

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

Date: Tuesday, 4 April 2023
Time: 10.00am
Meeting Room: Reception Lounge
Venue: Auckland Town Hall
301-305 Queen Street
Auckland

Komiti mō te Waeture me te Haumarutanga / Regulatory and Safety Committee

OPEN AGENDA

MEMBERSHIP

Chairperson	Josephine Bartley	
Deputy Chairperson	Cr Ken Turner	
Members	IMSB Member Edward Ashby	IMSB Member Tony Kake, MNZM
	Cr Andrew Baker	Cr Kerrin Leoni
	Cr Julie Fairey	Cr Sharon Stewart, QSM
	Cr Alf Filipaina, MNZM	Cr Wayne Walker
Ex-officio	Mayor Wayne Brown	
	Deputy Mayor Desley Simpson JP	

(Quorum 5 members)

Sam Riddiford
Kaitohutohu Mana Whakahaere / Governance
Advisor

29 March 2023

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ITEM	TABLE OF CONTENTS	PAGE
1	Ngā Tamōtanga Apologies	5
2	Te Whakapuaki i te Whai Pānga Declaration of Interest	5
3	Te Whakaū i ngā Āmiki Confirmation of Minutes	5
4	Ngā Petihana Petitions	5
5	Ngā Kōrero a te Marea Public Input	5
	5.1 Public Input: Amanda Easterbrook - challenges of dog ownership / management within the Auckland region.	5
6	Ngā Kōrero a te Poari ā-Rohe Pātata Local Board Input	5
7	Ngā Pakihi Autaia Extraordinary Business	5
8	Options in response to review of Indoor Domestic Fires Bylaw	7
9	Adoption of a Regulatory and Safety Committee Policy	15
10	COVID-19 Recovery (Fast-track Consenting) Act – extension of delegations	19
11	Summary of Regulatory and Safety Committee information memoranda, workshops and briefings (including the Forward Work Programme) - 4 April 2023	25
12	Appointment of the District Licensing Committee for 2023-2026	27
13	Determination of an objection to a menacing dog classification by Linda Dumont	31
14	Te Whakaaro ki ngā Take Pūtea e Autaia ana Consideration of Extraordinary Items	
PUBLIC EXCLUDED		
15	Te Mōtini ā-Tukanga hei Kaupare i te Marea Procedural Motion to Exclude the Public	37
C1	CONFIDENTIAL: Recommendation for the appointment of District Licensing Committee chairs and members for 2023-2026	37

1 Ngā Tamōtanga | Apologies

2 Te Whakapuaki i te Whai Pānga | Declaration of Interest

3 Te Whakaū i ngā Āmiki | Confirmation of Minutes

Click the meeting date below to access the minutes.

That the Regulatory and Safety Committee:

- a) confirm the ordinary minutes of its meeting, held on [Tuesday, 7 March 2023](#), including the confidential section, as a true and correct record.

4 Ngā Petihana | Petitions

5 Ngā Kōrero a te Marea | Public Input

5.1 Public Input: Amanda Easterbrook - challenges of dog ownership / management within the Auckland region.

**Te take mō te pūrongo
Purpose of the report**

1. Amanda Easterbrook will address the Regulatory and Safety Committee on the challenges of dog ownership / management within the Auckland region.

**Whakarāpopototanga matua
Executive summary**

2. This committee is responsible for regulatory hearings (required by relevant legislation), regulatory policy and bylaws and is responsible for overseeing improvement of the Council's regulatory functions and making certain regulatory decisions that are appropriate to be made by elected members.

**Ngā tūhonga
Recommendation/s**

That the Regulatory and Safety Committee:

- a) whiwhi / receive the public input from Amanda Easterbrook regarding the challenges of dog ownership / management within the Auckland region and whakamihi / thank Amanda Easterbrook for attending the meeting.

6 Ngā Kōrero a te Poari ā-Rohe Pātata | Local Board Input

7 Ngā Pakihi Autaia | Extraordinary Business

Options in response to review of Indoor Domestic Fires Bylaw

File No.: CP2023/00006

Te take mō te pūrongo Purpose of the report

1. To seek a decision on the preferred statutory option in response to the review of the Auckland Council Air Quality Bylaw for Indoor Domestic Fires 2017.

Whakarāpopototanga matua Executive summary

2. The Regulatory Committee completed a review of the Bylaw on 9 August 2022 as part of its statutory review programme ([REG/2022/39](#)). The committee agreed that a bylaw was still required to set the regional design standard (manufactured emission rate) for indoor domestic fires and requested an options report.
3. In preparing this options report (Attachment A), staff obtained and analysed additional information that suggests the Bylaw is no longer contributing to reducing the air quality problem (contaminants discharged from indoor domestic fires). This is because:
 - 99.55 per cent of the council's consents for indoor domestic fires are regulated by 'stricter' requirements in the national legislation
 - new fireplaces are now manufactured to have low emissions regardless of the Bylaw.
4. Staff used the review findings and additional information to identify and assess these statutory options under the Local Government Act 2002:
 - **option one (no bylaw):** allow the Bylaw to expire (for example, the Outdoor Fires Bylaw or the Wharves and Construction Bylaw) or revoke the Bylaw using a special consultative procedure in the Local Government Act 2002
 - **option two (a new bylaw):** make a replacement bylaw about a regional design standard (manufactured emission rate) for new indoor domestic fires.
5. Staff recommend **option one** (allow the Bylaw to expire). This option acknowledges that the Bylaw is not contributing to reducing contaminants or nuisance from indoor fires. Other benefits include:
 - a simpler regulatory framework to implement and communicate to the public
 - reduced costs to the council (one less bylaw to develop, administer and review)
6. The trade-off between preferred option one and option two is the efficiency of streamlining the regulatory framework versus a potential small improvement in air quality. The potential gains in air quality from option two are expected to be negligible (0.45 per cent).
7. There is a low risk that stakeholders or public may express concern about the recommended option. This risk is mitigated by communication of reasons why the Bylaw is unnecessary.
8. If agreed, the Governing Body will consider the committee's recommendations. If approved by the Governing Body, the Bylaw will lapse on 25 May 2024. Staff will update council information and the Bylaw and inform persons consulted in the Bylaw review.

Ngā tūtohunga Recommendation/s

That the Regulatory and Safety Committee:

- a) tuhi ā-taipitopito / note that the Regulatory Committee completed the review of the Air Quality Bylaw for Indoor Domestic Fires 2017 in August 2022.
- b) whakaae / agree that option one (allow the Bylaw to expire) is the most appropriate option to respond to the review findings and additional information in this report on the Auckland Council Air Quality Bylaw for Indoor Domestic Fires 2017.
- c) whakaae / agree to recommend that Governing Body:
 - i) whakaū / confirm that the Auckland Council Air Quality Bylaw for Indoor Domestic Fires 2017 is no longer the most appropriate way to protect public health and minimise nuisance to neighbouring properties from smoke, odour and ash discharged from indoor domestic fires.
 - ii) whakaae / approve continuing use of other existing regulations and non-regulatory measures to address public health risks and nuisance from indoor domestic fires, including the national legislation, Auckland Unitary Plan, information and education.
 - iii) whakaae / approve allowing the Auckland Council Air Quality Bylaw for Indoor Domestic Fires 2017 to expire on 25 May 2024.

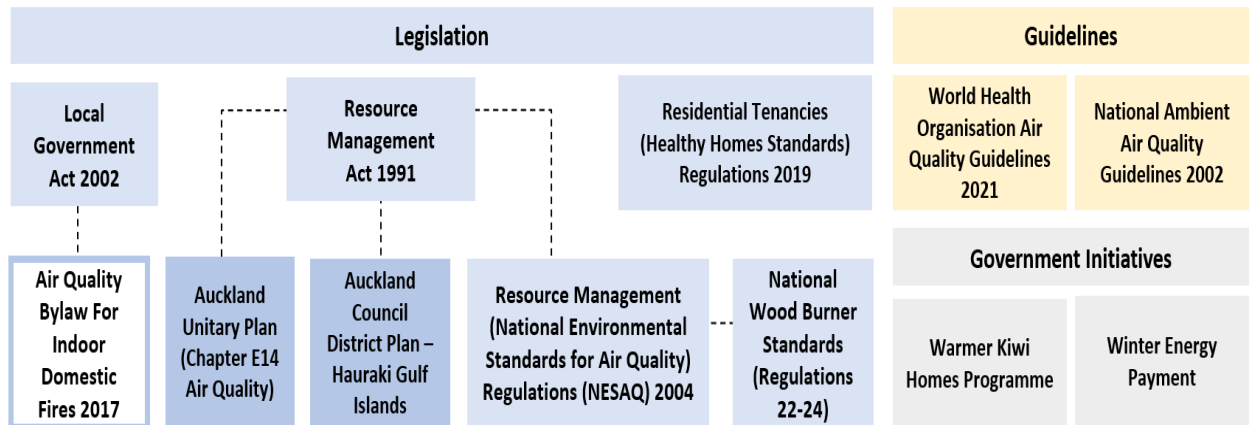
Horopaki Context

The Bylaw regulates matters related to indoor domestic fires in Auckland

9. The Governing Body adopted Te Ture ā-Rohe Kounga Hau mō ngā Pākaiahi Tara ā-Whare / Air Quality Bylaw for Indoor Domestic Fires 2017 on 25 May 2017 ([GB/2017/49](#)).
10. The Bylaw seeks to protect public health and minimise nuisance to neighbouring properties from smoke, odour and ash discharged from indoor domestic fires by:
 - setting a regional design standard (manufactured emission rate) for new indoor domestic fires not covered by the national legislation (the NESAQ)¹
 - prohibiting discharges of contaminants and burning of certain materials (fuels) that are likely to cause nuisance in any indoor domestic fire across Auckland.
11. The Bylaw aligns with and supports the outcomes in the Auckland Plan 2050 in relation to public health and wellbeing.
12. The Bylaw forms part of a wider regulatory and strategic framework that includes central government legislation and initiatives, local plans, and international and domestic guidelines.

¹ The Bylaw regulates all non-wood burners (including open fires, wood, coal, pellet and multi-fuel burners), wood-burning cooking stoves and water heaters on properties that are greater or equal to 2ha in the Auckland Urban Air Quality Area. National legislation refers to the national environmental standards for air quality (the NESAQ) which regulate a design standard (no more than 1.5g/kg) for wood burners used for space heating on properties smaller than 2ha (in rural and urban areas).

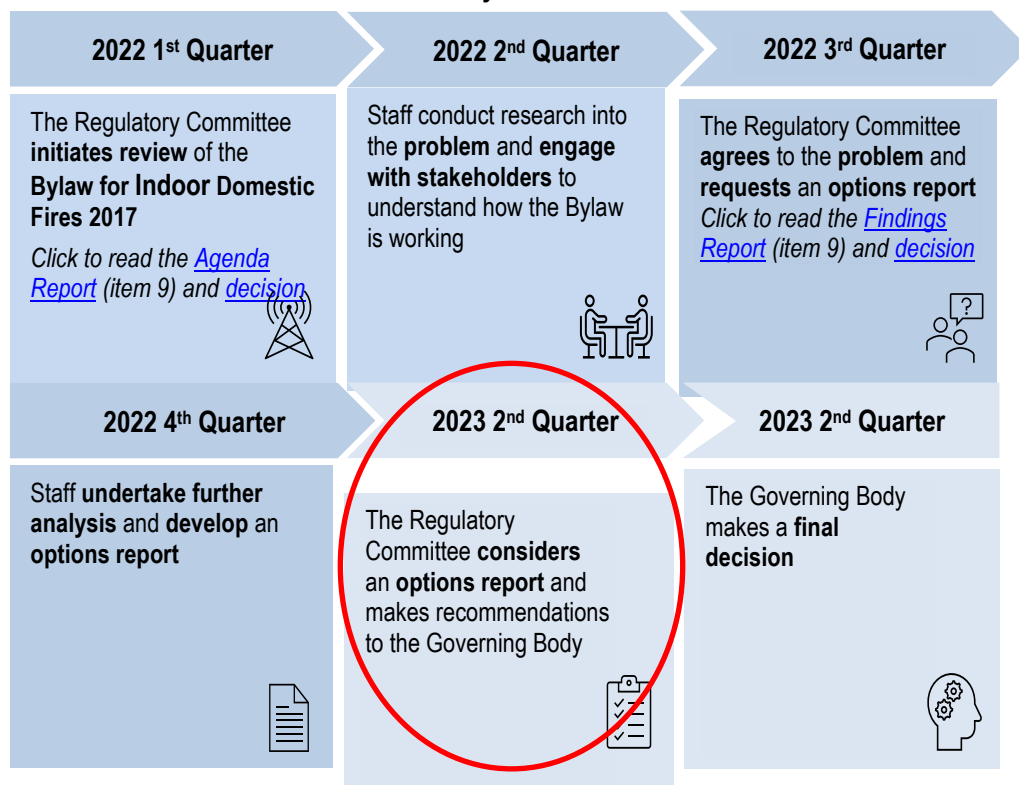
Regulatory and strategic framework



The Bylaw expires in May 2024 and the review found a bylaw was still required

13. The Bylaw will expire on 25 May 2024.
14. On 9 August 2022, the Regulatory Committee completed a review of the Bylaw.
15. The committee endorsed the findings ([REG/2022/39](#)), including that the Bylaw is:
 - still required to address public health risks from indoor domestic fires not regulated by the national legislation (the NESAQ)
 - ineffective at addressing public nuisance, the Auckland Unitary Plan is used instead.
16. The committee also requested an options report to respond to the findings and investigate specific improvements for any new bylaw.
17. The diagram below shows the review process to date and future steps for the committee and the Governing Body.

Process to review the Bylaw for Indoor Domestic Fires 2017



Tātaritanga me ngā tohutohu Analysis and advice

Staff used the findings and suggested improvements to develop an options report

18. Staff used the findings and the committees suggested improvements to develop an options report in Attachment A. The report includes:
- a definition of the problem, objectives and outcomes sought for 2023 and beyond
 - options for each of the three topics regulated by the current Bylaw (prohibited discharges, prohibited fuels and regional design standard)
 - assessment of each option against the criteria.

The air quality problem has reduced since the regional design standard was introduced

19. Home heating remains the largest source of air pollution from particulate matter and exposure has negative health impacts.² Particulate matter from domestic fires contributed to 74 per cent of Auckland's health related social costs (\$724 million) in 2016.
20. Auckland's particulate matter levels have declined significantly between 2006 and 2022, including in winter when indoor domestic fire use is highest. This is likely due to the introduction of air quality standards and the wood burner regulations in the NESAQ.
21. There have been no breaches of the regional or national air pollution standards due to discharges from indoor domestic fires between 2021 and 2022.
22. Despite Auckland's increasing population and number of dwellings, demand for indoor domestic fires has been stable (approximately 1300 building consents issued annually since 2017).
23. The use of domestic solid-fuel fires (wood and coal) has declined by 8.3 per cent between 2012 and 2018 whilst popularity of heat pumps and electric heaters has increased (simple to use and easier to repair).
24. The council received 872 complaints related to the use of indoor domestic fires since 2017. All complaints related to nuisance, with 10.8 per cent also mentioning health concerns:
- most common nuisance complaints are smoke (91 per cent) and odour (47 per cent)
 - most common health concerns relate to difficulty breathing (32 per cent), concern for a child's health and wellbeing (21.3 per cent) and aggravated asthma (16 per cent).
25. The number of nuisance and health complaints remains relatively stable with over 130 complaints received on average each year since 2017.
26. Complaint numbers are relatively low compared to the number of private dwellings in a growing Auckland (0.17 per cent complaints per household).
27. Overall, the air quality problem has improved since the regional design standard was introduced.

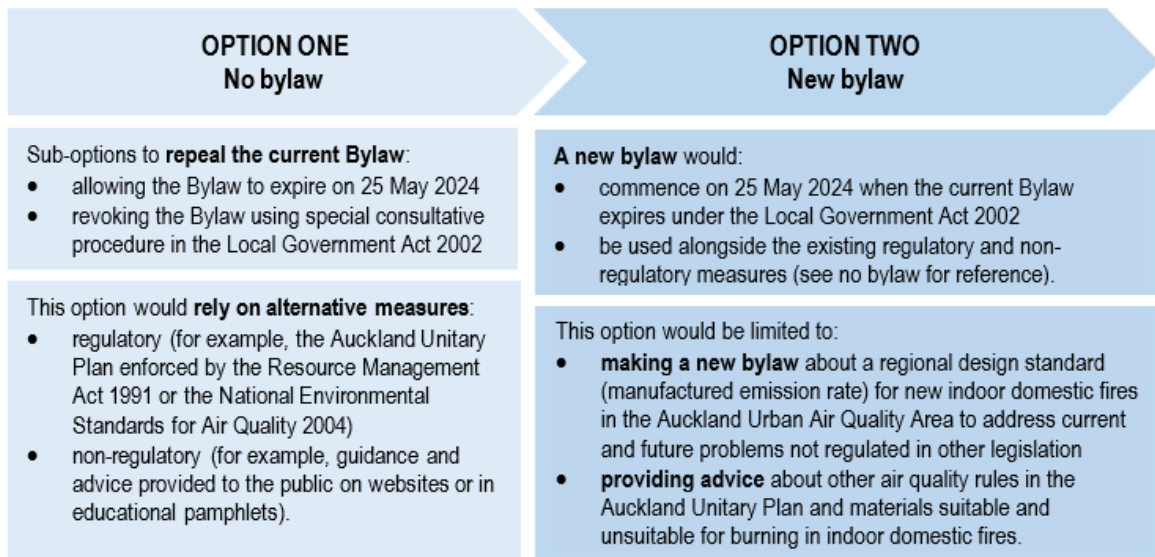
Staff assessed the statutory options to respond to public health risks and nuisance

28. The council must decide whether a bylaw is still required and if so, make a new bylaw before the expiry date following public feedback.³
29. Alternatively, if the Bylaw is no longer required, the council can decide to revoke the Bylaw using a public consultative procedure or allow the Bylaw to expire.

² Particulate matter means a mixture of solid or liquid particles found in the air that are small enough to be inhaled. Both short-term and long-term exposure negatively impacts health.

³ The Bylaw cannot be confirmed or amended. The Local Government Act 2002 (s158(1), s160A) means a bylaw not reviewed by its statutory review (findings) date (25 May 2022) expires after two years. The findings review was completed on 9 August 2022.

30. In preparing this options report staff assessed the required statutory options under the Local Government Act 2002: option one (no bylaw) or option two (a new bylaw).



31. Staff used the committee's suggested improvements ([REG/2022/39](#)) to develop the components of a new bylaw (see option two below). A full assessment of the suggested improvements is included in Attachment A (page 8).
32. When investigating specific improvements for any new bylaw (option two), staff obtained and analysed additional information that suggests the regulatory gap filled by the Bylaw is insignificant and is unlikely to impact public health.

The Bylaw is not reducing the air quality problem as it only regulates 0.45 per cent of fires

33. The findings report concluded that a bylaw was still required, with improvements, to address public health risks from indoor domestic fires not regulated by the NESAQ.
34. When investigating the suggested improvements for a new bylaw (option two), staff obtained and analysed information that suggests the Bylaw is no longer contributing to reducing the air quality problem (contaminants discharged from indoor domestic fires) because:
- the Bylaw only regulated 0.45 per cent of the council's consents for indoor domestic fires between 2017 and 2022 (approximately 4.4 consents per year). The remaining 99.55 per cent of consents were regulated by the 'stricter' standards in the NESAQ
 - technological advances made by manufactures mean most indoor domestic fires on the market meet the 'stricter' design standard in the NESAQ, regardless of the Bylaw⁴
 - enforcement of the regional design standard has not been undertaken due to a lack of link between the Bylaw (made under the Local Government Act 2002) and the Building Act 2004 (this is a common issue across all councils).⁵

The Bylaw is ineffective at addressing public nuisance, the Unitary Plan is used instead

35. The Bylaw is not used to address public nuisance from discharges of contaminants and materials (fuels) burnt in indoor domestic fires.
36. The council currently relies on the Auckland Unitary Plan, information and education.

⁴ Out of 22 domestic fires regulated solely under the Bylaw, 20 already met the design standard in the NESAQ (1.5g/kg of dry fuel burnt) and 19 met the proposed design standard (1.0g/kg of dry fuel burnt).

⁵ Building Consents staff can only provide advice on how to comply with the Bylaw requirements but legally, cannot turn down a consent application. If an applicant chooses to install a non-compliant fire, the Licensing and Regulatory Compliance staff would have to intervene using the Local Government Act 2002.

37. The Auckland Unitary Plan already regulates activities that adversely affect air quality to the same effect as the Bylaw and has more effective enforcement powers and penalties. The Plan is enforced using powers in the Resource Management Act 1991 that enable:
 - enforcement from the property boundary (no need to enter private homes or seek a search warrant from a court judge, as required under the Bylaw)
 - issuing of infringement notices (unavailable under the Bylaw).
38. Existing non-regulatory measures already inform the public on how to reduce smoke nuisance and acceptable types of fuel. Guidance can be found on the Ministry for the Environment webpage, the council webpage on how to minimise and report smoke, and in the domestic fire pamphlet endorsed by the New Zealand Home Heating Association. This non-regulatory approach is consistent with the national practice of providing advice.
39. Since 2017, only 15.5 per cent of complaints to the council required enforcement action, with 94 per cent of this total receiving an educational letter. The remaining six per cent of complaints were addressed using the Resource Management Act 1991 (never the Bylaw) to issue four formal warnings, three abatement notices and one infringement notice.

Options assessment

40. Staff assessed each option for the three Bylaw topics (prohibited discharges, prohibited fuels and regional design standard) against assessment criteria in Attachment A (page 9). A summary of the assessment is presented in the table below.
41. The full assessment in Attachment A includes how each option would be implemented, an analysis of all the suggestions in the findings to identify the components of a new bylaw as well as pros, cons, risks and risk mitigations.

Summary of each option against assessment criteria

Options	Effectiveness*	Efficiency*	Validity**
TOPIC 1: PROHIBITED DISCHARGES			
Option one (expire) Recommended	✓	✓✓	-
Option one (revoke)	✓	✓	-
Option two (new bylaw)	✗	✗	✗
TOPIC 2: PROHIBITED FUELS			
Option one (expire) Recommended	✓	✓✓	-
Option one (revoke)	✓	✓	-
Option two (new bylaw)	✗	✗	✗
TOPIC 3: REGIONAL DESIGN STANDARD			
Option one (expire) Recommended	✓	✓✓	-
Option one (revoke)	✓	✓	-
Option two (new bylaw)	✗	✗	✗

* Refers to effectiveness (in achieving the outcome) and efficiency (cost and benefit) at minimising the risk to public health and nuisance from smoke, odour and ash to neighbouring properties from indoor domestic fires.

** Refers to whether the Bylaw is reasonable, authorised by statute, is consistent with the New Zealand Bill of Rights Act 1990 and other relevant legislation, regulations and plans.

42. Based on the analysis of each option for each of the three topics, staff **recommend option one (allow the Bylaw to expire)**. Having no bylaw would:
 - continue to achieve the outcomes of protecting public health and minimising smoke, odour and ash nuisance to neighbouring properties from indoor domestic fires
 - provide no change to levels of service provided
 - rely on the existing 'stricter' requirements in the NESAQ which are estimated to be responsible for 99.55 per cent of the council's consents for indoor domestic fires

- continue to address nuisance by relying on existing regulation in the Auckland Unitary Plan, information and education
 - provide a simpler regulatory framework to implement and communicate to the public
 - reduce costs to the council (one less bylaw to develop, administer and review)
 - avoid time and expense to the council and public of using a special consultative procedure to formerly revoke the Bylaw under the Local Government Act 2002.
43. The trade-off between preferred option one and option two is the efficiency of streamlining the regulatory framework versus a potential small improvement in air quality. The potential gains in air quality from option two are expected to be negligible (0.45 per cent). A new bylaw would require staff resource and council budget for implementation and review.
44. This trade-off is considered to be acceptable based on evidence that the Bylaw is rarely used, other existing approaches are achieving the objectives and outcomes sought, and that there would be no changes to how the council responds to public nuisance complaints.

Tauākī whakaaweawe āhuarangi **Climate impact statement**

45. The Bylaw does not directly address climate change and has had minimal impact on improving emissions from indoor domestic fires.
46. While discharges of particulates from indoor domestic fires can contribute to poor air quality, particularly in winter months, these are already addressed in national legislation. Only an estimated 0.45 per cent of consents between 2017 and 2022 were for indoor domestic fires regulated solely under the Bylaw. Council air quality experts advise that these numbers are not statistically significant enough to likely have any impact on air quality.

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

47. Relevant staff provided feedback to the review and suggested technical improvements addressed in the options report. They also provided feedback during the preparation of this options report confirming that a regulatory gap of 0.45 per cent filled by the Bylaw is not statistically significant enough to impact public health caused by indoor domestic fires.
48. Stakeholder feedback relating to operational matters, including data systems, application processing, public guidelines and clean heating incentives have been referred to the appropriate departments. A review of how complaints data is recorded is already underway.

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

49. The Bylaw has been assessed as low interest with no impact on local governance as it regulates indoor domestic fires located on private properties Auckland-wide and received low levels of public feedback during its development in 2017 (51 people).
50. If a new bylaw is proposed, interested local boards would have an opportunity to provide their formal views on public feedback to the proposal to an appointed bylaw panel in 2023.

Tauākī whakaaweawe Māori **Māori impact statement**

51. The Bylaw supports manaakitanga and kaitiakitanga values in the Independent Māori Statutory Board's [Māori Plan for Tāmaki Makaurau](#) and the [Schedule of Issues of Significance](#) by promoting clean burning fires and preventing smoke nuisance to neighbouring properties.
52. To obtain feedback on the Bylaw, staff notified 19 mana whenua groups, eight Māori health organisations and three mataawaka marae in collaboration with Ngā Matarae.

53. Feedback from mana whenua highlighted the need to balance regulatory restrictions and the wellbeing of low socio-economic families during winter, and requested an amendment to the definition of special purpose areas to exclude papakāinga and marae from the Bylaw.
54. The recommended option of allowing the Bylaw to expire would enable the council to reduce regulatory restrictions on families while still protecting public health and reducing nuisance using the NESAQ, the Auckland Unitary Plan, information and education.
55. The NESAQ regulates domestic wood burners in papakāinga but does not apply to marae which are considered commercial premises.

Ngā ritenga ā-pūtea Financial implications

56. The cost of implementing the outcome of this report will be met within existing budgets.

Ngā raru tūpono me ngā whakamaurutanga Risks and mitigations

57. The following risks and risk mitigations have been identified:

If...	Then...	Mitigation
Stakeholders or the public are opposed to or concerned about the proposed options.	There may be a negative perception of the council about the Bylaw review processes and consultation to date. Low reputational risk.	Effective communication to the public that the Bylaw duplicates existing rules and is unnecessary, and that the council will continue to respond and resolve complaints in the same way it does currently.

Ngā koringa ā-muri Next steps

58. A summary of the Bylaw review process and next steps can be found in paragraph 17. If the recommended option is approved, the Governing Body will consider the committee's decision. If adopted by the Governing Body, staff will update council information and persons consulted in the review.

Ngā tāpirihanga Attachments

No.	Title	Page
A 	Indoor Domestic Fires Bylaw Review 2023 Options Report	

Ngā kaihaina Signatories

Authors	Magda Findlik - Senior Policy Advisor Chelsea Major - Policy Advisor
Authorisers	Paul Wilson - Senior Policy Manager Kataraina Maki - General Manager - Community and Social Policy Craig Hobbs - Director Regulatory Services

Adoption of a Regulatory and Safety Committee Policy

File No.: CP2023/03553

Te take mō te pūrongo

Purpose of the report

1. To introduce and obtain approval for an amended Regulatory and Safety Committee Policy (Attachment A).

Whakarāpopototanga matua

Executive summary

2. The committee is invited to receive and adopt a Regulatory and Safety Committee Policy. The Policy incorporates the operational policy and sub delegations for the decision-making responsibilities that lie within the areas of the committee's responsibilities.

Ngā tūtohunga

Recommendation/s

That the Regulatory and Safety Committee:

- a) whai / adopt the Regulatory and Safety Committee Policy.

Horopaki

Context

3. The Regulatory and Safety Committee has been delegated wide responsibility under a range of legislation including responsibilities relating to hearings, regulatory policy and bylaws. The implementation of a committee policy creates an effective and transparent means of implementing the oversight role of the committee and distinguishing it from the operational aspects of decision making undertaken by commissioners and staff.
4. The Committee primarily has a governance and oversight role across the areas within its terms of reference. Through its Policy, it can distinguish its policy making (governance) functions from the operational matters of statutory hearing and decision making. These operational functions can be delivered effectively by commissioners and staff. For example, the committee will appoint the pools of commissioners who will be available for alcohol licensing and resource management decision making but will leave the appointment of those commissioners to individual hearings to staff, who will make those appointments in accordance with the guidance and direction provided by the Policy.
5. The previous Regulatory Committee Policy built on the strengths of the previous Committee policies that were developed and implemented during the previous four terms of Council. The refreshing of the Policy clarifies and recognises the functions of the current Regulatory and Safety Committee in matters of planning and resource consenting, dog control and alcohol regulation. Both Committee and staff benefit from a clear distinction between governance and operational functions with the policy ensuring that operational matters within the oversight of the Committee remain consistent, transparent and efficient.
6. The Policy provides a streamlined process for the division of decision-making responsibility and determining who the decision maker should be. The delegation for decision making, subject to statutory limits, is allocated to a level that best suits the decisions that need to be made. This reflects the operational nature of regulatory decision making, as contrasted with policy development and approval, which fits more within the governance sphere.

Tātaritanga me ngā tohutohu Analysis and advice

7. Staff advise the Regulatory and Safety Policy should be adopted. With the exception of one substantive change addressed below, the changes made to the Policy are by way of clarifications or to recognise the new Council committee structure and changes to position titles.

Tauākī whakaaweawe āhuarangi Climate impact statement

8. This report is procedural in nature and any climate impacts attributable directly to the adoption of this policy will be negligible.

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

9. This report is procedural in nature and there are no council group impacts.

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

10. The Policy recognises the various ways in which local boards interface with regulatory matters. Local boards can address the Committee directly on any agenda item. For a matter that may affect the well-being of a local board community, processes are provided where the views and preferences can be expressed to those delegated the responsibility of regulatory decision making. The policy further outlines where local board members can speak to those views and preferences when a hearing is held.

Tauākī whakaaweawe Māori Māori impact statement

11. The policy recognises the knowledge of Māori as specialists in determining their values and associations. The policy describes how staff should consult on matters of significance to Māori and the desirability of appointing persons with relevant expertise in Te Ao Māori, tikianga Māori or Tiriti o Waitangi as part of a decision-making process.

Ngā ritenga ā-pūtea Financial implications

12. The policy provides effective understanding and guidance for elected members and staff. Delegations to a sub-committee, hearing commissioners and staff allows the most cost efficient and timely means of undertaking council's statutory decision-making.
13. Proposed section 6.5 of the revised Policy contains a substantive change enabling delegated staff to abide a decision of the Court rather than take an active part in proceedings. This provides an opportunity to save legal and witness costs and internal staff time on proceedings where Council does not have an interest in the outcome.

Ngā raru tūpono me ngā whakamaurutanga Risks and mitigations

14. This report is procedural in nature and any risks attributable directly to the adoption of this policy will be negligible as there is only one substantive change as set out in paragraph 13 above.

Ngā koringa ā-muri Next steps

15. Implement the Regulatory and Safety Committee Policy.

Ngā tāpirihanga Attachments

No.	Title	Page
A 	Regulatory and Safety Committee Policy	

Ngā kaihaina Signatories

Author	Robert Andrews - Principal Specialist Planning
Authorisers	Ian Smallburn - General Manager Resource Consents Craig Hobbs - Director Regulatory Services

COVID-19 Recovery (Fast-track Consenting) Act – extension of delegations

File No.: CP2023/03229

Item 10

Te take mō te pūrongo

Purpose of the report

1. To extend the delegated authority to staff to carry out powers, functions and duties relating to resource consents and notices of requirement under the COVID-19 Recovery (Fast-track Consenting) Act 2020.

Whakarāpopototanga matua

Executive summary

2. The COVID-19 Recovery (Fast-track Consenting) Act 2020 (the Act) enables the fast-tracking of consenting for eligible development and infrastructure projects following a different process and with different considerations to those occurring under the Resource Management Act 1991 (the RMA). The Act commenced on 9 July 2020 and will be repealed on 8 July 2023. A staff delegation in place from the Planning Committee of the previous term needs to be re-established.
3. The Act confers a number of powers and functions on Auckland Council, that includes responding to the Minister's invitation to comment on projects and providing feedback to the expert consenting panels. Council also takes part in nominating membership of the expert consenting panel while staff can appear at hearings, provide draft conditions, and manage any appeals from the panel decisions.
4. The timeframes for carrying out these powers and functions are very tight, being 10 working days in some instances. As such, actions typically need to be taken outside of the Committee's timeframes. This report sets out where these actions will be required and recommends the re-establishment of appropriate delegations.
5. Council's experience with consenting under the Act shows that the current delegations have worked well but remain imperative. These allow the prioritising of fast-track applications to meet the Act's strict timeframes and the current application workflow. Thirty-six applications relate to sites within the Auckland region, that are currently processing or granted.

Ngā tūtohunga

Recommendation/s

That the Regulatory and Safety Committee:

- a) whiwhi / receive the report and information contained.
- b) tautapa / delegate all responsibilities, duties and powers in relation to resource consent applications and notices of requirement processed under the COVID-19 Recovery (Fast-track Consenting) Act 2020 to the tier three manager in the Resource Consents department (in relation to resource consents) and the tier three manager in the Plans and Places department (in relation to notices of requirement), subject to:
 - i) the restrictions set out in the *General rules applying to all delegations – Auckland Council* (as set out in Attachment A to this report);
 - ii) compliance with the red flag process set out in this report; and
 - iii) consultation with the relevant tier three manager within the Legal Services department when deciding whether to appeal a matter to the High Court.

Horopaki Context

6. The Act's purpose is stated as; *“to urgently promote employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources”*.
7. The Act enables the fast-tracking of consenting for eligible development and infrastructure projects. These follow a different process and with different considerations to those occurring under the RMA. The Act commenced on 9 July 2020 and while intended to run for two years, was extended in November 2021, and will be repealed on 8 July 2023. For an application received prior to 8 July 2023, the provisions of the Act will continue to apply until the application process is completed, noting that a referred application must be lodged with the Environmental Protection Agency by 11 January 2024. A consent under the Act lapses after 2 years unless exercised. The fast-track consenting legislation does not amend the RMA; it provides an alternative consenting pathway.
8. The Act lists a number of projects which are automatically eligible for the fast-track consenting process and can progress directly to Expert Consenting Panels for consideration. In Auckland, the Papakura to Pukekōhe rail electrification and the first stage of the Papakura to Drury South State Highway 1 improvements are listed projects that have been consented. Three separate listed Unitec residential developments are currently in progress.
9. The Act has also enabled minor maintenance and upgrade works to be carried out by Waka Kotahi NZ Transport Agency, and Kiwi Rail Holdings Limited on their existing infrastructure within the road and rail corridor without a resource consent.
10. Any other person with an eligible (public or private) project can apply to the Minister for the Environment. The Minister can then refer projects that meet the purpose of the Act and the eligibility criteria to an Expert Consenting Panel. These referred projects make up the bulk of applications lodged and / or already determined under the Act. **Table 1** sets out the number of listed and referred projects lodged under the Act within the Auckland region compared with the rest of New Zealand. During the past 2 ½ years, 36 applications under the Act relate to sites within the Auckland region, this being around 50% of all applications currently processing or granted.
11. These applications represent a wide range of major infrastructure, residential and commercial projects spread across both urban and greenfield locations. **Attachment B** lists all applications under the Act that are within the Auckland region. These are at various stages, either lodged with the Environmental Protection Agency, allocated to an Expert Consenting Panel and processing, or already consented. The details of any listed or referred projects that are currently being processed or consented can be found on the Environmental Protection Agency webpage at <https://www.epa.govt.nz/fast-track-consenting/>.

Table 1: Number of Applications under the Covid Fast Track Act as of 16th February 2023

	Auckland (referred)	Auckland (listed)		Rest of New Zealand (referred)	Rest of New Zealand (listed)
Lodged and awaiting referral	6	-		6	1
Referred and in progress	11	4		3	0
Determined and granted	9	2		22	3 *
Withdrawn	4				
Totals referred and listed		36			35

- *Table does not include 3 projects that have been declined

From Environmental Protection Agency website

12. Applications lodged under the Act have continued at a steady rate since enactment. The notification of the Intensification Planning Instrument, Plan Change 78 of the Auckland Unitary Plan (AUP) and its more enabling approach to urban development does not appear to have influenced the rate of applications lodged under this alternative consenting process. Often these applications have pushed the boundaries to some extent under the provisions of the AUP, and the non-notification provisions and the unlikely need for a hearing are attractive elements of the fast-track process. These applications would otherwise typically be notified, attract submissions, and require a council hearing under the standard RMA processes. Appeals to Covid fast track decisions are limited to points of law. Importantly, for Council, it is the need to be able to immediately assess and feedback on applications that may be inconsistent with the Council's planning documents or embody adverse environmental effects.

Tātaritanga me ngā tohutohu Analysis and advice

Power of delegation

13. The powers and functions conferred on Auckland Council under the Act fit within the Regulatory and Safety Committee's Terms of Reference and current delegations, as they relate to the physical development and growth of Auckland. Therefore, it is open to this Committee to delegate its powers and functions under the Act.

Delegations required

14. In order for Auckland Council to exercise its functions, powers and duties under the Act, within the tight timeframes specified, it is recommended to continue with the present delegations of all relevant powers and functions under the Act to council staff.

These are as set out below.

Provision	Function, Duty, Power to be Delegated
21(2) & 22	Power to provide written comments to the Minister and response to a further information request from the Minister, on whether the application should be referred. (10 working days)
Schedule 5, clause 3(2)(a)	Power to nominate an Auckland Council representative on the expert consenting panel.
Schedule 6, Clause 17(2)	Power to respond to the expert consenting panel's invitation to provide feedback. (10 working days)
Schedule 6, clause 21	Power to decide to attend hearings and nominate a person to represent Auckland Council at the hearing.
Schedule 6, clause 36(1)	Power to provide comments on draft conditions for resource consents or confirming or modifying a designation. (5 working days)
Schedule 6, clause 44(1)	Power to decide whether to appeal a decision on a question of law to the High Court. Conditional on consultation with Manager Regulatory and Enforcement, Legal Services [and reporting any court action to the relevant committee].

15. It is recommended that all powers and functions are delegated to the tier three manager in the Resource Consents department (in relation to resource consents) and the tier three manager in the Plans and Places department (in relation to notices of requirement).

Red flag system

16. The first key step in the process is where the council is invited to comment on whether an application should be referred to the Expert Consenting Panel. Staff have 10 working days to comment. A 'red flag' system for any referred application seeks to bring to the Ministers attention any application that raises one or more of the following concerns:
- (i) clearly inconsistent with the Auckland Unitary Plan and/or not aligned with the outcomes in the Auckland Plan 2050,
 - (ii) out of sequence with the Auckland Plan Development Strategy and Future Urban Land Supply Strategy,
 - (iii) insufficient infrastructure to support the application and/or significant public infrastructure spend is required to support the project,
 - (iv) a significant impact on Auckland Council/Council Controlled Organisation (CCO) and/or third-party infrastructure,
 - (v) the application is a notice of requirement,
 - (vi) the potential for significant adverse environmental effects to occur.

17. The delegation will continue the current process that when a project is 'red flagged' notification is made immediately to the Chair of the Planning, Environment and Parks Committee, Chair of the Regulatory and Safety Committee, a Member of the Independent Māori Statutory Board and the relevant Ward Councillor(s) and all members of the relevant local board(s). Comments received from those members will continue to be used to inform the council's comment on whether an application should be referred to the Expert Consenting Panel. Local board feedback will also be included as part of the council's comment.
18. A Guidance Manual prepared by the Resource Consents department provides process parameters, Service Level Agreements and templates for staff. It sets out the delegations as previously agreed and can be updated where necessary.

Tauākī whakaaweawe āhuarangi Climate impact statement

19. The matters raised in this report do not have any impact on climate change as they address procedural matters and delegations.

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

20. Auckland Transport (AT), Watercare Services Limited (WSL) and Panuku Development Auckland (Panuku) were initially contacted for their views when these staff delegations were first sought, and the delegation sought continues the current agreements. These CCO's were previously involved in the preparation of the Guidance Manual and those sections of their Service Level Agreements with the Resource Consents department covering inputs to referred applications under the Covid (fast track) Act.
21. Auckland Transport and Watercare, given their separate legal identity status, are also separately invited to comment on whether an application should be referred to the Expert Consenting Panel. Depending on the nature of the project AT or WSL may comment directly or submit their comments as part of the Council's red flag comments process.

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

22. Local Board Services staff were contacted when the delegations were first established to discuss local board involvement in the process. These will continue without change and all relevant local board members are notified when comment is requested for whether a proposed is referred to an expert panel.
23. Existing local board delegations provide the opportunity to provide feedback on resource consent applications and notices of requirement within the fast-track consenting process. This will primarily be feedback to the Minister on whether an application should be referred, and if referred, feedback to the Expert Panel. Local board feedback is appended to the Auckland Council input.

Tauākī whakaaweawe Māori Māori impact statement

24. Under these delegations the red flag system will continue to operate where an application will be sent out to the nominated Independent Māori Statutory Board member.
25. Included in the criteria for 'red flagging' an application is where it is contrary to the outcomes of the Auckland Plan which includes Māori identity and wellbeing, and where it is clearly inconsistent with the Auckland Unitary Plan. Iwi and mataawaka in Tāmaki Makaurau were engaged in the development of these plans and the outcomes they identify.

26. In achieving the purpose of this Act, all persons performing functions and exercising powers under it must act in a manner that is consistent with the principles of the Treaty of Waitangi; and Treaty settlements. Within the Act, iwi have the same opportunity as local authorities to engage in the process at various stages.

Ngā ritenga ā-pūtea Financial implications

27. The Act identifies where local authorities can seek to recover costs, which is very limited, and it is the responsibility of the Environmental Protection Authority to make these payments. Staff continue to provide a proportionate approach to any non recoverable inputs. The wide geographic spread of applications has helped with staff resourcing demand and where additional staff resourcing has been required, this cost has been met by existing budgets. That is proposed to continue, and no additional funding is sought.



Ngā raru tūpono me ngā whakamaurutanga Risks and mitigations

28. The proposed 'red flag' system will continue to ensure that developments that meet the criteria as being contrary to the Auckland Unitary Plan, Auckland Plan, out of sequence with the Auckland Plan Development Strategy and/or require significant public infrastructure investment or have the potential for significant adverse environmental effects are identified early in the process.
29. The current Guidance Manual sets out process parameters, Service Level Agreements, templates and delegations as agreed by the Planning Committee in its previous term. This ensures that staff across Auckland Council and the CCOs are aware of the timeframes and process steps for applications that are made under the Act.

Ngā koringa ā-muri Next steps

30. The tier 3 managers will continue to exercise their authority in accordance with the new resolutions of this Committee to any application or notices of requirement lodged prior to the repeal of the legislation on 8 July 2023 and referred to an Expert Consenting Panel.
31. It is not known whether the legislation will continue with an extended expiry date. The initial purpose of the Act in promoting employment to support New Zealand's recovery from the economic and social impacts of COVID-19 may now have passed. However current features of the Covid fast-track process are embodied in the Natural and Built Environment Bill, as part of the Resource Management Reform programme.

Ngā tāpirihanga Attachments

No.	Title	Page
A 	General Rules applying to all delegations	
B 	List of Auckland listed and referred COVID-19 Fast Track projects	

Ngā kaihaina Signatories

Author	Robert Andrews - Principal Specialist Planning
Authorisers	Ian Smallburn - General Manager Resource Consents Craig Hobbs - Director Regulatory Services

Summary of Regulatory and Safety Committee information memoranda, workshops and briefings (including the Forward Work Programme) - 4 April 2023

File No.: CP2023/03665

Item 11

Te take mō te pūrongo Purpose of the report

1. To tuhi ā-taipitopito / note the progress on the forward work programme appended as Attachment A.
2. To whiwhi / receive a summary and provide a public record of memoranda, workshop and briefing papers that may have been held or been distributed to committee members.

Whakarāpopototanga matua Executive summary

3. This is a regular information-only report which aims to provide greater visibility of information circulated to committee members via memoranda/workshops and briefings or other means, where no decisions are required.
4. As noted previously decisions on the Annual Budget may well affect the forward work programme. The work programme underpinning the long-term scope of work as a result of the flooding events will also mean that this work programme will need to be reprioritised and updated.
5. The following memoranda/information have been sent:

Date	Subject
2/03/2023	Appointment of panel members to the National Policy Statement

6. These documents can be found on the Auckland Council website, at the following link:
<http://infocouncil.aucklandcouncil.govt.nz/>
 - o at the top left of the page, select meeting/te hui “Governing Body” from the drop-down tab and click “View”;
 - o under ‘Attachments’, select either the HTML or PDF version of the document entitled ‘Extra Attachments’.
7. Note that, unlike an agenda report, **staff will not be present to answer questions about the items referred to in this summary.** Governing Body members should direct any questions to the authors.



Ngā tūtohunga Recommendation/s

That the Regulatory and Safety Committee:

- a) tuhi ā-taipitopito / note the progress on the forward work programme appended as Attachment A of the agenda report
- b) whiwhi / receive the Summary of the Regulatory and Safety Committee information memoranda, workshops and briefings – 4 April 2023.

Ngā tāpirihanga Attachments

Item 11

No.	Title	Page
A 	Forward work programme - April	
B 	Memo: Appointment of panel members to the National Policy Statement (Under Separate Cover)	

Ngā kaihaina Signatories

Author	Maea Petherick - Kaitohutohu Mana Whakahaere Matua / Senior Governance Advisor
Authoriser	Craig Hobbs - Director Regulatory Services

Appointment of the District Licensing Committee for 2023-2026

File No.: CP2023/02473

Item 12

Te take mō te pūrongo

Purpose of the report

1. To confirm the appointments to the Auckland District Licensing Committee for a three-year term commencing 1 July 2023 and expiring on 30 June 2026.

Whakarāpopototanga matua

Executive summary

2. The Sale and Supply of Alcohol Act 2012 (the Act) requires each Territorial Authority to appoint one or more licensing committees ([s186](#)) and to establish, maintain and publish its own list of persons approved to be members of the territorial authority's licensing committee ([s192\(1\)](#)).
3. The members of the Auckland District Licensing Committee (DLC) hear and decide all applications related to alcohol matters. The contracts for the current members expire on 30 June 2023 and the new three-year term commences on 1 July 2023.
4. Information about the people being recommended as DLC members will be provided in the confidential section of today's Regulatory and Safety Committee meeting agenda.

Ngā tūtohunga

Recommendation/s

That the Regulatory and Safety Committee:

- a) tuhi ā-taipitopito / note that the information contained in this report on the appointment of the District Licensing Committee members enables the public to understand the nature of discussion in the confidential report on today's committee agenda on those appointments
- b) tuhi ā-taipitopito / note that the confidential report on today's agenda contains private information about individuals.

Horopaki

Context

5. The Sale and Supply of Alcohol Act 2012 (the Act) requires each Territorial Authority to appoint one or more licensing committees ([s186](#)) and to establish, maintain and publish its own list of persons approved to be members of the territorial authority's licensing committee ([s192\(1\)](#)).
6. In the confidential section of today's meeting, the committee is being asked to appoint the members of the District Licensing Committee approved to make decisions under the Sale and Supply of Alcohol Act 2012. This is in line with this committee's terms of reference and with the Regulatory Committee Policy 2020 section 3 "Policy relating to appointment of decision-makers".
7. In November 2022, the Governing Body approved the recruitment process and appointed the selection panel for the District Licensing Committee that included two councillors (one as alternate), a member of the Independent Māori Statutory Board and two senior staff members.

8. The Governing Body resolved to appoint approximately 12 to 15 District Licensing Committee chairs and members by 30 June 2023 (GB/2022/116).

Tātaritanga me ngā tohutohu Analysis and advice

9. The Sale and Supply of Alcohol Act 2012 aims to minimise harm from alcohol by managing the way it is sold, supplied and consumed. The members of the District Licensing Committee must have good standing in the community, the highest standard of professional and personal integrity and the necessary knowledge, skill and experience relating to matters that are likely to come before the committee. Decisions made by committees must enable the safe and responsible sale, supply and consumption of alcohol.
10. In December 2022, 34 applicants responded to the expression of interest for positions on the District Licensing Committee. During December, all applicants were assessed by the selection committee which shortlisted 18 candidates for interview. 16 interviews were held in February/ March 2023. Two candidates did not attend their interview. The selection panel considered all interviewed candidates and is recommending seven chairs and seven members for appointment to the District Licensing Committee for the new term commencing 1 July 2023.

Tauākī whakaaweawe āhuarangi Climate impact statement

11. There are no climatic or environmental impacts arising from the decision-making processes relating to this report. The minor impacts from the greenhouse gas emissions relating to travel associated with applications which are opposed or objected to under the Sale and Supply of Alcohol Act 2012 are mitigated by holding hearings as close as possible to the site relating to the application.

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

12. The proposed decision to appoint District Licensing Committee members does not impact other parts of the council group. The views of council-controlled organisations were not required for the preparation of the report's advice.

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

13. Local Boards can make an objection to an alcohol application and appear at hearings to represent community views and interests.
14. The Sale and Supply of Alcohol Act 2012 enables the appointment of current and former elected members to the District Licensing Committee. The recommended appointments for the 2023-2026 term include people with current and former experience as local board members, community members with experience of alcohol licensing and initiatives to minimise harm, and members who represent the diverse communities of Tāmaki Makaurau.

Tauākī whakaaweawe Māori Māori impact statement

15. All District Licensing Committee members are expected to have an understanding of Te Tiriti o Waitangi and Te Ao Māori. This expectation was built into the recruitment and selection process through shortlisting criteria and targeted interview questions.
16. Glenn Wilcox participated as a member of the selection panel on behalf of the Independent Māori Statutory Board.

Ngā ritenga ā-pūtea Financial implications

17. The Minister of Justice sets the remuneration for District Licensing Committee members and this cost is recovered through alcohol licensing fees. Members are selected from the pool when required for hearings and are paid for work completed. There is no cost impact associated with the number of members appointed to the District Licensing Committee.

Ngā raru tūpono me ngā whakamaurutanga Risks and mitigations

18. Two reference checks for each of the new recommended members to the DLC were carried out.
19. Successful candidates will undergo Ministry of Justice checks, which is a standard recruitment process requirement. As appointments are subject to this check being satisfactory, appointments are not able to be made public until this process has been completed.
20. Applicants who were not successful must receive notice from the selection panel before the announcement of the 2023-2026 DLC appointments.

Ngā koringa ā-muri Next steps

21. When checks have been completed, successful candidates will be advised of their appointment, and be asked to confirm their acceptance. Unsuccessful candidates will also be notified.

Ngā tāpirihanga Attachments

There are no attachments for this report.

Ngā kaihaina Signatories

Author	Julie McKee - Hearings Manager
Authorisers	Kenneth Aiolupotea - General Manager Democracy and Engagement Craig Hobbs - Director Regulatory Services

Determination of an objection to a menacing dog classification by Linda Dumont

File No.: CP2023/03288

Item 13

Te take mō te pūrongo

Purpose of the report

1. To hear and consider Linda Dumont's objection to her dog, Fern, having been classified as menacing under section 33A of the Dog Control Act 1996 (DCA).

Whakarāpopototanga matua

Executive summary

2. Ms Dumont is the owner of an 8-year-old de-sexed female Labrador Retriever called Fern.
3. On 5 August 2022 Fern attacked an Australian Cattle Dog cross called Blue. The attack was unprovoked. Blue sustained a serious injury to its groin which necessitated surgical intervention.
4. Section 33A of the DCA provides that Auckland Council may classify a dog as menacing when it considers that the dog may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of any reported behaviour of the dog.
5. Where a dog is classified as menacing the owner of the dog must:
 - a) Not allow the dog to be at large or in any public place, or in any private way, without it being muzzled; and
 - b) Within one month after service of the notice provide a certificate by a veterinarian that the dog is or has been de-sexed. If the dog is not in a fit condition to be de-sexed within that time, the dog owner must provide a certificate by a veterinarian explaining the reasons for that and specifying the date by when the dog can be de-sexed.
6. On 31 August 2022 Animal Management classified Fern as menacing by deed because it considered that the dog may pose a threat to the safety of other dogs. The notice of classification was served on Ms Dumont on 1 September 2022. Refer Attachment A.
7. Ms Dumont objected to the classification and supplied the grounds for her objection by email dated 5 October 2022. Refer Attachment B. In essence, her objection is based on the following:
 - Fern was provoked by Blue's boisterous behaviour.
 - Fern has not attacked another dog before this incident.
 - Fern has since the attack attended a behavioural rehabilitation clinic from 12 to 30 September 2022. She was assessed to have medium to high aggressive reactivity to dogs and a high prey drive towards ducks and other birds. She was submitted to a three-week course of therapy and training to address these issues.
8. Fern has responded well to the therapy and training. It is the opinion of the animal behaviourist, Mark Vette, that the training is to continue through reinforcement. It is their advice that Fern must remain muzzled until they are confident that Fern shows a stable and reliable response to commands. Refer Attachment C for the expert animal behaviour report.
9. Ms Dumont's objection is ill-suited and premature because Fern will continue to pose a risk to the safety of other dogs until she has successfully completed the programme.

10. Clause 17 of the Auckland Council Dog Management Bylaw 2019 provides for the review and cancellation of a menacing classification after 12 months if Ms Dumont:
- Provides a dog behavioural assessment report on Fern,
 - Has not been issued with infringement notices relating to Fern within the preceding 12-month period, and
 - Has obtained a responsible dog ownership licence.

Ngā tūtohunga Recommendation/s

That the Regulatory and Safety Committee:

- a) whakaae / agree to hear and consider Ms Linda Dumont's objection to her dog, Fern, having been classified as menacing under section 33A of the Dog Control Act 1996, and
- b) whakaae / agree to uphold Fern's menacing classification under section 33A of the Dog Control Act 1996.

Horopaki Context

Jurisdiction of the Regulatory and Safety Committee

11. The Governing Body of Auckland Council has delegated to the Regulatory Committee (now the Regulatory and Safety Committee) the responsibility for regulatory hearings in Resolution No. GB/2019/109 which was adopted on 12 November 2019. The regulatory hearings which this committee is responsible include, amongst others, decisions under the DCA in relation to the consideration of objections under the DCA.

The Dog Control Act 1996

12. A dog may be classified as menacing under section 33A if Auckland Council considers the dog may pose a threat to the safety of persons or animals because of any reported behaviour of the dog.
13. Where a dog is classified as menacing, then the owner of the dog:
- a) must not allow the dog to be at large or in a public place or in any private way without been muzzled, and
 - b) must within one month after service of the notice provide a certificate by a veterinarian that the dog is or has been de-sexed. If the dog is not in a fit condition to be de-sexed within that time, the dog owner must provide a certificate by a veterinarian explaining the reasons for that and specifying the date by when the dog can be de-sexed.
14. It is an offence under the DCA if an owner fails to comply with these requirements. The maximum fine for this offence is \$3,000. In addition, an animal management officer may seize and retain custody of the dog until the owner has demonstrated a willingness to comply with these requirements.
15. Section 33D(3) explains what the committee must take into account during their deliberations on whether the objection should be upheld or rescinded. These are:
- a) The evidence which formed the basis for the classification,
 - b) Any steps taken by the owner to prevent any threat to the safety of person or animals,
 - c) The matters relied on in support of the objection, and
 - d) Any other relevant matters.

a) Evidence which formed the basis for the classification

16. On 5 August 2022 the complainant was exercising his dog, a 2-year-old Australian Cattle Dog cross called Blue, in the Onetangi Sports Park on Waiheke Island. Blue, a boisterous and very energetic dog, was off leash. Ms Dumont was also walking her two dogs, Fern and Cooper, in the park. Fern was on a lead, but Cooper was off leash.
17. Blue ran towards Fern and Cooper. Fern became aggressive and strained at the lead towards Fern. Her lead snapped and the two dogs scuffled. Blue became submissive and rolled onto his back. Fern then bit Blue in the area of his groin. Refer Attachment **D** for the complainant's statement and Attachment **E** for Ms Dumont's statement.
18. The bite wound was repaired under surgery at a cost of \$778.20. Refer Attachment **F** for the vet bill and photo of the injury post-surgery.

b) Steps taken by Ms Dumont to prevent any threat to persons or animals

19. Ms Dumont was walking Fern on a lead because of her reactivity to other dogs and had at the time already enrolled Fern in a behavioural modification programme.

c) Matters relied upon in support of the objection

20. The bases of Ms Dumont's objection are that:
 - Fern was provoked by Blue's boisterous behaviour,
 - Fern has not attacked another dog before this incident, and
 - Fern has since the attack attended a behavioural rehabilitation clinic from 12 to 30 September 2022. She was assessed to have medium to high aggressive reactivity to dogs and a high prey drive towards ducks and other birds. She was submitted to a three-week course of therapy and training to address these issues.

d) Other relevant matters

21. Ms Dumont provided statements by two persons who had observed Blue's boisterous behaviour on several occasions. Refer Attachment G.
22. Fern has responded well to the therapy and training. It is the opinion of the animal behaviourist that the training is to continue through reinforcement. It is their advice that Fern must remain muzzled until they are confident that Fern shows a stable and reliable response to commands.
23. Ms Dumont has undertaken to keep Fern muzzled until the animal behaviourist feels it is no longer necessary.

Tātaritanga me ngā tohutohu

Analysis and advice

24. In as far as Blue's behaviour might be seen as provocation for Fern to attack Blue, the following points are relevant:
 - Blue's behaviour did not involve any aggression towards Fern, Cooper or Ms Dumont,
 - Fern has medium to high aggressive reactivity to dogs which explains her response to pull towards and attack Blue,
 - Fern's attack is disproportionate to Blue's provocation which is at the lower end of the scale. It cannot justify a penetrating dog bite that required veterinary intervention.
25. The High Court has held on appeal that the following behaviours fall short of provocation:
 - An attacking dog being bitten on the nose by another dog (*Van delden v Waitaki District Council* [2021] NXHC 2264),
 - An attacked dog baring teeth and growling at the attacking dog (*Ding v Auckland Council* [2022] NZHC 45)

26. Fern's medium to high aggressive reactivity to dogs and her high prey drive towards ducks and other birds remains a threat to other animals. This threat will be eliminated if Fern is muzzled when in public.
27. Clause 17 of the Auckland Council Dog Management Bylaw 2019 provides for the review and cancellation of a menacing classification after 12 months if Ms Dumont:
 - Provides a dog behavioural assessment report on Fern,
 - Has not been issued with infringement notices relating to Fern within the preceding 12-month period and
 - Has obtained a responsible dog ownership licence.
28. Ms Dumont's objection is ill-suited and premature. The potential harm that Fern poses to other dogs will remain until she has successfully completed the behavioural modification programme to the satisfaction of the animal behaviourist. Until then the menacing classification must remain in place to ensure that Fern is muzzled when in public.

Tauākī whakaaweawe āhuarangi Climate impact statement

29. This section is not relevant to the subject of this report.

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

30. This is a report about an objection to the menacing classification of a dog. It does not require council group views.

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

31. This report has no local impact. We have not sought local board views.

Tauākī whakaaweawe Māori Māori impact statement

32. This is a report about an objection to the menacing classification of a dog which has no impact on Māori.

Ngā ritenga ā-pūtea Financial implications

33. The decision by the Regulatory and Safety Committee on the objection to the menacing classification has no financial implications.








Ngā raru tūpono me ngā whakamaurutanga Risks and mitigations

34. There are no risks in upholding the classification.

Ngā koringa ā-muri Next steps

35. The Regulatory and Safety Committee must give Ms Dumont written notice of its decision as soon as practicable.

Ngā tāpirihanga Attachments

No.	Title	Page
A 	Notice of menacing classification	
B 	Objection to menacing classification	
C 	Animal Behaviourist's report on Fern	
D 	Complainant's statement	
E 	Statement by owner of Fern	
F 	Veterinary report on Blue	
G 	Statements in support of Fern	

Ngā kaihaina Signatories

Author	Chrisna Nortje - Principal Specialist Animal Management
Authorisers	Eleanor Waitoa - Manager Animal Management Mervyn Chetty - GM Licensing & Regulatory Compliance Craig Hobbs - Director Regulatory Services

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

That the **Regulatory and Safety Committee**

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

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

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

C1 **CONFIDENTIAL: Recommendation for the appointment of District Licensing Committee chairs and members for 2023-2026**

Reason for passing this resolution in relation to each matter	Particular interest(s) protected (where applicable)	Ground(s) under section 48(1) for the passing of this resolution
The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.	s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of a deceased person. The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.	s48(1)(a) The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.