches. This Bylaw expires on 25 June 2022 and must (if necessary) be replaced to avoid a regulatory gap.</td>
<td><strong>Decision</strong> on whether a bylaw still needed. Project scoping to commence December 2019.</td>
<td></td>
</tr>
<tr>
<td>Water Supply and Wastewater Network Bylaw 2015 Watercare</td>
<td>This bylaw protects Auckland’s water sources, water supply and wastewater networks from damage, misuse and interference. This Bylaw will expire on 25 June 2022 and council must (if a bylaw is still necessary) make a new bylaw to avoid a regulatory gap</td>
<td><strong>Decision</strong> on whether a bylaw is still need and whether any changes should be made and to confirm, amend, replace or revoke the bylaw (findings and options reports). Due to COVID-19 the findings report went the Emergency Committee in May May 2020 <strong>Decision</strong> June 2020 <strong>Decision</strong></td>
<td>EC</td>
</tr>
<tr>
<td>Resource Consents Appeal Update</td>
<td>To provide oversight of the appeals received to resource consent decisions.</td>
<td>Information purposes Monthly updates</td>
<td>✓</td>
</tr>
</tbody>
</table>

**Attachment A**

**Item 13**

<table>
<thead>
<tr>
<th>Area of work and Lead Department</th>
<th>Reason for work</th>
<th>Committee role (decision and/or direction)</th>
<th>Expected timeframes Highlight the month(s) this is expected to come to committee in 2020</th>
</tr>
</thead>
<tbody>
<tr>
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<td>EC</td>
</tr>
<tr>
<td>Resource Consents Appeal Update</td>
<td>To provide oversight of the appeals received to resource consent decisions.</td>
<td>Information purposes Monthly updates</td>
<td>✓</td>
</tr>
<tr>
<td>Area of work and Lead Department</td>
<td>Reason for work</td>
<td>Committee role (decision and/or direction)</td>
<td>Expected timeframes Highlight the month(s) this is expected to come to committee in 2020</td>
</tr>
<tr>
<td>----------------------------------</td>
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<td>------------------------------------------</td>
</tr>
<tr>
<td>The Regulatory Committee Policy</td>
<td></td>
<td><strong>Decision:</strong> adopt the updated Regulatory Committee Policy</td>
<td>Jan</td>
</tr>
<tr>
<td>Democracy Services</td>
<td></td>
<td><strong>Decision:</strong> approve the appointment of the District Licensing Committee and the selection process and appointments of independent resource management commissioners for 2021 to 2024.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The Policy incorporates the operational policy and sub delegations for the decision-making responsibilities that lie within the areas of the committee’s responsibilities.</td>
<td><strong>Decision:</strong> approve the appointment of the District Licensing Committee and the selection process and appointments of independent resource management commissioners for 2021 to 2024.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Review District Licensing Committee (DLC) and Independent Resource Management Act (RMA) commissioner pools.</td>
<td><strong>Decision:</strong> approve the appointment of the District Licensing Committee and the selection process and appointments of independent resource management commissioners for 2021 to 2024.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>April 2020, due to COVID19 appointment of District Licensing Committee went go to Emergency Committee DLC Commissioners - November 2019 decision.</td>
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<tr>
<td></td>
<td></td>
<td>Emergency Committee April 2020 decision</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>RMA Commissioners – June 2020 decision</td>
<td></td>
</tr>
<tr>
<td>The Regulatory Services Directorate</td>
<td>Report on: progress implementing the Food Act 2014</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Director Regulatory Services</td>
<td>insights into the performance, opportunities and risk of the Resources Consents Dept</td>
<td></td>
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<tr>
<td></td>
<td>progress implementing the Regulatory Compliance programme</td>
<td></td>
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<td></td>
<td>transformation activity update</td>
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<td></td>
<td>building consents and control</td>
<td></td>
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<td></td>
<td>resource consents and regulatory engineering</td>
<td></td>
<td></td>
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<td></td>
<td>For information only: 6 monthly updates</td>
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</tbody>
</table>

For information only: 6 monthly updates
<table>
<thead>
<tr>
<th>Item 13</th>
<th>Food Bylaw Review</th>
<th>Community and Social Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Attachment A</strong></td>
<td>This Bylaw requires food businesses registered with the council to display a food safety grade certificate. This Bylaw expires on 22 May 2020 and must (if necessary) be replaced to avoid a regulatory gap.</td>
<td></td>
</tr>
<tr>
<td><strong>Lead Department</strong></td>
<td></td>
<td></td>
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<td><strong>Area of work</strong></td>
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<td><strong>Committee role (decision and/or direction)</strong></td>
<td>Bylaw Panel appointed (REG/2019/39) Councillors Newman (Chair), Mulholland and Young and IMSB member Wilcox) to deliberate on public feedback and local board input and make recommendations to the Governing Body. Progress to date: Decision that a bylaw is still needed, that the current bylaw should be replaced, and proposal adopted in July 2019 (REG/2019/39 and GB/2019/70). Due COVID-19 the decision went to the Governing Body 30 April 2020 decision.</td>
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<td><strong>Decision</strong></td>
<td>Resolution number GB/2020/36 MOVED by Cr D Newman, seconded by Cr T Mulholland: That the Governing Body: a) acknowledge the impact of the COVID-19 pandemic on food businesses, and their employees. b) approve the Bylaw Panel recommendations on the proposed new Food Safety Information Bylaw 2020 in Attachment A and Attachment B of the agenda report. c) confirm that the Food Safety Information Bylaw 2020 in Attachment C of the agenda report: i) is the most appropriate way to protect public health from foodborne illness ii) is the most appropriate form of bylaw iii) does not give rise to any implications and is not inconsistent with the New Zealand Bill of Rights Act 1990. d) adopt the Food Safety Information Bylaw 2020 in Attachment C of the agenda report. e) approve the distribution of this agenda report and associated minutes to local boards for their information. f) delegate authority through the Chief Executive to staff responsible for bylaws to make any amendments to the Bylaw in Attachment C of the agenda report to correct errors or omissions.</td>
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<td><strong>CARRIED ON VOICES</strong></td>
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Objection to stormwater connection to public manhole located within 73 Park Rise Campbells Bay

File No.: CP2020/10467

Te take mō te pūrongo
Purpose of the report
1. To consider the objection to the Construction of a Public Stormwater line to connect to the public manhole located within the shared accessway serving 73 Park Rise Campbells Bay to serve 77 Park Rise Campbells Bay.

Whakarāpopototanga matua
Executive summary
2. A subdivision resource consent SC3024256 was approved on 4 July 2016 to undertake a two lot subdivision. (Attachment A)
3. The current dwelling stormwater does not comply with Council’s Stormwater Code of Practice as it discharges to ground and via sheet flow onto the neighbouring property. In order to comply, the stormwater should discharge to the public reticulation which is located within adjoining access way serving 73 Park Rise Campbells Bay.
4. The site is located in a SMAF1 control area and requires on-site detention.
5. The shared access way for 73 Park Rise serves 14 landowners (Attachment H)
6. The proposed development consent conditions require the installation of a stormwater management system to discharge to public reticulation.
7. The applicant initially engaged Airey Consultants to liaise with the various landowners to obtain landowner approval and were not successful. (Attachment D)
8. The Airey Consultants “Infrastructure Report” reference 12127-01 dated April 2016 considered three route options to connect to the only available public reticulation.
9. Council’s senior development engineer (Cedric Daniel) then met with certain landowner’s and identified the need for further consultation. (Attachment E)
10. The pertinent matters identified were that landowners were concerned with downstream discharge capacity and potential flooding and disruption during the works.
11. Following consultation and a site with Healthy Waters senior engineer Paul Jones the landowners were assured that the downstream capacity was adequate for the additional discharge and advise that the Aireys Consultants “Infrastructure Report” included a downstream capacity assessment confirming adequate capacity.
12. The most prominent objecting landowners were Jens Richter (73B) and James Leddy (73C) the landowners closest to the proposed works.
13. The applicant then engaged Peter Lowe of Landworks Consulting Ltd to consult with the various landowners.
14. Peter Lowe also undertook a downstream capacity assessment to confirm adequate capacity. (Attachment C)
15. Peter Lowe identified the most practical and least intrusive route option allowing continuous access for all the landowners was to discharge to the nearest manhole located with the shared access way for 73 Park Rise.
16. Council then issued Engineering Approval ENG60060119 under letter dated 27 August 2019 taking into account matters raised during consultation which required that additional affected landowners be consulted.
17. Following extensive consultation (including face to face meetings and letters) Peter Lowe notified Council that he was unable to gain approval from landowners and submitted his consultation report with email of 30 June 2019. (Attachment F)

18. Council then engaged Dave Serjeant an accredited Independent Hearings Commissioner to mediate approval of the stormwater connection. (Attachment G)

19. During consultation the landowners notified Council that the public line was blocked and buried which prompted Healthy Waters to engage a contractor to undertake maintenance works to clear the line of obstructions. (Attachment E)

20. Dave Serjeant also provided confirmation that downstream capacity assessments had confirmed adequate system capacity.

21. Following several months face to face and on-site meeting and communication Dave Serjeant confirmed that he was unable to obtain landowner approval.

22. Dave Serjeant presented his mediation report dated 10 February 2020 confirming that he was no able to mediate approval for the required stormwater connection. (Attachment G)

Ngā tūtohunga
Recommendation/s
That the Regulatory Committee:

a) hear and determine the objections by the owners of 73 Park Rise Campbells Bay, pursuant to section 460 of the Local Government Act 1974; and

b) subject to the hearing of the objection, resolve under section 460(1) of the Local Government Act 1974 that the proposed stormwater connection route across 73 Park Rise, is the only practical route as shown on LANDWORKS CONSULTING Ltd engineers drawings P18-59 sheet 400 revision A and sheet 401 revision A.

Horopaki
Context

23. The owner of 77 Park Rise is Kexin Wang (“the Applicant”). The Applicant has applied under section 460 of the Act for the council to determine, that the proposed installation of a stormwater pipe and connection to an existing Council public manhole located within the shared access way for 73 Park Rise as being the only practical route and available connection to serve 77 Park Rise.

24. A locational aerial of the relevant properties and plans of the precise route is shown on LANDWORKS CONSULTING Ltd engineers’ drawings P18-59 sheet 400 revision A and sheet 401 revision A. (Attachment B)

25. The Applicant lodged an Engineering Approval application (reference ENG60312220) on 4 December 2017 to undertake the work to install the stormwater line. This has since been approved on 27 August 2019 2019 subject to landowner approval of various landowners at 73 Park Rise. (Attachment B) Landowners of 73 Park Rise have not approved the connection.

26. The ‘Applicant’ and its consultants have consulted with the property’s owners in person, in writing and by phone over a period of 36 months to date to obtain their consent to undertake the work. A copy of relevant pertinent communication demonstrates that the property owners have been fully informed of the extent of works and this is provided as (Attachment D & F). The written communication has been sent to the addresses listed for the respective owners as well as email communication. The ‘Applicant’ has not been able to obtain consent.

27. The Council’s senior development engineer has also consulted with these landowners and has not been able to facilitate approval. (Attachment E)
28. Advertisement also confirms the attempts by Mr Dave Serjeant, council’s independent facilitator engaged to seek a resolution. However, these attempts were also unsuccessful.

29. Under report of 10 February 2020 the mediator proposes that the matter be set down for a hearing.

30. The Council is satisfied that the owners (‘Applicant’) of 77 Park Rise, have met its expectations of seeking all endeavors to obtain an agreement to install the stormwater line.

31. The approved stormwater reticulation provides for stormwater connection for 77 Park Rise which is a significant improvement on the current situation as this site currently discharges onto 73B Park Rise the property of Jens Richter Joanna Victoria Broadhead & John David Rust.

32. Details of landowners is provided under Attachment H

33. Copies of S460 LGA 1974 are provide under Attachment I

Tātaritanga me ngā tohutohu

Analysis and advice

34. Currently the site at 77 Park Rise stormwater discharges to ground via sheet-flow onto 73B Park Rise.

35. The proposed stormwater discharge connection will provide for discharge connection from 77 Park Rise to the public reticulation system and will provide a significant improvement of stormwater management in the immediate vicinity.

36. The existing public stormwater line traversing 73 Park Rise and the associated downstream reticulation has the capacity to receive discharge from the proposed development as confirmed from separate independent sources.

37. The proposed direct connection to the existing manhole located within the shared access way for properties at 73 Park Rise is in accordance with engineering best practice, is the shortest, least intrusive route and access to all the properties will be fully maintained throughout the duration of the works which are expected to be completed within a maximum of two days.

Tauākī whakaaweawe āhuarangi

Climate impact statement

38. The extent of the works is of a localised minor nature that does not require climate change consideration.

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera

Council group impacts and views

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

40. At the hearing, both the applicant and the objectors can present their evidence in support of their positions. After hearing all the evidence and the relevant information, the Regulatory Committee then has to make a decision. There is no right of appeal of the decision of the Regulatory Committee.
Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe
Local impacts and local board views
41. The Local Board is not advised of service connection requests under the Act. Further, the
determination of this objection requires no consultation beyond the owners the various
landowners at 73 Park Rise.

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

Ngā ritenga ā-pūtea
Financial implications
43. All costs for this process and hearing are to be met by the owner of 77 Park Rise Campbells
Bay.

Ngā raru tūpono me ngā whakamaurutanga
Risks and mitigations
44. The proposed reticulation will improve the upstream stormwater management and reduce
sheet flow discharged impact on downstream property at 73A Park Rise.

Ngā koringa ā-muri
Next steps
45. The installation of the public stormwater reticulation will be undertaken by Council upon the
Hearing approval of the proposed works.

Ngā tāpirihanga
Attachments

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<td>Resource Consent SC30224256  <em>(Under Separate Cover)</em></td>
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<td>B</td>
<td>Engineering Approval ENG60060119 <em>(Under Separate Cover)</em></td>
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<td>C</td>
<td>Engineering Documents <em>(Under Separate Cover)</em></td>
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<td>D</td>
<td>Airneys Consultants Ltd - Consultation <em>(Under Separate Cover)</em></td>
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<td>E</td>
<td>Auckland Council Communication <em>(Under Separate Cover)</em></td>
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<td>Mediation - Mediator Report <em>(Under Separate Cover)</em></td>
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<td>H</td>
<td>Landowner Details - Landowners consulted <em>(Under Separate Cover)</em></td>
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<td>I</td>
<td>s460 LGA 1974 <em>(Under Separate Cover)</em></td>
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Ngā kaihaina
Signatories

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<tr>
<th>Author</th>
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<tbody>
<tr>
<td>Cedric Daniel - Senior Development Engineer</td>
<td>Hock Lee - Principal Specialist Alcohol Licensing</td>
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<td>Craig Hobbs - Director Regulatory Services</td>
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