

AUCKLAND UNITARY PLAN  
INDEPENDENT HEARINGS PANEL

*Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau*

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**Report to Auckland Council  
Hearing topic 027**

**Artworks, signs and temporary  
activities**

**July 2016**

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# Report to Auckland Council Hearing topic 027 Artworks, signs and temporary activities

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# 1. Hearing topic overview

## 1.1. Topic description

Topic 027 addresses the regional coastal plan and district plan provisions of the proposed Auckland Unitary Plan relating to:

<b>Topic</b>	<b>Proposed Auckland Unitary Plan reference</b>	<b>Independent Hearings Panel reference</b>
027 Artworks, signs and temporary activities	C7.1 Artworks – Background, objectives and policies	E22 Artworks
	C7.4 Signs - Background, objectives and policies  H6.3 Signs – Activity table, development controls, and assessment matter and criteria	E23 Signs
	C7.5 Temporary activities - Background, objectives and policies  H6.5 Temporary activities - Activity table, development controls, and assessment matter and criteria	E40 Temporary activities

Under the Local Government (Auckland Transitional Provisions) Act 2010, section 144 (8) (c) requires the Panel to set out:

the reasons for accepting or rejecting submissions and, for this purpose, may address the submissions by grouping them according to—

- (i) the provisions of the proposed plan to which they relate; or
- (ii) the matters to which they relate.

This report covers all of the submissions in the Submission Points Pathways report (SPP) for this topic. The Panel has grouped all of the submissions in terms of (c) (i) and (ii) and, while individual submissions and points may not be expressly referred to, all points have nevertheless been taken into account when making the Panel's recommendations.

## 1.2. Summary of the Panel's recommended changes to the Proposed Auckland Unitary Plan

Topic 27 included three sub-topics:

- i. E22 Artworks
- ii. E23 Signs
- iii. E28 Temporary activities

The key recommendation for Artworks is:

- i. to agree with the Council that a new policy is added to encourage Maori artworks, and otherwise the Panel endorses the mediated version of the provisions.

The key recommendations for Signs are:

- i. The mediated provisions are largely endorsed subject to the further recommendations below;
- ii. The Unitary Plan should provide for comprehensive development signage (CDS) and whether or not it meets the definition of comprehensive development signage will determine if it is considered under Unitary Plan or the Auckland Transport/Auckland Council Signage Bylaw 2015 (Bylaw);
- iii. Election signage approved under the Auckland Transport Election Signs Bylaw 2013, is exempt from consideration under the Unitary Plan;
- iv. The increase in luminescence sought by the Outdoor Media Association for twilight hours is not recommended as it is considered that for billboards that emit light greater than 250 cds/m<sup>2</sup> be subject to a resource consent application; and
- v. That billboards less than 1.2m<sup>2</sup> that are located in a road reserve adjoining any Business zoned land be a permitted activity.

The key recommendations for Temporary activities are:

- i. The objectives and policies as amended are appropriate for the purpose of enabling temporary activities Auckland-wide.
- ii. Clarification of the relationship between the proposed Auckland Unitary Plan provisions and bylaws dealing with trading and events in public places.
- iii. Endorsement of the Council's policy shift providing for temporary activities on private land on the same basis as similar activities in public places.
- iv. Amendments to the activity table and standards to better enable events, filming and other temporary activities in public places and on private land. This includes deletion of the rule setting trip-generation thresholds for filming in residential zones inserted at mediation.
- v. Amendments to better enable temporary military training activities in recognition of the importance of defence to public safety.

- vi. Amendments to improve the relationship between these provisions and the management of the effects of temporary activities in the coastal marine area.

## **1.3. Overview**

### **1.3.1. E22 Artworks**

The Panel recommends the Artworks provisions as agreed by the Council and submitters, including the addition of a new policy encouraging Maori artworks. The definition of artworks in the notified Auckland Unitary Plan has been deleted in favour of relying on the common understanding and meaning of that word.

### **1.3.2. E23 Signs**

The provisions for signs were largely settled through the mediation process but two significant issues remained, as set out in the legal submissions of counsel for the key retailers, Mr Allan, in his legal submissions for the resumed hearing 31 August 2015. Those issues were the relationship of the signage provisions in the Unitary Plan to the Bylaw and the provisions for comprehensive development signage in the Unitary Plan and/or the Bylaw.

Based on the Panel's interpretation of the Bylaw it considers that depending on the nature of the package of signs, and whether or not it comes within the definition of CDS in the Bylaw/Unitary Plan, it will either be assessed under the Bylaw or the Unitary Plan. According to the Panel's approach the regulatory overlap that was of concern to both the Council and other submitters can be avoided.

### **1.3.3. E28 Temporary activities**

A total of 110 submissions were received on C.7.5, H.6.5 and the associated definition of temporary activities (Part 4). Many submissions supported the provisions as notified, but some submitters sought to broaden the provisions by changing the definition of temporary activities or relaxing the provisions that apply to activity tables and standards.

Many of the issues between the Council and submitters were resolved during mediation and through the hearing process. This report focuses on those issues that were not agreed and these are addressed below.

## **1.4. Scope**

The Panel considers that the recommendations in 1.2 above and the changes made to the provisions relating to this topic (see 1.1 above) are within scope of submissions.

Matters considered by the Panel to be beyond the scope of submissions are which are accepted are listed below:

### **1.4.1. E22 Artworks**

All of the recommendations in the Artworks section are considered to be within the scope of submissions.

### **1.4.2. E23 Signs**

The amendment to the billboard definition, to exempt signage approved under the Auckland Transport Election Signs Bylaw 2013 from consideration under the Unitary Plan, is a change as it was proposed by the Council late in the hearing process.

### **1.4.3. E28 Temporary Activities**

- i. Table E28.4.1 (A7-9) provides for temporary activities in the Auckland Domain involving more than 20,000 people during the summer months. This amendment enables long-established events with known effects that have a history of good management.
- ii. In Topic 065, remove markets from the definition of Temporary Activities because markets are listed as separate activities in some zones (paragraph 15.11, Ms Cox, evidence in chief).
- iii. In Topic 065, remove temporary structures within the coastal marine area from the definition of Temporary Activities (paragraph 15.18, Ms Cox, evidence in chief).
- iv. Rule E28.6.8(a) is amended by requiring the New Zealand Defence Force to provide a noise management plan to the Council at the same time as notice is given of temporary military training activities involving live firing. This enables the activity while ensuring that the Council is informed and has a benchmark for enforcement (see 8.2 below).

For an explanation of the Panel's approach to scope see the Panel's Report to Auckland Council – Overview of recommendations July 2016.

## **1.5. Documents relied on**

Documents relied on by the Panel in making its recommendations are listed below in Section 6 Reference documents.

## 2. Artworks

### 2.1. Statement of issue

As set out in the background for this section of the Unitary Plan, artworks provide an opportunity to create a sense of place, and can play a valuable role in enlivening people's experiences and the appearance of the physical environment. Artworks can be located on public space or on private property.

Artworks are encouraged, however potential effects from the location, installation or impacts from lighting and noise, particularly in open space areas, may need to be managed to avoid adverse effects on public access, navigation, public safety and amenity values.

The Artworks topic was not controversial and the Panel received few submissions. The Council addressed this subtopic in the primary evidence of Ms Cox in part B of her planning statement on page 26.

In her evidence she supported the addition of a new policy referring to enabling Maori culture and values to be expressed through art works (Policy 5).

The Panel did consider the merits of the definition of artworks in the notified Auckland Unitary Plan and there was evidence from the Alan Gibbs farm/sculpture park that the definition should be amended and expanded.

### 2.2. Panel recommendations and reasons

The Panel confirms the provisions for Art Works, which are now section E22 as per the version from the Council in its closing remarks.

The Panel recommends that the definition of artworks is deleted because it was a problematic definition and it is more appropriate for the Plan to rely on the common language meaning and usage of the word of artworks.

## 3. Signs

As set out in the Background to this section of the Unitary Plan, signs play an important role in identifying places and providing information including for business activities, direction or safety purposes. Signs are also an important advertising medium for businesses and can provide a source of revenue for building owners.

The number, type, location and size of signs can have adverse effects on the visual amenity of streets and buildings and on pedestrian traffic and safety. They may also have adverse effects on the character and heritage values of an area.

Billboards and signs that form part of an application for comprehensive development signage are subject to the provisions of this chapter. Some overlays also contain provisions relating to signs.

Most signs, other than billboards and comprehensive development signage, are managed under the Auckland Transport/Auckland Council Signage Bylaw 2015 or the Auckland

Transport Elections Signs Bylaw 2013 (Bylaw or any amended or updated version). As will be seen from the discussion below, the relationship between the Unitary Plan and the Bylaw was the most contested issue in the hearings.

### **3.1. Unitary Plan and the Bylaw Relationship**

#### **3.1.1. Statement of issue**

The most significant issue to emerge during Topic 027 on signs was to determine the appropriate division between the regulation of signs and billboards under the Unitary Plan and/or the Council Signage Bylaw. This issue led to an adjournment of the signs part of Topic 027 on 27 March 2015 to allow the promulgation of the Auckland Transport/Auckland Council Signage Bylaw 2015. The Bylaw was adopted by the Governing Body on 28 May 2015 and came into force on 1 October 2015.

At a general level, submitters including the Council agreed that the primary focus of the Bylaw would be on general signage, whereas billboards would be the primary focus of the Unitary Plan.

However, a significant difference of opinion between the parties emerged over where comprehensive development signage (CDS) should best be located. The Council purported to adopt a position that comprehensive development signage should be covered by the Bylaw and other parties, including a group of key retail parties represented by Ellis Gould, considered that comprehensive development signage should be covered by the Unitary Plan or potentially both the Unitary Plan and the Bylaw. They conceded that this would create a potential duplication of regulatory oversight, but they considered that because the assessment of resource consents/effects under the Resource Management Act 1991 was broader and a more contestable process than the assessment of signs under the Bylaw, it would be beneficial to have comprehensive development signage covered by both instruments, rather than just the Bylaw (Kiwi Property Group legal submissions for resumed hearing 31 August).

#### **3.1.2. Panel recommendation and reasons**

##### *Definitions*

The Panel recommends the following definitions for the Unitary Plan, and these will assist in explaining the Panel's approach to the issue of comprehensive development signage:

##### **Billboard**

Any sign, message or notice conveyed using any visual media which is used to advertise any business, service, good, products, activities or events that are not directly related to the primary use or activities occurring on the site of the sign.

Includes:

- the sign and any associated frame and supporting device, whether permanent, temporary or moveable, whose principal function is to support the message or the notice.

Excludes:

- stencil signage or similar markings;
- a poster or poster signage as defined in the Auckland Transport, Auckland Council Signage Bylaw 2015;
- a banner or flag situated on or over a road or public place;
- real estate signage or directional real estate signage;
- vehicle signage as defined in the Auckland Transport, Auckland Council Signage Bylaw 2015;
- community event signage as defined in the Auckland Transport, Auckland Council Signage Bylaw 2015;
- regional and major event signage defined in the Auckland Transport, Auckland Council Signage Bylaw 2015;
- any election sign as defined and controlled by the Auckland Transport Election Signs Bylaw 2013.

### **Comprehensive development signage**

Has the same meaning as in the Auckland Transport, Auckland Council Signage Bylaw 2015.

[From the Bylaw: comprehensive development signage means signage relating to a new building or the alteration of an existing building where the building or alteration requires a resource consent and/or building work to the value of at least \$100,000, assessed at the time a building consent application is lodged with the council.]

### **Changeable message sign**

Has the same meaning as in the Auckland Transport, Auckland Council Signage Bylaw 2015.

[From the Bylaw: changeable message signage means publicly visible signage with mechanical or electronic moving images or displays, including LED, neon, and electronically projected images.]

The Panel notes that the definitions of comprehensive development signage and changeable message signage are exactly the same as the definitions in the Bylaw. The definition of billboard has been slightly modified, with the most substantial change in the Unitary Plan from the Bylaw being the inclusion of the exemption for election signage in the Unitary Plan definition. The Panel obviously has no jurisdiction to amend the Bylaw definition.

#### *Panel interpretation of the Bylaw*

It appears to the Panel that both counsel for the Council (refer to its Memorandum of 24 July 2015) and counsel for Kiwi Property Group (referenced above) and other submitters proceeded on the basis that the Bylaw covers all comprehensive development signage. The submissions claim that this was the reported intent of the Governing Body.

However, the Panel on interpreting the Bylaw reaches a different conclusion for the reasons set out below.

Firstly, the Note on the front of the Bylaw indicates that billboards and signage that is part of a comprehensive development will be regulated by the Auckland Unitary Plan. The relevant provision is quoted below;

Note that some signage will be regulated by the Auckland Unitary Plan...in particular;

- billboards...
- signage which is part of a comprehensive development or re-development of a site...

In the substance of the Bylaw, the Panel notes the following clauses:

3(5)...this bylaw does not apply to the following publically visible signage...

- (a) Billboards;
- (b) Comprehensive development or redevelopment signage

Contrary to what appears to be the interpretation of some submitters that appeared before the Panel, the Panel concludes that notwithstanding what may have been the intent of the Council, the wording of the now operative Bylaw clearly excludes billboards and comprehensive development signage and comprehensive development signage is defined in both the Unitary Plan and the Bylaw.

Further to the above, it is noted that the Draft Signage Bylaw 2014 had a note that stated the following:

Note that some signage is also regulated by the Unitary Plan...

- ...
- Signage which is part of a comprehensive development or redevelopment of a site;

The Panel notes that in this draft Signage Bylaw 2014 there was no definition of billboard or comprehensive development signage. Therefore, between the draft and final Bylaw, by clearly defining these terms and, more explicitly, excluding billboards and comprehensive development signage, the Panel concludes that it is appropriate for both billboards and comprehensive development signage to be regulated by the Unitary Plan. On the Panel's interpretation of the plain and ordinary meaning of the Bylaw, there will be no regulatory overlap between the Bylaw and the Unitary Plan in regard to billboards and comprehensive development signage if the focus is placed on the definition of comprehensive development signage as quoted above.

#### *Definition of signage and sign*

**Signage** and **Sign** are defined terms in the Bylaw and it means '*...an advertisement, message or notice conveyed using any visual medium, which advertises a product, business, service, or event or acts to inform or warn any person, and...*'. The definition does not refer to comprehensive development signage and it appears that the Council interpret the Bylaw as rejecting the concept that comprehensive development signage would only be regulated by the Unitary Plan. Counsel stated on 24 July 2015 that:

Accordingly, signs that might be part of a comprehensive package of signs are individually subject to the Bylaw.

The Panel questions that interpretation of the Bylaw for the following reasons:

- ii. The Council and all the parties accept that billboards, a defined term in the Bylaw, are carved out from the Bylaw and are only addressed in the Unitary Plan in accordance with clause 3(5)(a). However, there is no doubt that a billboard comes within the broad definition of signage in the Bylaw.
- iii. The Panel considers that the same interpretation should be applied to comprehensive development signage, which is also a defined term in the Bylaw. Therefore comprehensive development signage relating to a new building or alteration that requires a resource consent, clearly a matter for the Unitary Plan under the Resource Management Act 1991, or building work to the value of at least \$100,000 at the time a building consent application is lodged with the Council, the Panel considers to be exempt from the Bylaw and is appropriate to regulate in the Unitary Plan.
- iv. It is only comprehensive development signage that does not meet the definition in the Bylaw because it does not require resource consent or is less than \$100,000 in value that is properly the subject of the Bylaw.

Therefore, in the view of the Panel, the definitions of billboard and comprehensive development signage, which are the same in both the Unitary Plan and the Bylaw, will always direct an applicant to the Unitary Plan in regard to an application for a billboard if it meets the definition of comprehensive development signage.

In regard to an application for a package of signage, whether or not this is properly a matter for the Bylaw or the Unitary Plan, will depend entirely on whether it falls within or outside the defined term comprehensive development signage. In this regard regulatory overlap and duplication is avoided by the Panel's approach. The Panel considers that both the Council and the key retailers approach to interpretation of the Bylaw would lead to regulatory overlap.

#### *Unitary Plan reference to the Bylaw and conclusions on comprehensive development signage*

The Unitary Plan refers to the Bylaw in the following manner:

Relationship to signage bylaws:

Signs that are permitted by, or approved pursuant to, the Auckland Transport/Auckland Council Signage Bylaw 2015 or the Auckland Transport Elections Signs Bylaw 2013 are not subject to the provisions of the Plan.

The Panel considers that due to the wording of the Bylaw, the converse also applies i.e. billboards and comprehensive development that is approved under the Unitary Plan is not the subject of the Bylaw.

The Panel accepts that this interpretation appears to be somewhat different to that of the Council and the parties, but that it is how the Panel interprets the Bylaw.

The consequences of the above recommendation in terms of comprehensive development signage, billboards not having been in dispute between the parties, is that the provisions in the signage chapter (now E23) provide for the comprehensive development signage that the Council had sought to delete in its Closing Statement version dated 29 July 2015. The Panel has felt obliged to provide for comprehensive development signage in the Unitary Plan based on its interpretation of the wording of the Bylaw itself.

The merit reasons for the confirmation of comprehensive development signage in the Unitary Plan (as was included in the Notified Unitary Plan) are as set out by the group of key retail parties including Kiwi Property Group in the Joint Planning Statement dated 13 March 2015 and the legal submissions of counsel dated 27 March 2015 and the supplementary legal submissions for the resumed hearing dated 31 August 2015. The legal and planning evidence from Z Energy and other petrol companies is also material that the Panel has relied upon to the extent that it is consistent with the Panel recommendations.

The Panel considers that the provisions in regard to billboards and comprehensive development signage satisfy the requirement of section 32 and will promote the purpose in Part 2 of the Resource Management Act 1991.

## **3.2. Election signs**

### **3.2.1. Statement of issue**

Subsequent to the hearing closing, the Council in a brief of evidence from Ms Yan dated 3 May 2016, drew the Panel's attention to the fact that election billboards had been unintentionally caught within the Unitary Plan provisions. The Council sought in its brief of evidence to amend the definition of billboards to specifically exclude election signage.

### **3.2.2. Panel recommendation and reasons**

The Panel has amended the definition of billboard in the Unitary Plan to make it clear that election signs are controlled by the Auckland Transport Election Signs Bylaw 2013. The following exclusion has been added as is reflected in the definition quoted above:

Billboard

...does not include:

....

**any election sign as defined and controlled by the Auckland Transport Election Signs Bylaw 2013**

The Council also sought an amendment to the activity table to make it clear that election signs approved under the Auckland Transport Election Signs Bylaw 2013 are a permitted activity. This is not considered necessary because the Unitary Plan only regulates billboards and comprehensive development signage that meets the definition, so approved election signs are excluded from the Unitary Plan.

### **3.3. Signs provisions**

#### **3.3.1. Statement of issue**

The Council worked with key submitters in mediation and produced a Memorandum and a version of tracked changes in response to the Bylaw dated 24 July 2015. This is similar to a version dated 29 July 2015 which is attached to the Council's closing statement. As per the convention for track changes, green text recorded mediated agreed changes, red text recorded Council's amendments in rebuttal evidence and blue text recorded changes in the right of reply.

In terms of scope, yellow text is to record matters outside the scope of submissions and there are no yellow highlighted provisions in this section.

In accordance with the Council's position on comprehensive development signage, as further expanded on above, the main blue text change in the Council's closing was to delete references to comprehensive development signage.

#### **3.3.2. Panel recommendation and reasons**

##### *Definition of comprehensive development signage*

If the Panel were to include provisions for comprehensive development signage in the Unitary Plan, the Council sought changes to the notified definition comprehensive development signage as per paragraph 3.4 of its closing remarks dated 29 September 2015. This included reference to business zones.

However, the Panel recommends the definition as quoted above because it is sufficiently broad to provide for service stations that may otherwise be located in a residential zone, the package of signs has to be sufficiently big enough to trigger the threshold of resource consent or cost and being a restricted discretionary activity consent can be declined or granted with conditions. This definition is also consistent with the Bylaw which will make interpretation of the Bylaw and the Unitary Plan more consistent.

##### *Background, objectives and policies*

The background is largely the same, but has been amended from the Council's closing to now include reference to comprehensive development signage in accordance with the Panel's recommendations.

The Panel's final recommended wording for the objectives in E23.2 is slightly different to the Council's closing in order to accommodate comprehensive development signage and to better express the objectives in accordance with the Panel's drafting principles.

As to be expected, following some adjustments to the objectives, the policies in E23.3 have been slightly amended, but are substantially the same as agreed between the parties at mediation and in the Council closing.

The activity table has been amended to reflect the final zoning descriptions in the Unitary Plan. The most significant change is the introduction of activity E23.4.2(A53), which provides for comprehensive development signage as a restricted discretionary activity. Another change was to accept the restricted discretionary activity status for billboards in some

business zones that were sought by the key retail group. These zones already contain billboards so the non-complying activity status was not considered to be appropriate. The Unitary Plan has robust assessment criteria for restricted discretionary activities.

In accordance with the template format the Panel has applied to the Unitary Plan, the standards have been reorganised.

#### *Digital billboards*

One other significant change was to revise the provisions for digital billboards in accordance with the expert evidence (Mr McKensey) from the Council and Mr Craig. The Panel has accepted those changes as reflected in Standard E23.6.1(3) Billboards.

#### *Restricted discretionary criteria*

In regard to the restricted discretionary activity criteria, these are largely the same apart from the addition of the duration of consent.

For the assessment criteria in E23.8.2, these are also largely as were agreed at mediation.

### **3.4. Issues raised by submitters**

#### **3.4.1. Statement of issue**

The main thrust of submissions was in regards to the inclusion or not of provisions in the Unitary Plan for comprehensive development signage. This has been covered above and other key submitter points are covered below.

#### **3.4.2. Panel recommendations and reasons**

##### *Luminescence and Outdoor Media Association*

The Outdoor Media Association of NZ sought an increase in night time luminescence of billboards from 250 cd/m<sup>2</sup> to 400 cd/m<sup>2</sup> to allow for automated brightness control to adjust for changing ambient light conditions during the transition from darkness to daylight at dawn and daylight to darkness at dusk, and also to provide for varying atmospheric conditions. Mr Kern, a lighting engineer, provided evidence for the Association.

In regard to the Outdoor Media Association of NZ submission Mr Craig relied on the technical expert for the Council, Mr McKensey, to confirm the 250 cd/m<sup>2</sup>.

The Panel recommends that the standard remain at 250 cd/m<sup>2</sup>. As Mr Kern indicated, the Council has granted consents previously for up to 500 cd/m<sup>2</sup> and the Panel considers that the consenting process is most appropriate to properly assess potential adverse effects, including health and safety in regard to the amount of luminescence from any particular billboard above 250 cd/m<sup>2</sup>.

##### *Nu-Lite Illuminated Limited*

Nu-Lite Illuminated Signs Limited, through the evidence of Mr Auton, sought an amendment to development control 6.3.2(6) for billboards less than 1.2 metres in area located in a road to be permitted if approved by Auckland Transport where they adjoined land zoned business rather than non-complying activities under the Unitary Plan.

The signs are mostly located in Manukau and Auckland Isthmus that Nu-Lite seeks to retain and possibly expand, and they advertise businesses on small lighted signs in the road corridor. In regard to the concerns raised by Nu-Lite, Mr Craig in his rebuttal evidence of 23 March 2015 for the Council, considered that non-complying activity status for Nu-Lite's signs was appropriate.

The Panel notes that its final recommended version contains the following statement under the heading Relationship to signage bylaws:

Signs that are permitted by, or approved pursuant to, the Auckland Transport/Auckland Council Signage Bylaw 2015...are not subject to the provisions of the Plan.

To the extent that the signs that Nu-Lite own are technically billboards, they are exempt from the Bylaw for the reasons outlined elsewhere in this report. Therefore the Panel recommends that billboards less than 1.2 metres in area located within a road under Auckland Transport's control be a permitted activity. A note is also added to make it clear that the Unitary Plan cannot usurp the authority of Auckland Transport over what works are undertaken in the public road corridor. The activity table has been amended accordingly E23.4.2(A49).

As indicated above, the Panel considers that because the road reserve is owned by Auckland Transport and it would not grant approval unless safety issues were addressed, and there is no need for these small signs to be regulated in the Unitary Plan.

The Panel also considered that, as Nu Lite claimed in evidence, the similarities of its signs with signage on street furniture, including bus shelters, meant that it was appropriate to treat both as permitted activities (refer to E23.4.2(A46)-(A48)).

## **4. Temporary activities**

### **4.1. Relationship between the Plan and the Trading and Events bylaws**

#### **4.1.1. Statement of issue**

Policy shift providing for temporary activities on private land on the same basis as similar activities in public places.

#### **4.1.2. Panel recommendations and reasons**

There are two bylaws dealing with trading and events in public places:

- i. Auckland Council Trading and Events in Public Places Bylaw 2015; and
- ii. Auckland Transport Trading and Events in Public Places Bylaw 2015.

Approval is required under both bylaws to hold events in public places. An event means 'an organised temporary activity that takes place on one or more days including .....or

triathlon', but excludes indoor private functions and markets amongst other things. Both bylaws have a similar purpose and scope. The definitions of public place are:

Under the Auckland Council bylaw, public place means:

any place that, at any material time, is owned, managed, maintained or controlled by the council or council controlled organisation and is open to or, being used by the public, whether free or on payment of a charge. It includes any road, footpath, public square, grass verge, berm, public gardens, reserves and parks, beaches, wharves, breakwaters, ramps and pontoons, foreshore and dunes, access ways, recreational grounds and sports fields.

Under the Auckland Transport bylaw, public place means:

any place that, at any material time, is owned, managed, maintained or controlled by Auckland Transport.

It is clear that a public place is linked to the Council's role as owner, manager or controller of the place. Privately-owned land is not a public place for the purposes of the bylaw unless it is managed or under the control of the Council or a council-controlled organisation at the time.

The bylaw is linked to the notified Proposed Auckland Unitary Plan by including a definition of event licence:

A licence that is issued by the council under its bylaw for trading and events occurring on public land.

It is not clear why this definition applies to public land rather than a public place. However it is clear that approval to an event under the bylaws is not required for privately-sponsored activities taking place on private land.

The event approval process was described by Ms Cox (paragraph 9.6, evidence in chief) and the Council confirmed that monitoring occurs on an ad hoc basis, particularly in relation to complaints from the public (paragraph 3.2(c), Auckland Council closing statement, 10 April 2015).

The notified Proposed Auckland Unitary Plan also regulates temporary activities in public places. However the notified Proposed Auckland Unitary Plan's definition of public places is not confined to places owned, managed, maintained or controlled by the Council or Auckland Transport. Under the notified Proposed Auckland Unitary Plan, a place becomes a public place when it is used by the public:

A place that, at any time, is open to or is being used by the public whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from that place.

In Topic 065 Definitions, the Council proposed the following amendments:

A place that, at any particular time, (including for the duration of an event) is accessible ~~open~~ to or is being used by the public whether free or on payment of a

~~charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from that place.~~

Excludes:

- Internal areas of buildings.

This definition enables temporary activities to occur on private land. However, the notified Proposed Auckland Unitary Plan does not generally provide for temporary activities on private land and most would default to non-complying activity status pursuant to notified Proposed Auckland Unitary Plan Rule G.1. This represents a policy change from some of the operative district plans where temporary activities on private and public land were generally subject to the same provisions (Ms Juliana Cox for Auckland Council, paragraph 13.1, evidence in chief). Ms Cox acknowledged that the lack of provision for temporary activities on private land is a gap (paragraph 13.4, evidence in chief). The Panel notes that together with the approach to noise events, which may take place on private land, the Council's approach as notified is potentially confusing.

The Panel agrees with the Council's policy shift to enable privately-sponsored temporary activities to take place on private land on the same basis as similar activities in public places. This is because the effects of temporary activities are similar regardless of land ownership and therefore should be subject to similar standards in the Plan. These activities occur infrequently and their effects are of short duration therefore the Panel's principle is that these activities should be enabled.

Events in public places will continue to be managed under both the bylaws and the Plan. For consistency and ease of interpretation, the Panel has clarified the relationship between the bylaws and Plan provisions by:

- re-wording the reference to the bylaws in the introduction to the activity table;
- adopting the Council's definition and amendments providing for temporary activities on private land, subject to minor changes to improve certainty;
- deleting the definition of public place in reliance on the bylaw definition and in light of recognising temporary activities on private land;
- deleting the definition of event licence in reliance on the bylaw's process for event approvals; and
- ensuring that temporary activities, including noise events, have specific rules in precincts where necessary and conversely that temporary activities are not enabled within precincts in addition to those specified activities (see also 3.2 below).

## **4.2. Temporary activities in Eden Park**

### **4.2.1. Statement of issue**

The Eden Park Neighbours' Association Incorporated, represented by Mr Mark Donnelly, opposed the policy shift described above and expressed concern that providing for temporary activities including noise events on private land for six days would potentially

allow a large number of additional activities and effects, including cumulative effects, in a precinct such as Eden Park (paragraph 1.7, evidence in chief). Mr Donnelly identified a problem with the interpretation of the definition of temporary activities in a precinct that is event-driven (paragraph 3.2). In his view, the precinct rules are the more appropriate place to deal with activities including any temporary activities.

#### **4.2.2. Panel recommendation and reasons**

The Panel agrees with the Eden Park Neighbours' Association that there is potential for confusion to arise with the interpretation of the definition and thus compliance with the Auckland-wide rules. Eden Park has been the subject of numerous Environment Court cases and the precinct provisions prepared during this process have been drafted to recognise and give effect to all of these decisions. This approach is consistent with the Panel's position that it would not disturb matters that have been settled by the Court unless there are good resource management reasons for doing so. In this case, enabling temporary activities that are additional to the events provided for in the precinct would have cumulative effects over and above the level of effects held to be reasonable by the Environment Court. The Panel did not receive evidence addressing the effects of additional temporary activities in and around Eden Park, which means that the Panel does not have grounds for changing the status quo with respect to the environmental baseline.

Accordingly, the Panel recommends that the Auckland-wide temporary activity rules do not apply in the Eden Park Precinct (exception set out in I310.4 Activity table). Where a specific temporary activity is suitable within the precinct, it is listed in Table I310.4.1 Activity Table e.g. filming activities are permitted.

### **4.3. Noise events in the city centre**

#### **4.3.1. Statement of issue**

For the Britomart Group Company, Mr Lala acknowledged that the Council's amended provisions allow for temporary activities on private land to the same extent they are provided for on public land (Mr Vijay Lala, paragraph 18, evidence in chief).

#### **4.3.2. Panel recommendation and reasons**

With respect to noise events on private land in the city centre, it was his view that 'such events should be provided for to the same extent as noise events on public land in the city centre' (paragraph 6, evidence in chief). He described situations such as Takutai Square where the distinction between what is public place and private land is not discernible on the ground and for the reasons set out at paragraph 16(a-d) supported permitted activity status for noise events in the city centre.

The Council held to the view that restricted discretionary activity status is necessary for these noise events because of the risk of unintended consequences and the implications for the Auckland-wide noise controls (Ms Juliana Cox, paragraphs 7.4-7.5 evidence in rebuttal). In Ms Cox's opinion, if there are specific privately-owned sites which host frequent noise events, then these activities can be addressed in the precincts.

The Panel agrees with Ms Cox that precincts are the best method of providing for noise on specific sites and therefore retains restricted discretionary activity status for noise events on private land, outside of land within a residential zone in Table E40.4.1.

As a consequence of investigating this issue, the Panel identified the need to amend Table E40.4.1 to provide for temporary activities in the coastal marine area and on wharves that are also within the city centre or metropolitan centres, including areas that may be privately owned but function as public places.

#### **4.4. New Zealand Fire Service and temporary training activities (other than temporary military training)**

##### **4.4.1. Statement of issue**

The New Zealand Fire Service sought amendments to the definition of temporary activities to ensure that essential live burns and other temporary fire emergency training activities can be undertaken as permitted activities. In Topic 065 Definitions, the New Zealand Fire Service acknowledged that the Council's policy shift enabling temporary activities on private land adequately provided for Fire Service training exercises as permitted activities (paragraph 6, legal submissions, Topic 065).

##### **4.4.2. Panel recommendation and reasons**

The Panel agrees with the inclusion of temporary activities on private land and also agrees that this provides for the New Zealand Fire Service's requirements. However, for clarity of interpretation, and to ensure that other emergency response agencies, such as St John's Ambulance, are also able to undertake training, the Panel has amended the definition of temporary activities by adding:

emergency response training, including live burns carried out by the New Zealand Fire Service.

#### **4.5. Temporary activities on Selwyn Reserve, Mission Bay**

##### **4.5.1. Statement of issue**

Drive Holdings Limited and Retail Holdings Limited expressed concerns about the cumulative effects of a number of longer events (more than three days) and events that exclude the public from Selwyn Reserve. Specific activity statuses for temporary activities of varying durations and payment terms were proposed solely for Selwyn Reserve.

##### **4.5.2. Panel recommendation and reasons**

The Panel agrees with the Council's position as set out in its closing statement (paragraphs 4.1-4.4) and relies in particular on the development of a region-wide policy addressing the intensity of usage of reserves by the Council. Policy 3(b) recognises the need to consider traffic effects on the reasonable functioning of businesses on surrounding sites.

#### **4.6. Filming activities and mediated amendments inserting a trip generation threshold in residential zones**

##### **4.6.1. Statement of issue**

Filming requires approval under the Trading and Events in Public Places bylaws and is also regulated by this Plan. It is included in the definition of temporary activities in the Plan.

Filming activities up to and including 30 days are permitted. At mediation, filming for more than 30 days as a restricted discretionary activity was added to Table E40.4.1 Activity table. Film Auckland Incorporated and Cherokee Films supported this change (Mr Peter Hall, paragraph 5.3, evidence in chief).

There were no issues identified by the parties however the Panel sees an issue concerning a trip generation threshold in residential zones inserted at mediation.

#### **4.6.2. Panel recommendation and reasons**

The Panel agrees with providing for filming activities up to 30 days and other changes enabling filming to take place region-wide. However the Panel considers that the mediated trip-generation standard for residential zones sets such a low threshold that this enablement is negated. Many common activities in residential zones, such as school fairs, festivals, sporting events and concerts, generate more than 100 vehicle trips per day and would require resource consents to be obtained under this standard.

After liaising with Auckland Transport, Ms Cox considered that a threshold of 100 vehicle movements per day in residential zones would fall within the acceptable daily fluctuation for a local, collector or arterial road (paragraph 13.11, evidence in chief). No evidence contesting this threshold was provided, however in Topics 043/044 Transport the Panel heard a wide range of evidence about the traffic effects of subdivision, use and development. Consequently, the Panel concluded that a more enabling policy framework for trip generation and parking region-wide was required. In light of this policy shift and the Panel's principle that temporary activities should be enabled, the trip-generation rule applicable to residential zones is deleted.

### **4.7. Temporary military training activities**

#### **4.7.1. Statement of issue**

The definition of temporary military training activity is:

A temporary activity undertaken for Defence purposes. Defence purposes are those in accordance with the Defence Act 1990.

Excludes:

- underwater explosives training exercises involving divers.

This definition is nested within the Community nesting table.

An unresolved issue between the Council and the New Zealand Defence Force is whether the ownership or control of land is relevant to the activity status of temporary military training activities.

The effects of noise, particularly noise arising from helicopter landing and take-offs, was also an issue.

#### 4.7.2. Panel recommendation and reasons

The Panel's starting position is that the New Zealand Defence Force is a Crown agency acting within strict legal and operational constraints when undertaking temporary military training and therefore the Plan should not overly regulate these activities.

Mr Rob Owen, expert witness for the New Zealand Defence Force, described the wide-ranging character, scale and intensity of temporary military training activities and the careful preparation involved prior to execution (paragraphs 8-15, evidence in chief). While these activities generally occur sporadically in terms of frequency and location, the New Zealand Defence Force also has relationships with landowners enabling training to occur several times a year in the same place. Many activities take place on designated land but the New Zealand Defence Force also utilises the coastal marine area and private land from time to time.

An unresolved issue between the Council and the New Zealand Defence Force is whether the ownership or control of land is relevant to activity status. Ms Cox, planning witness for the Council, (paragraph 4.8 evidence in rebuttal) considered that:

.....the policy distinction between land not under control or ownership of NZDF is necessary and appropriate, given that TMTA undertaken on non-NZDF land has the potential to create significant effects. Such TMTA are outside the normal expected use of a site, compared with TMTA occurring on NZDF land which are expected. This distinction is consistent with a theme of the RMA about managing external environmental effects beyond the site or land controlled by the applicant or resource user.

This distinction was retained in the activity table in the Council's closing version of the provisions, notwithstanding Ms Cox's agreement to delete the line relating to '...training activities on land under the control or ownership of the New Zealand Defence Force' because these activities are provided for by designations (paragraph 4.9 evidence in rebuttal).

For the New Zealand Defence Force, Ms Karen Baverstock (paragraph 34-35 evidence in chief) said that there was no need to make this distinction given the activity status for both is permitted and because there is no effects based purpose for it.

The Panel agrees with Ms Baverstock that this distinction is unnecessary. Only the New Zealand Defence Force can carry out temporary military training activities and the Panel is satisfied that the New Zealand Defence Force takes the effects of its activities into account when planning exercises and choosing locations. There are processes in place for giving advance notice to neighbours of training activities. Apart from noise, there is a low risk of adverse effects on the environment due to the limited frequency of these activities wherever they occur.

The New Zealand Defence Force acknowledged that noise effects from temporary military activities need to be controlled by the Plan (Mr Rob Owen, paragraphs 16 and 17, evidence in chief). Ms Karen Baverstock (paragraphs 22-25, evidence in chief) identified a particular need to manage the noise effects of weapons firing and the use of explosives because live firing will not meet the noise limits in the Plan. She proposed using minimum setback distances as an alternative to actual noise measurement because this is a practical tool for

planning compliance that is both effective and efficient. The Council appears to have agreed with the New Zealand Defence Force's suggested approach given the changes made to the closing statement version of the provisions.

For certainty, the Panel agrees that focusing on noise effects is appropriate and notes that the New Zealand Defence Force's suggested provisions are evidentially based (report of Malcolm Hunt Associates, acoustic engineers attached to Rob Owen's evidence in chief) and informed by experience on the ground and with other district plans. Accordingly, the agreed changes are endorsed. The Panel has made further amendments to the provisions giving effect to this approach including a change requiring a noise management plan to be provided to the Council at the same time as notice is given of an event involving live firing (Standard E40.6.8(1)(a)). Previously, a rule required the New Zealand Defence Force to provide a noise management plan to the Council for its approval at least 15 days prior to commencing the training activity. However, there is no process by which the Council can approve or refuse approval to this plan unless resource consent is also required. The Panel does not consider it is reasonable to require resource consent to be obtained and therefore has amended the rules to require a noise management plan prepared by a qualified acoustic engineer to be submitted with notification at least 48 hours prior to the activity commencing. This approach enables the Council to answer public enquiries and carry out monitoring while enabling the activity.

The Council and the New Zealand Defence Force did not agree on a noise standard to apply to helicopter landing areas. Helicopters are used infrequently during temporary military training activities however a standard is desirable to set a threshold of effects and for enforcement.

For the New Zealand Defence Force, Ms Baverstock proposed (paragraph 11, evidence in chief) that reference to the relevant New Zealand Standard (NZS6807:1994 Noise Management and Land Use Planning for Helicopter Landing Areas) is an efficient and appropriate way of addressing this matter. Mr Styles, an acoustic engineer advising the Council, considered application of this standard to be problematic (paragraph 4.8, legal submissions). The standard is only intended to apply to helicopter landing areas used for 10 or more flight movements in any month, where flight movements are likely to exceed an L<sub>max</sub> of 70dBA during the night time or 90dBA during the day time in residential zones, or within the notional boundary of any rural dwelling. It is not suitable for the occasional landing or helicopters by New Zealand Defence Force. The standards in the notified Proposed notified Auckland Unitary Plan are more permissive and it is simpler to rely on a standard that sits within the Proposed Auckland Unitary Plan rather than outside it.

The Panel accepts the expert opinion of Mr Styles that the more permissive Auckland-wide standards are suitable and because there is low usage of helicopters for temporary military training activities. The provisions are amended by referring to the relevant Auckland-wide rule, thus providing a consistent approach to noise arising from helicopter landing areas.

Auckland Council and the New Zealand Defence Force agreed to relocate the provisions for temporary military training activities and underwater explosives training in the coastal marine area to Chapter F Coastal because this enables the activities and their effects to be addressed within a consistent and coherent framework relative to other activities within the coastal marine area. The Panel agrees with this amendment.

## 5. Consequential changes

### 5.1. Changes to other parts of the plan

As a result of the Panel's recommendations on this topic relating to signage and temporary activities, there are consequential changes to other parts of the Plan as listed below:

- i. Coastal
  - The provisions for temporary military training activities and underwater explosives training in the coastal marine area are relocated to Chapter F Coastal.
- ii. Definitions
  - Minor amendments to the definitions of billboard and comprehensive development signage.
  - Amendments to the definition of temporary activities by deleting temporary structures in the coastal marine area and adding emergency response training to the definition of temporary activities, and by deleting public open space and event licence.

There are no changes to other parts of the Plan as a result of artworks.

### 5.2. Changes to provisions in this topic

There are no changes to provisions in this topic as a result of the Panel's recommendations on other hearing topics.

## 6. Reference documents

The documents listed below, as well as the submissions and evidence presented to the Panel on this topic, have been relied upon by the Panel in making its recommendations.

The documents can be located on the aupihp website ([www.aupihp.govt.nz](http://www.aupihp.govt.nz)) on the hearings page under the relevant hearing topic number and name.

You can use the links provided below to locate the documents, or you can go to the website and search for the document by name or date loaded.

(The date in brackets after the document link refers to the date the document was loaded onto the aupihp website. Note this may not be the same as the date of the document referred to in the report.)

### 6.1. General topic documents

#### Panel documents

[027-Submission Points Pathway Report - 18 February 2015](#) (18 February 2015)

[027-Parties and Issues Report - 19 August 2015](#) (21 August 2015)

[027 - Mediation Joint Statement - Artworks and Signs](#) (24 February 2015)

[027 - Mediation Joint Statement - Temporary Activities](#) (24 February 2015)

#### **Auckland Council marked up version**

[027 Auckland Council MARKED-UP version for mediation \(Artworks-Objectives and Policies\)](#) (16 February 2015)

[027 Auckland Council MARKED-UP version for mediation \(Signs Provisions\)](#) (13 February 2016)

[027 Auckland Council MARKED-UP version for mediation \(Temporary activities\)](#) (16 February 2015)

[027 Auckland Council MARKED-UP version for mediation \(Temporary activities\) - with amendments - 20 February 2015](#) (20 February 2015)

#### **Auckland Council closing statement**

[027 Hrg - Auckland Council - CLOSING COMMENTS](#) (29 September 2015)

[027 Hrg - Auckland Council - CLOSING COMMENTS - Appendix 1 Signs Track Changes](#) (29 September 2015)

[027 Hrg - Auckland Council - Post hearing closing statement - temporary activities](#) (13 April 2015)

[027 Hrg - Nu-Lite Illuminated Signs Ltd - Closing Statement confirming position](#) (22 October 2015)

#### **Auckland Council**

[027 Hrg - Auckland Council - \(Juliana Cox\) - Temporary Activities and Artworks](#) (04 March 2015)

[027 Hrg - Auckland Council - \(Juliana Cox\) - Attachment C](#) (04 March 2015)

[027 Hrg - Auckland Council - \(Juliana Cox - Temporary Activities\) - REBUTTAL](#) (24 March 2015)

[027 Hrg - Auckland Council - \(Juliana Cox - Attachment A - Tracked Changes\) - REBUTTAL](#) (24 March 2015)

#### **Aria Bay Retirement Village Limited**

[043&044 - Hrg - \(Brett Harries\) – Transport Engineering](#) (17 June 2015)

#### **Atlas Concrete Limited (Kumeu, Silverdale, Warkworth, Woodhill)**

[043&044 - Hrg - \(Brett Harries\) – Transport Engineering](#) (17 June 2015)

#### **Britomart Group Company**

[027 Hrg - Britomart Group Company - \(Vijay Lala\)](#) (13 March 2015)

#### **Cherokee Films**

[027 Hrg - Film Auckland Incorporated and Cherokee Films - \(Peter Hall\)](#) (16 March 2015)

#### **Drive Holdings Limited and Retail Holdings Limited**

[Pre-Hearing Meeting- Memorandum](#) (15 January 2015)

[027 Hrg - Drive Holdings Ltd and UP Mgmt Ltd - Legal submissions](#) (26 March 2015)

[027 Hrg - Drive Holdings Ltd and UP Mgmt Ltd - \(Peter Neeve\)](#) (13 March 2015)

#### **Eden Park Neighbours' Association Incorporated**

[027 Hrg - Eden Park Neighbours' Association](#) (13 March 2015)

#### **Film Auckland Incorporated**

[027 Hrg - Film Auckland Incorporated and Cherokee Films - \(Peter Hall\)](#) (16 March 2015)

#### **New Zealand Defence Force**

[NZDF Evidence Rob Owen](#) (13 March 2015)

[NZDF Evidence Rob Owen Attachment A](#) (13 March 2015)

[NZDF Karen Baverstock Planning](#) (13 March 2015)

[NZDF Karen Baverstock Attachment A track change](#) (13 March 2015)

#### **New Zealand Fire Service Commission**

[065 Hrg - New Zealand Fire Service Commission \(Perri Duffy\) - Statement of Evidence](#) (15 October 2015)

[065 Hrg - New Zealand Fire Service Commission \(Kerry Anderson\) - Legal Submissions](#) (10 November 2015)

#### **Summerset Group Holdings Limited**

[043&044 - Hrg - \(Brett Harries\) – Transport Engineering](#) (17 June 2015)

#### **Waitakere Ranges Protection Society Incorporated**

[027 Hrg - Waitakere Ranges Protection Society - \(James Hook\)](#) (17 March 2015)