

Analysis of submissions and recommendations

Road Use Bylaw

1 Background

On [20 May 2021](#), under section 155(1) of the Local Government Act 2002, the governing body of the Far North District Council (“the Council”) agreed that a new bylaw, made under the Land Transport Act 1998, is appropriate to regulate road use in the Far North District. Section 22AB of the Land Transport Act 1998 gives the Council broad powers to regulate all aspects of road use. On 7 September 2021 the Strategy and Policy Committee approved a proposal for a new Road Use Bylaw to be released for public consultation. The period during which people could make written submissions on the proposal was from 13 September 2021 to 15 October 2021. Six written submissions were received. The committee heard oral submissions on 26 October 2021, and one oral submission was made (Submission 3).

This report analyses the submissions and makes recommendations for amendments to the draft Road Use Bylaw. A numbered list of submissions is in the Appendix and these numbers are used to refer to the individual submissions in the body of this report.

Council staff from the following teams contributed to the analysis of the submissions:

- Strategy Development
- Environmental Services
- District Planning
- Asset Management and Infrastructure Planning
- Northern Transport Alliance
- Legal Services Team

2 Summary of submissions

Six submissions were received, with four of these made online using a submissions form that asked people to state whether they supported the proposed Road Use Bylaw, and whether they supported each of nine parts and other provisions of the draft bylaw. Of the four online submissions, one supported the proposed Road Use Bylaw in full, and three supported it in part. One of those that supported the bylaw in part (Submission 4) was in support of all clauses in the draft bylaw, but wished to propose an addition to the Schedules. The analysis and recommendations section of this report will address the individual issues raised in the submissions.

Two written submissions were received that did not use the online form. They did not explicitly state whether or not they were in support of the Road Use Bylaw. However, both submissions raised issues with specific parts of the draft bylaw, rather than any general disagreement with its overall aims. The analysis and recommendations section of this report will address the individual issues raised.

In addition, one late submission was received in March 2022, outside the submission dates for the Road Use Bylaw, as part of the submissions regarding the insertion of provisions regulating vehicles on beaches into the Road Use Bylaw. Council staff consider that one of the points they raised regarding Clause 10 of the Road Use Bylaw should be addressed in this report and have included it.

3 General feedback

The following feedback was received that is not related to a specific clause in the draft bylaw.

3.1 The Council should make one new bylaw (Option One)

Submission 6 said that the Council should make one new bylaw to regulate both parking and road use under the Land Transport Act 1998 and the Local Government Act 2002. This was in reference to the analysis of options described in the Road Use Bylaw Proposal document (pp.2-3).

Staff analysis

The Council has already determined on 20 May 2021 that two new bylaws, one to regulate parking and one to regulate road use, made under the Land Transport Act 1998, are the most appropriate way to regulate parking and road use in the Far North District (that is, Option Two). Therefore, this feedback is outside the scope of the consultation on the Road Use Bylaw.

Staff recommendation

Staff recommend that no change should be made in response to this submission.

3.2 The Council should not overreach its authority or be involved in political bias

Two submissions made comments suggesting that the Council is overreaching its authority. Submission 1 felt that the Road Use Bylaw *“could be framed and written in a more user friendly way and a less authoritarian/ dictatorial way.”*

Submission 2 made a number of related comments. With regard to Part 4: Trading on roads and footpaths (clauses 12-14), Submission 2 felt that it was inappropriate for the Council to tell businesses what they can or cannot do. In addition, they said of part 4 that they *“fear that this will be used to prevent legitimate assembly for the purposes of political protest, as we have already seen in some parts of New Zealand.”* This issue was also raised in their comment on Clause 18, and is addressed more specifically below, under the discussion of that clause (4.3).

With regard to the Schedules, Submission 2 said that they *“feel Council is taking on too much authority at the expense of private individuals and business.”* In general comments, this submitter also stated that in their view the bylaw had many flaws, and the Council should avoid the *“possibility of being involved in social conditioning or political bias.”*

Staff analysis

The feedback from Submission 1 is related to the style of communication rather than the substance of the bylaw. The wording of the bylaw itself should be determined by clarity and accuracy. Council staff agree that communication with the public should also be user friendly as much as possible. Council staff will ensure that other related communications to do with the Road Use Bylaw, such as explanatory information on the Council website, will be easy for members of the public to navigate and understand.

Submission 2 expressed a view that a number of the provisions in the Road Use Bylaw are inappropriately prescriptive regarding the use of private property, business activities, and the right of people to protest. Submission 2 also stated that the Council risks being involved in social conditioning or political bias through the provisions of the draft Road Use Bylaw. This view appears to express a general discomfort with any regulations being imposed by the Council on the behaviour of private individuals and businesses.

Council staff agree that members of our communities should be free to use their private property, engage in business activities, and gather to protest as they see fit, but that this must always be balanced against the need to ensure safety, accessibility, and prevention of nuisance for other community members. Therefore, it is appropriate for council to regulate the use of public places such as roads. The provisions of the Road Use Bylaw are intended to ensure this balance is maintained in a way that is fair for all members of the community.

Staff recommendation

Staff recommend that no change should be made in general in response to these submissions, however see below (4.3) for specific discussion of Clause 18 and proposed amendments to that clause.

3.3 The Council should ban all bicycles, skateboards, and scooters on footpaths

Submission 3 was made both in writing and orally. The submitter raised concerns about nuisance, antisocial behaviour, and safety issues associated with the use of skateboards, bicycles, and scooters on footpaths in CBD areas. His written and oral submissions made the following points –

- The Council should ban all bikes, skateboards, and scooters (with the exception of mobility scooters) on footpaths.
- There is concern that the bylaw will not come into force until next year (2022).
- Better signage is needed to communicate the rules that are already in place.
- There is a lack of appropriate enforcement of the rules.

Staff analysis

The submitter expressed significant concerns about public safety, and felt that the Council should ban all bikes, skateboards, and scooters (with the exception of mobility scooters) on footpaths. He also expressed concern about when the bylaw would come into effect.

Some of the concerns are already covered in legislation. Under the Land Transport (Road User) Rule 2004, riding any kind of cycle on a footpath is prohibited. More generally, riding any kind of vehicle in a dangerous manner is prohibited under the transport legislation, and as such is a matter for the police to enforce. Bicycles are not included in the proposed Road Use Bylaw because they are already prohibited from footpaths in the existing law.

Unlike bicycles, skateboards and scooters (and similar wheeled recreational devices) are generally allowed on footpaths. Under the Land Transport (Road User) Rule 2004, they must be operated in a safe manner. In the scheduled CBDs (Schedule 2, Part C), the use of these devices is not compatible with pedestrian safety, and so it is appropriate for the Council to prohibit them in a bylaw. Both the existing Skating and Cycles Bylaw 2012 and the proposed Road Use Bylaw prohibit the use of wheeled recreational devices (skateboards, scooters, etc.) in the specified CBD areas. While the proposed Road Use Bylaw will not come into force until mid-2022, the rules banning skateboards and scooters from the specified CBDs are already in place.

The concerns regarding signage and enforcement are operational matters and will be conveyed to the appropriate staff. They are outside the scope of the proposed Road Use Bylaw.

Staff recommendation

Staff recommend that no change should be made in response to this submission.

4 Analysis and recommendations regarding the bylaw wording

4.1 Staff recommendations for amendments and drafting clarifications

Legal advice was received recommending a number of amendments. Staff also identified typographical errors and wording that required clarification. These amendments, clarifications, and corrections are addressed in this subsection 4.1.

The Bylaw should be made under both the Local Government Act 2002 and the Land Transport Act 1998.

Legal advice was received that the Road Use Bylaw should be made under both the Local Government Act 2002 and the Land Transport Act 1998. This is based on a problem with Clause 9: Vehicles containing offensive matter not to be left on road.

Clause 9 states that vehicles containing offensive matter such as manure or offal should not be left on the road, or a place adjoining a road, within 30 metres of a dwelling. Legal advice was received that the bylaw-making powers around parking under the Land Transport Act 1998 do not allow the Council to restrict parking without signage, or to restrict parking on private land. As currently drafted, this clause may be *ultra vires* (beyond the powers granted to the Council to make bylaws under the Land Transport Act 1998).

Clause 9 contains similar provisions to clause 1106 in the Nuisances Bylaw 1990 (made under the Health Act 1956), and it is intended to replace that clause in the Nuisances Bylaw (as per Clause 33 of the draft Road Use Bylaw). Since the intention of the clause is to prevent nuisance, it would be within the bylaw-making powers in the Local Government Act 2002. Based on the legal advice received, Council staff recommend amending the draft Road Use Bylaw, to make it under both the Local Government Act 2002 and the Land Transport Act 1998. This change does not alter any of the provisions of the draft Road Use Bylaw, but rather only ensures that the proposed provisions are enforceable according to the appropriate legislation. Therefore, according to the Council's Significance and Engagement Policy it does not require further consultation to be undertaken.

In addition, there are a few other points at which making the Road Use Bylaw under both the Local Government Act 2002 and the Land Transport Act 1998 will improve the bylaw. The Local Government Act will be appropriate to cover restrictions on wheeled recreational devices on roads which are state highways (clause 8) and prevention of nuisance from busking or similar activities (Clause 18). No drawbacks have been identified to this proposed amendment.

Staff recommendations

The Road Use Bylaw be made under both the Local Government Act 2002 and the Land Transport Act 1998.

Clause 2 Related information boxes

Council staff recommend a minor change to clause 2 (c), to clarify how the related information boxes may be amended.

Staff recommendations

Clause 2 (c) be amended by inserting the words “by Council” after the word “removed”.

“Tracked changes” to the clause as recommended to be amended

Boxes headed “Related information” in this bylaw are for information purposes only, and –

- (a) they do not form part of this bylaw; and
- (b) cannot be considered in the interpretation or application of a provision of this bylaw; and
- (c) may be inserted, amended or removed by Council without any formality.

Clause 3 Commencement

Council staff recommend a minor change to clause 3, to specify the date on which the bylaw comes into force.

Staff recommendations

Clause 3 be amended by omitting the words “two days after the date it is made by the governing body of the Far North District Council” and substituting the words “on 23 May 2022”.

“Tracked changes” to the clause as recommended to be amended

This bylaw comes into force ~~two days after the date it is made by the governing body of the Far North District Council~~ on 23 May 2022.

Clause 4 Application

Council staff recommend deleting the “Related information” box to clause 4, as it will no longer apply if the Road Use Bylaw is made under both the Local Government Act 2002 and the Land Transport Act 1998.

Staff recommendations

Clause 4 be amended by deleting the “Related information” box.

“Tracked changes” to the clause as recommended to be amended

This bylaw applies to the district of the Far North District Council.

Related information

~~This bylaw does not apply to roads in the district that are state highways. State highways are regulated by Waka Kotahi (New Zealand Transport Agency).~~

Clause 8 Roads where turning right or certain vehicles prohibited

Council staff recommend minor changes to clause 8, to correct a typographical error and clarify the drafting.

Staff recommendations

Clause 8 be amended by:

1. In subclause (3), omitting the word “recreation” and substituting the word “recreational”, in two instances.
2. In subclause (3), omitting the word “travelling” and substituting the words “being used”.
3. In the “Related information” box, omitting the word “recreation” and substituting the word “recreational”.

“Tracked changes” to the clause as recommended to be amended

- (3) Wheeled ~~recreation~~ recreational devices are prohibited from ~~travelling being used~~ on the roads, or parts of roads, listed in Part C of Schedule 2. A person must not use a wheeled ~~recreation~~ recreational device in contravention of this subclause.

Related information

Devices include skateboards and scooters, but not cycles. On roads not listed in Part C of Schedule 2, wheeled ~~recreation~~ recreational devices must be used and operated in accordance with clause 11.1 of the Land Transport (Road User) Rule 2004. The Land Transport (Road User) Rule 2004 also contains restrictions and prohibitions on riding cycles.

Clause 9 Vehicles containing offensive matter not to be left on road

Clause 9 is discussed above, where it is recommended that the Road Use Bylaw should be made under both the Local Government Act 2002 and the Land Transport Act 1998.

In addition, legal advice was received that “any unnecessary length of time” in clause 9 (1)(b) is vague and difficult to enforce. Compliance staff advised that two hours would be an appropriate time limit, to enable them to deal with this issue effectively, should they need to escalate to enforcement.

Staff recommendations

Clause 9 (1)(b) be amended by omitting the words “any unnecessary length of time” and substituting the words “more than two hours”.

“Tracked changes” to the bylaw as recommended to be amended

- (1) A person must not leave a vehicle containing, or that recently contained, manure, offal, or any other matter or thing that is likely to be offensive or injurious to health, on any road, or place adjoining a road that is within 30 metres of any dwellinghouse, –
- (a) during the period between half an hour after sunset and half an hour before sunrise; or
 - (b) for ~~any unnecessary length of time~~ more than two hours during any other part of a day.

Clause 11 Only certain signs allowed on or near road

Council staff recommend several minor changes to clause 11, to clarify the drafting of the bylaw. Submissions were also received on the wording of clause 11. All the proposed amendments to clause 11 are dealt with together, under the discussion of submissions on clause 11 below (section 4.3).

Clause 12 Approval required for stands and stalls in public places

Council staff recommend minor changes to Clause 12, to improve the clarity of the bylaw. These amendments improve the accuracy of the wording, and clarify that Council permission must be granted to operate a stand or stall on a road or adjoining public place (not merely applied for).

Staff recommendations

Clause 12 be amended by:

1. In subclause (1), omitting the word “occupy” and substituting the word “operate”, in two instances.
2. In subclause (1), omitting the words “apply to the council for approval” and substituting the words “have written approval from the Council”.
3. In subclause (3), omitting the word “Occupation” and substituting the word “Operation”.
4. In subclause (4), omitting the word “Occupation” and substituting the word “Operation”.
4. In subclause (4), inserting the words “in that schedule” after the word “stated”.

“Tracked changes” to the bylaw as recommended to be amended

- (1) A hawker, pedlar, or keeper of a mobile or travelling shop who wants to ~~occupy~~ operate a stand or stall (including a vehicle used as a stall) —
 - (a) in any road or part of a road; or
 - (b) in any public place adjoining a road or State highway if the presence of the stall or stand is likely to cause an obstruction or a danger to traffic —must ~~apply to the council for approval~~ have written approval from the Council to ~~occupy~~ operate that stand or stall.
- (3) ~~Occupation~~ Operation of a stand or stall by a hawker, pedlar, or keeper of a mobile or travelling shop in the roads, or part of a road, or public places specified in Part A of Schedule 4 is prohibited.
- (4) ~~Occupation~~ Operation of a stand or stall by a hawker, pedlar, or keeper of a mobile or travelling shop in the roads, or part of a road, or public places specified in Part B of Schedule 4 is restricted to the type of stand or stall stated in that schedule and the council may not grant an approval for any other type of stand or stall in the specified road, part of a road or public place.

Clause 13 Approval required for alfresco dining on footpaths or shared roadways

Council staff recommend a minor change to clause 13 (1), to clarify that Council permission must be granted to occupy a road or part of a road with structures for alfresco dining (not merely applied for).

Staff recommendations

Clause 13 (1) be amended by omitting the words “apply to the council for an approval” and substituting the words “have written approval from the Council”.

“Tracked changes” to the clause as recommended to be amended

- (1) A person who wants to occupy any part of a road with structures for providing food or beverage services, including tables, chairs, umbrellas, or heaters, must ~~apply to the council for an approval~~ have written approval from the Council for that occupation.

Clause 14 Approvals may be affected by other approved events

Clause 14 states that the Council may, in its absolute discretion, suspend an approval for a mobile trader or alfresco dining, if another approval has been granted for an event or road stoppage, which necessitates this suspension. For example, if the Council has granted an approval for a Christmas parade, the Council may suspend a previous approval for alfresco dining for the duration of the parade.

Legal advice was received that this clause should be deleted, and the provision simplified to allow the Council to revoke permits where necessary. Clause 28 also allows the Council to suspend or cancel an approval where necessary. Staff recommend deleting clause 14, and including a similar, but simplified provision in clause 28 (see below under the discussion of clause 28).

Staff recommendations

Clause 14 be deleted.

“Tracked changes” to the clause as recommended to be amended

~~14 Approvals may be affected by other approved events~~

~~If the council has approved—~~

~~(a) the stopping of the road or part of the road; or~~

~~(b) an event, for example a Christmas parade, that will occur on the road or part of the road—~~

~~that an approval granted for the purposes of clause 12 or 13 applies to, the council may, in its absolute discretion, suspend the approval under clause 28 for the duration of the stopping or the event if, in the council’s opinion,—~~

~~(c) the stopping or event will prevent or restrict actions covered by the approval from being done; or~~

~~(d) the actions covered by the approval are inconsistent with the stopping or event.~~

Clause 16 Protection of people and vehicles when doing work near a road

Legal advice was received that the provisions in Clause 16 are covered by other legislation such as the Building Act 2004, Resource Management Act 1991, and the Health and Safety at Work Act 2015. Since these issues are already covered, Clause 16 should be removed from the draft Road Use Bylaw, as there is no need for such regulation (LGA 2002). With regard to subclause (2), NTA staff have advised that building activities on roads are covered by the Corridor Access Request (CAR) system and section 357 of the Local Government Act 1974, and therefore this provision is not required in the Road Use Bylaw.

Staff recommendations

Clause 16 be deleted.

“Tracked changes” to the clause as recommended to be amended

~~16—Protection of people and vehicles when doing work near a road~~

~~(1)—A person who is doing any work to, or on, any external part of a building that is adjacent to or near a road must take all reasonable steps to—~~

- ~~(a)—protect any other person using or passing along the road from injury; and~~
- ~~(b)—protect any vehicle using or passing along the road from damage; and~~
- ~~(c)—ensure the work does not cause a nuisance or danger to traffic; and~~
- ~~(d)—prevent any damage being caused to the road.~~

~~In this subclause “work” includes altering, repairing, painting, or cleaning any part of the building.~~

Related information

~~For example, the person could erect a fence or hoarding to prevent people or vehicles from coming near the work.~~

~~Compliance with this subclause does not affect any obligations the person may have under the Health and Safety at Work Act 2015.~~

~~(2)—A person who is doing building work that includes any one or more of the following being done on a road or a public place adjoining a road—~~

- ~~(a)—erecting scaffolding, gantries, hoardings, or barricades; or~~
- ~~(b)—depositing building materials; or~~
- ~~(c)—carrying out excavation work; or~~
- ~~(d)—using a crane, stationary engine, concrete mixer, air compressor, crane, hoist, or other machinery—~~
~~must apply to the council for approval of that, or those, actions.~~

~~(3)—In subclause (2), “building work” has the same meaning as in section 7(a) and (b) of the Building Act 2004 and “public place” means land or property of, or under the control of, the council.~~

Related information

~~As at 08 June 2021 the definition of building work in the Building Act 2004 is:~~

~~(a)—means work—~~

- ~~(i)—for, or in connection with, the construction, alteration, demolition, or removal of a building; and~~
- ~~(ii)—on an allotment that is likely to affect the extent to which an existing building on that allotment complies with the building code; and~~

~~(b)—includes sitework.~~

Clause 19 Types of approval under this bylaw

Clause 19 is a guide to summarise the actions or things for which an approval is required under the Road Use Bylaw. Legal advice was received that this clause risks legal challenge due to ambiguous language, and that nothing in this clause is necessary for the bylaw. The recommendation is to delete the clause.

Staff recommendations

Clause 19 be deleted.

“Tracked changes” to the clause as recommended to be amended

~~19 Types of approval under this bylaw~~

- ~~(1) This clause is intended only as a guide to summarise the actions or things for which an approval is required under this bylaw and in the event of any conflict between this clause and any other clause of this bylaw, the latter prevails.~~
- ~~(2) A person may apply for an approval under this Part for –~~
- ~~(a) Displaying a sign that uses flashing or revolving lights (clause 11);~~
 - ~~(b) Displaying an advertising sign for a temporary sporting, community or cultural event (clause 11);~~
 - ~~(c) Occupying a stand or stall for trading on a road (including a footpath) or public place (clause 12);~~
 - ~~(d) Occupying a road (including a footpath) with furniture or other things for alfresco dining (clause 13);~~
 - ~~(e) Building work on a road or a public place adjoining a road (clause 16).~~

Clause 20 Application for approval

Council staff recommend minor changes to clause 20, to clarify the drafting of the bylaw.

Staff recommendations

Clause 20 be amended by:

1. In subclause (1)(a), inserting the words “, company or group” after the word “person”.
2. In subclause (1)(b), inserting the words “and by Council” after the word “bylaw”.

“Tracked changes” to the clause as recommended to be amended

- (1) An application for an approval required by this bylaw must be made to the council by the person, company or group who needs the approval (“**the applicant**”) and –
- (a) be in the form required by the council; and
 - (b) include all the information required by this bylaw and by Council; and
 - (c) be accompanied by the applicable fee set in the council’s Fees and Charges Policy.

Clause 21 Assessment of application

Council staff recommend minor changes to clause 21, to clarify the drafting of the bylaw. In subclause (c) the rule number should be omitted, so that the Bylaw will relate to the relevant provisions in both the current District Plan and the new Draft District Plan (when applicable).

Staff recommendations

Clause 21 be amended by:

1. Inserting the words “that are received” after the word “applications”.
2. Omitting the words “, including as follows” and substituting the words “under this bylaw as soon as reasonably practicable after the application has been made. When assessing an application, the Council must consider”.
3. In subclause (a), deleting the words “by determining”.
4. In subclause (b), deleting the word “considering”.
5. In subclause (c), deleting the words “by considering”.
6. In subclause (c), deleting the words “rule 16.7.2 of”.
7. In subclause (c), inserting the word “Operative” after the words “assessment criteria in the”.
8. Renumbering the second subclause (c) to subclause (d).
9. In subclause (d), omitting the words “as soon as reasonably practicable after the application has been made” and substituting the words “any other factors that the Council considers relevant to the application”.

“Tracked changes” to the clause as recommended to be amended

The council must assess all applications that are received for approvals, ~~including as follows under this bylaw as soon as reasonably practicable after the application has been made. When assessing an application, the Council must consider~~ –

- (a) ~~by determining~~ whether the matter covered by the approval will comply with any applicable provisions of this or any other bylaw made by the council; and
- (b) ~~considering~~ whether any conditions are required to be included in the approval under clause 23; and
- (c) if the application relates to a sign, ~~by considering~~ any relevant assessment criteria in ~~rule 16.7.2 of the~~ Operative Far North District Plan; and
- (ed) ~~as soon as reasonably practical after the application has been made. any other factors that the Council considers relevant to the application.~~

Clause 22 Decision on application

Council staff recommend minor changes to clause 22, to clarify the drafting of the bylaw. A submission was also received on the wording of clause 22. All the proposed amendments to clause 22 are dealt with together, under the discussion of submissions on clause 22 below (section 4.3).

Clause 23 Conditions on approvals

Council staff recommend minor changes to clause 23, to clarify the drafting of the bylaw.

Staff recommendations

Clause 23 be amended by:

1. In subclause (1), omitting the words “clause 22” and substituting the words “part 7 of this bylaw must”.
2. In subclause (1), omitting the word “its” and substituting the words “any other”.
3. In subclause (1), inserting the words “under that approval” after the word “conditions”.
4. In subclause (2)(b), omitting the words “and the” and substituting the word “. The”.
5. In subclause (2)(g), deleting the words “, including any area or space where parking is prohibited or restricted in the council’s Parking Bylaw”.

“Tracked changes” to the clause as recommended to be amended

- (1) All approvals granted under ~~clause 22~~ part 7 of this bylaw must include a condition that enables the council to carry out inspections to ensure the approval and ~~its~~ any other conditions under that approval are being complied with.
- (2) The council may include conditions on an approval for any one or more of the following matters –
 - (b) payment of a bond, of an amount determined by the council, to be used by the council to make good any damage caused by the person granted the approval ~~and the~~ The council may charge that person a further amount if the bond does not cover the full cost incurred by the council:
 - (g) restricting the area or space the approval applies to, ~~including any area or space where parking is prohibited or restricted in the council’s Parking Bylaw:~~

Clause 24 Duration of approval

Council staff recommend minor changes to clause 24, to clarify the drafting of the bylaw.

Staff recommendations

Clause 24 (5) be amended by:

1. In subclause (5), omitting the word “granted” after the words “a new one being” and substituting the word “determined”.
2. In subclause (5), omitting the words “and must take all actions necessary to ensure the location of anything done under the previous approval is made safe for all road users” and substituting the words “The applicant must remove all items covered by the previous approval and ensure the location is cleared of any hazards caused by their activity”

“Tracked changes” to the clause as recommended to be amended

- (1) All approvals granted under this bylaw have a duration of 12 months from the date granted, unless another duration period is specified in the approval.
- (2) A person granted an approval may apply to the council to renew the approval, before the end of its duration, by –
 - (a) informing the council, in writing, the approval is still necessary and giving reasons why; and
 - (b) demonstrating any conditions are being met, or seeking amendment of the conditions.
- (3) The provisions of this bylaw about approvals apply to the renewal of an approval, with any necessary modifications, including payment of any applicable fee.
- (4) If the council has not made a decision on the renewal application before the duration of the approval ends, the approval will continue to have effect until the renewal application is decided.
- (5) For the avoidance of doubt, if the duration of an approval has ended, the person granted the approval may apply for a new approval and refer to the previous approval to support their application, but during the time between the previous approval ending and a new one being ~~granted~~ determined, the applicant cannot do any of the things that were covered by the previous approval ~~and must take all actions necessary to ensure the location of anything done under the previous approval is made safe for all road users.~~ The applicant must remove all items covered by the previous approval and ensure the location is cleared of any hazards caused by their activity.

Clause 27 Transfer of approval

Council staff recommend a minor change to clause 27, to clarify the drafting of the bylaw.

Staff recommendations

The words “to any other person, company or group” be added after the word “transferable”.

“Tracked changes” to the clause as recommended to be amended

Approvals are not transferable to any other person, company or group.

Clause 28 Suspending or cancelling approval

Council staff recommend changes to clause 28, to clarify the drafting of the bylaw. A submission was also received on the wording of clause 28. All the proposed amendments to clause 28 are dealt with together, under the discussion of submissions on clause 28 below (section 4.3).

Part 8: Enforcement, offences and penalties

Council staff recommend a minor change to the “Related information” box. Section 163 of the Local Government Act 2002 only authorises the Council to remove a work or thing and recover costs when authorised by a bylaw. Since this bylaw does not authorise such removals, this example should be deleted.

Staff recommendations

The “Related information” box after “Part 8: Enforcement, offences and penalties” be amended by deleting the words “, and under section 163 of the Local Government Act 2002 the council can remove any work or thing and recover the costs of that removal”.

“Tracked changes” to the clause as recommended to be amended

Related information

The council has powers under the Land Transport Act 1998 and Local Government Act 2002 to take various actions to enforce the provisions of this bylaw. For example, under section 128E of the Land Transport Act 1998 the council can remove vehicles that are causing an obstruction, ~~and under section 163 of the Local Government Act 2002 the council can remove any work or thing and recover the costs of that removal.~~ All other actions to enforce the provisions of this bylaw are taken by the Police.

Clause 30 Offence and penalty

Council staff recommend minor changes to clause 30, to clarify the drafting of the bylaw. Submissions were also received on clause 30. All the proposed amendments to clause 30 are dealt with together, under the discussion of submissions on clause 30 below (section 4.3).

Clause 34 Applications, approvals etc under revoked bylaws

Council staff recommend minor changes to clause 34, to clarify the drafting of the bylaw.

Staff recommendations

Clause 34 be amended by:

1. In subclause (a), omitting the word “commenced” and substituting the word “commences”.
2. In subclause (b), inserting the words “granted under revoked bylaws” after the word “authorisation”.
3. In subclause (b), adding the words “and must be treated as a new application” after the word “bylaw”.

“Tracked changes” to the clause as recommended to be amended

All applications, approvals, permits, documents, matters, acts, and things that were made, approved or authorised under the provisions of the Parking and Traffic Control Bylaw revoked in clause 31, and are continuing at the commencement of this bylaw, will continue, and be treated, as if they are applications made, or approvals granted, under this bylaw, except –

- (a) any approval, permit or authorisation will only continue until the date that is 12 months from the date this bylaw ~~commenced~~ commences; and
- (b) any approval, permit or authorisation granted under revoked bylaws cannot be renewed under this bylaw and must be treated as a new application.

Clause 36 Roads that have vehicle restrictions or prohibitions

Council staff recommend a minor change to clause 36, to correct a typographical error.

Staff recommendations

Clause 36 subclause (2)(c) be amended by omitting the word “recreation” and substituting the word “recreational”.

“Tracked changes” to the clause as recommended to be amended

(2) Schedule 2 has 3 parts –

- (a) Part A lists the roads, or parts of roads, where under clause 8 vehicles are prohibited from turning to the right:
- (b) Part B lists the roads, or parts of roads, where under clause 8 heavy motor vehicles are prohibited:
- (c) Part C lists the roads, or parts of roads where, under clause 8, wheeled ~~recreation~~ recreational devices are prohibited.

Schedule 4 Roads, or parts of roads, where occupation of a stand or stall is prohibited or restricted

Council staff recommend a minor change to Schedule 4 Part B (1)(a), to correct a typographical error.

Staff recommendations

Schedule 4 Part B (1)(a) be amended by omitting the word “Pahia” and substituting the word “Paihia”.

“Tracked changes” to the clause as recommended to be amended

- (1) Approvals for stands or stalls in or on the following roads or public places are restricted to those that spend a maximum of 60 minutes at the location, for example, mobile ice cream vendors –
 - (a) In ~~Pahia~~ Paihia at –

4.2 Clauses not referred to in submissions

No submissions were made about the following clauses in the draft bylaw:

- Clause 1 Title
- Clause 2 Related information boxes
- Clause 3 Commencement
- Clause 4 Application
- Clause 5 Purpose
- Clause 7 Roads where vehicles must travel in a specified direction
- Clause 9 Vehicles containing offensive matter not to be left on road
- Clause 14 Approvals may be affected by other approved events
- Clause 16 Protection of people and vehicles when doing work near a road
- Clause 19 Types of approval under this bylaw
- Clause 20 Application for approval
- Clause 21 Assessment of application
- Clause 23 Conditions on approvals
- Clause 24 Duration of approval
- Clause 25 Objections
- Clause 26 Amendment of approval
- Clause 27 Transfer of approval
- Clause 29 Other obligations not affected
- Clause 31 Parking and Traffic Control Bylaw revoked in part
- Clause 34 Applications, approvals etc under revoked bylaws
- Clause 37 Provisions for signs to not be a danger or nuisance
- Clause 38 Amendment of Schedules

4.3 Submissions on clauses in the draft bylaw

This subsection analyses the submissions made about specific clauses in the draft bylaw and recommends how to address these submissions in the bylaw. This section also analyses some of the staff recommendations for amendments, clarifications, and corrections, in order to keep all proposed amendments to a clause together in one place.

Clause 6 Interpretation

Clause 6 provides definitions for the interpretation of this bylaw.

Submission received

Submission 5 pointed out that Clause 6 *“includes definitions of footpath and road but not roadway. In later clauses the term road is used where roadway would more correctly identify the area of concern.”* The submission suggested adding the definition of roadway from the Land Transport (Road User) Rule 2004, namely:

- **roadway** means that portion of the road used or reasonably usable for the time being for vehicular traffic in general (Land Transport (Road User) Rule 2004 1.6)

Staff analysis

The suggested amendment would allow for greater precision in defining which part of the road is under discussion in some later clauses. This would apply in instances where the term “road” is intended specifically to refer to that part of the road usually used for vehicular traffic.

This seems to have arisen from the wording of Clause 17, which was also raised in the same submission (see discussion below). The ambiguity in Clause 17 has been resolved through minor amendments that do not use the term “roadway”. Making this amendment to Clause 6 could create a need for additional amendments in other clauses. Therefore, while the terminology suggested by the submitter would be a correct alternative, this change is not necessary.

Staff recommendations

Staff recommend that no change should be made to Clause 6 in response to this submission.

Clause 8 Roads where turning right or certain vehicles prohibited

Clause 8 (1) prohibits vehicles from turning to the right at certain intersections. Clause 8 (2) prohibits heavy motor vehicles from travelling on certain roads or parts of roads. Clause 8 (3) prohibits wheeled recreational devices from travelling on certain roads or parts of roads.

Submission received

Submission 1 said that e-scooters should be treated as allowed on the road in areas where the speed limit is 50kph or less, and prohibited from the open road where the speed limit is 80kph or more. The submission said that it was safer to ride on the roadway rather than the footpath, and said it was discriminatory to allow cycles on the roadway but not to allow e-scooters.

Staff analysis

The submitter has not correctly understood the scope of the proposed clause. The roads and parts of roads to which Clause 8 (3) applies are laid out in Part C of Schedule 2, which comprises roads in central business district areas. In CBDs the use of wheeled recreational devices (such as skateboards and scooters) is not compatible with pedestrian safety, and therefore it is appropriate for the council to prohibit them in a bylaw.

In all other areas of the Far North District (not specified in Schedule 2 Part C), the use of wheeled recreational devices is governed by the [Land Transport \(Road User\) Rule 2004](#). In general, low-powered e-scooters can be used on the footpath or the roadway. ([For an e-scooter to meet the definition of a low-powered vehicle, the wheels must not exceed 355mm and maximum power output must not exceed 300W.](#)) They must be operated in a safe and considerate manner, and if travelling on the road, must be as near as practicable to the edge of the roadway.

The concerns regarding e-scooters raised by Submission 1 are outside the scope of the proposed Road Use Bylaw.

Staff recommendations

Staff recommend that no change should be made to Clause 8 in response to this submission. (NB. Staff recommendations for changes to Clause 8 are addressed above, in section 4.1.)

Clause 10 Approval required for erecting or planting things near intersections etc

Clause 10 states that walls, fences or vegetation should not be placed at or near intersections or bends where they would cause nuisance or danger to traffic.

Submissions received

Submission 1 found this unfair, as “*prima facies if you live on a corner you cant build a fence plant a hedge*” [sic]

Submission 80 (part of the submissions made on the insertion of provisions regulating vehicles on beaches into the Road Use Bylaw) thought it was unclear whether the clause would only apply to private land, or could be interpreted as undermining Council’s ability to deal with encroachments on public land such as the road berm.

Staff analysis

Submission 1 has misinterpreted the scope of the proposed clause. Fences, walls, hedges and trees may be placed on private property at or near intersections or bends, as long as they are not likely to cause nuisance or danger to traffic. Under [section 355 of the Local Government Act 1974](#) the Council has the power to require landowners to remove or trim vegetation, fences or walls when, in the opinion of the Council, they are likely to cause danger to traffic. In practice, this clause does not place an unreasonable burden on the owners of property on bends or corners. There is no requirement to seek prior permission to plant vegetation or to erect a fence or wall; there is only a requirement to ensure that this activity is not likely to cause nuisance or danger to traffic. Therefore, it is appropriate for the Council to mandate this requirement in a bylaw.

The submission’s misinterpretation is likely due to the title of the clause: “*Approval required for erecting or planting things near intersections etc.*” The clause itself does not include a requirement for prior approval from the Council of any planned vegetation, fence, or wall on a property at an intersection or bend. Research has identified that the title was not updated when the clause was changed at a previous stage of the development of the bylaw, and it reflects the content of an earlier draft of the clause. Therefore, Council staff consider that the title of Clause 10 should be rewritten to reflect the intent of the clause accurately.

Council staff consider that submission 80 has made a useful point. Legal advice received is that the clause itself does not require amendment, since section 357 of the Local Government Act 1974 is clear on encroachments; however, the Related information box should be amended to include the suggested clarification.

Staff recommendations

Clause 10 be amended by:

1. Omitting the words “Approval required for erecting or planting things near intersections etc” and substituting the words “Vegetation, walls, or fences must not cause nuisance or danger to traffic”
2. Adding the words “In general it is an offence to place vegetation, a fence or other items on any part of a public road (which includes the berm) without authorisation, under section 357 of the Local Government Act 1974, and the council will normally require their removal. In exceptional circumstances, if deemed an appropriate use of public land, the Council may decide to grant a licence to occupy the road.”

“Tracked changes” to the clause as recommended to be amended

10 ~~Approval required for erecting or planting things near intersections etc~~ Vegetation, walls, or fences must not cause nuisance or danger to traffic

A person must not plant or erect, at or within 5 meters distance from corners, bends, or intersections on roads, any tree, shrub, hedge, scrub, or other growth, or fence or wall, that, in the opinion of the council is, or is likely to constitute, a source of nuisance or danger to traffic.

Related information

The council can require the owner of any land adjoining a road corridor to remove or trim any vegetation or wall under section 355 of the Local Government Act 1974.

In general it is an offence to place vegetation, a fence or other items on any part of a public road (which includes the berm) without authorisation, under section 357 of the Local Government Act 1974, and the Council will normally require their removal. In exceptional circumstances, if deemed an appropriate use of public land, the council may decide to grant a licence to occupy the road.

Clause 11 Only certain signs allowed on or near road

Clause 11 defines the types of signs that are permitted on or near the road.

Submissions received

Three submissions commented on Clause 11. Submission 2 said: *“Display of signage on privately owned land should be no business of Council in a democratic society. Further, requirements around what language(s) may or may not or must be used is entirely inappropriate.”*

Submission 5 noted that the list of conditions in Clause 11 (2) were all joined by “and”, requiring all these conditions to occur at the same time for the signage to contravene the bylaw. Since the intention is to prohibit any of the conditions, the wording should be amended by replacing “and” with “or”.

Submission 6 voiced support of Clause 11 (6), as it allows for advertising of community events without imposing undue costs.

Staff analysis

Submission 2 objected to the Council’s perceived interference with the rights of property owners to display signage on their property. The intent of the clause is to enable the Council to address problems such as nuisance or danger to traffic or pedestrians, which may be caused by inappropriate signage. The display of signage on privately owned land must not cause undue nuisance to others or interfere with public safety. Therefore, it is appropriate for the Council to define the types of signs that are permitted on or near the road.

Submission 2 also objected to requirements around what languages must be used for signage. This appears to be in reference to subclause (3): *“Any poster, placard, handbill, writing, picture, or device for advertising or other purposes displayed on Te Oneroa-a-Tōhe/90 Mile Beach must be bilingual in english and te reo māori,”* which only applies to Te Oneroa-a-Tōhe/90 Mile Beach. All signs on Te Oneroa-a-Tōhe/90 Mile Beach must be approved by the Te Oneroa-a-Tōhe Beach Board, in accordance with the Beach Management Plan (<https://www.teoneroa-a-tohe.nz/beach-management-plan>).

Subclause (3) reflects a requirement of the Te Oneroa-a-Tōhe Beach Management Plan that signs be bilingual. The Beach Management Plan is primarily to be implemented through the Regional Plan. Legal advice was received that, as currently drafted, this clause may be *ultra vires* (beyond the powers granted to the Council to make bylaws under the Land Transport Act 1998).

Subclause (7) states that any planned display on Te Oneroa-a-Tōhe/90 Mile Beach must have approval from the Te Oneroa-a-Tōhe Beach Board before the Council will consider approving it. Since the Te Oneroa-a-Tōhe Beach Board (in accordance with the Beach Management Plan) will implement the requirement for signage to be bilingual in English and te reo Māori in advance of any application to the Council for approval, it is unnecessary for this provision to be included in the Road Use Bylaw. Therefore, Council staff recommend that subclause (3) should be deleted, and the requirement should be included in the “Related information” box.

Submission 5 suggested replacing “and” with “or” in subclause (2), in order to make its requirements clear. Council staff consider that this is an amendment that will improve the clarity of the draft bylaw.

As they are currently drafted, Clause 11 and Schedule 3 are unclear. The wording gives the impression that only compliant signs will be allowed, and do not make it clear that a sign that does not comply with Schedule 3 (e.g. with more words or a larger size) may be permitted by the Council, at its discretion, following the application process specified in the proposed bylaw. Therefore, staff recommend a new subclause 11(4) for clarification, and amendments as described under the discussion of Schedule 3.

In addition to these amendments, Council staff recommend several minor changes to clause 11, subclauses (3)-(7), to improve the clarity of the drafting of the Road Use Bylaw, as detailed below.

Staff recommendations

Clause 11 be amended by:

1. In subclause (1), inserting the reference "(4)" after the word "subclauses".
2. In subclause (1), inserting the words "in contravention of subclause (2)" after the words "other purposes".
3. In subclause (1), deleting the words "in contravention of subclauses (2) and (3)" after the words "visible from a road or public place".
4. In subclause (2)(a)-(f), deleting the word "and".
5. In subclause (2)(g), omitting the word "and" and substituting the word "or".
6. Deleting subclause (3).
7. Renumbering subclause (4) to be subclause (3).
8. In subclause (3), omitting the words "For the purposes of subclause (2)(h) only," and substituting the word "All".
9. In subclause (3), omitting the words "that are" and substituting the words "must be".
10. In subclause (3), omitting the words "will be treated by the council as not constituting" and substituting the words "to ensure they are not and do not become".
11. Inserting a new subclause as follows:
"(4) A person may display a poster, placard, handbill, writing, picture, or device for advertising or other purposes that does not comply with Schedule 3 if the person has an approval from Council for the display."
12. In subclause (5), inserting the words "clause 11" after the words "does not comply with".
13. In subclause (5), inserting the words "from Council" after the word "approval".
14. In subclause (6), inserting the words "clause 11" after the words "does not comply with".
15. In subclause (6) (c), inserting the words "from Council" after the word "display".
16. In subclause (7), inserting the words "from Council" after the word "approvals".
17. In subclause (7), omitting the words "subclauses (5) and (6)" and substituting the words "clause 11".
18. In subclause (7), inserting the word "planned" after the words "if the".
19. In subclause (7), inserting the words "to be located" after the words "display is".
20. In subclause (7), inserting the words "to Council" after the word "application".
21. In the "Related information" box, inserting the words "Any signage displayed on Te Oneroa-a-Tōhe/90 Mile Beach must be bilingual in English and te reo Māori." after the words "in accordance with the Beach Management Plan (available at this link: <https://www.teoneroa-a-tohe.nz/beach-management-plan>), as well as the council."

"Tracked changes" to the clause as recommended to be amended

- (1) Except as provided in subclauses ~~(4)~~, (5) and (6), a person must not cause, permit or otherwise enable the display, or continued display, of posters, placards, handbills, writings, pictures, or devices for advertising or other purposes ~~in contravention of subclause (2)~~ –
 - (a) on or over public buildings or bridges; or
 - (b) on or over buildings, walls, fences, posts, trees, footpaths, or hoardings – that are situated –
 - (c) in, or on, or adjoining any land or road that is the property of, or under the control of, the council; or
 - (d) any place where that display is visible from a road or public place – ~~in contravention of subclauses (2) and (3).~~
- (2) Any display, or continued display, of posters, placards, handbills, writings, pictures, or devices for advertising or other purposes must not –
 - (a) obstruct or be likely to obstruct the view of any corner, bend, intersection, vehicle crossing, traffic sign or traffic signals; ~~and~~
 - (b) distract unduly or be likely to distract unduly the attention of a road user; ~~and~~
 - (c) resemble or be likely to be confused with any traffic sign or signal; ~~and~~
 - (d) give rise to excessive levels of glare; ~~and~~
 - (e) use lights or reflective materials; ~~and~~
 - (f) invite drivers to turn so close to a turning point that there is no time to signal or turn safely; ~~and~~
 - (g) have sharp edges, projections or moving parts that may be a nuisance or danger to road users; ~~and or~~
 - (h) constitute or be likely to constitute in any way a danger or nuisance to road users or the environment.
- ~~(3) Any poster, placard, handbill, writing, picture, or device for advertising or other purposes displayed on Te Oneroa-a-Tōhe/90 Mile Beach must be bilingual in english and te reo māori.~~

- (43) ~~For the purposes of subclause (2)(h) only, All~~ posters, placards, handbills, writings, pictures, or devices for advertising or other purposes ~~that are must be~~ constructed, fixed, placed and maintained in accordance with the provisions of Schedule 3 ~~will be treated by the council as not constituting to ensure they are not and do not become~~ a danger or nuisance.
- (4) A person may display a poster, placard, handbill, writing, picture, or device for advertising or other purposes that does not comply with Schedule 3 if the person has an approval from Council for the display.
- (5) A person may display a poster, placard, handbill, writing, picture, or device for advertising or other purposes that does not comply with clause 11 subclause (2)(e) if the person has an approval from Council for the display.
- (6) A person may display a poster, placard, handbill, writing, picture, or device for advertising or other purposes that does not comply with clause 11 subclause (2), if –
- (a) it is displayed for a limited period of time to advertise a sporting, community or cultural event; and
 - (b) it is a maximum size of 3 square metres; and
 - (c) the person has an approval for the display from Council; and
 - (d) it is removed no more than 2 days following the completion of the event to which it relates.
- (7) For the purposes of the approvals from Council required in ~~subclauses (5) and (6)~~ clause 11, if the planned display is to be located on Te Oneroa-a-Tōhe/90 Mile Beach, it must be approved by the Te Oneroa-a-Tōhe Beach Board before an approval is applied for under this bylaw and evidence of the Board's approval must be included with the application to Council made under this bylaw.
- (8) For the purposes of this clause "public buildings" means buildings that are owned by the council and for the avoidance of doubt a "road user" includes a pedestrian.
- (9) This clause does not apply to advertisements for candidates in an election under the Electoral Act 1993 or the Local Electoral Act 2011.

Related information

Other types of signs, advertising or displays etc that are erected, placed or left on a road and not covered by the description in this clause are prohibited under section 357(1)(a) and (b) of the Local Government Act 1974 unless authorised by the council. Some signs may also require a resource consent under rules in the Far North District Plan made under the Resource Management Act 1991 or a building consent under the Building Act 2004.

Signs on Te Oneroa-a-Tōhe/90 Mile Beach must be approved by the Te Oneroa-a-Tōhe Beach Board, in accordance with the Beach Management Plan (available at this link:

<https://www.teoneroa-a-tohe.nz/beach-management-plan>), as well as the council. Any signage displayed on Te Oneroa-a-Tōhe/90 Mile Beach must be bilingual in English and te reo Māori.

Signs on State Highways are regulated in the New Zealand Transport Agency (Signs on State Highways) Bylaw 2010, available at this link: <https://nzta.govt.nz/assets/resources/Bylaws-state-highway/Bylaw-2010-New-Zealand-Transport-Agency-Signs-on-State-Highways-Bylaw-July-2010.pdf>

Clause 12 Approval required for stands and stalls in public places

Clause 12 requires anyone who wishes to operate a stand or stall in any road or any public place adjoining a road to apply to the Council for approval, and prohibits stands and stalls in certain locations.

Submission received

Submission 6 said that the Council should consider the impact that roadside traders have on parking and manoeuvrability for large vehicles. This is an issue for the rural community who often come into town with large vehicles or trailers and cannot easily park in smaller car parks. Roadside traders often occupy the limited places which allow for large vehicles and trailers, and so they said that *“Council needs to ensure that the locations roadside traders operate on do not hinder the rural community’s ability to come into town for supplies and amenities.”* They asked that the Council considers this when deciding on applications.

Staff analysis

Council staff agree that the needs of businesses operating stands and stalls should be balanced with the needs of members of the community who require access to suitable parking, in order to ensure equitable access to public parking spaces. This issue is part of the implementation of the bylaw and will be communicated to operational staff. It does not affect the drafting of the bylaw.

Staff recommendations

Staff recommend that no change should be made to Clause 12 in response to this submission. (NB. Staff recommendations for changes to Clause 12 are addressed above, in section 4.1.)

Clause 13 Approval required for alfresco dining on footpaths or shared roadways

Clause 13 requires anyone who wishes to set up furniture and structures on any road or footpath for providing alfresco food or beverage services to obtain an approval from the Council, and sets out rules to ensure public accessibility and safety.

Submission received

Submission 1 was against the clause, and voiced support of alfresco dining, saying that it *“is part of making a place or a part of town vibrant and give it and the businesses in it a buzz and permit them to trade.”*

Staff analysis

Council staff agree that there are benefits to businesses and town centres from alfresco dining and enabling outdoor trade. However, this must also be balanced with other community needs such as pedestrian safety, accessibility, and preventing nuisance. Therefore, it is appropriate for the Council to require people to apply for approval for alfresco dining activities on public roads and footpaths, and to regulate their location to ensure public accessibility and safety.

Staff recommendations

Staff recommend that no change should be made to Clause 13 in response to this submission. (NB. Staff recommendations for changes to Clause 13 are addressed above, in section 4.1.)

Clause 15 General requirements [Animals on roads]

Clause 15 sets out the requirements for people in control of animals on roads, to ensure safety and require removal of solid waste.

Submissions received

Submission 1 stated opposition to Clause 15 but did not give a reason.

Submission 6 expressed general support for the requirement for livestock owners to clean up solid animal waste and prevent damage to the roads they use. However, they considered that this requirement is impractical for unsealed roads and unformed legal roads. They suggested changing the wording to *“must ensure where reasonable to clean up solid waste left by livestock”*.

Staff analysis

Submitter 6 acknowledged that livestock owners have a responsibility to clean up waste, remove hazards and nuisance for other road users, and prevent damage to the roads they use. However, they expressed a concern that the requirement in clause 15 (1) may be unreasonable in some circumstances, and proposed softening the wording. For example, on a rural unsealed road, removing all animal waste would be impractical and impossible to enforce.

Monitoring and enforcement staff report that this problem is not frequent, but they do receive complaints about animal waste on roads from time to time. The Council uses the VADE (Voluntary, Assisted, Directed and Enforced) approach to ensure compliance with bylaws. VADE begins with a reasonable approach to resolve problems, and escalation to enforcement is only rarely required. Staff report that complaints about animal waste are usually successfully resolved after a conversation with the livestock owner. However, enforcement staff do need to have a rule in place to deal with persistent problems. For example, animal waste on the road can cause a hazard for motorcyclists, or a nuisance in a residential area.

The suggested wording “where reasonable” could be disputed. Staff propose amending the clause to clarify the circumstances where the Council would consider enforcement action to be appropriate: where the waste is causing damage to the road, a hazard, or a nuisance.

Staff recommendations

Clause 15 (1) be amended by inserting the words “, if these materials cause or are likely to cause in any way a danger or nuisance to road users or damage to the road” after the word “time”.

“Tracked changes” to the clause as recommended to be amended

- (1) A person having control of animals being driven or ridden on any road must ensure that any solid materials deposited on the road from the animals are removed and disposed of within a reasonable period of time, if these materials cause or are likely to cause in any way a danger or nuisance to road users or damage to the road.

Clause 17 Safe placement of bins, skips or containers on roads

Clause 17 regulates the safe placement of bins, skips and containers on roads.

Submissions received

Submission 1 stated opposition to Part 6 (Clauses 16-18) but did not give a reason.

Submission 5 made suggestions to improve the clarity of Clause 17 as follows:

“17 (1) (a) Rephrase for clarity to “is on a part of the road where parking is not prohibited or restricted...”

17 (1) (b) has two possible meanings:

- cannot be closer to a traffic lane than one metre or*
- cannot extend more than one metre into a traffic lane.*

Redraft to clarify which is the intention.

Both of these could benefit from use of roadway instead of road if the intention is to avoid risk to other vehicles.”

Staff analysis

Council staff agree that amendments will improve the clarity of the draft bylaw. The suggested amendment to Clause 17, subclause (1) (a) will prevent confusion.

The wording of Clause 17, subclause (1) (b), namely that it “does not encroach within one metre of a traffic lane”, has been taken from Schedule 4 of the current Parking and Traffic Control Bylaw 2010. The intention of the clause is to ensure that bins, skips, and containers do not cause a danger to traffic by encroaching onto the roadway, and therefore this meaning should be made clear.

Staff recommendations

Clause 17 be amended by:

1. In subclause (1) (a), moving the word “not” from after the first “is” to after the second “is”.
2. In subclause (1) (b), omitting the words “does not encroach within one metre of a traffic lane” and substituting the words “is not closer than one metre to a traffic lane at any time”.

“Tracked changes” to the clause as recommended to be amended

- (1) A person must not place a waste bin, skip, shipping container or other similar receptacle on a road unless it –
- (a) is ~~not~~ on a part of the road where parking is not prohibited or restricted under the council’s Parking Bylaw; and
 - (b) ~~does not encroach within one metre of a traffic lane~~ is not closer than one metre to a traffic lane at any time; and
 - (c) has its edge that faces on-coming traffic painted white or a fluorescent colour that is in contrast to the colour of its main body and the edge markings are maintained to ensure clear visibility to traffic; and
 - (d) is not left on the road between half an hour after sunset of one day and half an hour before sunrise the following day unless properly lit by flashing amber lights on outer corners of the bin facing on-coming traffic.

Clause 18 Activities that may impede or obstruct road users

Clause 18 prohibits organising or engaging in activities on any road that impede pedestrians or vehicles, or obstruct access to shops or premises.

Submissions received

Submission 1 stated opposition to Part 6 (Clauses 16-18) but did not give a reason.

Submission 2 commented that *“Clause 18 could easily be used to prevent legitimate political protests.”*

Staff analysis

Submission 2 expressed concern that Clause 18 of the proposed Road Use Bylaw could be used to prevent legitimate political protests and interfere with the rights of individuals to express their political views. Council staff agree that the exercise of legitimate political protest is important in a democratic society. However, the Council must also balance this with the need to ensure safety and accessibility for other members of the community, businesses, and organisations. This was the intention of Clause 18, rather than the prevention of any political protest or other public gathering or meeting.

Legal advice was received that, as it is currently drafted, Clause 18 may be at risk of challenge, as it may be in breach of the Bill of Rights Act 1990. Therefore, council staff recommend removing subclauses 18 (1) and (2) from the proposed Road Use Bylaw.

Council staff have identified that there is still a need for some regulation to ensure that busking or similar activities do not impede or obstruct other members of the public, or create a nuisance. Therefore, staff recommend a minor amendment to the remainder of the clause.

Staff recommendations

Clause 18 be amended by:

1. Deleting subclause (1).
2. Deleting subclause (2).
3. In subclause (b), inserting the word “or” after the words “premises adjacent to the road”
4. Adding a new subclause (c) as follows:
“(c) in a way that creates a nuisance.”

“Tracked changes” to the clause as recommended to be amended

18 Activities that may impede or obstruct road users

- ~~(1) A person must not organise or conduct a meeting, gathering, demonstration, parade, procession or competition on a road that impedes pedestrians or vehicles, or prevents or obstructs access to shops or premises adjacent to the road.~~
- ~~(2) A person must not participate in any assembly, or association, with other persons (including any of the activities referred to in subclause (1)) on a road that impedes pedestrians or vehicles, or prevents or obstructs access to shops or premises adjacent to the road.~~
- ~~(3)~~ A person must not perform, sing, play musical instruments, preach, lecture or exhibit on a road –
- (a) in a way that impedes pedestrians or vehicles; or
 - (b) in a way that prevents or obstructs access to shops or premises adjacent to the road; or
 - (c) in a way that creates a nuisance.

Related information

A footpath is part of a road and this clause applies to footpaths accordingly.

Clause 22 Decision on application

Clause 22 sets out the rules governing how applications for approvals are decided by the council.

Submission received

Submission 5 said that subclause 22 (1) appeared to be a requirement that the council must decline any application which is not covered by a resource consent, regardless of whether a resource consent is in fact required for the event.

Staff analysis

Subclause 22 (1) states the following:

*“(1) The council must decline an application for an approval if the matter to be covered by the approval –
(a) is not a permitted activity under any applicable plan, provision or requirement; or
(b) is not covered by a resource consent –
under the Resource Management Act 1991.”*

This could be interpreted as saying that the only activities which can be approved must be covered by a resource consent. This is not the intent of the clause. Council staff consider that rephrasing this clause will improve the clarity of the proposed bylaw.

Council staff also recommend minor changes to clause 22, to clarify the drafting of the bylaw.

Staff recommendations

Clause 22 be amended by:

1. In subclause (1), inserting the words “under this bylaw” after the words “application for an approval”.
2. In subclause (1), omitting the word “if” and substituting the word “unless”.
3. In subclause (1) (a), omitting the word “not”
4. In subclause (1) (a), omitting the word “or” and substituting the words “, statutory or regulatory” after the word “provision”.
5. In subclause (1) (b), omitting the word “not”.
6. In subclause (4), inserting the words “for an approval under this bylaw” after the words “withdraw their application”.

“Tracked changes” to the clause as recommended to be amended

- (1) The council must decline an application for an approval under this bylaw ~~if~~ unless the matter to be covered by the approval –
- (a) is ~~not~~ a permitted activity under any applicable plan, provision ~~or~~, statutory or regulatory requirement; or
 - (b) is ~~not~~ covered by a resource consent –
- under the Resource Management Act 1991.
- (4) An applicant may withdraw their application for an approval under this bylaw at any time before a decision is made, but any fee paid with the application will not be refundable unless the council, in its absolute discretion, decides a refund, or partial refund, is reasonable in the circumstances.

Clause 28 Suspending or cancelling approval

Clause 28 regulates how an approval may be suspended or cancelled. Subclause (2) states that *“The suspension or cancellation takes effect from the date the person who was granted the approval receives written notice of the council’s decision to suspend or cancel the approval.”*

Submission received

Submission 5 queried whether Clause 28 (2) placed an obligation on Council to prove time of receipt. The submission suggested the inclusion of a deemed delivery clause.

Staff analysis

Council staff agree that the inclusion of a deemed delivery clause could avoid potential disputes.

In addition, staff recommend further changes to clause 28. Legal advice was received recommending that clause 14 should be deleted and the provision simplified (see discussion of clause 14 above, section 4.1). This means that clause 28 (1)(a) should be redrafted, to cover the essential provisions in clause 14.

Legal advice was also received that the provision in clause 28 (1)(c) should be strengthened and clarified, to ensure that the Council retains the ability to suspend or cancel approvals where necessary.

Council staff also recommend minor changes to clause 28 (3), to clarify the drafting of the bylaw.

Staff recommendations

Clause 28 be amended by:

1. In subclause (1) (a), omitting the words “clause 14 applies” and substituting the words “the council has approved an event or road stoppage at the same location, which, in the Council’s opinion, necessitates the suspension or cancellation”.
2. In subclause (1)(c), after the words “road safety”, omitting the word “or” and substituting a comma.
3. In subclause (1)(c), inserting the words “, or for any other reason it considers relevant and reasonably necessary” after the word “environment”.
4. In subclause (2), inserting the words “, or from five working days after the written notice was sent via post or email to the address or email address provided to the Council by the applicant, whichever is earliest” after the words “cancel the approval”.
5. In subclause (3), after the words “other legislation for”, omitting the word “the” and substituting the word “any”.
6. In subclause (3), omitting the words “were the reasons for” and substituting the words “may have contributed to”.
7. In subclause (3), adding the words “of the approval” after the word “cancellation”.

“Tracked changes” to the clause as recommended to be amended

- (1) The council may suspend or cancel an approval, in its absolute discretion, if –
 - (a) ~~clause 14 applies~~ the council has approved an event or road stoppage at the same location, which, in the council’s opinion, necessitates the suspension or cancellation; or
 - (b) any conditions on the approval are not being met; or
 - (c) the council considers the suspension or cancellation necessary to enhance or promote road safety, ~~or~~ provide protection for the environment, or for any other reason it considers relevant and reasonably necessary.
- (2) The suspension or cancellation takes effect from the date the person who was granted the approval receives written notice of the council’s decision to suspend or cancel the approval, or from five working days after the written notice was sent via post or email to the address or email address provided to the Council by the applicant, whichever is earliest. The notice must include the reasons for the council’s decision.
- (3) Suspending or cancelling an approval does not affect the council’s powers to take other enforcement action under this bylaw or any other legislation for ~~the any~~ acts or omissions that ~~were the reasons for~~ may have contributed to the suspension or cancellation of the approval.

Clause 30 Offence and penalty

Clause 30 sets out the fine and legal remedies available for the Council to enforce the proposed bylaw.

Submissions received

Submission 1 expressed the view that \$1,000 is a “ridiculously high fine” and felt that the council should consider warnings and education rather than going straight to fines and prosecution.

Submission 5 pointed out that, as it is currently worded, Clause 30 (1) means any offence would be subject to a fine of \$1000. The submission suggested rephrasing with “a fine up to \$1000” as per the regulations.

Staff analysis

Submitter 1 may not be aware that warnings and education are already an integral part of bylaw enforcement. (<https://www.fndc.govt.nz/Your-Council/Plans-Policies-Bylaws-Projects/Bylaws/Lets-talk-about-bylaws>). The council uses the VADE (Voluntary, Assisted, Directed and Enforced) approach to ensure compliance with bylaws. VADE assumes that most people will be willing to do the right thing if they are given the right information, and escalation to enforcement will only rarely be required. The purpose of Clause 30 is to set out the fines for breaches of this bylaw; wider issues of bylaw enforcement are out of scope.

Under section 22AB (1) (b) of the Land Transport Act 1998, a road controlling authority (i.e. the Council) may prescribe fines, “not exceeding \$1,000”, for the breach of any bylaw made under this section. Council staff consider that the suggestion made by submitter 5 to rephrase the clause to state that the fine is up to \$1,000 is correct and this phrasing will be reflected in the “Related information” box.

Legal advice was received recommending changes to clause 30, to clarify penalties under the bylaw. Since the recommendation (discussed above in section 4.1) is to make the Road Use Bylaw under both the Local Government Act 2002 and the Land Transport Act 1998, the wording of clause 30 should be amended to reflect this.

It should be noted that a person who is convicted of an offence against this bylaw under the Local Government Act 2002 is liable to a fine of \$20,000, which is considerably higher than the \$1,000 under the Land Transport Act 1998. However, the threshold for escalation to court proceedings under the Local Government Act 2002 is very high, and this level of enforcement action is only very rarely required. The infringement notices and penalties available under the Land Transport Act 1998 offer Council compliance staff practical tools for enforcement where education and communication have been unable to resolve the problem.

Staff recommendations

Clause 30 be amended by:

1. In subclause (1), inserting the words “fails to comply with or” after the word “who”.
2. In subclause (1), omitting the words “for which the fine is \$1,000” and substituting the words “under the Local Government Act 2002 and the Land Transport Act 1998 and is liable to the penalties set out in those Acts”
3. In subclause (2), inserting the words “or other enforcement authorities” after the word “council”.
4. In subclause (2), omitting the words “it sees” and substituting the words “they see”.
5. In the “Related information” box, inserting the words “A person who commits an offence against this Bylaw under the Land Transport Act 1998 may be served with an infringement notice in accordance with sections 22AB and 139 of the Land Transport Act 1998 and may be liable to a fine of up to \$1,000. A person who is convicted of an offence against this Bylaw under the Local Government Act 2002 is liable to a fine not exceeding \$20,000.” after the words “Related information”.

“Tracked changes” to the clause as recommended to be amended

- (1) A person who fails to comply with or breaches this bylaw commits an offence ~~for which the fine is \$1,000 under the Local Government Act 2002 and the Land Transport Act 1998 and is liable to the penalties set out in those Acts.~~
- (2) Subclause (1) does not prevent the council or other enforcement authorities from having recourse to other legal remedies, as ~~it sees~~ they see fit, to enforce the provisions of this bylaw.

Related information

A person who commits an offense against this Bylaw under the Land Transport Act 1998 may be served with an infringement notice in accordance with sections 22AB and 139 of the Land Transport Act 1998 and may be liable to a fine of up to \$1,000.

A person who is convicted of an offense against this Bylaw under the Local Government Act 2002 is liable to a fine not exceeding \$20,000.

Breaches of this bylaw may also be offences under the Land Transport (Offences and Penalties) Regulations 1999 with fines of up to \$1,000.

Clause 32 Skating and Cycles Bylaw revoked

Clause 32 states that the Skating and Cycles Bylaw 2007 will be revoked on adoption of the proposed Road Use Bylaw.

Submission received

Submission 1 questioned the revoking of the Skating and Cycles Bylaw and asked where the new bylaw is.

Staff analysis

Submission 1 appears to have misunderstood the scope of the proposed Road Use Bylaw. The submitter has not referred to the Appendix in the Road Use Bylaw Proposal, which sets out where the provisions from previous bylaws and policy are included in the proposed new Road Use Bylaw. The provisions in the Skating and Cycles Bylaw are included in Clause 8(3), Part 8 “related information”, Clause 30, Clause 38, and Part C Schedule 2 of the proposed Road Use Bylaw (Road Use Bylaw Proposal, Appendix, p.23).

Staff recommendations

Staff recommend that no change should be made to Clause 32.

Clause 33 Nuisances Bylaw revoked in part

Clause 33 states that Clause 1106 of Chapter 11 (Nuisances) of the General and Fire Bylaw 1990 will be revoked on adoption of the proposed Road Use Bylaw.

Submission received

Submission 1 questioned the revoking of the Nuisances Bylaw and asked where the new bylaw is.

Staff analysis

Submission 1 appears to have misunderstood the scope of the proposed Road Use Bylaw. The submitter has not referred to the Appendix in the Road Use Bylaw Proposal, which sets out where the provisions from previous bylaws and policy are included in the proposed new Road Use Bylaw. The provisions in Clause 1106 of the Nuisances Bylaw (Chapter 11 of the General and Fire Bylaw) are included in Clause 9 of the proposed Road Use Bylaw (Road Use Bylaw Proposal, Appendix, p.23).

Staff recommendations

Staff recommend that no change should be made to Clause 33.

Clause 35 Other existing permits or approvals for matters regulated under this bylaw

Clause 35 states that where the council has authorised a person to do something regulated by the proposed bylaw, that authorisation will continue; however, it will only continue to be approved for 12 months from the date of the bylaw, and cannot be renewed under this bylaw. If they wish to continue after that date, they must apply for a new approval.

Submission received

Submission 2 said *"I do not accept Clause 35 and believe it places an unreasonable burden on private business."*

Staff analysis

Clause 35 is a provision that simply allows for a reasonable changeover period so that activities previously permitted under older revoked bylaws or parts of bylaws can continue for up to twelve months. This allows plenty of time for people to apply for a new approval under the new bylaw. Since many permits are only issued for 12 months or less already, this will not place significant additional administrative requirements on businesses or individuals. There may be some administrative changes such as updated forms, to reflect that the application is made under a new bylaw. However, this will not be an unreasonable burden. Council staff do not recommend changes to this clause based on this submission.

Council staff recommend minor changes to clause 35, to clarify the drafting of the bylaw. As currently drafted, clause 35 (b) is unclear, and may give the impression that the Council will not grant approvals for activities that are currently permitted. This clarification may address the concerns raised by the submitter.

Staff recommendations

Clause 35 be amended by:

1. In subclause (a), omitting the word "commenced" and substituting the word "commences".
2. In subclause (b), inserting the words "granted under revoked bylaws" after the word "consent".
3. In subclause (b), adding the words "and must be treated as a new application" after the word "bylaw".

"Tracked changes" to the clause as recommended to be amended

If, before the date this bylaw commenced, the council granted a person a permit, authorisation, licence, approval or other form of consent to do any act or thing that is regulated under this bylaw, that permit, authorisation, licence, approval or other form of consent will continue, and be treated, as if it is an approval granted under this bylaw, except –

- (a) the permit, authorisation, licence, approval or other form of consent will only continue until the date that is 12 months from the date this bylaw ~~commenced~~ commences; and
- (b) the permit, authorisation, licence, approval or other form of consent granted under revoked bylaws cannot be renewed under this bylaw and must be treated as a new application.

Clause 36 Roads that have vehicle restrictions or prohibitions

Clause 36 sets out the schedules which list the roads in the district which have vehicle restrictions or prohibitions.

Submission received

Submission 1 expressed concern that Clause 36 (3) would mean that the coffee cart at Long Beach would be prohibited due to the drawing of the diagram. They were in support of the coffee cart as a community meeting place.

Staff analysis

The submission did not speak against the clause itself, but expressed concern that the related list in Schedule 4 would prohibit the coffee cart at Long Beach, Russell. See below for discussion of submissions on the schedules.

Staff recommendations

Staff recommend that no change should be made to clause 36 in response to this submission.

4.4 Submissions on schedules in the draft bylaw

Four submissions were made about the schedules in the draft bylaw (Submissions 1, 2, 4, and 5). Submission 2 made general comments about the schedules, which have been addressed above (General feedback 3.2).

The following section analyses the submissions about specific schedules in the proposed Road Use Bylaw. No submissions were received on Schedule 1 or Schedule 5.

Schedule 2 Roads or parts of roads where turning right or certain vehicles prohibited

Schedule 2 lists the roads or parts of roads where vehicles are prohibited from turning right, where heavy motor vehicles are prohibited, and where wheeled recreational devices are prohibited, under Clause 8 of the proposed Road Use Bylaw.

Submissions received

Submission 4 said that Opito Bay Road should be included in Schedule 2 Part B (No heavy vehicles). They said that because the road is narrow, winding, and undulating, heavy vehicles are a danger to motorists, walkers, joggers, and cyclists, especially as the speed limit is 100 km/h. They felt that the speed limit should be 80km/h. In addition, they observed that the road is in constant need of repair, and some of this damage is due to heavy vehicles on an unsuitable road.

Submission 5 asked whether council had considered the implications of Schedule 2 Part B (No heavy vehicles) where it lists Homestead Road, Kerikeri as “No Heavy Vehicles over 6000kg”. This would seem to prevent goods deliveries to businesses, access for Fire Service vehicles, and access to the one-way system for buses.

Staff analysis

Council staff looked at the suggestion made by Submission 4 to include Opito Bay Road in Schedule 2 Part B (No heavy vehicles). While the submission expressed concerns regarding the risks to public safety and damage to roads attributable to heavy vehicles, it is not appropriate for council to prohibit heavy vehicles from most public roads. In the case of Opito Bay Road, there is no alternative route to access the properties and smaller roads along it. Heavy vehicles are necessary for many personal and business activities, such as transporting goods, moving machinery necessary for construction or maintenance, moving home, etc. Therefore, Opito Bay Road is not an appropriate addition to Schedule 2. Speed limits are outside the scope of the proposed Road Use Bylaw.

Submission 5 raised a question about the implications of prohibiting heavy vehicles over 6000kg from Homestead Road, Kerikeri. There are two locations currently listed in Schedule 2 Part B (No heavy vehicles). In Commerce Street, Kaitaia, the restriction covers the section “Between the intersection of Pukepoto Road and Commerce Street and the intersection of Commerce Street and Redan/Couth Roads”, and states “No heavy vehicles that are bus or stock truck or truck and trailer or semi-trailer combination.” There is an alternate route available to heavy vehicles on Matthews Avenue.

In Kerikeri, Schedule 2 Part B (No heavy vehicles) of the draft Road Use Bylaw lists Homestead Road as “No Heavy Vehicles over 6000kg”. With the one-way system, this would mean that there is no heavy vehicle access to Homestead Road, Fairway Drive, Golf View Road, Amokura Drive, and the smaller roads leading off them, without council approval. It would also mean that buses could not access the one-way system or use the Cobham Road bus stop without council approval. Heavy vehicles would have to use Hone Heke Road to access the northern parts of Kerikeri, unless they obtain council approval.

Clause 8 and Schedule 2 of the draft Road Use Bylaw relate to provisions in the previous Parking and Traffic Control Bylaw 2010.

Schedule 3 of the Parking and Traffic Control Bylaw 2010 listed Homestead Road as restricted to vehicles under 6000kg, except with the written consent of the council ([A125737](#)). Research to date has not identified the precise origin of this weight restriction, and it is likely be historic. When the council adopted the Parking and Traffic Control Bylaw ([17 June 2010](#)), the council also adopted the schedules in the “Attachment C” that was part of the report on this bylaw to the 25th March 2010 meeting. The weight restriction for Homestead Road was not in the

original “Attachment C” for the Council meeting 25th March 2010 ([A2118394](#), NB the schedules were renumbered; in Attachment C the relevant schedule is Schedule 7). Research has not uncovered a Council resolution to add the restriction to the schedules in 2010. It seems that it may have been incorrectly reintroduced or retained from a previous document. It should be noted that there is no signage indicating this weight restriction on site.

Council staff have not identified any issues with heavy vehicles using Homestead Road currently, and have noted that buses and coaches use the one-way system to access the Cobham Road bus stops without incident. In the opinion of staff responsible for roading asset management and transport planning, the weight restriction on Homestead Road, Kerikeri, is no longer applicable and can be removed from Schedule 2.

Staff recommendations

The vehicle restriction on Homestead Road, Kerikeri, “No heavy vehicles 6000kg or over” in Schedule 2 Part B (No heavy vehicles) be deleted.

Schedule 3 Provisions for signs to not constitute a nuisance or danger

Schedule 3 sets out the requirements for signs to ensure that they will not be considered as constituting a nuisance or danger under Clause 11 (2) (h) of the proposed Road Use Bylaw. These requirements allow for people to put up signs that do not present a nuisance or danger, without needing to seek approval from the Council. A non-compliant sign may still be permitted, however this will need to be assessed by the Council on a case by case basis.

Submission received

Submission 5 made three comments on Schedule 3. The submitter:

- pointed out that in Schedule 3 (1), because all the conditions must be met, subclauses (a)-(k) should be edited to include “and”.
- asked whether the Council had considered the implications of specifying particular fonts on roads where the speed limit is greater than 70kmh, as this would exclude most lettering on professionally designed signs as well as all handwritten signs (e.g. such as signage at the Packhouse Market and Makana on Kerikeri Road). The submission noted that while some of these may have been granted under a resource consent, others would not meet the conditions.
- commented, regarding the example of too many signs on a single location, that the Council should consider how to determine which signs should be removed to reduce distraction.

Staff analysis

Submission 5 suggested adding “and” to each subclause in Schedule 3 (1), as all the conditions must be met. Council staff consider that this is an amendment that will improve the clarity of the draft bylaw. Likewise, all the conditions must be met in Schedule 3 (3), and therefore a similar amendment should be also made to Schedule 3 (3).

Submission 5 raised the issue of whether the Council had considered the implications of specifying particular fonts on roads where the speed limit is greater than 70kmh, as this would limit the lettering that can be used on many advertising signs. The intent of Clause 11 (2) (h) and Schedule 3 of the proposed Road Use Bylaw is to ensure that signs and advertising displays will not create a danger or nuisance to road users.

The District Plan contains extensive guidance on signs and lighting. The District Plan rules apply to signage on non-Council owned land, and signs which do not comply require a resource consent. Signs located on Council controlled land are regulated by the Council’s bylaws. In addition, the rules for signs located on or adjacent to state highways are set by Waka Kotahi, according to the [New Zealand Transport Agency Signs on State Highways Bylaw July 2010](#).

The requirements for signs in Schedule 3 are intended to align as far as possible with the District Plan and the requirements from Waka Kotahi, in order to maintain consistent rules. The rules regarding lettering height, fonts, and character limits on roads where the speed limit is greater than 70kmh in Schedule 3 were drafted with regard to the requirements in the District Plan (16.6.1.5) and the NZTA Signs on State Highways Bylaw (First and Second Schedules).

According to the District Plan and Waka Kotahi, signs adjacent to state highways where the speed limit is greater than 70km/h must use a font which is acceptable to Waka Kotahi. However, in the District Plan this font requirement does not apply to local roads where the speed limit is greater than 70kmh. Council staff agree that the list of fonts in Schedule 3 is unnecessarily prescriptive, and recommend that as long as the Council retains the right, at its sole discretion, to remove any sign which is causing a nuisance or hazard, the font restriction may be removed from the draft bylaw.

The third issue raised was the example of too many signs on a single location, and how the Council will determine which signs should be removed to reduce distraction. This is an operational matter. The Council will retain the right to assess which signs constitute a nuisance or hazard on Council-controlled land, at its sole discretion.

As they are currently drafted, Clause 11 and Schedule 3 are unclear. The wording gives the impression that only compliant signs will be allowed, and do not make it clear that a non-compliant sign (e.g. with more words or a larger size) may be permitted by the Council, at its discretion, following the application process specified in the proposed bylaw.

Therefore, staff recommend amendments for clarification, as detailed below in this section, and above under the discussion of Clause 11. These clarifications will not alter the intent of the draft bylaw, but should address the submitter's concerns regarding unreasonably restrictive requirements.

Staff also recommend amending clause 1(k), so that the Bylaw will relate to the relevant provisions in both the current District Plan and the new Draft District Plan (when applicable).

Staff recommendations

Schedule 3 be amended by:

1. In the introduction, adding the words "Signage that does not comply with these requirements must not be put up without written approval from the Council. Approval is at the sole discretion of the Council." after the words "clause 11(2)(h)."
2. In subclauses (1)(a)-(e), omitting the ":" and substituting "; and".
3. In subclause (1)(f), inserting "; and" after the word "ground".
4. In subclause (1)(g), omitting the "." and substituting "; and".
5. In subclauses (1)(h)-(j), omitting the ":" and substituting "; and".
6. In subclause (k)(i), omitting the words "being the areas covered in Chapter 7 of the" and substituting "as defined by the Operative".
7. In subclause (k)(ii), omitting the words "being the areas covered in Chapter 8 of the" and substituting "as defined by the Operative".
8. In subclause (3)(a), omitting the words "and use expressway, helvetica, hyperion, impact, tahoma or univers font:" and substituting "; and".
9. In subclause (3)(b), omitting the ":" and substituting "; and".

"Tracked changes" to the schedule as recommended to be amended

Schedule 3 – Provisions for signs to not constitute a nuisance or danger

Clause 11(2)(h)

Posters, placards, handbills, writings, pictures, or devices for advertising or other purposes that meet the provisions of this Schedule will be treated by the council as not constituting a danger or nuisance under clause 11(2)(h). Signage that does not comply with these requirements must not be put up without written approval from the Council. Approval is at the sole discretion of the Council.

- (1) The poster, placard, handbill, writing, picture, or device must be constructed, fixed, placed and maintained to:
 - (a) not exceed 1 square metre in area or 2 metres for any edge dimension: ; and
 - (b) use a colour combination for the background, wording and legend that does not cause confusion with any of those used for any official road sign or traffic sign: ; and
 - (c) not display more than 6 words, symbols or graphics and no more than 40 characters: ; and
 - (d) use no reflective material: ; and
 - (e) provide no internal or external illumination: ; and
 - (f) have the bottom edge not more than 2.5 metres above road level or ground: ; and
 - (g) contain no moving parts or a dynamic display: ; and
 - (h) not reduce the width of any footpath or other place used by pedestrians to less than 1.5 metres and if fixed, be not closer than 5 metres from the edge of the carriageway, if moveable, be not closer than 2 metres from the edge of the carriageway: ; and
 - (i) be secured against wind gusts: ; and

- (j) not project more than 50mm from a building frontage if it is less than 2.5 metres above ground level: ~~;~~ and
- (k) be more than the following distances from an intersection, permanent regulatory or warning sign, curve (with chevron signing), or pedestrian crossing:
 - (i) 100 metres in the urban environment (~~being the areas covered in Chapter 7 of the~~ as defined by the Operative Far North District Plan); or
 - (ii) 200 metres in the rural environment (~~being the areas covered in Chapter 8 of the~~ as defined by the Operative Far North District Plan).
- (2) On roads where the speed limit is 70km/h or less, the poster, placard, handbill, writing, picture, or device must use lettering and symbols at least 120 millimetres in height.
- (3) On roads where the speed limit is greater than 70km/h, the poster, placard, handbill, writing, picture, or device must:
 - (a) use lettering and symbols at least 160 millimetres in height ~~and use expressway, helvetica, hyperion, impact, tahoma or univers font: ; and~~
 - (b) provide an unrestricted view to drivers for a minimum distance of 180 metres: ~~;~~ and
 - (c) have supports that meet the relevant requirements regarding strength, rigidity and impact performance in section 7.0 of the New Zealand Transport Agency's "Traffic Control Devices Manual – Part 1 General requirements for traffic signs".

Related information

The Traffic Control Devices Manual – Part 1 General requirements for traffic signs can be read at this link: [Traffic control devices manual - Part 1: General requirements for traffic signs \(nzta.govt.nz\)](https://www.nzta.govt.nz/traffic-control-devices-manual-part-1-general-requirements-for-traffic-signs)

Schedule 4 Roads, or parts of roads, where occupation of a stand or stall is prohibited or restricted

Schedule 4 lists the roads, or parts of roads, where occupation of a stand or stall is prohibited or restricted.

Submission received

Submission 1 expressed concern that the coffee cart at Long Beach would be prohibited due to the drawing of the diagram. They were in support of the coffee cart as a community meeting place.

Staff analysis

The provisions in Part B of schedule 4 relating to Long Beach, Russell are as follows:

Part B – Places where type of stand or stall is restricted

(1) *Approvals for stands or stalls in or on the following roads or public places are restricted to those that spend a maximum of 60 minutes at the location, for example, mobile ice cream vendors –*

(b) *In Russell at –*

(ii) *Long Beach in or on any place outside of the car park area*

Start GPS: -35.2570963427531, 174.131095418639

End GPS: -35.2610813938921, 174.140446317826

The Long Beach Coffee Cart has had a site permit to operate in the car park at Long Beach (SITE-1564). The provisions in the schedule restrict stands or stalls at Long Beach “in or on any place outside of the car park area.” Clause 36 (4) states that the maps of shown in Schedule 5 are for ease of reference only, and that the other schedules describe the formal restrictions and prohibitions in the bylaw. Since Schedule 4 allows permitted stands or stalls in the car park area at Long Beach, there is no suggestion that the coffee cart will be prohibited by the proposed Road Use Bylaw. Therefore, the concern expressed by Submission 1 is unfounded.

Staff recommendations

Staff recommend that no change should be made to Schedule 4 in response to this submission.

Appendix – List of submissions received

Submissions on the Road Use Bylaw

Number	Organisation
1	Individual submission
2	Individual submission
3	Riders Sports Depot Ltd
4	Individual submission
5	Individual submission
6	Federated Farmers of New Zealand

In addition, one late submission was received in March 2022, outside the submission dates for the Road Use Bylaw, as part of the submissions regarding the insertion of provisions regulating vehicles on beaches into the Road Use Bylaw. (The numbering is retained from that submission analysis.)

Submission made on the Road Use Bylaw as part of the submissions on the vehicles on beaches provisions to be inserted into the Road Use Bylaw

Number	Organisation
80	Vision Kerikeri