

## **BYLAW CLAUSE 10: To enable the installation, and prohibit damage or defacing of road name signs.**

### **STATUTORY OBLIGATIONS/POWERS**

- Council (delegated to Local Boards) has the power to name roads under the Local Government Act 1974 (s319(1)(j))<sup>1</sup>.
- Auckland Council and Auckland Transport<sup>2</sup> may make a bylaw about road names to address public nuisance, health, safety, offensive behaviour, or use of public places under the Local Government Act 2002 (s145, s146).

### **ISSUE IN 2013**

- Road names that are unauthorised or damaged affecting the ease of the public, delivery, and emergency services accessing premises. No data available to indicate the size of the problem.

### **OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013**

- To provide efficient access to locations through display of correct road names and prohibit damage to road names.
- Auckland Council and Auckland Transport bylaws state that Auckland Transport installs road names, and prohibit damage or defacing of road name signs.
- Powers to enforce bylaw include court injunction (s162 LGA), and power to request name and address (s178 LGA).
- Penalties for bylaw breaches include a maximum \$20,000 court fine (s242(4) LGA).

### **BYLAW IMPLEMENTATION SINCE 2013**

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- The bylaw is reactively enforced and is a low priority.
- The bylaw has not been used to date. Identifying offenders is difficult. Instead any damage is repaired/replaced.
- Auckland Transport repairs and installs road names on the Auckland Transport System.

### **ISSUE IN 2018**

- The nature of the problem remains the same as in 2013.
- Instances of unauthorised or damaged road names are low. Council received four complaints in 2015 and five in 2016.
- Ten to 14 per cent of Aucklanders surveyed witnessed issues. Of those 65 to 94 per cent considered it a nuisance.

### **OUTCOME SOUGHT IN 2018**

- To create a stunning city centre, with well-connected quality towns, villages and neighbourhoods by minimising damage or defacing of road name signage that effects the efficiency of the public, mail delivery, delivery and emergency services to locate premises.

### **BYLAW EVALUATION**

#### **Still a problem requiring a bylaw response?**

- ✓ There is still a low frequency problem that regulation can help address.
- ✗ Damage to road names is the responsibility of Auckland Transport as it occurs on the Auckland Transport System.
- ✓ Auckland Council is responsible for any damage to road names in other public places (e.g. parks).
- ✗ The Local Government Act 2002 (s232) already provides an offence to wilfully, maliciously or negligently interfere with any council property. Penalties include a maximum \$20,000 court fine (s242(1) LGA).
- ✗ Police can address wilful damage under Summary of Offences Act 1981 which carry a maximum penalty of a three month prison term or a maximum \$2,000 court fine (s11).

<sup>1</sup> Also refer to s46(1)(c) Local Government (Auckland Council) Act 2009

<sup>2</sup> Also refer to s46(1)(h) Local Government (Auckland Council) Act 2009

<b>Bylaw effective / efficient?</b>	
<ul style="list-style-type: none"> <li>✗ Bylaw is not used. Identifying offenders is difficult. Instead any damage is repaired/replaced.</li> <li>✗ Bylaw is not required to authorise Auckland Transport to install road name signage.</li> </ul>	
<b>Bylaw clearly written?</b>	
<ul style="list-style-type: none"> <li>✗ Bylaw contains unnecessary information. Location of wording for damage is hard to follow because it relates to damage (clauses 7) but is contained in clause 10 for road names.</li> </ul>	
<b>Public aware of bylaw?</b>	
<ul style="list-style-type: none"> <li>✗ Likely to be low. There are no known public awareness initiatives.</li> </ul>	
<b>Bylaw fit for the future?</b>	
<ul style="list-style-type: none"> <li>✗ Bylaw is not required to authorise Auckland Transport to install road name signage.</li> <li>✗ While it could be used for damage, in practice it is not, and adequate powers already exist in section 232 of the Local Government Act 2002 and Summary of Offences Act 1981 if required.</li> </ul>	
<b>Any bill of rights implications?</b>	
<ul style="list-style-type: none"> <li>✓ The current bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights 1990.</li> </ul>	
<b>Section 160(1) Local Government Act 2002 Recommendation:</b>	
A bylaw is not the most appropriate way to address damage to road names now or in the future. Council already has the power to allocate road names, and adequate powers to respond to damage already exist in section 232 of the Local Government Act 2002 and Summary of Offences Act 1982.	
<b>OPTIONS</b>	
<b>Option 1: Status quo - Retain current wording and implementation</b>	<b>Option 2: Revoke the clauses from the bylaw (RECOMMENDED)</b>
<ul style="list-style-type: none"> <li>• No changes to wording.</li> <li>• No enforcement.</li> <li>• Council would continue to repair any damage.</li> </ul>	<ul style="list-style-type: none"> <li>• Revokes bylaw clause which is not used.</li> <li>• Local Government and Summary of Offences Act used for enforcement of damage to road name signage.</li> <li>• Council would continue to repair any damage.</li> </ul>
<b>Effectiveness and efficiency:</b>	<b>Effectiveness and efficiency:</b>
<ul style="list-style-type: none"> <li>✗ Bylaw not used.</li> <li>✓ Enables Council enforcement if the person responsible is identified (has not occurred to date).</li> <li>✗ Bylaw not required to authorise Auckland Transport to install road name signage.</li> </ul>	<ul style="list-style-type: none"> <li>✓ Enables Council enforcement if the person responsible is identified (not occurred to date).</li> <li>✓ Removes unnecessary bylaw regulation.</li> </ul>
<b>Bill of Rights implications:</b>	<b>Bill of Rights implications:</b>
<ul style="list-style-type: none"> <li>✓ Does not give rise to any unjustified implications under New Zealand Bill of Rights 1990.</li> </ul>	<ul style="list-style-type: none"> <li>✓ Does not give rise to any unjustified implications under New Zealand Bill of Rights 1990.</li> </ul>
<b>Fit for future:</b>	<b>Fit for future:</b>
<ul style="list-style-type: none"> <li>✓ Bylaw not used.</li> </ul>	<ul style="list-style-type: none"> <li>✓ Enables enforcement action if required.</li> </ul>
<b>Māori impact/risk:</b>	<b>Māori impact/risk:</b>
<ul style="list-style-type: none"> <li>✓ There are no specific impacts for Māori.</li> </ul>	<ul style="list-style-type: none"> <li>✓ There are no specific impacts for Māori.</li> </ul>
<b>Section 160(3) Local Government Act 2002 recommendation:</b>	
The Bylaw clause should be revoked (Option 2), and existing legislation used instead. The bylaw is not used, and adequate powers already exist in section 232 of the Local Government Act 2002 and Summary of Offences Act 1981 if required. Taking this approach will remove unnecessary bylaw regulation while still allowing Council to take action against any offenders if they are identified.	

**BYLAW CLAUSE 10 (3,4,5,7): To require the display and maintenance of building/property numbers allocated by Auckland Council to specified visible standards, and to prohibit their damage, removal or defacement.**

**STATUTORY OBLIGATIONS/POWERS**

- Council has powers to allocate building/property numbers under the Local Government Act 1974 (s319B).<sup>3</sup>
- Auckland Transport may make a bylaw requiring property owners, managers, and developers to display property /building numbers in a position that is visible to the road under the Land Transport Act 1998 (s22AB(1)(x)).
- Auckland Council may make a bylaw about building/property numbers to address public nuisance and safety under the Local Government Act 2002 (s145).
- If properties/buildings have frontage on to a private road or park requirement for their display falls under Council's jurisdiction. No examples of this have been found.

**ISSUES IN 2013**

- Unauthorised or poorly maintained numbers, incorrect numbers or no numbers displayed.
- Low compliance with address Australia/New Zealand Rural and Urban Addressing Standard - AS/NZS 4819:2011 (the Standard) due to differing requirements of seven of eight legacy Councils who had bylaws.
- No data available on the scale and impact of the issue in 2013.

**OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013**

- To ensure correct display and maintenance of property numbers so that public, delivery and emergency services can efficiently access buildings.
- Auckland Council and Auckland Transport bylaws require the display and maintenance of building/property numbers allocated by Auckland Council to specified visible standards, and to prohibit their damage, removal or defacement.
- Powers to enforce bylaw include power to request name and address (s178 LGA).
- Penalties for bylaw breaches include a maximum \$20,000 court fine (s242(4) LGA).
- Penalties for breaches of the Auckland Transport bylaw also include a \$1,000 court fine.

**BYLAW IMPLEMENTATION SINCE 2013**

- Council's Property Data Team uses bylaw to proactively encourage correct numbering through letters to owners.
- Licensing and Compliance uses bylaw to respond to rare complaints about missing or incorrect numbers.

**ISSUES IN 2018**

- Incorrect, missing or invisible numbers create:
  - Accessibility/mobility challenges for older people, people with disabilities, youth who are more likely to use public transport and have trouble identifying where to disembark.
  - An issue for the emergency services when trying to reach properties in an emergency. GPS does not always provide correct information, and forces reliance on landmarks or people standing outside premises.
  - Issues for delivery of mail including rates notices, legal documents and voting papers.
- Non-compliance with the Standard and some discrepancy between Council address data and that of NZ Post /electoral role data (in part due to varying address standards used by legacy councils).
- CBD has lower compliance and fewer numbers displayed compare to suburban and rural areas in Auckland.
- 48 per cent of Aucklanders surveyed had seen buildings or houses with no number. Of those, 71 percent found that missing numbers made them feel annoyed, frustrated, or angry.
- Nine per cent of Aucklanders had seen incorrect numbers displayed and 61 per cent of those respondents felt annoyed, frustrated, or angry.
- Low number of complaints: < 5 per year.

**OUTCOME SOUGHT IN 2018**

- To create a stunning city centre, with well-connected quality, towns, villages and neighbourhoods where public, mail delivery and emergency services can efficiently locate premises.

**BYLAW EVALUATION**

**Is there still a problem requiring a bylaw response**

- ✓ There is still a problem that regulation can help address.

**Is the bylaw effective / efficient?**

<sup>3</sup> Also refer to s46(1)(c) Local Government (Auckland Council) Act 2009

- ✓ There is still an issue that regulation can address.
- ✓ Bylaw does enable compliance around the display of building/property numbers because Council is able to easily identify and contact building/property owners.
- ✓ No feasible regulatory alternatives to a bylaw exist in relation to the display and maintenance of numbers.
- ✗ Feasible alternatives exist in relation to Police powers under the Summary Offences Act 1981 (s11) to respond to damage and destruction of building/property numbers.
- ✗ Most numbers relate to the Auckland Transport System and are traffic related, which is an Auckland Transport responsibility.
- ✗ Potentially, there may be rare instances of buildings/properties that are outside of the Auckland Transport System (e.g. park roads), but none have been identified.

**Is the bylaw clearly written?**

- ✗ No. Wording is not structured in a way to assist the reader.

**Public awareness of the bylaw?**

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

**Bylaw fit for future?**

- ✗ No, not for Auckland Council. The issue is related to the Auckland Transport System which is Auckland Transport responsibility.

**Any bill of rights implications?**

- ✓ The current bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights 1990.

**Section 160 (1) Local Government Act 2002 Recommendation:**

A bylaw is not the most appropriate way to address display, maintenance and damage of building/property numbers now or in the future. The issue is traffic related and therefore is the responsibility of Auckland Transport and not Auckland Council.

**OPTIONS**

**Option 1: Status quo – Retain current wording and implementation**

- No changes to wording.
- Council would continue to enforce display and maintenance of building/property numbers.

**Option 2: Revoke bylaw clause and rely on Auckland Transport bylaw (RECOMMENDED)**

- Bylaw clauses revoked.
- Council would continue to enforce display and maintenance of building/property numbers using the Auckland Transport bylaw under delegation.
- Damage addressed through the Police under the Summary of Offences Act 1981 (s11).

**Effectiveness and efficiency:**

- ✗ Bylaw is unnecessary because identifies issues relating to the Auckland Transport System.

**Effectiveness and efficiency:**

- ✓ Auckland Transport bylaw enables enforcement for the display and maintenance of building/property numbers.
- ✓ Removes unnecessary Auckland Council bylaw regulation.
- ✓ Police is better placed to investigate damage.

**Fit for future:**

- ✗ Bylaw is unnecessary because identifies issues relating to the Auckland Transport System.

**Fit for future:**

- ✓ Continue to ensure the display and maintenance of building/property numbers.

**Bill of Rights implications:**

- ✓ Does not give rise to any unjustified implications under New Zealand Bill of Rights 1990.

N/A

**Māori Impact:**

- There are no specific implications for Māori.

**Māori Impact:**

- There are no specific implications for Māori.

**Section 160(3) Local Government Act 2002 recommendation**

The Bylaw clause should be revoked (Option 2), and the existing Auckland Transport bylaw and Police legislation used instead. Including this in the Auckland Council bylaw is unnecessary because it relates to the Auckland Transport System which falls within Auckland Transport's jurisdiction. Adequate powers also exist in section 11 of the Summary of Offences Act 1981 in relation to damage if required.

## **BYLAW CLAUSE 6(1)(g) Prohibits intimidation, nuisance and unsafe behaviours around car window washing in public places.**

### **STATUTORY OBLIGATIONS/POWERS**

- Council may make a bylaw about car window washing to address public nuisance, public health and safety, offensive behaviour, or use of public places under the Local Government Act 2002 (s145, s146), and to address public health and nuisance under the Health Act 1956 (s64, s65).

### **ISSUES IN 2013**

- Nuisance and intimidation factors, safety risks for road users, pedestrians as well as window washers.
- Council received and investigated complaints although exact data is not available.

### **OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013**

- To enable Council to maintain public safety and minimise nuisance in public places from car window washing
- Sought to enable Council to support police activity.
- Auckland Council and Auckland Transport bylaws allowed car window washing provided it was done safely and did not cause nuisance, intimidation or obstruct traffic.
- Powers to enforce bylaw include power to seize equipment (s164 to 168 LGA).
- Penalties for bylaw breaches include a maximum \$20,000 court fine (s242(4) LGA).
- Police regarded the bylaw as an additional tool to address the issues of road/traffic safety (for both the car window washers and other users) and perceptions around community safety.

### **BYLAW IMPLEMENTATION SINCE 2013**

- Auckland Transport delegated the enforcement of the bylaw to Auckland Council.
- Council worked to support police to address the issue.

### **ISSUES IN 2018**

- Car window washing occurs at road intersections and creates nuisance, intimidation and safety issues for road users/window washers. In December 2017 a teenager was hit by a car and died while car window washing.
- 87 per cent of Aucklanders surveyed witnessed the behaviour. Of those, 80 per cent declined to have their windows washed. If car window washer is rude or loud people may be fearful - 42 per cent versus when they are polite 8 per cent.
- 800 complaints received between 2015 (505) and 2016 (314). Officers report no real decline in incidents.
- From 2015 to 2017, 267 charges were laid against 63 people, 36 were fined between \$100 and \$300 dollars, plus \$130 in court costs. Each prosecution cost Council \$2500.
- Council intervention largely ineffective with risks to officers' health and safety.

### **OUTCOME SOUGHT IN 2018**

- To minimise nuisance, intimidation and safety issues associated with car window washing.

### **BYLAW EVALUATION**

#### **Still an issue requiring a bylaw response?**

- ✓ There is still an issue, but better regulatory alternatives exist:
  - The police can enforce an amendment in August 2017 to the Land Transport (Road User) Rule 2004 that prohibited car window washing on a road unless the vehicle is legally parked. The penalty under the Land Transport (Vehicle User Safety) Amendment Act 2017 is a \$150 infringement fine or maximum \$1,000 court fine.
  - Where children as young as 12 engage in the activity, Police can address the issue under the Child, Young Persons, and Their Families Act (s48).

#### **Is the bylaw effective / efficient?**

- ✗ The activity occurs at intersections rather than other public places covered by the bylaw.
- ✗ Bylaw has limited effect - offenders often depart before officers arrive – preventing ability to give warnings.
- ✗ Prosecutions are limited due to difficulties in proving nuisance - where successful they are costly, fines often cannot be collected due to the financial circumstances of window washers.
- ✗ Enforcement powers are largely limited to seizure of property (i.e. buckets and mops).

<ul style="list-style-type: none"> <li>✘ There are health and safety risks for Council officers who unlike Police do not have sufficient training or powers to act.</li> <li>✘ 64 per cent of Aucklanders surveyed thought Police should manage the behaviour.</li> <li>✘ Bylaw no longer used. Council officers have ceased responding to complaints. Police is responsible for addressing issue under new national legislation.</li> </ul>	
<b>Is the public aware of the bylaw?</b> ✘ There is likely to be limited awareness of the bylaw.	
<b>Is the bylaw clearly written?</b> ✘ No. Bylaw not easy to read (e.g. no examples of public places), penalties unclear.	
<b>Is the bylaw fit for the future?</b> ✘ No. Bylaw not effective. National legislation has replaced the need for the bylaw.	
<b>Any bill of rights implications?</b> ✓ The current bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights 1990.	
<b>Section 160(1) Local Government Act 2002 recommendation</b>	
A bylaw is no longer the most appropriate way to address the issue. The August 2017 amendment to the Land Transport (Road User) Rule 2004 and Land Transport (Vehicle User Safety) Amendment Act 2017 provides a more effective approach. This national legislation allows the Police (who are better trained to approach offenders) to issue infringement fines for car window washing on a road.	
<b>OPTIONS</b>	
<b>Option 1: Status quo – Retain current wording and implementation</b> <ul style="list-style-type: none"> <li>• Covers public places not covered by Land Transport Act (i.e. other than roads) and Auckland Transport bylaw.</li> <li>• No changes to bylaw wording.</li> <li>• No enforcement. Issue addressed by Police using national legislation.</li> </ul>	<b>Option 2: Revoke bylaw clause (RECOMMENDED)</b> <ul style="list-style-type: none"> <li>• Revoke clauses from the bylaw.</li> <li>• Land Transport Rule becomes key regulatory tool.</li> <li>• Council would no longer have a regulatory compliance role.</li> </ul>
<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✘ Bylaw applies to public places where there is no issue. Problem only occurs at road intersections.</li> <li>✘ Bylaw and its enforcement is ineffective.</li> <li>✘ Bylaw could create confusion and duplication of effort between Police and Council.</li> <li>✘ Retains bylaw regulation that is no longer used.</li> </ul>	<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✓ Police already address issue under new national legislation.</li> <li>✓ Police have better powers and training to manage the issue.</li> <li>✓ Remove unnecessary bylaw regulation.</li> <li>✓ No health and safety risk to council officers.</li> <li>✓ Aligns with current practice. Council officers have ceased responding to complaints.</li> </ul>
<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✘ Issue occurs on road intersections and is covered under new national legislation that Police enforce. Bylaw ineffective now and in the future.</li> </ul>	<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✓ Issue occurs on road intersections and is covered under new national legislation that Police enforce.</li> </ul>
<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>✓ Does not give rise to any unjustified implications under New Zealand Bill of Rights 1990.</li> </ul>	<b>Bill of Rights implications:</b> N/A
<b>Māori impact:</b> <ul style="list-style-type: none"> <li>- Māori are more likely to participate in car window washing. No regulatory intervention on its own can fully address this complex social issue.</li> </ul>	<b>Māori impact:</b> <ul style="list-style-type: none"> <li>- Māori are more likely to participate in car window washing. No regulatory intervention on its own can fully address this complex social issue.</li> </ul>
<b>Section 160(3) Local Government Act 2002 recommendation</b>	
Revoke the bylaw clause on car window washing (Option 2). The amended Land Transport (Road User) Rule 2004 and Land Transport (Vehicle User Safety) Amendment Act 2017 provides an effective regulatory alternative to the bylaw enforced by the Police. Taking this approach will help address nuisance, intimidation and safety risks associated with car window washing on roads and remove health and safety risks to Council officers.	

**BYLAW CLAUSE 6(3): To prohibit fireworks in a public place unless approved by council; or in any other place in a way that is a nuisance or danger any person, property, dog or other animal in a public place.**

#### **STATUTORY OBLIGATIONS/POWERS**

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

#### **ISSUES IN 2013**

- Injury to persons, fire risks to private and public land (e.g. Piha), noise, litter, distress/injury/death of animals, and fireworks outside of the Guy Fawkes period. No data available on scale or impact of issue.

#### **OUTCOMES SOUGHT AND BYLAW RESPONSE IN 2013**

- To ensure that public places are safe and accessible, to minimise nuisances, and where appropriate, use a bylaw rather than relying on other legislation or non-regulatory approaches.
- Both Auckland Council and Auckland Transport bylaws prohibit use of fireworks in a public place unless approved by council; and where set off from any other place, to prohibit nuisance or endangerment to any person, property, dog or other animal in a public place.
- Powers to enforce the bylaw include: seizure of property (s164 to 168 LGA), cost recovery for damage (s176 LGA), ability to request names and addresses (s178 LGA).
- Penalties for bylaw breaches include a maximum \$20,000 court fine (s242 LGA), a maximum \$500 court fine and a further \$50 court fine per day for continuing offences (s66 Health Act).

#### **BYLAW IMPLEMENTATION SINCE 2013**

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council reactively responds to complaints within 2-3 hours.
- During Guy Fawkes two officers respond to complaints and two officers patrol key beaches/parks.
- Officers focus on engagement and education to achieve compliance as there are significant issues identifying perpetrators who often leave, or give false details, often not deterred by Council presence.
- Police respond to safety/property complaints. Council noise control officers respond to noise complaints.
- Public awareness through media (e.g. Our Auckland, Council website and media commentary).
- Non-regulatory initiatives include Council support for controlled public fireworks displays.
- Officers do not use the part of the bylaw about letting off fireworks from any other place (Clause 6(3)(b)).

#### **ISSUES IN 2018**

- Nature of issue is comparable with 2013. Peak times are Guy Fawkes, Chinese New Year, and Diwali.
- 447 complaints received from February 2017 to February 2018 mostly in November around Guy Fawkes.
- This is one of the biggest nuisance and safety concerns for Aucklanders (37 per cent surveyed saw the issue in the past year, and 77 per cent of those felt annoyed, angry or threatened).
- Most complaints relate to noise from private residences which are handled by noise control.

#### **OUTCOME SOUGHT IN 2018**

- To minimise noise, damage and safety risks related to the letting off fireworks in public places.

#### **BYLAW EVALUATION**

##### **Still an issue requiring a bylaw response?**

- ✓ Yes, there is still an issue that regulation can help address.
- ✓ No feasible alternatives to bylaw identified:
  - Police powers limited to fireworks that may injure or alarm people in any place (s35 Summary Offences Act 1981). Police want Council to retain an enforcement role due to limited Police resource.
  - Reserves Act bylaws do not apply to all public places and need Minister of Conservation approval.
  - Government ban on public sale of fireworks could address issue. However, interim solution still needed.

##### **Bylaw effective / efficient?**

- ✓ Bylaw acts as a deterrent to most people letting off fireworks in a public place when part of a wider approach to increase public awareness about the ban, and support for public displays.
- ✗ Enforcement is challenging and resource-intensive. Council does not have capacity to respond to all complaints at peak times, and offenders flee, cannot be identified, or resume activity once officers leave.
- ✗ Bylaw may force fireworks onto private property which is a concern but has not been quantified.
- ✗ The part of the bylaw about letting off fireworks from any other place is not used by council officers and:
  - duplicates Police powers (s35 Summary Offences Act 1981) for which the penalty is a \$200 court fine

- creates health and safety risks for Council officers that Police are better trained to address, and for which the Police have the power of arrest (s39 Summary Offences Act 1981)
- the reference to animals in Clause 6(3)(b) is ultra vires<sup>4</sup> and not enforceable. Council does not have a statutory power to protect animals from fireworks.

**Bylaw clearly written?** ✓ Yes, wording easy to understand.

**Public aware of bylaw?** ✓ High awareness due to media coverage/Council communication.

**Bylaw fit for the future?**

- ✓ Fireworks in public places likely to remain an issue until there is a national ban on public sale of fireworks.
- ✗ The part of the bylaw about fireworks from any other place is not appropriate as discussed above.

**Any bill of rights implications?**

- ✓ The current bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights 1990.

**Section 160(1) Local Government Act 2002 recommendation:**

- A bylaw about the use of fireworks in public places remains appropriate to address nuisance and safety issues. However, a bylaw about issues in public places from fireworks in other places is not appropriate. It duplicates Police powers, creates health and safety risks for officers, and contains ultra vires provisions.
- The current bylaw form about fireworks in other places is not appropriate for reasons stated above.
- The current bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights 1990.

### OPTIONS

**Option 1: Status quo – Retain wording and implementation**

- Firework ban in public places.
- Bylaw about fireworks set off in other places not enforced
- Police respond to incidents of injury or alarm to people in public places from fireworks let off in any place.
- Noise control responds to noise complaints.

**Option 2: Amend wording to remove provisions about fireworks set off in other places (RECOMMENDED)**

- Firework ban in public places.
- Police respond to incidents of injury or alarm to people in public places from fireworks set off in any place.
- Noise control responds to noise complaints.

**Option 3: Revoke bylaw**

- Fireworks allowed in public places.
- Police respond to incidents of injury or alarm to people in public places from fireworks set off in any place.
- Noise control responds to noise complaints.

**Effectiveness and efficiency:**

- ✓ Will deter people from letting off fireworks in a public place.
- ✗ Enforcement challenging and resource-intensive.
- ✗ Retains bylaw provision about fireworks on other places that is not used by Council officers, duplicates Police powers, and contains ultra vires provisions.

**Effectiveness and efficiency:**

- ✓ Will deter people from letting off fireworks in a public place.
- ✗ Enforcement challenging and resource-intensive.
- ✓ Removes bylaw provision about fireworks on other places that is not used by Council officers, duplicates Police powers, contains ultra vires provisions.

**Effectiveness and efficiency:**

- ✗ Increase in the use and issues from fireworks in public places.
- ✗ May increase demands on limited Police resources to respond to safety issues in public places.
- ✗ Public criticism of Council from removal of public places ban.

**Bill of Rights implications:**

- ✓ Does not give rise to any unjustified implications under New Zealand Bill of Rights 1990.

**Bill of Rights implications:**

- ✓ Does not give rise to any unjustified implications under New Zealand Bill of Rights 1990.

**Bill of Rights Implications:**

N/A

**Fit for future:**

- ✓ Will deter people from letting off fireworks in a public place.
- ✗ Retains inappropriate provision about fireworks in other public places.

**Fit for future:**

- ✓ Will deter people from letting off fireworks in a public place.
- ✓ Removes inappropriate provision about fireworks in other public places.

**Fit for future:**

- ✗ Increase in the use and issues from fireworks in public places.
- ✓ Removes inappropriate provision about fireworks in other public places.

**Note:** None of these options prevent Council advocating for a national ban on the public sale of fireworks.

**Section 160(3) Local Government Act 2002 recommendation:**

The bylaw should be amended (Option 2) to retain the ban on fireworks in public places but remove clause 6(3)(b) about fireworks on other public places. Clause 6(3)(b) is not used, duplicates Police powers, and contains ultra

<sup>4</sup> Decisions or actions outside the lawful powers of a person or body



vires provisions. Taking this approach will continue to address issues about fireworks while removing unnecessary and inappropriate bylaw regulations.

**BYLAW CLAUSE 9(5)(q): Seeks to prohibit interference with lifesaving equipment, warning devices or notices on a beach unless with prior approval from Council.**

### **STATUTORY OBLIGATIONS/POWERS**

- Council may make a bylaw about the use of lifesaving equipment to address public nuisance, public health and safety, offensive behaviour, or use of public places under the Local Government Act 2002 (s145, s146).

### **ISSUES IN 2013**

- Interference with lifesaving equipment and warning devices on beaches could create risk to public safety.
- No data available on scale or impact of the problem. No data available on number or location of equipment.

### **OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013**

- To ensure public safety, minimise nuisance, and manage the use of land, assets, or structures on parks and beaches.
- Auckland Council bylaw prohibits interference with lifesaving equipment, warning devices, or notices on a beach.
- Powers to enforce bylaw include seizure of property (s164 to 168 LGA), cost recovery for damage (s175 LGA), and ability to request name and address (s178 LGA).
- Penalties for bylaw breaches include a maximum \$20,000 court fine (s242(4) LGA).

### **BYLAW IMPLEMENTATION SINCE 2013**

- Park rangers have not used the bylaw, in part due to a lack of training.
- Council community facility maintenance team replaces or repairs damaged lifesaving equipment.

### **ISSUE IN 2018**

- Council maintenance team reports rare incidents of removal of life preservers, but other related equipment such as ropes are often removed and must be replaced.
- No complaints data, but interference with lifesaving equipment witnessed by 9 per cent of Aucklanders surveyed. Of those, 95 per cent considered the issue a significant safety risk.
- No related issues reported by Harbourmaster or Auckland Transport on wharves.
- No enforcement. Limited ability to identify offenders.

### **OUTCOME SOUGHT IN 2018**

- To help maintain quality infrastructure to make Auckland liveable and resilient by ensuring lifesaving equipment, warning devices and notices are available for appropriate use on parks and beaches.

### **BYLAW EVALUATION**

#### **Still an issue requiring a bylaw response?**

- ✓ This is an issue of low frequency but high potential impact that regulation can help address.
- ✗ Feasible regulatory alternatives exist, but require a higher threshold of behaviour:
  - The Local Government Act 2002 (s232) provides an offence to wilfully, maliciously or negligently interfere with any Council property. Penalties include a maximum \$20,000 court fine (s242(1) LGA).
  - Police can address wilful damage or removal of warning devices under Summary of Offences Act 1981 which carry a maximum penalty of a three month prison term or a maximum \$2,000 court fine (s11, s12).

#### **Bylaw effective / efficient?**

- ✗ Bylaw not used. Offenders difficult to identify unless “caught in the act”. Damage is instead repaired/replaced.
- ✗ Applies only to beaches, and excludes equipment, devices and notices in other public places (e.g. Hunua Falls). Data not available on location, but some could potentially be located on parks or roads.

#### **Bylaw clearly written?**

<ul style="list-style-type: none"> <li>✘ Wording hard to follow because it relates to safety or damage (clauses 6 and 7) but is contained in clause 9 for beaches.</li> </ul>	
<p><b>Public aware of bylaw?</b></p> <ul style="list-style-type: none"> <li>✘ Likely to be low. There are no known public awareness initiatives.</li> </ul>	
<p><b>Bylaw fit for the future?</b></p> <ul style="list-style-type: none"> <li>✘ While it could be used, in practice it is not. Further, the bylaw only applies to beaches which preclude lifesaving equipment, warning devices or notices adjacent to the beach (on a park or road).</li> </ul>	
<p><b>Any bill of rights implications?</b></p> <ul style="list-style-type: none"> <li>✓ The current bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights 1990.</li> </ul>	
<p><b>Section 160(1) Local Government Act 2002 recommendation:</b></p> <p>A bylaw is not the most appropriate way to address the interference with lifesaving equipment, warning devices or notices now or in the future. Adequate powers to respond to the issue already exist in section 232 of the Local Government Act 2002 and Summary of Offences Act 1981.</p>	
<p><b>OPTIONS</b></p>	
<p><b>Option 1: Status quo – Retain current wording and implementation approach</b></p> <ul style="list-style-type: none"> <li>• No changes to wording (only applies to beaches).</li> <li>• No enforcement. Any damage repaired/replaced.</li> </ul>	<p><b>Option 2: Revoke bylaw and rely on Local Government Act 2002 and Summary of Offences Act 1981 (RECOMMENDED)</b></p> <ul style="list-style-type: none"> <li>• Revokes bylaw clause which is not used.</li> <li>• Local Government and Summary of Offences Act would be used for enforcement.</li> <li>• Council would continue to repair any damage.</li> </ul>
<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✘ Bylaw not used.</li> <li>✓ Enables Council enforcement if the person responsible is identified (has not occurred to date).</li> <li>✘ Applies only to beaches; excludes equipment, devices and notices on parks, roads and waterways.</li> </ul>	<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✓ Enables Council enforcement in all public places if the person responsible is identified (not occurred to date).</li> </ul>
<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ Does not give rise to any unjustified implications under New Zealand Bill of Rights 1990.</li> </ul>	<p><b>Bill of Rights implications:</b></p> <p>N/A</p>
<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✘ Bylaw not used, and only applies to beaches.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✓ Enables enforcement action on any public place.</li> </ul>
<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>- The issue and risks are the same for all Aucklanders.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>- The issue and risks are the same for all Aucklanders.</li> </ul>
<p><b>Section 160(3) Local Government Act 2002 recommendation:</b></p> <p>The Bylaw clause should be revoked (Option 2), and existing legislation used instead. The bylaw is not used, and adequate powers already exist in section 232 of the Local Government Act 2002 and Summary of Offences Act 1981 if required. Taking this approach will remove unnecessary bylaw regulation while still allowing Council to take action against any offenders if they are identified.</p>	

**BYLAW CLAUSE: 8(1)(e) To prevent obstructions on public places from goods being packed or stored****STATUTORY OBLIGATIONS/POWERS**

- Council may make a bylaw about storing and packing goods to address public nuisance, health, safety, offensive behaviour, or use of public places under the Local Government Act 2002 (s145, s146), and to address public health and nuisance under the Health Act 1956 (s64, s65).

**ISSUE IN 2013**

- Obstructions on footpaths, roads, parks and beaches causing nuisance and affecting public safety and accessibility.

**OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013**

- To provide for appropriate behaviour, safety and to minimise nuisance in public places.
- Auckland Council and Auckland Transport bylaws prohibit obstruction from storing or packing of goods in public.
- Powers to enforce bylaw include court injunction (s162 LGA), seizure of property (s164 to 168 LGA), request name and address (s178 LGA).
- Penalties for bylaw breaches include a maximum \$20,000 court fine (s242(4) LGA), or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences (s66 Health Act).

**BYLAW IMPLEMENTATION SINCE 2013**

- Council investigates complaints as a low priority using a graduated approach to compliance.
- No promotion or awareness initiatives about clause.

**ISSUE IN 2018**

- People storing or leaving a range of items on footpaths, parks and other public places that causes an obstruction, nuisance, safety risk, or misuse of public places.
- Of the Aucklanders surveyed, 24 per cent had seen the issue in the past 12 months. Of those, 86 per cent found the packing or storing of goods in a public place to be a nuisance or safety issue.
- No complaints recorded in 2015 and 2016.
- The issue is considered to typically occur on footpaths but could also occur in parks.

**OUTCOME SOUGHT IN 2018**

- To create a stunning city centre, with well-connected quality towns, villages and neighbourhood by regulating nuisance, safety issues and the misuse of public places from storing or packing goods.

**BYLAW EVALUATION****Still an issue requiring a bylaw response?**

- ✓ There is still an issue that the regulation can help address.
- ✓ There are no feasible regulatory alternatives. The Police can use the Summary of Offences Act 1982 (s22), but this is limited to obstructions to a public way (which is mainly the jurisdiction of Auckland Transport) and would not include parks for instance. It also does not provide for managing the use of public places.

**Bylaw effective / efficient?**

- ✓ Bylaw can be effective in addressing issues as offender likely to be identifiable.
- ✗ Only prohibits the activity when it creates an obstruction, but issue also relate to the misuse of public places
- ✗ Creates an inconsistency with the Auckland Council Trading and Events in Public Places Bylaw 2015 (trading bylaw). The trading bylaw manages the use of public places, including the display of goods for trading purposes.

**Bylaw clearly written?** ✗ No. The fact that sub- clause (e) only applies where it is an obstruction is not clear.

**Public aware of bylaw?** ✗ Likely to be low.

**Bylaw fit for the future?** ✗ No. Does not address issues effectiveness and efficiency issues.

**Any bill of rights implications?**

- ✓ The current bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights 1990.

**SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

- A bylaw remains an appropriate way to address the storing or packing of goods in public places.
- The current bylaw form is not the most appropriate because it does not address the misuse of public places and is inconsistent with the Auckland Council Trading and Events in Public Places Bylaw 2015.
- The current bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights 1990.

## OPTIONS

<p><b>Option 1: Status quo – Retain current wording and implementation</b></p> <ul style="list-style-type: none"> <li>Storage or packaging of goods in a public place only prohibited if causing an <u>obstruction</u> unless approved by council.</li> <li>Council responds to complaints.</li> </ul>	<p><b>Option 2: (RECOMMENDED) Amend – Prohibit <u>use</u> of public places to store or pack goods</b></p> <ul style="list-style-type: none"> <li><u>Use</u> of public places to store or pack goods prohibited unless approved by council (exemptions may apply).</li> <li>Council responds to complaints.</li> </ul>	<p><b>Option 3: Revoke bylaw – Rely on Auckland Transport bylaw and Police enforcement of obstructions of public ways</b></p> <ul style="list-style-type: none"> <li>Obstruction of public ways to store or pack goods prohibited.</li> <li>Auckland Transport and Police respond to complaints.</li> </ul>
<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✘ Issues associated with misuse of public places remains.</li> <li>✘ Inconsistency with trading bylaw remains.</li> <li>✓ Enables council to respond to complaints using a graduated compliance approach.</li> </ul>	<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✓ Addresses issues associated with misuse of public places.</li> <li>✓ Addresses inconsistency with trading Bylaw.</li> <li>✓ Enables council to respond to complaints using a graduated compliance approach.</li> <li>✓ Amendment can provide for exemptions where appropriate. Exemptions for homeless and temporary use should be investigated.</li> </ul>	<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✘ Police unlikely to prioritise enforcement.</li> <li>✘ Council under delegation from Auckland Transport would only respond to obstructions on the Auckland Transport system (issues associated with misuse of public places remains).</li> </ul>
<p><b>Bill of rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ Does not give rise to any unjustified implications under New Zealand Bill of Rights 1990.</li> </ul>	<p><b>Bill of rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ Does not give rise to any unjustified implications under New Zealand Bill of Rights 1990.</li> </ul>	<p style="text-align: center;">n/a.</p>
<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✘ No. Does not address the misuse of public places, nor inconsistency with the trading bylaw.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✓ Yes. Addresses issues associated with misuse of public places (not only obstructions). Can also provide for appropriate exemptions.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✘ Police are unlikely to prioritise enforcement.</li> <li>✘ Police and Auckland Transport response limited to public ways and Auckland Transport system (does not include inappropriate use or parks).</li> </ul>
<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>✓ Risk around homeless (who are more likely to be Māori) storing of possessions in public places not an issue where it does not cause an obstruction.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>- Risk around impact on homeless (who are more likely to be Māori) storing of possessions in public places requires investigation.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>✓ Risk around homeless (who are more likely to be Māori) storing of possessions in public places not an issue where it does not cause an obstruction.</li> </ul>

### SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:

The Bylaw should be amended (Option 2) to prevent the misuse of public places associated with the storing or packing of goods, and to be consistent with the Auckland Council Trading and Events in Public Places Bylaw 2015. Exemptions if appropriate can be provided and should be investigated. Taking this approach will better prevent nuisance, safety, and the misuse of public places from storing or packing goods.

# DRAFT- NOT COUNCIL POLICY

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

### STATUTORY OBLIGATIONS/POWERS

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

### ISSUE IN 2013

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

### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

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

### BYLAW IMPLEMENTATION SINCE 2013

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

### ISSUE IN 2018

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

### OUTCOME SOUGHT IN 2018

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

### BYLAW EVALUATION

#### Still an issue requiring a bylaw response?

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

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

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

References:

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

## DRAFT – NOT COUNCIL POLICY

### BYLAW CLAUSE 7(1)(b) and 7(3)– Polluting, damaging or obstructing a water or storm water course.

#### STATUTORY OBLIGATIONS/POWERS

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

#### ISSUES IN 2013

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

#### OUTCOMES SOUGHT AND BYLAW RESPONSE IN 2013

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

#### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council officers co-ordinate the remediation of pollution, damage or obstruction following a complaint.

#### ISSUES IN 2018

- Safety, damage and nuisance. 599 drain covers stolen or missing in South Auckland in last five-years.
- 15 per cent of Aucklanders surveyed directly witnessed pollution or damage to a watercourse or stormwater drain. Of those surveyed, 98 per cent felt either annoyed, frustrated, angry, fearful or threatened. Respondents were more tolerant of accidental damage.
- Pollution or damage to waterways generated the most negative emotion of the 34 issues surveyed.

#### OUTCOMES SOUGHT NOW (2018)

- To ensure public safety and minimise damage and nuisance from pollution, obstruction or interference with any watercourse, stormwater drain or channel.

#### BYLAW EVALUATION

##### Is there still a problem requiring a bylaw response:

- ✓ Yes. There is still an issue that regulation can help to address.
- ✗ There are feasible regulatory alternatives to the Bylaw:
  - The Auckland Council Stormwater Bylaw 2015 already addresses pollution, damage or obstruction to a water course or stormwater drain related to a stormwater network, including open drains, watercourses, inlet structures, pipes and other conduits. **However, it is not exactly comparable and would require amendment to cover the matters contained in the Bylaw.**
  - Police powers under the Summary Offences Act 1981 (s11) address wilful (intentional or reckless) damage to any property. Penalties include a maximum 3-month prison term or maximum \$2,000 court fine.
  - Police powers under the Summary Offences Act 1981 (s12) address obstructions or removal of any protective structure in a public place. Penalties include a maximum 3-month prison term or maximum \$2,000 court fine.
  - Council powers under the Local Government Act 2002 (s232) address wilful, negligent or malicious damage, obstruction, interference with a water work, water race or drainage work under the control of council. Penalties include a maximum 3-year prison term or maximum \$20,000 court fine.

<p><b>Bylaw effective/efficient?</b></p> <ul style="list-style-type: none"> <li>✗ No. Bylaw difficult to enforce. Difficult to identify offenders unless there is a witness, or if offender is caught in the act. There is no recourse for people who refuse to give details to officers.</li> <li>✗ Bylaw overlaps provisions in the Auckland Council Stormwater Bylaw 2015.</li> </ul> <p><b>Bylaw clearly written?</b></p> <ul style="list-style-type: none"> <li>✗ No. Bylaw overlaps provisions in the Auckland Council Stormwater Bylaw 2015.</li> <li>✗ Bylaw is confusing as under damage it also refers to polluting, obstruction and interfering.</li> </ul> <p><b>Public awareness of bylaw?</b> ✗ Likely to be low. There are no known public awareness initiatives.</p> <p><b>Bylaw fit for the future?</b> ✗ No. Overlaps with provisions in the Auckland Council Stormwater Bylaw 2015.</p>
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**Bill of Rights:** ✓ Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights 1990.

**SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**  
 A bylaw is an appropriate way to address public safety and minimise damage and nuisance from pollution, obstruction in or interference with any watercourse, stormwater drain or channel. The Bylaw is not the most appropriate form of bylaw because it overlaps with provisions of the Stormwater Bylaw 2015. The Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990

**OPTIONS**

<p><b>Option 1: Status quo – Retain bylaw</b></p> <ul style="list-style-type: none"> <li>• Bylaw prohibits damage to watercourses, stormwater drains or channels, unless approved by council. Network utility operators exempt.</li> <li>• Council responds to complaints and repairs damage.</li> </ul>	<p><b>Option 2: (RECOMMENDED) Amend bylaw to remove overlap with Stormwater Bylaw</b></p> <ul style="list-style-type: none"> <li>• Stormwater Bylaw amended to prohibit damage to watercourses, stormwater drains or channels, unless approved by council. Network utility operators exempt.</li> <li>• Equivalent provisions in Bylaw repealed.</li> <li>• Council responds to complaints and repairs damage.</li> </ul>	<p><b>Option 3: Revoke bylaw and use existing regulation</b></p> <ul style="list-style-type: none"> <li>• Council uses Stormwater Bylaw 2015 and Local Government Act 2002 for damage to council property.</li> <li>• Council responds to complaints and repairs damage.</li> <li>• Police can use powers under Summary Offences Act 1981 for damage to any property, and obstruction and removal of protective structures in public places.</li> </ul>
<p><b>Effectiveness/Efficiency:</b></p> <ul style="list-style-type: none"> <li>✗ Bylaw difficult to enforce. Difficult to identify offenders. Need to ensure health and safety of officers.</li> <li>✗ Bylaw duplicates provisions in the Stormwater Bylaw 2015.</li> </ul>	<p><b>Effectiveness/Efficiency:</b></p> <ul style="list-style-type: none"> <li>✗ Bylaw difficult to enforce. Difficult to identify offenders. Need to ensure health and safety of officers.</li> <li>✓ Streamlines council’s regulations.</li> </ul>	<p><b>Effectiveness/Efficiency:</b></p> <ul style="list-style-type: none"> <li>✗ Regulations difficult to enforce. Difficult to identify offenders. Regulations are not exactly comparable. There will be technical gaps.</li> </ul>
<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ Does not give rise to any unjustified implications under New Zealand Bill of Rights 1990.</li> </ul>	<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ Does not give rise to any unjustified implications under New Zealand Bill of Rights 1990.</li> </ul>	<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>Not applicable.</li> </ul>
<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✗ Overlaps with provisions in the Stormwater Bylaw 2015.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✓ All issues associated with stormwater contained in the Stormwater Bylaw 2015.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✗ Regulations are not exactly comparable. There will be technical gaps.</li> </ul>
<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>✓ Implications for Māori role as Kaitiaki over the environment.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>✓ Implications for Māori role as Kaitiaki over the environment.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>✓ There are no specific implications.</li> </ul>

**SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**  
 The bylaw should be amended (Option 2) to amend the Stormwater Bylaw 2015 to address public safety and minimise damage and nuisance from pollution, obstruction in or interference with any watercourse, stormwater drain or channel. Taking this approach will still enable council to respond to complaints while streamlining regulations.

References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 18.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 7, 102, 107, 111.



- Catch-pit safety review 2017 by Auckland Council and Auckland Transport.
- Legislative requirements: Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242(4) and Health Act 1956 s66, s128.

## DRAFT – NOT COUNCIL POLICY

### BYLAW CLAUSE 7(1)(c) and 7(3) - Prohibits damage by placing a structure, opening a drain or disturbing a surface.

#### STATUTORY OBLIGATIONS/POWERS

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

#### ISSUES IN 2013

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

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To manage the use of public places by prohibiting damage or misuse of structures, property and assets owned, managed or under the control of Auckland Council and Auckland Transport. To protect public property from interference, wilful damage or destruction.
- Auckland Council and Auckland Transport bylaws prohibit “placing a structure, opening a drain or disturbing a surface that is likely to be injurious to or cause a nuisance to any person or to cause damage to that public place”.
- Network utility operators exempt.
- Powers to enforce bylaw include: court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage, or power to request name and address.
- Penalties for bylaw breaches include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

#### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council responds to complaints and repairs damage.
- No specific complaints received in 2015 or 2016.

#### ISSUES IN 2018

- Safety and damage.
- There were 52 complaints of damage to roads in 2016.
- 599 drain covers stolen or missing in South Auckland in the last five years.
- Neither the qualitative or quantitative research findings specifically address this issue.

#### OUTCOME SOUGHT NOW (2018)

- To ensure public safety and minimise damage and nuisance to public places from placing a structure, opening a drain or disturbing a surface in a public place.

#### BYLAW EVALUATION

##### Is there still a problem requiring a bylaw response:

- ✓ Yes, there is still an issue that regulation can help to address.
- ✗ There are feasible regulatory alternatives to the bylaw in relation to injury and damage. These alternatives are not exactly comparable to the Bylaw:
  - Council can use powers under the Local Government Act 2002 (s232) to address wilful, negligent or malicious damage, obstruction, interference with a drainage work or any works or property under council control. Penalties include imprisonment not exceeding 3 years or a fine not exceeding \$20,000 or both.
  - Police powers under the Summary Offences Act 1981 (s12) can address removal of any protective structure and (s11) can address wilful, intentional or reckless damage to any property. Penalties for both include imprisonment not exceeding 3 months or a fine not exceeding \$2,000.
  - Police powers under the Crimes Act 1961 (s269) can address intentional or reckless damage to any property, where danger to life is likely. The penalty includes imprisonment not exceeding 10 years.

##### Bylaw effective / efficient?

<p>✘ Bylaw difficult to enforce due to difficulty identifying offenders unless there is a witness, or the offender is “caught in the act”. There is no recourse for people refusing to give details to officers. There is also a need to ensure health and safety of staff.</p>		
<p><b>Bylaw clearly written?</b> ✘ No. Bylaw lacks clarity. It is unclear whether it is about damage or safety and nuisance.</p>		
<p><b>Public awareness of bylaw?</b> ✘ Likely to be low. There are no known public awareness initiatives.</p>		
<p><b>Bylaw fit for the future?</b> ✘ No. Bylaw lacks clarity. The Local Government Act 2002, the Summary Offences Act 1981 and the Crimes Act 1961 address injury and damage.</p>		
<p><b>Bill of Rights:</b> ✓ Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights 1990.</p>		
<p><b>SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b>  A bylaw is not the most appropriate way to address issues about placing a structure, opening a drain, or disturbing a surface in a public place. Adequate powers already exist under the Local Government Act 2002, Summary Offences Act 1981, and Crimes Act 1961.</p>		
<p><b>OPTIONS</b></p>		
<p><b>Option 1: Status quo - Retain bylaw.</b></p> <ul style="list-style-type: none"> <li>Bylaw prohibits damage to public places by placing a structure, opening a drain or disturbing a surface. Network utility operators exempt.</li> <li>Council responds to complaints and repairs damage.</li> </ul>	<p><b>Option 2: Amend bylaw to improve certainty</b></p> <ul style="list-style-type: none"> <li>Bylaw prohibits damage to public places by placing a structure, opening a drain or disturbing a surface. Network utility operators exempt.</li> <li>Council responds to complaints and repairs damage.</li> </ul>	<p><b>Option 3: (RECOMMENDED) Revoke bylaw and rely on existing legislation</b></p> <ul style="list-style-type: none"> <li>No bylaw.</li> <li>Council use powers under the Local Government Act 2002 to address damage.</li> <li>Council responds to complaints and repairs damage.</li> <li>Police use powers under the Summary Offences Act 1981 and the Crimes Act 1961 to address injury and damage.</li> </ul>
<p><b>Effectiveness/Efficiency:</b></p> <ul style="list-style-type: none"> <li>✘ Bylaw difficult to enforce. Difficult to identify offenders.</li> <li>✘ Bylaw not easy to read and understand.</li> </ul>	<p><b>Effectiveness/Efficiency:</b></p> <ul style="list-style-type: none"> <li>✘ Bylaw difficult to enforce. Difficult to identify offenders.</li> <li>✓ Bylaw drafted to better reflect the problem and be easier to read and understand.</li> </ul>	<p><b>Effectiveness/Efficiency:</b></p> <ul style="list-style-type: none"> <li>✘ Legislation difficult to enforce. Difficult to identify offenders.</li> <li>✘ Simplifies council’s regulations.</li> <li>✘ Police unlikely to prioritise enforcement.</li> </ul>
<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ Does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</li> </ul>	<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ Does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</li> </ul>	<p><b>Bill of Rights implications:</b></p> <p>Not applicable.</p>
<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✘ Bylaw not easy to read and understand.</li> <li>✘ Duplicates existing regulations.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw drafted to better reflect the problem and be easier to read and understand.</li> <li>✘ Duplicates existing regulations.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✘ Does not address placing a structure and disturbing a surface.</li> </ul>
<p><b>Māori impact:</b></p> <ul style="list-style-type: none"> <li>✘ No specific implications for Māori.</li> </ul>	<p><b>Māori impact:</b></p> <ul style="list-style-type: none"> <li>✘ No specific implications for Māori.</li> </ul>	<p><b>Māori impact:</b></p> <ul style="list-style-type: none"> <li>✘ No specific implications for Māori.</li> </ul>
<p><b>SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b>  The bylaw should be revoked (Option 3) to rely on existing legislation for injury and damage from placing a structure, opening a drain or disturbing a surface in a public place. Taking this approach will still enable a response to complaints while simplifying council regulations.</p>		

References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 18.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 7, 109, 116, 174.
- Legislative requirements: Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242(4) and Health Act 1956 s66, s128.

## DRAFT - NOT COUNCIL POLICY

**BYLAW CLAUSE 7(1)(d) and 7(3) - Prohibits depositing, moving or removing rock, shingle, sand, vegetation, or any material or artefact unless approved by council**

### STATUTORY OBLIGATIONS/POWERS

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

### ISSUE IN 2013

- Damage in any public place caused by depositing, moving, or removing rock, shingle, sand, vegetation, or any material or artefact. Poor perceptions of public safety, reduced use of public places, nuisance.
- Potential for injury or damage to property, increased antisocial behaviour.
- High maintenance costs to the council and Auckland Transport due to vandalism (\$1.4 million in 2011/2012).
- No further data available on scale or impact of the issue in 2013.

### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

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

### BYLAW IMPLEMENTATION SINCE 2013

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

### ISSUE IN 2018

- Safety, nuisance, and misuse of public places.
- There were 52 related damages complaints in 2016.
- Licensing and Regulatory Compliance identified several instances of depositing grass clippings or weeds in public places or leaving building materials such as wood in a public place adjacent to a building site.
- Of Aucklanders surveyed 18 per cent had seen someone damaging trees or removing plants from a public space, 20 per cent had seen someone dumping weeds in a public place and 22 per cent had seen someone removing natural materials such as sand or rocks from a public place.
- Of those surveyed, between 79 and 96 per cent felt annoyed, frustrated, angry, fearful or threatened. Intentional damage generated stronger emotional responses.

### OUTCOME SOUGHT IN 2018

- To ensure public safety, and to minimise nuisance, damage, and the misuse of public places from the depositing, moving or removing rock, shingle, sand, vegetation, or any material or artefact in a public place.

### BYLAW EVALUATION

#### Still an issue requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can help address.
- ✗ There are feasible regulatory alternatives in relation to the deposition of material:
  - Council can use powers under the Litter Act 1979 and the Solid Waste Bylaw 2012 to regulate the deposition of material. Penalties include a fine not exceeding \$5,000.
  - Police powers under the Summary Offences Act 1981 (s11) can address wilful (intentional or reckless) damage to any property. Penalties include a maximum three-month prison term or a \$2,000 court fine.
  - Council can use powers under the Local Government Act 2002 (s232) to address any damage to council-controlled property or works. Penalties include a maximum \$20,000 court fine.

<p>✘ There are no feasible alternatives to a bylaw for moving or removing rock, shingle, sand, vegetation, or any material or artefact. This is more of a safety, nuisance and misuse of public places issue.</p>		
<p><b>Bylaw effective / efficient?</b></p> <p>✓ The Bylaw can still address issues related to regulatory provisions for moving or removing rock, sand, shingle or any material or artefact.</p> <p>✘ Bylaw difficult to enforce due to difficulties in identifying offenders unless there is a witness, or the offender is caught in the act. There is no recourse for people refusing to give details to officers.</p>		
<p><b>Bylaw clearly written?</b> ✘ No. Bylaw is not easy to read and understand. Bylaw overlaps with other clauses.</p>		
<p><b>Public aware of bylaw?</b> ✘ Likely to be low. There are no known public awareness initiatives.</p>		
<p><b>Bylaw fit for the future?</b> ✘ No. Bylaw lacks clarity and does not properly reflect the problem. Bylaw could be used for damage, but adequate powers exist under Local Government Act 2002, Litter Act 1979, Solid Waste Bylaw 2012 and Summary Offences Act 1981.</p>		
<p><b>Bill of Rights:</b> ✓ Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights 1990.</p>		
<p><b>SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b></p> <p>A bylaw is not the most appropriate way to address damage from depositing any material on a public place. Council already has adequate powers under the Litter Act 1979, Solid Waste Bylaw 2012, Local Government 2002 Act and Summary Offences Act 1981. A bylaw is the most appropriate way to address issues about moving or removing rock, shingle, sand, vegetation, or any material or artefact in a public place. The bylaw form is not the most appropriate form because it lacks clarity. The current bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</p>		
<p><b>OPTIONS</b></p>		
<p><b>Option 1: Status quo – Retain bylaw</b></p> <ul style="list-style-type: none"> <li>Bylaw prohibits damage to public places from depositing, moving or removing rock, sand, shingle, vegetation or any material or artefact, unless approved by council. Network utility operators exempt.</li> <li>Council responds to complaints and repairs damage.</li> </ul>	<p><b>Option 2: (RECOMMENDED) Amend bylaw to better reflect the problem and address regulatory gaps</b></p> <ul style="list-style-type: none"> <li>Bylaw more clearly addresses safety, nuisance and misuse of public places from moving or removing rock, sand, shingle, vegetation or any material or artefact. Network utility operators exempt.</li> <li>Council responds to complaints and repairs damage.</li> <li>Use Litter Act 1979, Solid Waste Bylaw 2012, Local Government Act 2002 and Summary Offences Act 1981 to address damage.</li> </ul>	<p><b>Option 3: Revoke bylaw – Rely on existing regulation</b></p> <ul style="list-style-type: none"> <li>No bylaw.</li> <li>Use Litter Act 1979, Solid Waste Bylaw 2012, Local Government Act 2002 to address damage and deposition of materials.</li> <li>Police can use powers under the Summary Offences Act 1981 to address damage.</li> <li>Council responds to complaints and repairs damage.</li> </ul>
<p><b>Effectiveness and efficiency:</b></p> <p>✘ Bylaw difficult to enforce. Difficult to identify offenders. Need to ensure health and safety of officers.</p> <p>✘ Bylaw not easy to read and understand.</p> <p>✘ Duplicates existing regulations in relation to depositing of material.</p>	<p><b>Effectiveness and efficiency:</b></p> <p>✘ Bylaw difficult to enforce. Difficult to identify offenders. Need to ensure health and safety of officers.</p> <p>✓ Bylaw more certain. Bylaw drafted to better reflect the problem and be easier to read and understand.</p> <p>✓ Streamlines council’s regulations (does not duplicate any existing regulations).</p>	<p><b>Effectiveness and efficiency:</b></p> <p>✘ Regulation difficult to enforce. Difficult to identify offenders. Need to ensure health and safety of officers.</p> <p>✘ Bylaw does not address moving or removing rock, sand, shingle, vegetation or any material or artefact.</p> <p>✓ Streamlines council’s regulations (does not duplicate any existing regulations).</p>
<p><b>Bill of Rights implications:</b></p> <p>✓ No. Bylaw does not give rise to any unjustified regulations under the New Zealand Bill of Rights Act 1990.</p>	<p><b>Bill of Rights implications:</b></p> <p>✓ No. Bylaw does not give rise to any unjustified regulations under the New Zealand Bill of Rights Act 1990.</p>	<p><b>Bill of Rights implications:</b></p> <p>Not applicable.</p>

<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✘ Bylaw not easy to read and understand.</li> <li>✘ Bylaw duplicates existing regulations in relation to depositing of material.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw more certain. Bylaw drafted to better reflect the problem and be easier to read and understand.</li> <li>✓ Streamlines council's regulations (does not duplicate any existing regulations).</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✘ Bylaw does not address moving or removing rock, sand, shingle, vegetation or any material or artefact.</li> </ul>
<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>✓ Implications to Māori role as Kaitiaki over the environment.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>✓ Implications to Māori role as Kaitiaki over the environment.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>✘ Implications to Māori role as Kaitiaki over the environment.</li> </ul>
<p><b>SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b>  The bylaw should be amended (Option 2) to rely on existing regulations for damages and more clearly address safety, nuisance and misuse of public places from moving or removing rock, sand, shingle, vegetation or any material or artefact. Taking this approach will better reflect the problem and address regulatory gaps.</p>		

References:

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

## DRAFT- NOT COUNCIL POLICY

### BYLAW CLAUSE (7)(1)(e) and 7(2)- Removing, damaging, planting, sowing or scattering the seeds of, any tree, shrub or plant of any kind

#### STATUTORY OBLIGATIONS/POWERS

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

#### ISSUE IN 2013

- Damage to trees, shrubs and plants in any public place. Poor perceptions of public safety, potential for injury or damage to property or persons. No further data available on scale or impact of the issue in 2013.

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To manage the use of public places by prohibiting damage or misuse of structures, property and assets owned, managed or under the control of Auckland Council and Auckland Transport.
- Auckland Council and Auckland Transport made bylaws to prohibit “removing or damaging any tree, shrub or plant of any kind ... or planting, sowing, or scattering the seed of any tree, shrub, or plant” in a public place unless approved. Exemptions apply to any person maintaining the grass verge on any road adjacent to their premises.
- Powers to enforce bylaw include: court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage, or power to request name and address.
- Penalties for bylaw breaches include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

#### BYLAW IMPLEMENTATION SINCE 2013

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

#### ISSUE IN 2018

- Safety, damage, nuisance, and use of public places. This is low level issue and does occur on occasion.
- 18 per cent of Aucklanders surveyed witnessed damage or removal of trees or plants from a public place. Of those surveyed, 95 per cent felt either annoyed, frustrated, angry, fearful or threatened. Intentional, malicious, large scale, or repeated damage generated stronger emotional responses. Survey respondents placed high importance on protecting the environment from harm and the enjoyment of the community.

#### OUTCOME SOUGHT IN 2018

- To ensure public safety, and minimise damage, nuisance, and misuse of public places from damaging, removing, planting, sowing or scattering of seeds, of any tree, shrub or plant on public places.

#### BYLAW EVALUATION

##### Still an issue requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can help address.
- ✓ There are feasible alternatives to a bylaw about damage to trees, shrubs or plants:
  - Council can use powers under the Resource Management Act 1991 (s9) for breaches of the unitary plan in relation to trees in open space zones that contribute to cultural, amenity, landscape and ecological values, and vegetation. Penalties include imprisonment not exceeding 2 years, a fine not exceeding \$300,000, or a fine not exceeding \$10,000 per day for a continuing offence.
  - Council can use powers under the Local Government Act 2002 (s232) to address any damage to council-controlled property or works. Fine not exceeding \$20,000, imprisonment not exceeding 3 years, or both.
  - Police powers under the Summary Offences Act 1981 (s11) can address wilful (intentional or reckless) damage to any property. Penalties include imprisonment not exceeding 3 months, fine not exceeding \$2,000.
- \* There are no feasible alternatives to a bylaw for planting, sowing or scattering seeds. This is more of a safety, nuisance and use of public places issue.

**Bylaw effective / efficient?** \* No. Bylaw not necessarily a deterrent as damage sometimes occurs when a public place is deserted. The bylaw can be difficult to enforce. Identification of offenders is difficult unless there is a witness or the offender is caught in the act by officers. There is no recourse for people refusing to give details to officers. There is also a need to ensure health and safety of staff.

**Bylaw clearly written?** \* No. The bylaw clause is not easy to read.

**Public aware of bylaw?** \* Likely to be low. There are no known public awareness initiatives.

<b>Bylaw fit for the future?</b> ✘ No. Bylaw lacks clarity and does not properly reflect the problem. Bylaw could be used for damage, but adequate legislative powers already exist.		
<b>Bill of Rights:</b> ✔ Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.		
<b>Section 160(1) Local Government Act 2002 Recommendation:</b> A bylaw is not the most appropriate way to address damage or removal of trees, shrubs or plants in a public place. Council already has adequate powers under the Local Government Act 2002, Resource Management Act 1991, and Summary Offences Act 1981. A bylaw is the most appropriate way to address planting, sowing or scattering of seeds in public places. The bylaw form is not the most appropriate form because it lacks clarity. The current bylaw does not give rise to any implications under the Bill of Rights Act 1990.		
OPTIONS		
<b>Option 1: Status quo – Retain bylaw</b> <ul style="list-style-type: none"> <li>Bylaw prohibits damaging, removing, or planting, sowing or scattering of seeds of any trees, plants or shrubs in public places.</li> <li>Council responds to complaints and repairs damage.</li> </ul>	<b>Option 2: (RECOMMENDED) Amend bylaw to properly reflect the problem and address regulatory gaps</b> <ul style="list-style-type: none"> <li>For damage rely on Local Government Act 2002, and Summary Offences Act 1981.</li> <li>Bylaw more clearly addresses safety, nuisance and misuse of public places from planting, sowing, or scattering of seeds.</li> <li>Council responds to complaints and repairs damage.</li> </ul>	<b>Option 3: Revoke bylaw – Rely on existing regulation</b> <ul style="list-style-type: none"> <li>No bylaw.</li> <li>Council use Local Government Act 2002 and Resource Management Act 1991 to address damage.</li> <li>Police can use powers under the Summary Offences Act 1981 to address damage.</li> <li>Council responds to complaints and repairs damage.</li> </ul>
<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✘ Bylaw difficult to enforce. Difficult to identify offenders. Need to ensure health and safety of officers.</li> <li>✘ Bylaw not easy to read and understand.</li> <li>✘ Duplicates existing regulations in relation to damage.</li> </ul>	<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✘ Bylaw difficult to enforce. Difficult to identify offenders. Need to ensure health and safety of officers.</li> <li>✔ Bylaw more certain. Bylaw drafted to better reflect the problem and to be easier to read and understand.</li> <li>✔ Streamlines council regulations (does not duplicate any existing regulations).</li> </ul>	<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✘ Bylaw difficult to enforce. Difficult to identify offenders. Need to ensure health and safety of officers.</li> <li>✘ Does not address trees outside open space zones or which do not contribute to cultural, amenity, landscape or ecological values.</li> <li>✘ Does not address safety, nuisance and misuse of public places from planting, sowing, or scattering of seeds.</li> <li>✔ Streamlines council regulations.</li> </ul>
<b>Bill of Rights Implications:</b> <ul style="list-style-type: none"> <li>✔ No. Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of Rights Implications:</b> <ul style="list-style-type: none"> <li>✔ No. Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of Rights Implications:</b> <ul style="list-style-type: none"> <li>Not applicable.</li> </ul>
<b>Fit for the future:</b> <ul style="list-style-type: none"> <li>✘ Bylaw not easy to read and understand.</li> <li>✘ Duplicates existing regulations in relation to damage.</li> </ul>	<b>Fit for the future:</b> <ul style="list-style-type: none"> <li>✔ Bylaw more certain. Bylaw drafted to better reflect the problem and to be easier to read and understand.</li> <li>✔ Streamlines council regulations.</li> </ul>	<b>Fit for the future:</b> <ul style="list-style-type: none"> <li>Does not address safety, nuisance and misuse of public places from planting, sowing, or scattering of seeds.</li> </ul>
<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>Implications for Māori role as Kaitiaki over the environment.</li> </ul>	<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>Implications for Māori as Kaitiaki over the environment.</li> </ul>	<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>Implications for Māori as Kaitiaki over the environment.</li> </ul>
<b>Section 160(3) Local Government Act 2002 recommendation:</b> Bylaw should be amended (Option 2) to rely on existing regulations for damages and more clearly address safety, nuisance and misuse of public places from planting, sowing, or scattering seeds. Taking this approach will better reflect the problem and address regulatory gaps.		

## References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 18.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 106, 115, 116, 117, 176.
- Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242(4) and Health Act 1956 s66, s128.

## DRAFT - NOT COUNCIL POLICY

**BYLAW CLAUSE: 8(1)(a) Prohibits obstructions caused by placing or leaving any material, object, thing or structure in a public place without prior written approval from the council**

### STATUTORY OBLIGATIONS/POWERS

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

### ISSUE IN 2013

- Obstructions in public places.
- No further data available on scale or impact of issue in 2013.

### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To ensure safe and accessible public places for the use of everyone in the community and to minimise the uncontrolled use and occupation of footpaths, accessways and other public places.
- Auckland Council and Auckland Transport made bylaws to prohibit a person using a public place to “place or leave any material, object, thing or structure” without approval.
- Powers to enforce bylaw include: court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage, or power to request name and address.
- Penalties for bylaw breaches include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council responds to complaints as a low priority using a graduated compliance approach.

### ISSUE IN 2018

- Obstruction, nuisance, safety, or misuse of public places.
- 796 general obstruction and 100 footpath obstruction complaints were received in 2016.
- Between 24 and 28 per cent of Aucklanders surveyed witnessed obstructions in public places from building materials, tents, and private property. Of those surveyed, 87 to 88 per cent felt annoyed, frustrated, angry, fearful or threatened.

### OUTCOME SOUGHT IN 2018

- To ensure public safety, and to minimise obstruction, nuisance, and the misuse of public places from materials, objects, things or structures placed or left in a public place.

### BYLAW EVALUATION

#### Still an issue requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can address.
- ✗ There are no feasible regulatory alternatives to a bylaw:
  - Police powers under the Summary of Offences Act 1981 (s22) is limited to obstructions of a public way, and would not include parks, for instance. The penalty is a maximum \$1,000 fine.
  - Police powers under the Summary of Offences Act 1981 (s12) can address obstructions in a public place likely to cause injury, not nuisance. Penalties include a maximum 3-month prison term or maximum \$2,000 court fine.

#### Bylaw effective / efficient?

- ✓ Bylaw can be effective in addressing issues because offenders can be easily identified.
- ✗ Bylaw can be difficult to enforce. There is no definition of obstruction which makes it a subjective term that is open to interpretation.
- ✗ Licensing and regulatory compliance staff suggest the bylaw clearly apply to any object stored or left in a public place, not only those causing an obstruction.

**Bylaw clearly written?** ✗ Arguably open to interpretation. Is the clause about safety, obstruction, nuisance, and the misuse of a public places, or only where an activity causes an obstruction?

**Public aware of bylaw?** ✗ No. Limited awareness. No promotion of bylaw.



<b>Bylaw fit for the future?</b> ✘ No. Issue is unlikely to change. Bylaw can be effective, but issue is not clearly written.		
<b>Bill of Rights:</b> ✓ Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights 1990.		
<b>SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b> A bylaw is an appropriate way to address issues associated with safety, obstruction, nuisance, and the misuse of a public places from materials, objects, things or structures placed or left on a public place. The Bylaw is not the most appropriate form of bylaw because it is not written clearly. The Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.		
<b>OPTIONS</b>		
<b>Option 1: Status quo – Retain bylaw</b> <ul style="list-style-type: none"> <li>Bylaw prohibits placing or leaving any material, object, thing or structure in a public place in a way that causes an obstruction, unless approved by council.</li> <li>Council responds to complaints.</li> </ul>	<b>Option 2: (RECOMMENDED) Amend bylaw to improve certainty</b> <ul style="list-style-type: none"> <li>Bylaw prohibits use of public places to place or leave any material, object, thing or structure unless approved by council, regardless of whether it causes an obstruction (exemptions may apply).</li> <li>Council responds to complaints.</li> </ul>	<b>Option 3: Revoke bylaw and rely on police powers</b> <ul style="list-style-type: none"> <li>No bylaw.</li> <li>No enforcement role for council.</li> <li>Police use s12 and s22 of the Summary of Offences Act 1981 to address obstructions to public ways or where likely to cause an injury in a public place.</li> </ul>
<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✓ Bylaw enables the issue to be addressed where it arises.</li> <li>✘ Bylaw can be difficult to enforce because the term obstruction is open to interpretation.</li> </ul>	<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✓ Bylaw enables the issue to be addressed where it arises.</li> <li>✓ Bylaw drafted to clearly apply to the use of public places, not only where it causes an obstruction.</li> <li>✓ Exemptions can be provided where appropriate.</li> </ul>	<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✘ Police unlikely to prioritise enforcement.</li> <li>✘ Bylaw does not address obstruction, nuisance and misuse in all public places unless on a public way or where likely to cause injury.</li> </ul>
<b>Bill of rights implications:</b> <ul style="list-style-type: none"> <li>✓ No. Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of rights implications:</b> <ul style="list-style-type: none"> <li>✓ No. Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of rights implications:</b> Not applicable.
<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✘ No. Bylaw is not clearly written, leaving potential for inconsistent decisions in the future.</li> </ul>	<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✓ Yes. The Bylaw is more certain.</li> </ul>	<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✘ No. Bylaw does not address obstruction, nuisance and misuse in all public places unless on a public way or where likely to cause injury.</li> </ul>
<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>Risk around impact on homeless (who are more likely to be Māori) storing possessions in public places - however not an issue where it does not cause an obstruction.</li> </ul>	<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>Risk around impact on homeless (who are more likely to be Māori) leaving items in public places requires investigation.</li> </ul>	<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>There are no specific implications for Māori.</li> </ul>
<b>SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b> The Bylaw should be amended (Option 2) to prohibit placing or leaving things in a public place, unless approved by council. Exemptions, if appropriate, can be provided and should be investigated. Taking this approach will better prevent issues associated with safety, obstruction, nuisance, and the misuse of a public places.		

References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 21.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 118, 120, 177, 179.
- Local Government Act 2002 s162, s163, s164-168, s171-174, s176; s178 and Health Act 1956 s66(2), s128.

## DRAFT- NOT COUNCIL POLICY

### BYLAW CLAUSE 8(1)(b) and 8(2) – Prohibits obstruction of a public place by any part of a building, structure or tent

#### STATUTORY OBLIGATIONS/POWERS

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

#### ISSUES IN 2013

- Safety, nuisance, access, and use of public places.
- Obstructions in public places causing trip hazards, impeding pedestrian and vehicle flow, visual impact.
- Sources of obstructions range from overgrown vegetation, building materials, gates left open over footpaths, port-a-loos, tents, and shipping containers.
- Obstructions typically on footpaths and road reserves.
- Important issue for disability community where obstructions can cause trip hazards, and hinder access for prams, wheelchairs, and mobility scooters.

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To ensure that safe and accessible public places are provided for the use of everyone in the community and to minimise the uncontrolled use and occupation of footpaths, access ways and other public spaces.
- Auckland Council and Auckland Transport made bylaws that prohibit the use of a public place to “erect, construct, or place a building, structure, tent or projection of a building, structure or tent or any part thereof, on, under, over or across a public place”, without approval.
- Clause 8(2) of the Auckland Council bylaw exempts tents erected temporarily for shade provided they do not create a visual obstruction, impede or obstruct movement of people or vehicles, and do not cause a nuisance.
- Powers to enforce bylaw include: court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage, or power to request name and address.
- Penalties for bylaw breaches include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

#### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council responds to complaints as a low priority using a graduated compliance model.

#### ISSUES IN 2018

- Obstruction, public safety, nuisance, and use of public places.
- There were 795 general obstruction complaints in 2016.
- 28 per cent of Aucklanders surveyed witnessed building materials, a shelter or a tent in a public space in a way that obstructs the public. Of those, 89 per cent felt annoyed, frustrated, angry, fearful or threatened. Overall, obstructions of public places were more likely to be of concern to older Aucklanders (60 years or older).
- The Disability Advisory Panel has concerns about obstructions for people with accessibility needs.

#### OUTCOME SOUGHT NOW (2018)

- To ensure public safety and minimise obstructions, nuisance and misuse of public places from buildings, structures or tents in public places.

#### BYLAW EVALUATION

##### Is there still a problem requiring a bylaw response:

- ✓ Yes. There is still an issue regulation can help address
- ✗ There are no feasible regulatory alternatives to the bylaw:
  - Police powers under the Summary Offences Act 1981 (s22) can address obstruction to a public way, which does not include parks. The penalty is a maximum \$1,000 fine.
  - Police powers under the Summary Offences Act 1981 (s12) can address obstruction likely to cause injury. Penalties include a maximum 3-month prison term or maximum \$2,000 court fine.

##### Bylaw effective / efficient?

- ✗ Can be difficult to enforce. No definition of obstruction means it is subjective term open to interpretation. Licensing and Regulatory Compliance staff suggest the bylaw clearly apply to any object stored or left in a public place, not only those causing an obstruction.
- ✓ Can be effective in addressing issues as offenders likely to be identifiable.
- ✓ Exemption for tents or similar structures erected temporarily for shade provides for reasonable use.

**Bylaw clearly written?** ✗ Arguably open to interpretation. Is the clause about safety, obstruction, nuisance, and the use of public places, or only where an activity causes an obstruction?

**Public awareness of bylaw?** ✗ No. Limited awareness. No promotion of bylaw.

<b>Bylaw fit for the future?</b> ✘ No. The issue is unlikely to change. The Bylaw can be effective but is not clearly written.		
<b>Bill of Rights:</b> ✓ Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.		
<b>SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b> A bylaw is an appropriate way to address issues associated with safety, obstruction, nuisance, and the misuse of a public places from any part of a building, structure or tent in a public place. The Bylaw is not the most appropriate form of bylaw because it is not clearly written. The Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.		
<b>OPTIONS</b>		
<b>Option 1: Status quo. Retain bylaw</b> <ul style="list-style-type: none"> <li>Bylaw prohibits building, structures and tents in public places, in a way that causes an obstruction unless approved by council</li> <li>Council responds to complaints.</li> </ul>	<b>Option 2: (RECOMMENDED) Amend bylaw to improve certainty</b> <ul style="list-style-type: none"> <li>Bylaw prohibits use of public places for buildings, structures and tents, unless approved by council (exemptions may apply).</li> <li>Council responds to complaints.</li> </ul>	<b>Option 3: Revoke bylaw. Rely on Police powers</b> <ul style="list-style-type: none"> <li>No bylaw.</li> <li>Police use s12 and s22 of the Summary of Offences Act 1981 to address obstructions to public ways or where obstructions likely to cause an injury in a public place.</li> </ul>
<b>Effectiveness/Efficiency:</b> <ul style="list-style-type: none"> <li>✓ Bylaw enables the issue to be addressed where it arises.</li> <li>✘ Can be difficult to enforce because the term obstruction is open to interpretation.</li> </ul>	<b>Effectiveness/Efficiency:</b> <ul style="list-style-type: none"> <li>✓ Bylaw enables the issue to be addressed where it arises.</li> <li>✓ Bylaw more certain. Bylaw drafted to clearly apply to the use of public places (not only where it causes an obstruction).</li> <li>✓ Exemptions can be provided where appropriate</li> </ul>	<b>Effectiveness/Efficiency:</b> <ul style="list-style-type: none"> <li>✘ Does not address obstruction safety, nuisance and misuse unless obstruction on a public way or likely to cause injury.</li> <li>✘ Police unlikely to prioritise enforcement.</li> </ul>
<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>✓ No. Bylaw does not give rise to any unjustified regulations under the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>✓ No. Bylaw does not give rise to any unjustified regulations under the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of Rights implications:</b> Not applicable.
<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✓ No. Bylaw is not clearly written leaving potential for inconsistent decisions in the future.</li> </ul>	<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✓ Yes. The bylaw is more certain.</li> </ul>	<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✘ No. Bylaw does not address obstruction, safety, nuisance or misuse, unless obstruction on a public way or likely to cause injury.</li> </ul>
<b>Māori impact or risk:</b> <ul style="list-style-type: none"> <li>✓ Risk around homeless (who are more likely to be Māori) not an issue where it does not cause an obstruction.</li> </ul>	<b>Māori impact or risk:</b> <ul style="list-style-type: none"> <li>✓ Risk around impact on homeless (who are more likely to be Māori) storing possessions in public places requires investigation.</li> </ul>	<b>Māori impact or risk:</b> <ul style="list-style-type: none"> <li>✓ Risk around homeless (who are more likely to be Māori) not an issue where it does not cause an obstruction.</li> </ul>
<b>SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b> The Bylaw should be amended (Option 2) to prohibit placing any building, structure or tent in a public place regardless of whether it causes an obstruction. Exemptions can be provided and should be investigated. Taking this approach will better address the safety, obstruction, nuisance, and misuse of public places.		

References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 21, 22, 23, 52.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 16, 118, 119, 120, 226.
- Legislative requirements: Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242(4) and Health Act 1956 s66, s128.

# DRAFT - NOT COUNCIL POLICY

## BYLAW CLAUSE 8(1)(c) – Prohibits vegetation encroachment over a public place

### STATUTORY OBLIGATIONS/POWERS

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

### ISSUES IN 2013

- Overhanging vegetation blocking footpaths.
- No further data available on the scale or impact of the issue in 2013.

### OUTCOMES SOUGHT AND BYLAW RESPONSE IN 2013

- To ensure that safe and accessible public places are provided for the use of everyone in the community.
- Auckland Council and Auckland Transport made bylaws to prohibit “vegetation to encroach over a public place in a manner that may cause a nuisance to any person or an obstruction to traffic”.
- Powers to enforce bylaw include: court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage, or power to request name and address.
- Court penalties for bylaw breaches include: a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council responds to complaints as a low priority using a graduated compliance response.

### ISSUES IN 2018

- Obstruction, nuisance and safety.
- There were 796 general obstruction complaints and 429 complaints about obstructions to footpaths or public places in 2016.
- 46 per cent of Aucklanders surveyed had personally witnessed vegetation encroachment on a public place. Of those surveyed, 88 per cent said they would feel annoyed, frustrated, angry, fearful, or threatened.
- Vegetation encroachment is of concern for people with accessibility needs and youth.
- Staff consider that most of the issues are likely to occur on the Auckland Transport System (e.g. roads and footpaths) which is the jurisdiction of Auckland Transport. However, some issues are anticipated to occur on parks and walkways that are under the control of Auckland Council.

### OUTCOMES SOUGHT NOW (2018)

- To ensure public safety and minimise obstruction and nuisance from vegetation encroachment over public places.

### BYLAW EVALUATION

#### Still an issue requiring a bylaw response:

- ✓ Yes. There is still an issue requiring a bylaw response.
- ✗ There are no feasible regulatory alternatives to the bylaw for vegetation encroachment:
  - Police powers under the Summary Offences Act 1981 (s12) can address obstructions in a public place likely to cause injury, not nuisance. Penalties include a maximum 3-month prison term or maximum \$2,000 court fine.
  - Police powers under the Summary Offences Act 1981 (s22) can address obstructions on a public way, which does not include other public places such as parks. The penalty is a maximum \$1,000 court fine.
  - Council powers under the Local Government Act 1974 (s355) are limited to obstruction to traffic or drainage on roads and public ways which are an Auckland Transport responsibility and do not address nuisance.

#### Bylaw effective/efficient? –

- ✓ Bylaw can be effective in addressing issues as offender is likely to be identifiable.
- ✗ Bylaw can be difficult to enforce. No definition of obstruction makes it a subjective term open for interpretation.

**Bylaw clearly written?** ✗ No. The reference to “traffic” creates uncertainty about whether this is an Auckland Transport issue, and in what circumstances issues would arise outside of the Auckland Transport System (roads).

<b>Public awareness of bylaw?</b> ✘ No. Limited awareness. No promotion of the bylaw.		
<b>Bylaw fit for the future?</b> ✘ The bylaw can be effective but is not clearly written. The issue is unlikely to change.		
<b>Bill of Rights:</b> ✓ Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.		
<b>SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b> A bylaw is an appropriate way to address vegetation encroachment over public places. The Bylaw is not the most appropriate form of bylaw because it is not clearly written. The Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.		
<b>OPTIONS</b>		
<b>Option 1: Status quo - Retain bylaw.</b> <ul style="list-style-type: none"> <li>Bylaw prohibits vegetation encroachment over public places that may cause obstruction to traffic or nuisance to people in public places, unless approved by council.</li> <li>Council responds to complaints.</li> </ul>	<b>Option 2: (RECOMMENDED)</b> <b>Amend bylaw to better reflect the problem.</b> <ul style="list-style-type: none"> <li>Bylaw prohibits vegetation encroachment over public places that may cause safety, obstruction, or nuisance issues to people in public places, unless approved by council.</li> <li>Council responds to complaints.</li> </ul>	<b>Option 3: Revoke bylaw - Rely on existing regulation.</b> <ul style="list-style-type: none"> <li>No Bylaw.</li> <li>Police can use s12 and s22 of the Summary Offences Act 1981 to address obstructions.</li> <li>Auckland Transport can use s355 of the Local Government Act 1974 to address vegetation causing an obstruction to traffic or drainage on roads.</li> </ul>
<b>Effectiveness/Efficiency:</b> <ul style="list-style-type: none"> <li>✓ Bylaw enables the issue to be addressed where it arises.</li> <li>✘ Bylaw can be difficult to enforce. The term 'obstruction' open for interpretation.</li> </ul>	<b>Effectiveness/Efficiency:</b> <ul style="list-style-type: none"> <li>✓ Bylaw enables the issue to be addressed where it arises.</li> <li>✓ Bylaw more certain. Bylaw drafted to better define obstruction.</li> </ul>	<b>Effectiveness/Efficiency:</b> <ul style="list-style-type: none"> <li>✘ Bylaw does not address obstruction and nuisance on public way or where likely to cause injury.</li> </ul>
<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>✓ No. Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>✓ No. Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of Rights implications:</b> Not applicable.
<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✘ No. Bylaw is not clearly written and leaves potential for inconsistent decisions in the future.</li> </ul>	<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✓ Yes. The bylaw is more certain.</li> </ul>	<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✘ No. Does not address obstruction and nuisance on public way or where likely to cause injury.</li> </ul>
<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>✓ There are no specific implications for Māori.</li> </ul>	<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>✓ There are no specific implications for Māori.</li> </ul>	<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>✓ There are no specific implications for Māori.</li> </ul>
<b>SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b> The Bylaw should be amended (Option 2) to prohibit vegetation encroachment over public places that may cause safety, obstruction, or nuisance issues to people in public places. Taking this approach will better prevent issues associated with obstruction, nuisance or safety to people in public places.		

References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 21, 52.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 120, 122, 123, 124.
- Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242(4) and Health Act 1956 s66, s128.

## DRAFT- NOT COUNCIL POLICY

### BYLAW CLAUSE 8(1)(d) - Hanging a door or gate that encroaches on a public place

#### STATUTORY OBLIGATIONS/POWERS

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

#### ISSUE IN 2013

- Obstruction of footpaths and other public places was of concern to disability groups local boards and business.
- No further data available on scale or impact of the issue in 2013.

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To ensure that safe and accessible public places are provided for the use of everyone in the community.
- Auckland Council and Auckland Transport made bylaws to prohibit a person hanging “a door or gate on any premises capable of being swung over or across or otherwise encroaching on a public place”.
- Powers to enforce bylaw include: court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage, or power to request name and address.
- Penalties bylaw breaches include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

#### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council responds to complaints as a low priority using graduated enforcement approach.

#### ISSUE IN 2018

- Obstruction, nuisance and safety.
- No specific data available. In 2016, there were 796 general obstruction complaints and 429 complaints about general obstructions on footpaths and public places.
- Complaints about overhanging gates are thought to be rare. Licensing and Regulatory Compliance officers recall one instance in the last decade where a gate was upgraded after engagement with owner.
- 15 per cent of Aucklanders surveyed had personally witnessed a gate or door obstructing a public place. Of those surveyed, 96 per cent said they would feel annoyed, frustrated, angry, fearful, or threatened.
- Complaints about obstructions often reflect concerns for people with accessibility needs.

#### OUTCOME SOUGHT IN 2018

- To ensure public safety and minimise obstruction and nuisance from doors or gates being swung over or across public places.

#### BYLAW EVALUATION

##### Still an issue requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can help address.
- ✓ There are no feasible alternatives to a bylaw for hanging a door or gate that encroaches on a public place:
  - Police powers under the Summary of Offences Act 1982 (s22) limited to obstructions of a public way and would not include parks for instance. The penalty includes a fine not exceeding \$1,000.
  - Police powers under the Summary of Offences Act (s12) limited to obstructions that are likely to cause injury in a public place and does not include nuisance. Penalties include can imprisonment not exceeding 3 months or a fine not exceeding \$2,000.

##### Bylaw effective / efficient? -

- ✓ Bylaw can be effective in addressing issues as offender is likely to be identifiable.
- ✓ The bylaw has enabled the issue to be addressed where it has arisen at the lower end of the graduated enforcement.
- ✗ Can be difficult to enforce. No definition of obstruction making it a subjective term that is open to interpretation. Licensing and regulatory compliance staff suggest the bylaw clearly apply to any object stored or left in a public place not only those causing obstruction.

**Bylaw clearly written?** ✗ Arguably open to interpretation. Is the clause about obstruction, nuisance or safety or only where it causes an obstruction?

**Public aware of bylaw?** ✗ Limited awareness. No promotion of bylaw.

**Bylaw fit for the future?** ✗ The issue is unlikely to change. The Bylaw can be effective but is not clearly written.

**Bill of Rights:** ✓ Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights 1990.

**SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

A bylaw is an appropriate way to address issues about doors or gates being swung over or across public places. The Bylaw is not the most appropriate form of bylaw because it is not clearly written. The Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.

**OPTIONS**

<p><b>Option 1: Status quo – Retain bylaw</b></p> <ul style="list-style-type: none"> <li>• Bylaw prohibits hanging a door or gate that encroaches on a public place, unless approved by council.</li> <li>• Council responds to complaints.</li> </ul>	<p><b>Option 2: (RECOMMENDED) Amend bylaw to improve certainty</b></p> <ul style="list-style-type: none"> <li>• Bylaw prohibits use of public places to hang a door or gate that encroaches on a public place, unless approved by council, regardless of whether it causes an obstruction.</li> <li>• Council responds to complaints.</li> </ul>	<p><b>Option 3: Revoke bylaw and rely on police powers</b></p> <ul style="list-style-type: none"> <li>• No bylaw.</li> <li>• No enforcement role for council.</li> <li>• Police use s12 and s22 of the Summary of Offences Act 1981 to address hanging doors or gates that obstruct a public way or are likely to cause an injury in a public place.</li> </ul>
<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw enables the issue to be addressed where it arises.</li> <li>✗ Can be difficult to enforce. The term obstruction is arguably open to interpretation.</li> </ul>	<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw enables the issue to be addressed where it arises.</li> <li>✓ Bylaw more certain. Bylaw drafted to clearly apply to the use of public places (not only where it causes an obstruction).</li> </ul>	<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✗ Does not address safety, obstruction and nuisance issues in all public places, unless on a public way or where likely to cause injury.</li> <li>✗ Police unlikely to prioritise enforcement.</li> </ul>
<p><b>Bill of rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ No. Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</li> </ul>	<p><b>Bill of rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ No. Bylaw does not give rise to any unjustified implications under the New Zealand Bill of Rights Act 1990.</li> </ul>	<p><b>Bill of rights implications:</b></p> <p>Not applicable.</p>
<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✗ No. The Bylaw is not clearly written leaving potential for inconsistent decisions in the future.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✓ Yes. Bylaw more certain.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✗ No. Bylaw does not address safety, obstruction and nuisance issues in all public places, unless on a public way or where likely to cause injury.</li> </ul>
<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>• There are no specific implications for Māori.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>• There are no specific implications for Māori.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>• There are no specific implications for Māori.</li> </ul>

**SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

The Bylaw should be amended (Option 2) to increase certainty by prohibiting hanging a door or gate that encroaches on a public place regardless of whether it causes an obstruction. Taking this approach will more effectively ensure public safety and minimise obstruction and nuisance from doors or gates being swung over or across public places.

## References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 21, 52.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 120, 126, 127, 177.
- Legislative requirements: Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242(4) and Health Act 1956 s66, s128.

## DRAFT- NOT COUNCIL POLICY

### BYLAW CLAUSE 6(1)(a) – Do not obstruct, disturb or interfere with a person’s use or enjoyment of a public place

#### STATUTORY OBLIGATIONS/POWERS

- Council may make a bylaw about protecting people’s use or enjoyment of a public place to address public nuisance, health, safety, offensive behaviour, and use of public places under the Local Government Act 2002 (s145, s146) and Health Act 1956 (s64).

#### ISSUE IN 2013

- Nuisance, safety, use of public places.
- General anti-social or nuisance behaviour (such as littering, harassment, loitering or any activity) that unreasonably interferes with a person’s enjoyment of a public place.
- No further data available on scale or impact of the issue in 2013.

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To provide for appropriate behaviour in public places, ensure safe public places and minimise nuisances.
- Auckland Council and Auckland Transport made bylaws to prohibit using a public place to “wilfully obstruct, disturb or interfere with any other person in their use or enjoyment of that public place”.
- Powers to enforce bylaw include a court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage or power to request name and address. Penalties include a maximum \$20,000 court fine or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

#### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council proactively enforces Bylaw through the City Watch Programme which manage nuisance behaviours such as aggressive or nuisance begging activities, protesting that obstruct footpaths etc.
- Serious offences are referred to police.

#### ISSUE IN 2018

- Public safety, obstruction and nuisance. No issues of offensive behaviour and damage.
- 53 per cent of Aucklanders surveyed witnessed someone disturbing or interfering with others’ enjoyment of a public space. Of those surveyed, 96 per cent said they felt annoyed, frustrated, angry, fearful, or threatened.

#### OUTCOME SOUGHT IN 2018

- To ensure public safety and minimise obstruction and nuisance from people using a public place to wilfully obstruct, disturb or interfere with any other person in their use or enjoyment of that public place.

#### BYLAW EVALUATION

##### Still an issue requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can help address.
- ✓ There are no feasible alternatives to a bylaw. Existing police legislation address higher levels of offending:
  - Police powers under the Summary Offences Act 1981 (s3, s4, s9, s21, s28) can address activities such as offensive and disorderly behaviour, assault, intimidation, loitering and trespass.
  - Police powers under the Summary Offences Act 1981 (s22) are limited to obstructions of a public way (not including parks for instance).

##### Bylaw effective / efficient?

- ✓ Bylaw is a “catch-all” for behaviours now and in the future that does not meet the threshold for police intervention, but nevertheless are a concern to Aucklanders.
- ✓ Police support this approach because it can be an early intervention tool for preventing low-level activities escalating into more serious offences.
- ✗ Bylaw difficult to enforce due to difficulties in identifying offenders unless there is a witness, or the offender is caught in the act. There is no recourse for people refusing to give details to officers.

**Bylaw clearly written?** ✗ Bylaw unclear. Arguably open to interpretation. For instance, it could better explain how the Bylaw applies to specific issues, for instance, this clause is used to address begging activities that causes an obstruction because the Bylaw clause 6(1)(f) only refers to aggressive and nuisance begging activities.

**Public aware of bylaw?** ✗ Limited awareness. No promotion of bylaw.

**Bylaw fit for the future?** ✗ The issue is unlikely to change, but the Bylaw is not clearly written.

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



**SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

A bylaw is an appropriate way to address safety, obstruction and nuisance issues from people using a public place to wilfully obstruct, disturb or interfere with any other person in their use or enjoyment of that public place. The Bylaw is not the most appropriate form of bylaw because it is not written clearly. The Bylaw does not give rise to any implications and is not consistent with the New Zealand Bill of Rights Act 1990.

**OPTIONS**

<b>Option 1: Status quo – Retain bylaw</b> <ul style="list-style-type: none"> <li>Bylaw prohibits using a public place to wilfully obstruct, disturb or interfere with any other person in their use or enjoyment of that public place.</li> <li>Council responds to complaints.</li> <li>Police addresses serious offences.</li> </ul>	<b>Option 2: (RECOMMENDED) Amend bylaw to improve certainty</b> <ul style="list-style-type: none"> <li>Bylaw same as Option 1. Explanatory notes added to better explain how the Bylaw applies to lower levels of offending and to specific issues as they arise.</li> <li>Council responds to complaints.</li> <li>Police addresses serious offences.</li> </ul>	<b>Option 3: Revoke bylaw - Rely on existing legislation</b> <ul style="list-style-type: none"> <li>Bylaw clause deleted.</li> <li>Police use the Summary Offences Act 1981 to address offensive and disorderly behaviour, assault, intimidation, loitering and trespass.</li> </ul>
<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✓ Bylaw enables the issues to be addressed where they arise.</li> <li>✗ Bylaw difficult to enforce.</li> </ul>	<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✓ Bylaw enables the issues to be addressed where they arise.</li> <li>✗ Bylaw difficult to enforce.</li> <li>✓ Bylaw more certain. Explanatory notes can be added without formality to explain how the clause applies to new issues as they arise.</li> </ul>	<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✗ Does not address obstruction, safety, nuisance and misuse unless obstruction on a public way.</li> <li>✗ Police unlikely to prioritise enforcement.</li> </ul>
<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>- Criteria not applicable for non-bylaw option.</li> </ul>
<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✗ No. Bylaw is not clearly written leaving potential for inconsistent decisions in the future.</li> </ul>	<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✓ Yes. Explanatory notes make Bylaw more certain for issues now and in the future.</li> </ul>	<b>Fit for future:</b> <ul style="list-style-type: none"> <li>✗ No. Legislation only addresses nuisance intending to intimidate and obstructions limited to public ways.</li> </ul>
<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>No specific implications for Māori.</li> </ul>	<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>No specific implications for Māori.</li> </ul>	<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>No specific implications for Māori.</li> </ul>

**SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

The Bylaw should be amended (Option 2) to prohibit using a public place to wilfully obstruct, disturb or interfere with any other person in their use or enjoyment of that public place. Taking this approach will better address issues associated with safety, obstruction and nuisance.

**References:**

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 13, 50
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 120, 126, 127, 177.
- Legislative requirements: Local Government Act 2002, s162, s163, s164-168, s171-174, s176, s178, s242(4)
- Health Act 1956, s66, s128.
- Public Safety and Nuisance Bylaw Review Colmar Brunton Findings Report 2017, pp 8.
- Attachment B Assessment of Public Safety and Nuisance Behaviours and Opportunities 2017, pp 8, 9.

## DRAFT - NOT COUNCIL POLICY

### BYLAW CLAUSE 6(1)(b) – Prohibits nuisance from excessive noise in a public place

#### STATUTORY OBLIGATIONS/POWERS

- Council may make a bylaw about noise to address public nuisance, health, safety, offensive behaviour or use of public places under the Local Government Act 2002 (s145, s146) and Health Act 1956 (s29, s64).

#### ISSUE IN 2013

- Nuisance from the use of loud speakers, amplifiers and musical instruments.
- No specific data on the size of the issue in 2013.

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To minimise nuisance and provide for appropriate behaviour in public places.
- Auckland Council and Auckland Transport made bylaws to prohibit “nuisance through the use or playing of any instrument (musical or otherwise), any type of public address system or any type of amplified sound system, or from making any excessive sound or noise” in a public place.
- Powers to enforce bylaw include a court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage or power to request name and address.
- Penalties for bylaw breaches include a maximum \$20,000 court fine or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

#### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- To respond to complaints, council officers use the Resource Management Act 1991 (RMA) and the Bylaw depending on the circumstances.

#### ISSUE IN 2018

- Noise nuisance.
- 52 per cent of Aucklanders surveyed experienced excessive noise from public address systems and instruments. Of those surveyed, 84 per cent considered announcements, speeches or music played over loud speakers a nuisance.
- Other stakeholders identified the use of loud speakers on bicycles as being of concern.
- Street performances, such as busking, generated the most responses from the stakeholders.
- The number of busking complaints increased from 56 in 2015 to 153 in 2016. Data does not specify whether the issue was related to noise.
- Council receives few complaints about noise in public places. In contrast, council receives over 57,000 complaints per year about noise on private property.

#### OUTCOME SOUGHT IN 2018

- To minimise sound or noise nuisance in public places, including from playing of instruments, public address systems and amplified sound systems.

#### BYLAW EVALUATION

##### Still a problem requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can help address.
- ✗ There are feasible regulatory alternatives to a bylaw under the Resource Management Act 1991. This Act:
  - provides enforcement powers to investigate excessive noise emitted from any place, to require the noise to be reduced to a reasonable level (s327) and the right of entry to seize, remove, lock or seal any instrument, appliance or machine that is producing or contributing to the excessive noise (s328)
  - provides for \$500 infringement notices as a penalty [s343C(3)].

##### Bylaw effective / efficient?

- ✗ No. Council officers rely on the Resource Management Act 1991 and the Bylaw depending on the circumstances. However public law confirmed that the Resource Management Act 1991 (s326-328) can apply to noise emitted from any place (is not limited to a private property).
- ✗ No. Noise associated with street performers already regulated in the Trading and Events in Public Places Bylaw 2015. Street performers require approval and must comply with conditions [cl 11(1)(k)].

##### Bylaw clearly written?

- ✗ No. Bylaw is too wordy. Terms such as “nuisance” and “excessive” are open to interpretation.

##### Public aware of bylaw?

- ✗ Awareness of the bylaw is likely to be low. There are no known public awareness initiatives.

##### Bylaw fit for the future?

- ✗ No. While the issue is unlikely to change the RMA can be used instead of the bylaw.

<b>Any Bill of Rights implications?</b>	
✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act 1990.	
<b>SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b>	
A bylaw is not the most appropriate way to address sound or noise nuisance in public places, including from playing of instruments, public address systems, or amplified sound systems now and in the future. Adequate powers already exist under the Resource Management Act 1991 and Trading and Events in Public Places Bylaw. The Bylaw is not the most appropriate form of the bylaw because it is not clearly written. The Bylaw does not give rise to any implications and is not inconsistent with the New Zealand Bill of Rights Act.	
<b>OPTIONS</b>	
<b>Option 1: Status quo - Retain bylaw</b>	<b>Option 2: (RECOMMENDED) Revoke bylaw – Rely on existing regulations</b>
<ul style="list-style-type: none"> <li>Bylaw prohibits nuisance in public places from playing instruments, public address or amplified sound systems or from making any excessive sound or noise.</li> <li>Council continues to respond to noise complaints using bylaw and the Resource Management Act 1991.</li> <li>Council continues to use the Trading and Events in Public Places Bylaw 2015 to regulate noise from street performances.</li> </ul>	<ul style="list-style-type: none"> <li>Delete Bylaw clause.</li> <li>Council responds to noise complaints using the Resource Management Act 1991.</li> <li>Council continues to use the Trading and Events in Public Places Bylaw 2015 to regulate noise from street performances.</li> </ul>
<b>Effectiveness and efficiency:</b>	<b>Effectiveness and efficiency:</b>
✘ Bylaw is unnecessary as the Resource Management Act 1991 and Trading and Events in Public Places Bylaw 2015 already have the necessary provisions.	<ul style="list-style-type: none"> <li>✓ Council uses Resource Management Act 1991 to respond to complaints and Trading and Events in Public Places Bylaw 2015 to regulate street performers.</li> <li>✓ Simplifies council's regulations.</li> </ul>
<b>Bill of Rights implications:</b>	<b>Bill of Rights implications:</b>
✓ Bylaw does not give rise to implications and is not inconsistent with New Zealand Bill of Rights Act.	- Criteria not applicable for non-bylaw option.
<b>Fit for future:</b>	<b>Fit for future:</b>
✘ No. Bylaw is not clearly written and is unnecessary.	<ul style="list-style-type: none"> <li>✓ Enables council to respond to complaints while simplifying council regulations.</li> </ul>
<b>Māori impact/risk:</b>	<b>Māori impact/risk:</b>
✓ No specific impacts for Māori.	✓ No specific impacts for Māori.
<b>SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b>	
The Bylaw should be revoked (Option 2) and existing regulations used to address excessive noise nuisance from the use of public address systems, amplified sound systems, playing any instruments in a public place. Taking this approach will still enable council to respond to complaints while simplifying council regulations.	

**References:**

- Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178.
- Health Act 1956 s66(2), s128.
- Statement of Proposal - Review of Public Places / Safety and Nuisance Bylaws December 2012 pp 13, 50.
- Public Safety and Nuisance Bylaw Review Findings Report 2017 pp 80, 81, 82.

## DRAFT – NOT COUNCIL POLICY

**BYLAW CLAUSE 6(1)(c) – Prohibits use of any material or thing recklessly or in a manner which may intimidate, be dangerous, be injurious to or cause a nuisance to any person**

### STATUTORY OBLIGATIONS/POWERS

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

### ISSUE IN 2013

- Reckless use of vehicles, including skateboards and bicycles.
- Reduced levels of public safety and access to public places.
- There were two unmanned aircraft (drone) incidents in 2007; one in 2008, 2009, 2010, and 2011; three in 2012; and nine in 2013. No further data available on the scale or impact of this issue in 2013.

### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To provide for appropriate behaviour in public places, ensure safe public places, and minimise nuisances.
- Auckland Council and Auckland Transport made bylaws to prohibit the “use of any material or thing (including a vehicle, bicycle, motorised scooter, model aircraft, skateboard, roller skates or roller blades, shopping trolley or similar object) recklessly or in a manner which may intimidate, be dangerous, be injurious to or cause a nuisance to any person” in a public place.
- Powers to enforce bylaw include a court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage, or power to request name and address.
- Penalties for bylaw breaches include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council addresses issues using a graduated enforcement approach.

### ISSUE IN 2018

- Public safety, nuisance and misuse of public places. There is no data for motorised scooters, roller skates/blades, shopping trolleys, vehicles not a skateboard or bike, or model aircraft.

#### Skateboarding:

- Collision, high speed, congestion, aggressive behaviour, damage to public property, noise, reduced amenity.
- There were 55 skateboarding complaints in 2016.
- 50 per cent of Aucklanders surveyed witnessed or experienced skateboarding in a way that may harm others. Of those surveyed, 91 per cent felt annoyed, frustrated, angry, fearful, or threatened.

#### Bike riding:

- Intimidating behaviour from riding on one wheel towards pedestrians and cars, and damage from wheeling off and on cars an issue in southern local board areas. However, no complaints received in 2015 or 2016.

#### Drones:

- Council received no complaints of drones on council land in 2015, and 11 from Oct 2016 - February 2018.
- Western and Northern Park Rangers and a small number of local boards identified drones as a growing issue.
- The Civil Aviation Authority (CAA) address issues about drones flown over properties without consent or near aircraft. The CAA report 27 incidents in 2014 and 53 incidents in 2015 to end of June.

### OUTCOME SOUGHT IN 2018

- To ensure public safety and minimise nuisance and misuse of public places from reckless or intimidating, dangerous, injurious or nuisance use of any material or thing.

### BYLAW EVALUATION

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

- **Skateboarding and bike riding:** ✓ No feasible regulatory alternatives. Police powers under Summary Offences Act 1981 (s13) limited to public safety - doing anything, with anything under a person’s control likely to endanger safety with reckless disregard for the safety of others.
- **Drones:** ✓ No feasible regulatory alternatives.

Civil Aviation Authority (CAA) powers under Civil Aviation Act 1990 require consent of individuals and property owners (including Auckland Council for parks) to be flown over by drones, and other operational requirements (part 101), and for operators of higher risk drone operations to be CAA-certified (part 102).

Auckland Council addresses consent and reckless, dangerous, intimidating, or nuisance use of drones in public places. Council gives consent for drone operation in most council-owned public places subject to guidelines and a code of conduct (which have no enforcement powers), adherence to CAA rules, and the Bylaw.

There are few complaints about code breaches. Code breaches are recorded as Bylaw breaches, or complainants are directed to other organisations e.g. CAA.

**Bylaw effective/efficient?**

- ✓ Bylaw addresses bike riding/skateboarding issues using a graduated compliance approach.
- ✗ Enforcement difficult. E.g. for drones in public places, it is difficult to identify offenders and drone flight time is limited. However, this is a problem for all NZ drone regulations.
- ✗ Bylaw does not enable the Auckland Council guidelines and code of conduct to be enforceable documents.

**Bylaw clearly written?** ✗ No. Bylaw wording is unclear and does not include reference to drones.

**Public aware of bylaw?** ✗ Likely to be low.

**Bylaw fit for the future?** ✗ No. Bylaw is not clearly written.

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

**SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

A bylaw is the most appropriate way to address use of any material or thing recklessly or in a manner which may intimidate, be dangerous, be injurious to or cause a nuisance to any person in a public place. The Bylaw is not the most appropriate form of bylaw because it is unclear and does not explicitly address drone operation in public places or enforce the Auckland Council guidelines and code of conduct. The Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.

**OPTIONS**

<p><b>Option 1: Status quo – Retain bylaw</b></p> <ul style="list-style-type: none"> <li>• Bylaw prohibits use of any material or thing recklessly, or in an intimidating, dangerous, injurious or nuisance manner.</li> <li>• Council responds to complaints using graduated compliance approach.</li> <li>• Civil Aviation Authority (CAA) can respond to breaches of CAA rules.</li> <li>• Privacy commissioner can address drone privacy issues.</li> </ul>	<p><b>Option 2: (RECOMMENDED) Amend bylaw for certainty</b></p> <ul style="list-style-type: none"> <li>• Bylaw amended to address drone operation, and provide for the adoption of guidelines/code of conduct (where appropriate) in public places.</li> <li>• Bylaw aims and implementation the same as Option 1.</li> </ul>	<p><b>Option 3: Revoke bylaw – Rely on existing legislation</b></p> <ul style="list-style-type: none"> <li>• Bylaw clause deleted.</li> <li>• Police can use powers under Summary Offences Act 1981 to address safety risks.</li> <li>• Civil Aviation Authority (CAA) can respond to breaches of CAA rules.</li> <li>• Privacy commissioner can address drone privacy issues.</li> </ul>
<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✗ Enforcement is difficult.</li> <li>✗ Bylaw is unclear.</li> </ul>	<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✗ Enforcement is difficult.</li> <li>✓ Bylaw more certain.</li> <li>✓ Bylaw enables enforcement of guidelines/code of conduct.</li> </ul>	<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✗ Enforcement is difficult</li> <li>✗ Damage, nuisance, and misuse of public places unaddressed.</li> </ul>
<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw does not give rise to any unjustified regulations and is not inconsistent with the New Zealand Bill of Rights Act 1990.</li> </ul>	<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw does not give rise to any unjustified regulations and is not inconsistent with the New Zealand Bill of Rights Act 1990.</li> </ul>	<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>- Criteria not applicable for non-bylaw option.</li> </ul>
<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✗ Bylaw is unclear.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw more certain and explicitly addresses growing issue of drones in public places.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✓ Regulatory gap for damage, nuisance, and misuse of public places.</li> </ul>
<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>• No specific implications for Māori.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>• No specific implications for Māori.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>• No specific implications for Māori.</li> </ul>

**SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

The Bylaw should be amended (Option 2) to improve clarity and address drone operation in public places. Taking this approach continues to enable council to respond to complaints with greater certainty.

**References:**

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp 12, 13.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 72, 73, 75.
- Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242(4); Health Act 1956 s66, s128.
- RPAS, UAV, UAS, Drones and Model Aircraft, [www.caa.govt.nz](http://www.caa.govt.nz)
- Rules and guidelines for flying UAVs and drones, [www.aucklandcouncil.govt.nz](http://www.aucklandcouncil.govt.nz)

## DRAFT – NOT COUNCIL POLICY

**BYLAW CLAUSE 6(1)(d) – Prohibits a fence in a public place that may cause an injury or nuisance to any person**  
**LEGACY BYLAW CLAUSE 12.1 and 15.2(b) fences to meet minimum standards or be approved by council.**

### STATUTORY OBLIGATIONS/POWERS

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

### ISSUE IN 2013

- Public safety, nuisance, use of public places.
- Public safety due to potential injury, from poorly erected or maintained barbed wire, electrified or spiked fences on property adjacent to a public place.

### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To prevent injury, nuisance and misuse of public places from dangerous fencing.
- Auckland Council and Auckland Transport:
  - Made bylaws to prohibit using a public place to “install or maintain a fence (including a razor-wire and electric fence) in a manner that may cause an injury or nuisance” to people.
  - Confirmed two legacy bylaws of former Papakura District Council and Waitakere City Council. Both legacy bylaws require barbed wire and electric fences to meet minimum standards or be approved by council.
- Powers to enforce bylaw include a court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage or power to request name and address. Penalties for bylaw breaches include a maximum \$20,000 court fine, or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council officers reactively respond to complaints.

### ISSUE IN 2018

- The nature of the problem remains the same as in 2013. Complaints have been rare over the past four years.
- Eight per cent of Aucklanders surveyed had witnessed nuisance or dangerous fencing. Of those surveyed, 91 per cent said they would be annoyed, frustrated or angry, fearful or threatened.
- Inconsistency between the Bylaw (effects based) and two legacy bylaws (imposes minimum standards).

### OUTCOME SOUGHT IN 2018

- To ensure public safety and minimise nuisance and misuse of public places from fences.

### BYLAW EVALUATION

#### Still a problem requiring a bylaw response?

- ✓ Yes. There is still a low frequency problem that regulation can help address.
- ✓ There are no feasible regulatory alternatives to a bylaw:
  - Council powers under the Local Government Act 2002 (s215-223) to issue removal orders is limited to where offences are committed and the fence is used to either conceal these, or to injure or intimidate.
  - Council powers under the Auckland Transport bylaw are limited to fences on the boundary between private property and a road on the Auckland Transport System. It does not include parks.
  - Council powers under the Building Act 2004 are limited to safety of construction.
  - Council powers under the Fencing Act 1978 enable removal but are limited to encroachment of fences onto adjoining land, via a court order.
  - Police powers under the Summary Offences Act 1981 (s13) prohibits any thing likely to cause injury with reckless disregard for safety. However, this issue would be a low priority for police.

#### Bylaw effective / efficient?

- ✓ Yes. Most complaints resolved through a conversation with the owner using the Bylaw.
- ✓ The bylaw provides for removal powers and cost recovery under the Local Government Act 2002 (s163).
- \* Inconsistent provisions between the Bylaw and legacy bylaws cause confusion.

**Bylaw clearly written?** \* No. Bylaw does not clearly reflect the issue which relates to the use of public places for private fences and the risks to safety and nuisance in public places from fences on or adjacent to public places. The Bylaw refers only to fences that cause safety or nuisance issues on public places.

**Public aware of bylaw?** \* Likely to be low. There are no known public awareness initiatives.

**Bylaw fit for the future?** \* No. Does not clearly reflect the issues. Inconsistent legacy clauses create confusion.

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

**SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

A bylaw remains the most appropriate way to address public safety, nuisance, and the misuse of public places from fencing on or adjacent to public places. The Bylaw is not the most appropriate form of the bylaw because it does not clearly reflect the issues and the inconsistent legacy bylaw clauses create confusion. The Bylaw does not give rise to any implications and is not inconsistent with the New Zealand Bill of Rights 1990.

**OPTIONS**

<b>Option 1: Status quo - Retain Bylaw</b>	<b>Option 2: (Recommended) Amend bylaw to better reflect issues</b>	<b>Option 3: Revoke Bylaw – Rely on existing regulations</b>
<ul style="list-style-type: none"> <li>Bylaw prohibits use of a public place for installing or maintaining a fence (including a razor-wire and electric fence) in a manner that may cause an injury or nuisance to any person.</li> <li>Legacy bylaw clauses require barbed wire and electric fences to meet minimum standards or be approved by council.</li> <li>Council responds to complaints on a reactive basis.</li> </ul>	<ul style="list-style-type: none"> <li>Bylaw to prohibit use of public place for fences between private and public land unless approved, and to address the risks to safety and nuisance in public places from fences on or adjacent to public places.</li> <li>Legacy bylaw clauses deleted.</li> <li>Council responds to complaints on a reactive basis.</li> </ul>	<ul style="list-style-type: none"> <li>Bylaw and legacy bylaws deleted.</li> <li>Council can use Local Government Act 2002 for fences involved in a criminal offence, are intimidating or intended to injure.</li> <li>Police use Summary Offences Act 1981 for fences causing safety issues.</li> <li>Council use Fencing Act 1978 for court - ordered removal of an encroaching fence.</li> <li>Council responds to complaints on a reactive basis.</li> </ul>
<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✓ Enables Council enforcement, including powers to remove a fence and recover costs.</li> <li>✗ Bylaw does not clearly reflect the issues.</li> <li>✗ Inconsistency between Bylaw and legacy bylaws creates confusion.</li> </ul>	<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✓ Enables Council enforcement, including powers to remove a fence and recover costs.</li> <li>✓ Bylaw better reflects the issues.</li> <li>✓ Removes inconsistent bylaws.</li> </ul>	<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✗ Local Government Act 2002 cannot be used unless the fence is involved in a criminal offence or fence is intended to intimidate or injure.</li> <li>✗ Powers of removal under Fencing Act 1978 are costly and time consuming.</li> <li>✗ Police unlikely to prioritise enforcement under Summary Offences Act 1981.</li> </ul>
<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act 1990.</li> </ul>	<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act 1990.</li> </ul>	<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>- Criteria not applicable for non-bylaw option.</li> </ul>
<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✗ Bylaw does not clearly reflect the issues and legacy bylaw clauses create confusion.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw better reflects the issues.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✗ Does not clearly reflect the issues, and limited scope for enforcement.</li> </ul>
<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>✓ No specific impacts for Māori.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>✓ No specific impacts for Māori.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>✓ No specific impacts for Māori.</li> </ul>

**SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

The Bylaw should be amended (Option 2) to address the use of public place for fences between private and public land, the risks to safety and nuisance in public places from fences on or adjacent to public places, and to revoke legacy bylaws about fencing. Taking this approach will better reflect the issues while simplifying council regulations.

**References:**

- Statement of Proposal – Review of Public Places / Safety and Nuisance Bylaws December 2012 pp 50, 51.
- Public Safety and Nuisance Bylaw Review Findings Report 2017 pp 78, 79.
- Local Government Act 2002 s145, s146; Health Act 1956 s64, s65.

## DRAFT- NOT COUNCIL POLICY

**BYLAW CLAUSE: 6(1)(e): Offence to consume, inject, inhale, distribute, sell any mind-altering substance in public**

### STATUTORY OBLIGATIONS/POWERS

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

### ISSUES IN 2013

- Poor perception of public safety, nuisance and potential health implications from the use and distribution of mind-altering substances in public places.
- No further data available on scale or impact of the issue in 2013.

### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To provide for appropriate behaviour in public places that are safe and to minimise nuisances.
- Auckland Council and Auckland Transport made bylaws to prohibit people from using a public place to “consume, inject or inhale, distribute or offer for sale any mind-altering substance”.
- Powers to enforce a bylaw includes a court injunction, removal of works, seizure of property, powers of entry, cost recovery, or power to request name and address.
- Penalties for bylaw breaches include a maximum \$20,000 court fine or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council officers do not use or enforce the bylaw due to Health and Safety implications. If the complaint is about immediate danger or harm it would be referred to the Police by the Call Centre.

### ISSUES IN 2018

- Public safety and nuisance.
- While the number of complaints to the council is low, the quantitative survey found 34 per cent of respondents had witnessed or experienced people using mind-altering substances in a public place.
- Of those surveyed, 88 per cent felt either annoyed, frustrated, angry, fearful or threatened.

### OUTCOME SOUGHT IN 2018

- To ensure public safety and to minimise nuisance from people using a public place to consume, inject or inhale or distribute or offer for sale any mind-altering substance.

### BYLAW EVALUATION

#### Is there still a problem requiring a bylaw response?

- ✓ There is still a problem that regulation can help address.
- ✗ There are feasible regulatory alternatives to the bylaw:
  - police can use the Psychoactive Substances Act 2013 (s70(1),71(1)) to address distribution, sale and possession of all psychoactive substances and most mind-altering substances. Arguably this could include glue sniffing and solvent abuse.
    - section 70(1), distribution of unapproved products, carries an imprisonment term not exceeding two years.
    - section 71(1), possession of unapproved substances, includes a fine not exceeding \$500.
  - Misuse of Drugs Act 1975 deals with the use, possession, cultivation or trafficking of illegal drugs. The Act classifies drugs into three classes based on their projected risk of serious harm.
  - police can use the Summary Offences Act 1981 (s3, s4, s22, s21) to address negative behaviours associated with mind altering substances such as offensive and disorderly behaviour, obstructions and intimidation.

#### Is the bylaw effective / efficient?

- ✗ Council officers do not use or enforce the bylaw due to Health and Safety implications.
- ✗ If the complaint is about immediate danger or harm it is referred to Police.
- ✗ Bylaw difficult to enforce. People using mind-altering substances often refuse to cooperate with staff.
- ✗ Bylaw ineffective for addressing complex social issues.
- ✗ Bylaw potentially conflicts with the Psychoactive Substances Act 2013. This act can allow for approved psychoactive substances, whereas the Bylaw bans all mind-altering substances in public places.

**Is the bylaw clearly written?** ✗ No. It duplicates and conflicts provisions in the Psychoactive Substances Act 2013.

**Public awareness of the bylaw?** ✗ Likely to be low. There are no known public awareness initiatives.

#### Bylaw fit for future?

- ✗ No. Mind-altering substances are better dealt with under the Psychoactive Substances Act 2013.



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

**SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

A bylaw is not the most appropriate way to address people using a public place to consume any mind-altering substance now or in the future. Adequate police powers already exist under the Psychoactive Substances Act 2013 and Summary Offences Act 1981. The Bylaw is not the most appropriate form of bylaw because it overlaps and potentially conflicts with provisions under the Psychoactive Substances Act 2013. The Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.

**OPTIONS**

**Option 1: Status quo – Retain Bylaw**

- Bylaw prohibits people from using a public place to consume, inject or inhale or distribute or offer for sale any mind-altering substance.
- Bylaw not enforced. Complaints about immediate danger or harm are referred to the Police.

**Option 2: (RECOMMENDED) Revoke Bylaw clause and rely on Psychoactive Substances Act 2013**

- Delete Bylaw clause.
- Police use powers under Psychoactive Substances Act 2013 for possession, distribution or offering to sell all psychoactive substances in a public place.
- Police use Summary Offences Act 1981 to address offensive and disorderly behaviour, obstruction and intimidation.

**Effectiveness and efficiency:**

- ✗ Bylaw not enforced due to Health and Safety implications. If the complaint is about immediate danger or harm, it is referred to Police.
- ✗ Bylaw duplicates and conflicts with provisions in the Psychoactive Substances Act 2013.

**Effectiveness and efficiency:**

- ✓ Removes unenforced, duplicate and potentially repugnant bylaw regulation.
- ✓ Police better placed to investigate mind-altering substance use and behaviours.

**Fit for future:**

- ✗ No. Duplicates and conflicts with provisions in the Psychoactive Substances Act 2013.

**Fit for future:**

- ✓ All psychoactive substances are covered under the Psychoactive Substances Act 2013 with enforcement powers given to the police.

**Bill of Rights implications:**

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

**Bill of Rights implications:**

- Criteria not applicable for non-bylaw option.

**Māori Impact:**

- There are no specific implications for Māori.

**Māori Impact:**

- There are no specific implications for Māori.

**SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

The Bylaw clause should be revoked (Option 2), and existing police legislation used to address mind-altering substances and associated negative behaviours. Taking this approach will reflect current practice and simplify council regulations.

**References:**

- Attachment B Assessment of Public Safety and Nuisance Behaviours and Opportunities 2017, pp 19
- Martin Jenkins report pp 12, 13
- Local Government Act, 2002 s162, s163, s164-168, s171-174, s176, s178, s242(4)
- Health Act 1956, s66, s128

## DRAFT – NOT COUNCIL POLICY

### **BYLAW CLAUSE 6(1)(f) – Prohibits begging activity that intimidates or causes a nuisance**

#### **STATUTORY OBLIGATIONS/POWERS**

- Council may make a bylaw about begging activities to address public nuisance, health, safety, offensive behaviour or use of public places under the Local Government Act 2002 (s145, s146) and Health Act 1956 (s29, s64).

#### **ISSUES IN 2013**

- Nuisance, intimidation, poor perception of public safety and the use of public places.
- There was no data available on the scale or impact of the issue in 2013.

#### **OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013**

- To ensure public safety, minimise nuisance and provide for appropriate behaviour in public places.
- The intent of the bylaw was not to ban begging activities but to address nuisance behaviour associated with it.
- Both Auckland Council and Auckland Transport made bylaws to prohibit a person from using a public place to “beg in a manner that may intimidate or cause nuisance to any person”.
- Powers to enforce bylaw include a court injunction, removal of works, seizure of property, cost recovery, or power to request name and address. Court penalties for bylaw breaches include a maximum fine of \$20,000 or a maximum fine of \$500 and a further fine of \$50 per day for continuing offences.

#### **BYLAW IMPLEMENTATION SINCE 2013**

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- Council’s response to begging activities involves a mix of both non-regulatory and regulatory measures.
- Council proactively enforces the bylaws through the City Watch Programme. Council officers and security contractors patrol the CBD for up to four times a day, taking a largely non-regulatory approach with a focus on educational rapport to manage nuisance behaviour.
- Where people undertake begging activities in breach of the bylaw, patrol officers apply a graduated compliance approach. This includes education and advice on how to seek help from support organisations, verbal warnings, written warnings, seizure of signs, developing relationships with private businesses (including supporting businesses to obtain trespass notices), referrals to the New Beginnings Court and prosecution.
- Council has pursued 14 prosecutions against aggressive and intimidating begging activities. In most of these cases defendants were convicted and discharged without penalty due to their lack of means to pay a fine.

#### **ISSUES IN 2018**

- Nuisance, obstruction and safety.
- Qualitative research identifies begging activity as a key issue of concern to Aucklanders.
- Begging activities are found across the city, not just the CBD. It mainly occurs on paths and other public ways (most likely part of the Auckland Transport System).
- The number of people who undertake begging activities in the CBD has increased but complaints to council have decreased:
  - 456 incidents of nuisance begging activities occurred in March 2018, compared to 277 in March 2017.
  - 147 general complaints about begging activities were made in 2017 compared to 276 in 2016.
- City Watch and enforcement officers highlight a behavioural change from aggressive to passive begging activities.
- Quantitative research concludes that begging activity is one of more polarising issues.
- A survey shows that 87 per cent of Aucklanders directly witnessed someone who undertakes begging activity for money in public places. When confronted by aggressive begging activities, 95 per cent express fear, frustration and annoyance, compared to 86 per cent who have the same feelings with respect to night time begging activities.
- Over half of survey respondents consider passive and unobtrusive begging activities as nuisance behaviour. Obtrusive behaviour (blocking people from walking past), assertive behaviour (asking for money), and physical presence (standing rather than sitting) all increase the likelihood of begging activities being perceived as nuisance.
- Overall, 21 per cent of Aucklanders feel those who undertake begging activities deserve sympathy, 39 per cent are neutral, 38 per cent disagree. Māori, Pasifika, young people and women are most sympathetic towards those who are engaged in begging activities.
- Nearly two-thirds of Aucklanders (64 per cent) recognise begging activities as a complex, and not easily resolved issue. 48 per cent believe Auckland Council should do more to help those who undertake begging activities.
- Compliance and City Watch officers have a database of 450 people who undertake begging activities and roughly sleep in the CBD.

#### **OUTCOME SOUGHT NOW (2018)**

- To minimise nuisance, obstruction and safety issues associated with begging activities.

## BYLAW EVALUATION

### Is there still a problem requiring a bylaw response:

- ✓ Yes. There is an issue that regulation can help address.
- ✗ There are feasible regulatory alternatives in the Auckland Transport Public Safety and Nuisance Bylaw 2013. Begging activities mainly occur on paths and other public ways which are generally part of the Auckland Transport System. Where aggressive and nuisance begging activities affect traffic (including pedestrians), it is the Auckland Transport bylaw, not the Auckland Council bylaw that applies.
- ✗ There are feasible regulatory alternatives to a bylaw under the Summary Offences Act 1981. This Act can address (albeit at a higher threshold to those in the Bylaw):
  - disorderly behaviour in a public place (s3). Penalties include a maximum three-month prison term or a \$2,000 court fine.
  - offensive behaviour or language in a public place (s4). The penalty is a maximum \$500 court fine.
  - obstructions in a public place likely to cause injury, not nuisance (s12). Penalties include a maximum three-month prison term or maximum \$2,000 court fine.
  - intimidation of any person in any public place including stopping, confronting or accosting (s21). Penalties include a maximum three-month prison term or a \$2,000 court fine.
  - obstructions in a public way (unreasonably impedes normal passage) including every road, street, path, mall, arcade, or other way over which the public has the right to pass and repass (s22). The penalty is a maximum \$1,000 court fine.
- There are several non-regulatory initiatives in place to address aggressive and nuisance begging activities:
  - City Watch officers have developed a rapport with many members of the street community and encourage them not to obstruct the pavements or undertake begging activities in an intimidating or threatening way.
  - Te Kooti o Timatanga Hou (The Court of New Beginnings) provides non-adversarial, inter-agency help to people who undertake begging activities and offers alternatives to jail. Individuals however need to opt into this service.
  - Lifewise, Auckland City Mission and James Liston House provide a range of support to people who undertake begging activities and sleep rough, for example, through the Housing First initiative.
  - Community Empowerment staff investigate initiatives - providing shower facilities and lockers for storage of belongings, establishing the Big Issue newspaper, public education encouraging public not to give money to people who undertake begging activities, and the impact begging activities and rough sleeping on council facilities (e.g. libraries).

### Bylaw effective / efficient?

- ✗ No. While the bylaw is used to identify people who undertake begging activities, it is the advice, education and constructive engagement by the regular City Patrol and enforcement officers that are most effective in changing behaviour from aggressive to passive begging activities. A bylaw is not required for engagement. The Bylaw appears to have been a positive catalyst to increasing the number of patrols which has increased opportunities for encounters and the building of a rapport.
- ✗ Bylaw clause 6(1)(a) already addresses the issue in a broader sense without the need to reference those who undertake begging activities.
- ✗ Begging activities that causes nuisance occur mainly on public footpaths which are an Auckland Transport responsibility.
- ✗ Bylaw is difficult to enforce when dealing with people who are aggressive, have mental health and addiction issues, and can create safety risks for officers. In 2016, an officer was chased by a rough sleeper wielding a knife.
- ✓ The bylaw is supported by Police as it aligns with their "prevention first" approach and avoids the application of more punitive measures.
- ✗ Bylaw is not a sufficient deterrent to people who undertake begging activities in an intimidating or aggressive manner. Written warnings or prosecutions are often ineffective, costly, time-consuming and don't address the underlying issues.
- ✗ Bylaw does not include obstructions which are easier for officers to regulate than nuisance and intimidation.
- ✗ Stakeholders express frustration at ineffectiveness of the bylaw and the level of official action taken against those who undertake begging activities. This reflects a lack of understanding of the limited powers of staff under the bylaw.
- ✗ In line with the key findings of the review, bylaws are not effective at addressing complex social issues:
  - Social research views begging activities as a manifestation of deeply ingrained social problems such as addiction, mental illness, inter-generational poverty, lack of education, homelessness and unemployment.

People who undertake begging activities are more likely to come from abusive and unstable homes, experience prison incarceration and are among the most vulnerable in the city.

- Research by Groot and Hodgetts views begging activities as a coping mechanism, a form of a radical commerce.
- Lifewise research shows that the begging community is not homogeneous. Long established “streeties” adhere to enforcement officers’ advice and take steps to educate new arrivals on street culture and expected behavioural norms. Research also shows people engaged in transient begging activities in the CBD are less likely to conform to the “street code” or the expectations of compliance staff. They are referred to as “weekend warriors” and can be unpredictable, chaotic and vulnerable. Young people are likely to appear in this group. Those in this group overwhelmingly struggle with serious addiction and mental health problems and face abusive or difficult home circumstances.

**Bylaw clearly written?** ✘ No. Bylaw lacks clarity because it can be perceived as prohibiting all forms of begging activities and does not define subjective terms such as “intimidation” or “nuisance”.

**Public awareness of bylaw?** ✔ Public awareness of the bylaw is likely to be high.

**Bylaw fit for the future?** ✘ No. Bylaw lacks clarity.

**Any Bill of Rights implications?** ✔ Bylaw does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act 1990.

**SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

A bylaw is not the most appropriate way to address begging activities that intimidate or cause a nuisance now or in the future. Adequate regulatory and non-regulatory approaches exist to address the issue. The Bylaw is not the most appropriate form of bylaw because it is not clearly written.

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

**OPTIONS**

**Option 1: Status quo – Retain bylaw**

- Bylaw prohibits begging activity that intimidates or causes a nuisance.
- Council and City Watch patrol use educational rapport with people who undertake begging activities to address nuisance behaviour.
- Council relies on the Auckland Transport bylaw to respond to complaints about nuisance, intimidation and obstruction on the Auckland Transport System that are traffic-related.
- Council responds to complaints not on the Auckland Transport System or that are not traffic related using a graduated enforcement approach.
- Police use powers under the Summary Offences Act 1981 to address more serious obstructions, intimidation, disorderly and offensive behaviour or language.
- Council uses long-term, non-regulatory strategies to address the underlying causes of begging activity.

**Option 2: Amend bylaw to better reflect problem and improve certainty**

- Bylaw to include “obstructions”, in addition to begging activities that intimidates or causes a nuisance.
- Certainty improved with clearer definitions of “intimidation”, “nuisance”, “obstruction”.
- Implementation the same as Option 1.

**Option 3: (RECOMMENDED) Revoke bylaw – Rely on existing regulatory and non-regulatory methods**

- Delete Bylaw clause.
- Implementation the same as Option 1, except that council responds to complaints not on the Auckland Transport System or that are not traffic related using general Bylaw clause 6(1)(a).

**Effectiveness/Efficiency:**

- Bylaw is a positive catalyst to use educational rapport with people who undertake begging activities to address nuisance behaviour.
- ✘ Bylaw is not clearly written and leaves terms such as “nuisance” and “intimidation” open for interpretation.
- ✘ Bylaw does not include “obstructions”.

**Effectiveness/Efficiency:**

- Bylaw is a positive catalyst to use educational rapport with people who undertake begging activities to address nuisance behaviour.
- ✔ Bylaw includes “obstructions” and defines “nuisance” and “intimidation” missing from Option 1.

**Effectiveness/Efficiency:**

- General Bylaw clause 6(1)(a) and Auckland Transport Bylaw are a positive catalyst to increasing educational rapport with people who undertake begging activities to address nuisance behaviour.
- ✔ Council regulations simplified.
- ✔ Bylaw avoids specific reference to vulnerable people and instead focuses on the behaviour expected from every Aucklanders.

<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw does not give rise to implications and is not inconsistent with New Zealand Bill of Rights Act 1990.</li> </ul>	<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw does not give rise to implications and is not inconsistent with New Zealand Bill of Rights Act 1990.</li> </ul>	<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>- Criteria not applicable for non-bylaw option.</li> </ul>
<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>- Bylaw is a positive catalyst for a behavioural change from aggressive to passive begging activities but is not clearly written.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>- Bylaw is a positive catalyst for a behavioural change from aggressive to passive begging activities and is more clearly written.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>✓ General Bylaw clause 6(1)(a) and Auckland Transport Bylaw continue to be a positive catalyst for change from aggressive to passive begging activities.</li> <li>✓ Council regulations simplified and focussed on behaviour expected from every Aucklander.</li> </ul>
<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>✗ Bylaw has potential impact on people who undertake begging activities, rough sleepers and homeless people who are more likely to be Māori.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>✗ Bylaw has potential impact on people who undertake begging activities, rough sleepers and homeless people who are more likely to be Māori.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>- Regulation has potential impact on people who undertake begging activities, rough sleepers and homeless people who are more likely to be Māori.</li> </ul>
<p><b>SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b>  The Bylaw clause should be revoked (Option 3) because adequate regulatory and non-regulatory approaches already exist to address the issue, and the Bylaw is not clearly written. Taking this approach will continue to enable council to respond to complaints while simplifying council regulations that focus on behaviour expected from every Aucklander.</p>		

**References:**

- Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178.
- Health Act 1956 s66(2), s128.
- Public Safety and Nuisance Bylaw 2013, pp 7.
- Statement of Proposal - Review of Public Places / Safety and Nuisance Bylaws December 2012 pp 13, 50.
- Review Findings Report 2017 pp 22, 23, 26, 27, 28, 30, 31, 32, 33, 38, 41.
- Auckland Council Bylaw Review 2017 - Martin Jenkins, pp 6.
- Public Safety and Nuisance Review 2017 - Colmar Brunton, pp 1, 11.
- City Centre Public Amenities Project: A Case for Public Amenities as Critical Social and Cultural infrastructure 2018, pp 6, 7, 17.

## DRAFT – NOT COUNCIL POLICY

### BYLAW CLAUSE 6(2)(a) – Prohibits graffiti, posters, signs or advertising on council property unless approved

#### STATUTORY OBLIGATIONS/POWERS

- Council may make a bylaw about graffiti, posters, signs or advertising devices in public places to address public nuisance, health, safety, offensive behaviour or use of public places under the Local Government Act 2002 (s145, s146) and Health Act 1956 (s64, s65).

#### ISSUE IN 2013

- Nuisance, safety, damage, use of public places.
- Defacing of public property impacting perceptions of public safety and the use of public places.
- For the 2011/2012 year the cost of damage was \$1.4m including vandalism.

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To ensure public safety, use of public places, minimise nuisance and damage in public places from graffiti, bill sticking, posters, signs or advertising devices.
- Auckland Council and Auckland Transport made bylaws to prohibit “displaying or fixing any graffiti, posters, signs or advertising devices on any property” under their control unless approved.
- Powers to enforce the Bylaw include a court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage, or power to request name and address.
- Penalties for bylaw breaches include a maximum \$20,000 court fine or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

#### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- The Bylaw is not used to address graffiti. Council’s Vandalism Prevention Advisors remove graffiti and gather evidence to identify offenders and help police prosecution using the Summary Offences Act 1981 (s11A).
- Council responds reactively to complaints related to signs, posters and advertising devices.
- The Signage Bylaw 2015 is used to address most signage complaints.

#### ISSUE IN 2018

- Public safety, damage, safety, nuisance and use of public places.
- Displaying or affixing of graffiti, posters, signs or advertising devices to the council property without approval.
- 69 per cent of Aucklanders surveyed had seen graffiti in public places in the last 12 months. Of those surveyed, 89 per cent perceived graffiti as a safety or nuisance issue.
- Council received no complaints about fly-posters in 2015-2016. However, fly-posters are evident in the central business district, Karangahape Road and Symonds Street.
- 36 per cent of Aucklanders surveyed had seen fly-posting in the last 12 months. Of those surveyed, 64 per cent considered unauthorised fly-posting a nuisance to varying degrees.
- Council received 3,446 sign-related complaints in 2016.

#### OUTCOME SOUGHT IN 2018

- To ensure public safety and minimise damage, nuisance and misuse of public places from graffiti, posters, signs or advertising devices.

#### BYLAW EVALUATION

##### Still a problem requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can help address.
- ✗ There are feasible regulatory alternatives:
  - Posters, signs and advertising devices are regulated under the Signage Bylaw 2015. All signs must either comply with specified requirements, or be approved by the council. E.g. posters are allowed on poster board sites, poster bollards or the inside of windows. In all other instances, council approval is required.
  - Police powers under the Summary Offences Act 1981 (s11A) addresses graffiti, vandalism, tagging or defacing any property. Penalties include a maximum three-month prison term or a \$2,000 court fine. In conjunction with Vandalism Prevention Team’s efforts to remove graffiti and gather evidence for police prosecutions. There has been a nine per cent decrease in graffiti incidents and 23 per cent reduction in graffiti eradication requests in 2013-2017.
- Other less feasible alternatives to the Bylaw include:

<ul style="list-style-type: none"> <li>Police powers under the Summary Offences Act 1981 (s33) for affixing “any placard, banner, poster, or other material ... to any structure, or to or from any tree” without the consent of the owner or occupier. Penalties include a fine of up to \$200. However, this is not a high priority for police.</li> <li>The Unitary Plan is used for third party advertising (billboards), signs erected as part of a comprehensive development or redevelopment and those within a scheduled historic heritage place rather than smaller scale/site specific signage. However, it addresses amenity rather than safety and nuisance issues, and changes can take a long time to implement.</li> </ul>	
<b>Bylaw effective / efficient?</b> ✘ No. Bylaw is not used. The Summary Offences Act 1981 is used to regulate graffiti, and the Signage Bylaw 2015 is used to regulate signage and posters.	
<b>Bylaw clearly written?</b> ✘ No. There are too many different issues captured in one clause.	
<b>Public aware of bylaw?</b> ✘ Likely to be low. There are no known public awareness initiatives.	
<b>Bylaw fit for the future?</b> ✘ No. The Bylaw is not used; it duplicates existing regulations and is not clearly written.	
<b>Any Bill of Rights implications?</b> ✔ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.	
<b>SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b> A bylaw is not the most appropriate way to address graffiti on council property. Adequate powers already exist under the Summary Offences Act 1981. A bylaw is the most appropriate way to address issues related to posters, signs or advertising devices on council property. The Bylaw is not the most appropriate form of bylaw because it is not clearly written. The Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.	
<b>OPTIONS</b>	
<b>Option 1: Status quo - Retain bylaw</b> <ul style="list-style-type: none"> <li>Bylaw prohibits unauthorised graffiti, posters, signs or advertising devices on council property.</li> <li>Vandalism Prevention Advisors remove graffiti and gather evidence to help Police prosecution of offenders under the Summary Offences Act 1981.</li> <li>Council responds reactively to complaints related to signs, posters and advertising devices using the Signage Bylaw 2015.</li> </ul>	<b>Option 2: (Recommended) Revoke bylaw – Rely on existing regulations</b> <ul style="list-style-type: none"> <li>Bylaw clause deleted.</li> <li>Rely on Summary Offences Act 1981 for graffiti and Signage Bylaw 2015 for posters, signs and advertising devices.</li> <li>Implementation the same as Option 1 (as per current practice).</li> </ul>
<b>Effectiveness and efficiency:</b> ✘ Summary Offences Act 1981 used to address graffiti. ✘ Duplicates provisions in Signage Bylaw 2015.	<b>Effectiveness and efficiency:</b> ✔ Reflects current practice. ✔ Removes duplication/confusion between bylaws.
<b>Bill of Rights implications:</b> ✔ Bylaw does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act 1990.	<b>Bill of Rights implications:</b> ✔ Does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act 1990.
<b>Fit for future:</b> ✘ The Bylaw is not used, duplicates existing regulations, and is not clearly written.	<b>Fit for future:</b> ✔ Enables enforcement action if required, removes unnecessary bylaw regulations.
<b>Māori impact/risk:</b> ✔ There are no specific impacts for Māori.	<b>Māori impact/risk:</b> ✔ There are no specific impacts for Māori.
<b>SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b> The Bylaw should be revoked (Option 2) and existing regulations used to address graffiti, posters, signs or advertising devices. Taking this approach will continue to enable council to respond to complaints while streamlining regulations.	

**References:**

- Statement of Proposal – Review of Public Places / Safety and Nuisance Bylaws December 2012 pp 12,18,31,51.
- Statement of Proposal – Signage Bylaw 2015 pp 31.
- Public Safety and Nuisance Bylaw Review Findings Report 2017 pp 15, 84, 85, 86, 90, 91, 92.

## DRAFT - NOT COUNCIL POLICY

### BYLAW CLAUSE 6(2)(b) – Prohibits fires in public places, except in an approved appliance, facility or site

#### STATUTORY OBLIGATIONS/POWERS

- Council may make a bylaw about lighting fires in public places to address public nuisance, health, safety, offensive behaviour or use of public places under the Local Government Act 2002 (s145, s146), and Health Act 1956 (s64). Any bylaw must not be inconsistent with the Fire and Emergency New Zealand Act 2017.

#### ISSUE IN 2013

- No data available on scale or impact of the issue in 2013.

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

- To provide for appropriate behaviour in public places, ensure safe public places and minimise nuisance.
- Auckland Council and Auckland Transport made bylaws to prohibit the use of a public place to “light a fire (except in an appliance designed for outdoor cooking, subject to any restriction imposed by the council on the lighting of fires)” except at a facility or site specifically provided, or with the prior written approval of council.
- Powers to enforce bylaw include a court injunction, removal of works, seizure of property, powers of entry, cost recovery for damage, or power to request name and address. Penalties for bylaw breaches include a maximum \$20,000 court fine or a maximum \$500 court fine and a further \$50 court fine per day for continuing offences.

#### BYLAW IMPLEMENTATION SINCE 2013

- Auckland Transport delegated enforcement of its bylaw to Auckland Council.
- In regional parks, rangers use bylaw to respond to fires they witness, and call Fire and Emergency New Zealand (FENZ) or Police if fires persist.
- In other cases, FENZ respond to complaints of dangerous fires, or council contractors respond within 30 minutes to complaints to council pollution hotline using a graduated compliance approach under the Unitary Plan.

#### ISSUE IN 2018

- Public safety, damage, nuisance, and use of public places.
- Inherent danger of outdoor fires in public places for many stakeholders. Danger of beach bonfires for local boards due to risk of burnt furniture, and feet from inadequately smothered embers.
- News articles in 2017 note public safety, property damage, and loss of amenity from suspicious fires at Piha.
- Incident and complaint numbers are low. Fires occur rarely in local parks. Council received 16 complaints in 2016 regarding outdoor fires. Council complaints data does not differentiate between fires in public or private places.
- 16 per cent of Aucklanders surveyed had seen or experienced an outdoor fire in a public place in the last 12 months. Of those surveyed, 88 per cent felt annoyed, frustrated, angry, fearful, or threatened at the lighting of a fire in a public place without a permit.

#### OUTCOME SOUGHT IN 2018

- To ensure public safety, and minimise damage, nuisance, and misuse of public places from fires in public places.

#### BYLAW EVALUATION

##### Still an issue requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can help address.
- ✓ There are no feasible alternatives to a bylaw, in particular in relation to managing the use of parks:
  - FENZ under the Fire and Emergency New Zealand Act 2017 (s52) can prohibit fire in open air, but no regulations have been made.
  - Council enforcement of Unitary Plan relates to air quality provisions - not safety, damage, nuisance or use of public place issues. E.g. fireworks are permitted (A127), cooking and heating outdoors is allowed (A124).
  - Police powers under Summary Offences Act 1981 (s13) can address any thing endangering safety under a person’s control with reckless disregard for the safety of others. However, this does not address lower level damage or nuisance issues, or the use of public places.
  - The Outdoor Fire Safety Bylaw 2014, Reserves Act 1977 and Forest and Rural Fires Act 1977 (s20-21, 23) are too limited in scope to address all issues. E.g. The Outdoor Fire Safety Bylaw 2014 does not address fire restrictions in public open space zones and has no provisions for cooking in public open space zones.

##### Bylaw effective / efficient?

- ✓ Bylaw is useful. Regional parks rangers make offenders put out fires.
- ✓ Bylaw supports implementation of Regional Parks Management Plan 2010 which limits open fires (including portable cookers) to designated areas to minimise public safety risks and damage.
- ✓ Unitary plan provisions are also used, but only the bylaw prohibits the behaviour.

**Bylaw clearly written?** \* No. Uncertainty about what “appliance designed for outdoor cooking” means. Does it include low risk options (e.g. gas cookers) or restrict high risk fuels (e.g. wood, solid fuel)?



<b>Public aware of bylaw?</b> ✓ Varies. There are 'no fire' signs in regional parks. Typically no signs in local parks.		
<b>Bylaw fit for the future?</b> ✗ No. Bylaw is useful but lacks clarity.		
<b>Any Bill of Rights implications?</b> ✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.		
<b>SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b> A bylaw is the most appropriate way to address lighting a fire in a public place. The Bylaw is not the most appropriate form of bylaw because it is unclear what some terms mean. The current Bylaw does not give rise to any implications and is not inconsistent with the Bill of Rights Act 1990.		
<b>OPTIONS</b>		
<b>Option 1: Status quo – Retain bylaw</b> <ul style="list-style-type: none"> <li>Bylaw prohibits fires in public places (except in an appliance designed for outdoor cooking, at a facility or site specifically provided, or with the council approval)</li> <li>Bylaw aims to address safety, nuisance and misuse of public places issues.</li> <li>Complaints addressed using bylaw, Unitary Plan air quality provisions, FENZ, or Police.</li> </ul>	<b>Option 2: (RECOMMENDED) Amend bylaw for certainty and validity</b> <ul style="list-style-type: none"> <li>Bylaw in Option 1 amended to be easier to read, to include definition of "appliance designed for outdoor cooking", and to ensure it is not inconsistent with any future rules under Fire and Emergency New Zealand Act 2017.</li> <li>Bylaw aims and implementation same as Option 1.</li> </ul>	<b>Option 3: Revoke Bylaw - Rely on existing provisions</b> <ul style="list-style-type: none"> <li>Bylaw clause deleted.</li> <li>Outdoor fires allowed provided they do not cause air quality or safety issues.</li> <li>Complaints addressed using Unitary Plan air quality provisions, FENZ, or Police.</li> </ul>
<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✓ Bylaw helps to manage the use of public places (e.g. regional parks).</li> <li>✗ Bylaw lacks clarity.</li> <li>✓ Bylaw regulates outdoor fires until FENZ regulations made (if any).</li> </ul>	<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✓ Bylaw helps to manage the use of public places (e.g. regional parks).</li> <li>✓ Bylaw clearer and worded to ensure no inconsistency with any future FENZ regulations.</li> </ul>	<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✗ No provision regulating use of fires in public places, only effects of fires.</li> <li>✗ Does not address nuisance and use of public places issues.</li> </ul>
<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of Rights implications:</b> <ul style="list-style-type: none"> <li>- Criteria not applicable for non-bylaw options.</li> </ul>
<b>Fit for the future:</b> <ul style="list-style-type: none"> <li>✗ Bylaw lacks clarity.</li> </ul>	<b>Fit for the future:</b> <ul style="list-style-type: none"> <li>✓ Bylaw more certain and valid.</li> </ul>	<b>Fit for the future:</b> <ul style="list-style-type: none"> <li>✗ Does not address nuisance and use of public places issues.</li> </ul>
<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>Approval can be sought to light a fire in a public place except in an appliance designed for outdoor cooking e.g. hangi.</li> </ul>	<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>Approval can be sought to light a fire in a public place except in an appliance designed for outdoor cooking e.g. hangi.</li> </ul>	<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>Traditional cooking fires allowed provided they do not cause air quality or safety issues.</li> </ul>
<b>SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b> Bylaw should be amended (Option 2) for certainty and to ensure it is not inconsistent with any future rules under the Fire and Emergency New Zealand Act 2017. Taking this approach will continue to enable council to manage the use of fires in public places.		

#### References:

- Statement of Proposal Review of Public Places / Safety and Nuisance Bylaws December 2012, pp. 13.
- Public Safety and Nuisance Bylaw Review Findings Report 2017, pp 94, 95, 96.
- Attachment B Assessment of Public Safety and Nuisance Behaviours and Opportunities 2017, pp. 25.
- Firebug sparks emotional rollercoaster of feelings for Piha residents ...*, NZ Herald, 8 May, 2017
- Local Government Act 2002 s162, s163, s164-168, s171-174, s176, s178, s242 (4); Health Act 1956 s66, s128.

## DRAFT - NOT COUNCIL POLICY

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

#### STATUTORY OBLIGATIONS/POWERS

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

#### ISSUE IN 2013

- No specific data on these issues in 2013.

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

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

#### BYLAW IMPLEMENTATION SINCE 2013

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

#### ISSUE IN 2018

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

#### OUTCOME SOUGHT IN 2018

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

#### BYLAW EVALUATION

##### Still a problem requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can help address.
- ✓ For beaches, there **are no** feasible alternatives for restricting or closing access:
  - Under the Marine and Coastal Area Act 2011 the council (unlike parks) does not own areas between mean high-water springs and the outer limits of the territorial sea. The council can however, use bylaws to manage use of this area.
  - Council may also not own areas of beach above mean high-water springs. Parts of beaches may be owned privately, or be roads under the Land Transport Act 1998 or the Local Government Act 1974.
- × For Parks, there **are** feasible alternatives for restricting or closing access:

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

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

**References:**

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

## DRAFT – NOT COUNCIL POLICY

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

#### STATUTORY OBLIGATIONS/POWERS

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

#### ISSUE IN 2013

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

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

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

#### BYLAW IMPLEMENTATION SINCE 2013

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

#### ISSUE IN 2018

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

#### OUTCOME SOUGHT IN 2018

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

#### BYLAW EVALUATION

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

✓ There are no feasible regulatory alternatives.

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

#### **Bylaw effective/efficient?**

✓ Controls appear to have reduced conflicts between beach users.

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

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

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

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

**Public aware of bylaw?** ✓ High awareness of controls due to media coverage/council signage.

**Bylaw fit for the future?** ✗ No. Bylaw structure and form lacks clarity.

**Any Bill of Rights implications?**

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

**SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

A bylaw is the most appropriate way to address public safety and minimise nuisance to bathers and swimmers from other recreational activities. The Bylaw is not the most appropriate form because the Bylaw structure and form lack clarity. The Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.

**OPTIONS****Option 1: Status quo – Retain Bylaw clause**

- Manages the use of beaches.
- Bylaw allows a delegated authority to restrict recreational activity on beaches, during such times and/or seasons considered necessary, to ensure public safety and prevent nuisance.
- Council responds to complaints.

**Option 2: (RECOMMENDED) Amend Bylaw clause and structure for clarity.**

- Bylaw aim and implementation same as Option 1.
- Bylaw in Option 1 amended for clearer structure, decision-making criteria and tiered delegations based on nature of control.
- Public Safety and Nuisance Bylaw clause 6(1)(a) amended to better address repeated actions in non-control areas, that obstruct, disturb or interfere with any other person in their use or enjoyment of a beach.

**Option 3: Revoke Bylaw clause – Rely on existing legislation**

- Manages the effects of activity.
- Bylaw clause deleted.
- For set netting this means relying on MPI's rules and Net Code of Practice.
- Litter Act 1979 to address bait and litter left on beaches.
- Police under Summary Offences Act 1981 to address offensive and disorderly behaviour, and intimidation.
- Clause 6(1)(a) of the Public Safety and Nuisance Bylaw addresses wilful obstruction, disturbance or interference (amendment required).

**Effectiveness and efficiency:**

- ✓ Bylaw enables the issues to be addressed where they arise.
- ✗ Bylaw structure and form make Bylaw difficult to understand.
- ✗ Bylaw is difficult to enforce.

**Effectiveness and efficiency:**

- ✓ Bylaw enables the issues to be addressed where they arise.
- ✓ Bylaw structure, wording, decision-making criteria and delegations make Bylaw easier to understand.
- ✗ Bylaw is difficult to enforce.

**Effectiveness and efficiency:**

- ✓ Enables individual issues to be addressed where they arise.
- ✓ Avoids duplication with existing regulations.

**Bill of Rights implications:**

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

**Bill of Rights implications:**

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

**Bill of Rights implications:**

- Criteria not applicable for non-bylaw option.

**Fit for the future:**

- See effectiveness and efficiency.

**Fit for the future:**

- See effectiveness and efficiency.

**Fit for the future:**

- See effectiveness and efficiency.

**Māori impact/risk:**

- There are no specific impacts for Māori.

**Māori impact/risk:**

- There are no specific impacts for Māori.

**Māori impact/risk:**

- There are no specific impacts for Māori.

**SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

The Bylaw should be amended (Option 2) to improve clarity around controls and recreational activities on beaches. Taking this approach continues to enable the council to respond to complaints with greater certainty.

**References:**

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

## DRAFT – NOT COUNCIL POLICY

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

#### STATUTORY OBLIGATIONS/POWERS

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

#### ISSUE IN 2013

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

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

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

#### BYLAW IMPLEMENTATION SINCE 2013

- No record of incidents, complaints or prosecutions.

#### ISSUE IN 2018

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

#### OUTCOME SOUGHT IN 2018

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

#### BYLAW EVALUATION

##### Still a problem requiring a bylaw response?

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

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

**References:**

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



## DRAFT - NOT COUNCIL POLICY

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

#### STATUTORY OBLIGATIONS/POWERS

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

#### ISSUE IN 2013

- No specific data on these issues in 2013.

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

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

#### BYLAW IMPLEMENTATION SINCE 2013

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

#### ISSUE IN 2018

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

#### OUTCOME SOUGHT IN 2018

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

#### BYLAW EVALUATION

##### Still a problem requiring a bylaw response?

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

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

##### Bylaw effective / efficient?

- ✓ Bylaw is used (and useful) to address people undertaking prohibited or restricted activities.

<ul style="list-style-type: none"> <li>✓ Implements the Regional Parks Management Plan 2010.</li> <li>✗ Prohibited or restricted activities not easily identifiable (i.e. need to look in Regional Parks Management Plan).</li> <li>✗ Bylaw clause duplicates or overlaps with other bylaw or legislative provisions (examples in Tables 1 and 2).</li> <li>✗ Use of Bylaw to apply Reserves Act 1977 offences to all park and beach areas not enforceable (only advisory).</li> <li>✗ Enforcement can be challenging. Offenders can flee / resume entry once officers leave.</li> </ul>
<p><b>Bylaw clearly written?</b></p> <ul style="list-style-type: none"> <li>✓ No. Bylaw clauses and structure are wordy and difficult to understand (i.e. Bylaw refers to other restrictions that are difficult to find (what is the “recreational activity that is prohibited or restricted by the council”?)</li> </ul>
<p><b>Public aware of bylaw?</b></p> <ul style="list-style-type: none"> <li>✗ Public awareness of Bylaw is likely to be low.</li> </ul>
<p><b>Bylaw fit for the future?</b></p> <ul style="list-style-type: none"> <li>✗ No. Bylaw duplicates or overlaps other bylaw or legislative provisions, is wordy and difficult to understand.</li> </ul>
<p><b>Any Bill of Rights implications?</b></p> <ul style="list-style-type: none"> <li>✓ Does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act.</li> </ul>

**SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

A bylaw is the most appropriate way to prohibit and restrict certain activities on a park or beach now and in the future. The Bylaw is not the most appropriate form because it duplicates or overlaps with other bylaw or legislative provisions, is wordy and difficult to understand. The Bylaw does not give rise to any implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.

**OPTIONS**

<p><b>Option 1: Status quo - Retain Bylaw</b></p> <ul style="list-style-type: none"> <li>• Manages the use of parks and beaches.</li> <li>• Bylaw prohibits or restricts certain activities on a park or beach.</li> <li>• Council responds to complaints.</li> </ul>	<p><b>Option 2: (RECOMMENDED) Amend Bylaw to improve clarity</b></p> <ul style="list-style-type: none"> <li>• Manages the use of parks and beaches.</li> <li>• Bylaw intent same as Option 1.</li> <li>• Bylaw clause and structure amended to be easier to read.</li> <li>• Bylaw specifies all prohibited or restricted activities whether as amendments to this or other bylaws, or reference to other regulations as appropriate.</li> <li>• Council responds to complaints.</li> </ul>
<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw helps to manage the use of parks.</li> <li>✗ Bylaw wordy and unclear.</li> </ul>	<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw helps to manage the use of parks.</li> <li>✓ Bylaw easier to understand (more concise, clear, structured).</li> <li>✓ Streamlines regulation (removes duplication and overlaps with other bylaws and legislation).</li> </ul>
<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw does not give rise to implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.</li> </ul>	<p><b>Bill of Rights implications:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw does not give rise to implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.</li> </ul>
<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>- See effectiveness and efficiency.</li> </ul>	<p><b>Fit for future:</b></p> <ul style="list-style-type: none"> <li>- See effectiveness and efficiency.</li> </ul>
<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>• Māori may be concerned with rules around burial of body parts, placenta or disposal of ashes.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>• Māori may be concerned with rules around burial of body parts, placenta or disposal of ashes.</li> </ul>

**SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**

The Bylaw should be amended (Option 2) to better ensure public safety, minimise nuisance and misuse of public places from certain activities on a park or beach. Taking this approach will make the Bylaw easier to understand and will streamline regulations.

**References:**

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

**Table 1: Regional Park Management Plan Prohibited and Restricted Activities**

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

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

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

**Table 2: Reserves Act 1977 Offences**

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

## DRAFT – NOT COUNCIL POLICY

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

#### STATUTORY OBLIGATIONS/POWERS

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

#### ISSUE IN 2013

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

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

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

#### BYLAW IMPLEMENTATION SINCE 2013

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

#### ISSUE IN 2018

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

#### OUTCOME SOUGHT IN 2018

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

#### BYLAW EVALUATION

##### Still a problem requiring a bylaw response?

✓ Yes. There is still a problem regulation can help address.

✗ There are feasible alternatives to the Bylaw for vehicles on parks:

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

**Bylaw effective/efficient?**

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

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

**Public aware of bylaw?**

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

**Bylaw fit for the future?**

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

**Any Bill of Rights implications?**

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

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

**OPTIONS**

**Option 1: Status quo - Retain bylaw**

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

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

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

**Effectiveness and efficiency:**

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

**Effectiveness and efficiency:**

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

**Bill of Rights implications:**

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

**Bill of Rights implications:**

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

**Fit for future:**

- ✓ See effectiveness and efficiency.

**Fit for future:**

- ✓ See effectiveness and efficiency.

**Māori impact/risk:**

- There are no specific impacts for Māori.

**Māori impact/risk:**

- There are no specific impacts for Māori.

**Section 160(3) Local Government Act 2002 recommendation:**

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

**References:**

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

## DRAFT - NOT COUNCIL POLICY

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

#### STATUTORY OBLIGATIONS/POWERS

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

#### ISSUE IN 2013

- No data available on the issue in 2013.

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

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

#### BYLAW IMPLEMENTATION SINCE 2013

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

#### ISSUE IN 2018

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

#### OUTCOME SOUGHT IN 2018

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

#### BYLAW EVALUATION

##### Still an issue requiring a bylaw response?

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

Note: An alternative clause investigated is the Trespass Act 1980 [s8(b)] but this is limited to private land.

##### Bylaw effective / efficient?

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

##### Bylaw clearly written?

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

##### Public aware of bylaw?

- ✗ No. Likely to be low.

##### Bylaw fit for the future?

<ul style="list-style-type: none"> <li>✗ No. Bylaw states expectation but is neither used nor enforced and structure is unclear.</li> </ul>		
<b>Any Bill of Rights implications?</b> <ul style="list-style-type: none"> <li>✓ Does not give rise to any unjustified implications and is not inconsistent with New Zealand Bill of Rights Act.</li> </ul>		
<b>SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b> A bylaw is not the most appropriate way to address leaving a gate in a park in a different position to how it is found. Adequate provisions already exist under the Trespass Act 1980. The Bylaw is not in the most appropriate form because structure is difficult to read. The Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.		
<b>OPTIONS</b>		
<b>Option 1: Status quo – Retain Bylaw clause</b> <ul style="list-style-type: none"> <li>• Manages the use of parks.</li> <li>• Bylaw prohibits leaving any gate in a park in a different position from that which it is found.</li> <li>• Council rectifies issue.</li> </ul>	<b>Option 2: Amend Bylaw clause and structure for clarity</b> <ul style="list-style-type: none"> <li>• Manages the use of parks.</li> <li>• Bylaw in Option 1 amended for clearer structure and clause.</li> <li>• Council rectifies issue.</li> </ul>	<b>Option 3: (RECOMMENDED) Revoke Bylaw clause– Rely on existing provisions</b> <ul style="list-style-type: none"> <li>• Manages the effects of activity.</li> <li>• Unused Bylaw clause deleted.</li> <li>• Trespass Act 1980 used for enforcement.</li> <li>• Council rectifies issue.</li> </ul>
<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✓ Enables enforcement if the person responsible is identified.</li> <li>✗ Bylaw not used.</li> <li>✗ Bylaw structure is difficult to understand.</li> <li>✗ Difficult to enforce (no offenders identified to date).</li> </ul>	<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✓ Enables enforcement if the person responsible is identified.</li> <li>✗ Bylaw not used</li> <li>✓ Bylaw structure easier to understand.</li> <li>✗ Difficult to enforce (no offenders identified to date).</li> </ul>	<b>Effectiveness and efficiency:</b> <ul style="list-style-type: none"> <li>✓ Enables enforcement if the person responsible is identified.</li> <li>✓ Removes unused bylaw clause.</li> <li>✗ Difficult to enforce (no offenders identified to date).</li> </ul>
<b>Bill of Rights Implications:</b> <ul style="list-style-type: none"> <li>✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of Rights Implications:</b> <ul style="list-style-type: none"> <li>✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.</li> </ul>	<b>Bill of Rights Implications:</b> <ul style="list-style-type: none"> <li>- Criteria not applicable for non-bylaw options.</li> </ul>
<b>Fit for the future:</b> <ul style="list-style-type: none"> <li>- See effectiveness and efficiency.</li> </ul>	<b>Fit for the future:</b> <ul style="list-style-type: none"> <li>- See effectiveness and efficiency.</li> </ul>	<b>Fit for the future:</b> <ul style="list-style-type: none"> <li>- See effectiveness and efficiency.</li> </ul>
<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>• There are no specific impacts for Māori.</li> </ul>	<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>• There are no specific impacts for Māori.</li> </ul>	<b>Māori impact/risk:</b> <ul style="list-style-type: none"> <li>• There are no specific impacts for Māori.</li> </ul>
<b>SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:</b> The Bylaw should be revoked (Option 3) and existing legislation used instead. The Bylaw is not used and adequate powers already exist under the Trespass Act 1980. Taking this approach will remove unnecessary bylaw regulation while still allowing Council to take action against any offenders if they are identified.		

**References:**

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



## DRAFT - NOT COUNCIL POLICY

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

#### STATUTORY OBLIGATIONS/POWERS

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

#### ISSUE IN 2013

- No data on this issue in 2013.

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

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

#### BYLAW IMPLEMENTATION SINCE 2013

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

#### ISSUE IN 2018

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

#### OUTCOME SOUGHT IN 2018

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

#### BYLAW EVALUATION

##### Still an issue requiring a bylaw response?

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

##### Possessing or using any weapon or instrument of a dangerous nature

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

##### Possessing or using any trap

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

##### Other instruments of a dangerous nature

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

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

## References:

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

## DRAFT - NOT COUNCIL POLICY

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

#### STATUTORY OBLIGATIONS/POWERS

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

#### ISSUE IN 2013

- No data available on the issue in 2013.

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

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

#### BYLAW IMPLEMENTATION SINCE 2013

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

#### ISSUE IN 2018

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

#### OUTCOME SOUGHT IN 2018

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

#### BYLAW EVALUATION

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

✓ No feasible regulatory alternatives to prohibit these activities.

#### Removing any animal under one’s control from a park

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

#### Harming any animal under one’s control in a park

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

#### Killing any animal under one’s control in a park

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

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

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

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

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

**Bylaw effective / efficient?**

- ✓ Bylaw is a useful tool for park rangers to speak with people and ask them to leave a park or area.
- ✗ No prosecutions to date due to lack of sufficient evidence.
- ✓ Bylaw implements the Regional Parks Management Plan 2010.

**Bylaw clearly written?** ✗ No. Bylaw clause is unclear in terms of whether it should apply to all public places (not just parks), definition of “under that person’s control” and with possible overlaps with existing bylaws and legislation. Bylaw structure is unclear which makes it difficult to read.

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

**Bylaw fit for the future?** ✗ No. Bylaw structure and wording lacks clarity.

**Any Bill of Rights implications?**

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

**SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**  
 A bylaw is the most appropriate way to address public safety, wildlife and environmental protection from removing, harming or killing any animal or releasing or losing control of any animal in a public place. The Bylaw is not the most appropriate form of bylaw because the Bylaw clause and structure is unclear. The Bylaw does not give rise to any implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.

**OPTIONS**

<p><b>Option 1: Status quo – Retain bylaw clause</b></p> <ul style="list-style-type: none"> <li>• Manages the use of parks.</li> <li>• Bylaw prohibits removing, harming or killing any animal or releasing or losing control of any animal under that person’s control in a park.</li> <li>• Complaints addressed by council.</li> </ul>	<p><b>Option 2: (RECOMMENDED) Amend bylaw clause and structure for clarity</b></p> <ul style="list-style-type: none"> <li>• Manages the use of public places.</li> <li>• Bylaw in Option 1 amended for clearer structure, addresses possible overlaps with existing bylaws and legislation (includes potential amendment of Animal Management Bylaw 2015), definitions included, and consideration given to application to beaches and civic spaces.</li> <li>• Bylaw implementation same as Option 1.</li> </ul>	<p><b>Option 3: Revoke Bylaw clause - Rely on existing provisions</b></p> <ul style="list-style-type: none"> <li>• Manages the effects of activity.</li> <li>• Bylaw clause deleted.</li> <li>• Police powers under the Crimes Act 1961, Wild Animal Control Act 1977, Animal Welfare Act 1999 and council powers under the Animal Management Bylaw 2015 to address removing, harming, killing, releasing or losing control of an animal under one’s control.</li> </ul>
<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw helps to manage the use of parks.</li> <li>✗ Bylaw structure and wording unclear and difficult to understand.</li> </ul>	<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw helps to manage the use of public places (e.g. regional parks).</li> <li>✓ Bylaw structure and wording clearer and easier to understand.</li> </ul>	<p><b>Effectiveness and efficiency:</b></p> <ul style="list-style-type: none"> <li>✗ Regulatory gaps because existing regulations are more limited than bylaw.</li> <li>✗ Legislation has higher threshold for enforcement than Bylaw.</li> </ul>
<p><b>Bill of Rights Implications:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.</li> </ul>	<p><b>Bill of Rights Implications:</b></p> <ul style="list-style-type: none"> <li>✓ Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.</li> </ul>	<p><b>Bill of Rights Implications:</b></p> <ul style="list-style-type: none"> <li>- Criteria not applicable for non-bylaw options.</li> </ul>
<p><b>Fit for the future:</b></p> <ul style="list-style-type: none"> <li>- Refer to effectiveness and efficiency.</li> </ul>	<p><b>Fit for the future:</b></p> <ul style="list-style-type: none"> <li>- Refer to effectiveness and efficiency.</li> </ul>	<p><b>Fit for the future:</b></p> <ul style="list-style-type: none"> <li>- Refer to effectiveness and efficiency.</li> </ul>
<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>• Māori are kaitiaki of the natural environment, including parks.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>• Māori are kaitiaki of the natural environment, including parks.</li> </ul>	<p><b>Māori impact/risk:</b></p> <ul style="list-style-type: none"> <li>• Māori are kaitiaki of the natural environment, including parks.</li> </ul>

**SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:**  
 The Bylaw should be amended (Option 2) to better ensure public safety, wildlife and environmental protection from removing, harming or killing any animal or releasing or losing control of any animal in a public place. Taking this approach will make the Bylaw clause and structure easier to understand and better aligned to existing plans, other bylaws and legislation.

**References:**

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

## DRAFT – NOT COUNCIL POLICY

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

#### STATUTORY OBLIGATIONS/POWERS

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

#### ISSUE IN 2013

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

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

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

#### BYLAW IMPLEMENTATION SINCE 2013

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

#### ISSUE IN 2018

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

#### OUTCOME SOUGHT IN 2018

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

#### BYLAW EVALUATION

##### Still a problem requiring a bylaw response?

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

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

##### Bylaw effective/efficient?

- ✓ Bylaw helps proactively manage the use of beaches by vehicles.
- ✓ Bylaw shown to be effective to address issues where offenders are identified.
- ✓ Bylaw implements the Unitary Plan – Resource Management Act 1991 is less effective for enforcement than the bylaw.
- ✗ Bylaw duplicates provisions in the Auckland Council Traffic Bylaw 2015.
- ✗ Bylaw can be difficult to enforce as Bylaw officers or park rangers cannot always respond in time.
- ✗ No ability to issue infringement notices under current bylaw.
- ✗ Permits for Muriwai and Karioitahi beaches not regularly checked. While permit system supports holders to familiarise themselves with regulations, this does not appear to moderate unsafe driving behaviour.

**Bylaw clearly written?** ✗ Bylaw not clearly written and wordy.

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

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

**Any Bill of Rights implications?**

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

**Section 160(1) Local Government Act 2002 Recommendation:**

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

**OPTIONS**

**Option 1: Status quo - Retain current wording and implementation**

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

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

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

**Effectiveness and efficiency:**

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

**Effectiveness and efficiency:**

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

**Bill of Rights implications:**

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

**Bill of Rights implications:**

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

**Fit for future:**

- ✓ Refer to effectiveness and efficiency.

**Fit for future:**

- ✓ Refer to effectiveness and efficiency.

**Māori impact/risk:**

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

**Māori impact/risk:**

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

**Section 160(3) Local Government Act 2002 recommendation:**

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

**References:**

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

## DRAFT – NOT COUNCIL POLICY

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

#### STATUTORY OBLIGATIONS/POWERS

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

#### ISSUE IN 2013

- Obstruction and misuse of public places.

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

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

#### BYLAW IMPLEMENTATION SINCE 2013

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

#### ISSUE IN 2018

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

#### OUTCOME SOUGHT IN 2018

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

#### BYLAW EVALUATION

##### Still a problem requiring a bylaw response?

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

✗ There are feasible regulatory alternatives to a bylaw:

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

##### Bylaw effective/efficient?

✓ People generally respond to notifications of a breach of the Bylaw and remove their boats.

✓ Bylaw more effective than relying on other alternative regulations (e.g. Unitary Plan).

✗ Bylaw clause overlaps with existing provisions in clause 8(1)(a) of the Public Safety and Nuisance Bylaw.

##### Bylaw clearly written?

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

##### Public aware of bylaw?

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

##### Bylaw fit for the future?

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

**References:**

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



## DRAFT - NOT COUNCIL POLICY

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

#### STATUTORY OBLIGATIONS/POWERS

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

#### ISSUE IN 2013

- No data available on this issue in 2013.

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

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

#### BYLAW IMPLEMENTATION SINCE 2013

- No data available on implementation of Bylaw to date.

#### ISSUE IN 2018

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

#### OUTCOME SOUGHT IN 2018

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

#### BYLAW EVALUATION

##### Still an issue requiring a bylaw response?

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

##### Bylaw effective / efficient? ✗ No.

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

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

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

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

##### Any Bill of Rights implications?

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

### SECTION 160(1) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:

A bylaw is not the most appropriate way to address the cleaning or leaving of fish or fish offal on a beach. Adequate powers exist under the Litter Act 1979. The Bylaw is not in the most appropriate form as the Bylaw clause and structure are unclear. The Bylaw does not give rise to any unjustified implications and is not inconsistent with the New Zealand Bill of Rights Act 1990.

#### OPTIONS

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

#### SECTION 160(3) LOCAL GOVERNMENT ACT 2002 RECOMMENDATION:

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

#### References:

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

## DRAFT- NOT COUNCIL POLICY

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

#### STATUTORY OBLIGATIONS/POWERS

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

#### ISSUE IN 2013

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

#### OUTCOME SOUGHT AND BYLAW RESPONSE IN 2013

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

#### BYLAW IMPLEMENTATION SINCE 2013

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

#### ISSUE IN 2018

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

#### OUTCOME SOUGHT IN 2018

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

#### BYLAW EVALUATION

##### Still an issue requiring a bylaw response?

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

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

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

References:

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