
ORDINARY MEETING

OF

MAKARA/OHARIU COMMUNITY BOARD

AGENDA

Time: 7: 00pm
Date: Thursday, 1 February 2018
Venue: Makara Community Hall, 366 Makara Rd

MEMBERSHIP

John Apanowicz (Deputy Chair)
Christine Grace (Chair)
Judy Liddell
Chris Renner
Wayne Rudd
Hamish Todd

Have your say!

You can make a short presentation to the Councillors at this meeting. Please let us know by noon the working day before the meeting. You can do this either by phoning 803-8334, emailing public.participation@wcc.govt.nz or writing to Democratic Services, Wellington City Council, PO Box 2199, Wellington, giving your name, phone number and the issue you would like to talk about.

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1 Meeting Conduct

1.1 Apologies

The Chairperson invites notice from members of:

1. Leave of absence for future meetings of the Makara/Ohariu Community Board; or
2. Apologies, including apologies for lateness and early departure from the meeting, where leave of absence has not previously been granted.

1.2 Conflict of Interest Declarations

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

1.3 Confirmation of Minutes

The minutes of the meeting held on 7 December 2017 will be put to the Makara/Ohariu Community Board for confirmation.

1.4 Public Participation

A period of at least 10 minutes shall be set aside near the beginning of Makara/Ohariu Community Board meetings to enable members of the public to make statements about any matter on the Agenda for that meeting. The total time set aside for public participation may be extended with the majority agreement of the Board.

1. Trends in Planning Permissions Concerns - Peter Johnston

1.5 Items not on the Agenda

A motion relating to any matter not on the Agenda may be made without notice, by the unanimous resolution of the meeting. The Chairperson shall explain to the meeting why the item is not on the agenda and the reason why discussion of the item cannot be delayed until a subsequent meeting.

2 Oral Reports

2.1 Representation Review Presentation – Anusha Guler

2.2 Roothing Report – David Chick

2.3 Chairperson's Report

3. Reports

PUBLIC PLACES BYLAW REVIEW

Purpose

1. As part of the engagement and consultation process feedback is sought from Makara/Ohariu Community Board on the revised Public Places Bylaw.

Summary

2. The Public Places Bylaw is required to be reviewed every 10 years.
3. The Public Places Bylaw is made under the Local Government Act 2002 and allows the Council to set controls on activities in public places which may cause a nuisance, relate to the use of any public place including the road, cemeteries, beaches and local and regional parks.
4. Staff have conducted a review and found that a bylaw remains the most appropriate way to regulate behaviours in public places.
5. To address issues relating to public places in Wellington, proposed changes to the bylaw include:
 - an extension to the Evan's Bay freedom camping site to accommodate up to 30 extra vehicles (10 large and 20 standard sites);
 - amended powers to manage damage to public places which includes specifying that no person may damage or disturb anything in a public place; and
 - other minor changes for clarity including updating the wording.

Recommendation/s

That the Makara/Ohariu Community Board:

1. Receive the information.
2. Provide feedback or make a submission if required.

Background

6. Public consultation took place from the 30th October and closed on the 7th of December.
7. The Council is keen to know what residents, ratepayers and stakeholders think about the review and the proposed changes. All parts of the bylaw are open to comment regardless of whether changes are proposed.
8. A copy of the Statement of Proposal is attached to this report for further information.

Discussion

9. The following questions were included in the consultation form.

- Do you support the proposed change that the Council may restrict any activity being undertaken in a public place to prevent material damage to the place or a nuisance or harm to any person? (clause 4.1)
- Do you support the Council requiring people to apply for permission for busking/street entertainment? (clause 7)
- Do you support clarifying the bylaw to reflect that informal or casual play in any public place does not require prior notice to Council? (clause 11)
- Do you support the proposed extension of the Evan's Bay freedom camping site? (clause 12 and map in Schedule 1)
- Do you think the balance of providing for an additional 10 large vehicle sites, and 20 standard sites is appropriate?
- Do you support the clarification that it's an offence to disturb or damage naturally occurring things such as trees (as well as retaining the offence for their removal)? (clause 22.3t)
- Are you aware that it is an offence to go eeling in public places and reserves in Wellington? (clause 22.3t)
- Do you support a specific bylaw (in addition to current, general, littering laws) providing that it's an offence to litter cigarette butts? (clause 22.3r)
- Are there any other comments you wish to make on any part of the bylaw?

Next Actions

10. The Public Places Bylaw will be amended taking into account feedback and consultation submissions.
11. The amended bylaw will be taken back to City Strategy Committee in early 2018.
12. If there is any feedback please send to Alice Bates by the end of February.

Attachments

Attachment 1. Statement of Proposal

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Author	Alice Bates, Policy Advisor
Authoriser	Geoff Lawson, Principal Advisor

SUPPORTING INFORMATION

Engagement and Consultation

1. An engagement and consultation plan was developed and adhered to for this review, in accordance with the Council's Significance and Engagement Policy.

Treaty of Waitangi considerations

2. Mana Whenua iwi are being consulted with and have no concerns with the review to date.

Financial implications

Notification: Costs associated with notifying the public of approved changes.

3. Freedom camping: If the proposed extension of the Evan's Bay Marina freedom camping site was adopted, the cost of the proposed realignment and expansion at Evans's Bay freedom camping site could include the following:

4. • Installation of car parking sensors - approximately \$15,000
5. • Landscape screening - approximately \$15,000
6. • New line markings – approximately \$5,000

Policy and legislative implications

Existing Council Policies	Implications
Footpath Management Policy	<ul style="list-style-type: none"> Provisions in the Footpath Management Policy on sandwich boards were considered appropriate to remain in the policy and not become part of the bylaw. Outdoor dining is currently addressed in both the policy and the bylaw. The Policy was also discussed at the bylaw workshops as there are a number of overlapping issues. The underlying design principles of the Footpath Management Policy are due to be reviewed in 2018 alongside the development of the Urban Design Guide.
Wellington Smokefree Action Plan (SWAP) and future Smokefree Strategy	<ul style="list-style-type: none"> The Smoke free Wellington Action Plan (SWAP) and future Smoke free Strategy to be developed in 2018 is considered the most appropriate way to target and communicate wider behaviour change around smoking. The Council is not able to ban smoking in public places with a bylaw as smoking is a legal activity and to do so would present a conflict with the Bill of Rights.
Guidelines for Temporary Signage in Public Places	<ul style="list-style-type: none"> The Guidelines are current the Council's reference mechanism for staff and public guidance on applications, approval and conditions. The bylaw is the enforcement mechanism for offences under the Guidelines. The Guidelines define that is an offence under the Public Places Bylaw to place posters on any Council ornament, statue, structure, building or facility in a public place without the Council's prior approval. The Guidelines were considered during the bylaw review process to be still fit for purpose and up to date. Issues raised by staff were related to enforcement which can be addressed by operational changes.
Commemorative Policies	<ul style="list-style-type: none"> The Council has a number of Commemorative Policies to assist with the management of memorials. The bylaw sets controls on appropriate use of cemeteries. The Policies are the most appropriate way to provide

	guidance for acceptable activities in cemeteries and will be reviewed in due course.
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Legislation	Implications
Local Government Act 2002	The bylaw is made pursuant to the Local Government Act 2002.
Freedom Camping Act 2011	The freedom camping section of the bylaw is made pursuant to the Freedom Camping Act 2011.
Litter Act 1979	The bylaw control relating to the cleaning of fish in a public place is made pursuant to the Litter Act 1979.
Land Transport (Road User Rule) 2004 Section 11.6A Washing of Vehicles	<ul style="list-style-type: none"> A law was passed in August 2017 during the course of this review which made vehicle window washing an offence under the Land Transport (Road User Rule) 2004. The current bylaw provision requiring a permit to work in the road is not legally repugnant and can still exist alongside the new legislation. The Council does not need to enforce window washing with a bylaw and may choose to let the Police directly enforce the behaviour by issuing infringement fines under the Road User Rule.
Land Transport Act 1998	<ul style="list-style-type: none"> An amendment to the Land Transport Act in 2011 updated the bylaw-making powers previously in the Local Government Act 1974 and moved these powers to the Land Transport Act 1998 section 22AB. Relevant sections in this bylaw which are now made under the LTA 1998 section 22AB relate to Traffic in public places, vehicle access and prohibiting vehicles on beaches. A new section has been added to the introduction of the bylaw to clarify that these provisions are made under the LTA 1998.

Risks / legal

7. The proposed bylaw has been legally reviewed and relevant feedback has been considered and incorporated. Officers note that due process has been followed, in accordance with the Local Government Act 2002.

This review relates to the appropriateness of both existing and new controls. Staff consider that the nature of the proposed changes are low risk.

Climate Change impact and considerations

8. There are no specific climate change implications for the Council associated with this policy.

Communications Plan

Once adopted officers will prepare public communications, and will notify submitters and the wider public of the changes made.

Health and Safety Impact considered

There are no health and safety implications for the project at this stage.



Wellington City Council

**Statement of Proposal:
Public Places Bylaw 2017**

Absolutely Positively
Wellington City Council
Me Heke Ki Pōneke

Summary of information

This statement of proposal outlines the review of the Council's Public Places Bylaw.

All bylaws made under the Local Government Act 2002 (the Act) must be reviewed every 10 years. The Public Places Bylaw is due for review by July 2018. The review includes an analysis of current issues by Council staff, followed by a public consultation on the proposed bylaw.

The Public Places Bylaw is made under the Act and allows the Council to set controls on how public places are used and on activities in them that may cause a nuisance. Public places include roads, cemeteries, beaches and local and regional parks.

The Public Places Bylaw also contains bylaws made under other acts, which cover activities including freedom camping, vehicles in public places, litter and advertising signage for commercial sex premises.

The Council has carried out a review and found that a bylaw is still the most appropriate way to regulate behaviours in public places.

To address issues relating to public places in Wellington, proposed changes to the bylaw include:

- an extension to the Evans Bay freedom camping site
- amended powers to manage damage to public places
- other minor changes for clarity.

The findings of the review are summarised in this document. Also included are a summary of changes, the reasons for the changes, and a copy of the proposed bylaw.

The process and timeframe for review

The proposed bylaw review assessment and amendments have been developed by the Council's Policy team through consultation with Council staff and key external stakeholders.

External consultation will be carried out in accordance with the special consultative procedure required under the Act.

Dates (2017)	Activity
5 October	City Strategy Committee considers this statement of proposal and decides whether to send this proposal out for external consultation
30 October-7 December	Period of public consultation
December-February 2018	City Strategy Committee considers the report on all written and oral submissions and decides whether to adopt the proposal bylaw
March-April 2018	The bylaw is adopted and comes into force

Have your say

The Council is keen to know what residents, ratepayers and stakeholders think about the review and the proposed changes. You can comment on any part of the bylaw.

To make a submission, go to our website wellington.govt.nz/haveyoursay, email your submission to policy.submission@wcc.govt.nz, or complete the attached submission form and send it to Freepost 2199, Public Places Bylaw Review 2017, PO Box 2199, Wellington 6140.

You can get more copies online at wellington.govt.nz/haveyoursay, the Service Centre, libraries, by emailing policy.submission@wcc.govt.nz or phoning 04 499 4444.

Public consultation starts 30 October and closes 5pm, 7 December 2017.

1. Introduction and reason for the proposal

This statement of proposal outlines the review of the Council's Public Places Bylaw.

All bylaws made under the Local Government Act 2002 (the Act) must be reviewed every 10 years. The Public Places Bylaw is due for review by July 2018. The review includes an analysis of current issues by Council staff, followed by public consultation on the proposed bylaw.

The Public Places Bylaw is made under the Act and allows the Council to set controls on how public places are used and on activities in them that may cause a nuisance. Public places include roads, cemeteries, beaches and local and regional parks.

The Public Places Bylaw also contains bylaws made under other acts, including freedom camping (Freedom Camping Act 2011), vehicles in public places (Land Transport Act 1998), litter (Litter Act 1979) and advertising signage for commercial sex premises (Prostitution Reform Act 2003).

The Council has reviewed the bylaw and found it is still the most appropriate way to regulate behaviours in public places.

To address issues relating to public places in Wellington, proposed changes to the bylaw include:

- an extension to the Evans Bay freedom camping site
- amended powers to manage damage to public places
- other minor changes for clarity.

The Council has proposed amendments to the Public Places Bylaw in order to:

- ensure the bylaw is fit for purpose
- ensure the offences and breaches of the bylaw are clearly identifiable
- update the meaning and interpretation of definitions and a number of provisions
- make minor clarifications and remove outdated references.

This document contains:

- background information
- the process and proposed timeframe for proposed bylaw amendments
- bylaw review proposals
- New Zealand Bill of Rights Act implications (NZBORA)
- the proposed draft bylaw.

2. Background

This section describes the Public Places Bylaw and review requirements.

The Public Places Bylaw provides the Council with the powers to:

1. set controls to manage the perceived problems from activities or uses that give rise to nuisance and inappropriate behaviour which impact on public safety
2. control the perceived problems from activities that obstruct and damage to public places
3. provide controls on the use of cemeteries, beaches, reserves, local and regional parks
4. manage trading in public places.

The bylaw establishes the Council's mechanism for decision-making.

The bylaw was last reviewed in July 2008 and is due for its 10-year statutory review by 31 July 2018.

The Freedom Camping section of the bylaw was last amended in part (but not reviewed) in 2015.

3. Review discussion and proposals

The following discussion reflects analysis of the bylaw by Council staff. The public consultation process is designed to bring any public concerns or suggestions into the review process.

3.1 Is the bylaw still appropriate under the Local Government Act 2002?

The Council finds that a bylaw is still appropriate, is required to enforce any issues in public places, and is necessary to allow the Council to manage any issues in the future.

The bylaw is made under the principles of the Local Government Act 2002 section 145, which sets out the safe and appropriate use of public places. This allows the Council to promote a safe environment for the public.

Without the bylaw, the Council would be unable to authorise its staff and the Police to carry out enforcement to reduce nuisance in public places, which would threaten public safety. Therefore, the Council does not recommend letting the bylaw lapse and has reviewed the bylaw to implement a new version before the statutory expiry date.

Proposed changes

Statutory review

A 10-year statutory review is required to keep a bylaw in place. To keep the bylaw as a regulatory tool, the Council must review the existing bylaw to decide if it is still fit for purpose.

Is the bylaw the most appropriate way of addressing the problem?

Yes - the bylaw is the most appropriate way of enabling the Council to enforce issues related to ensuring public safety and protecting the public from nuisance.

The bylaw is an instrument of delegated legislation with legal standing, which the Council can use to pursue prosecutions for more serious offending. Without a bylaw, the Council would not be able to recover costs through the court process for offences such as damage to public property, or enforce the prohibition of behaviours that may be dangerous or offensive in a public place.

The bylaw also allows the Police to act when individuals are causing a nuisance in a public place or issue a notice for offences under the bylaw.

The bylaw also allows for infringement fines to be issued for freedom camping offences, littering, and some traffic offences.

The review has identified the following proposed changes.

1. Changes to address issues around damage to public places

Issues have been raised about damage being caused to public places (including grass berms, sportsfields, and unauthorised digging of tracks in parks and reserves). Concerns were raised that the current bylaw does not clearly manage this behaviour. Currently the bylaw gives the impression that people engaging in casual sports on Council grounds need to obtain permission. In some instances however casual play can damage a field or lead to more than one group wanting the same space.

Changes are proposed to address this issue while also ensuring that the bylaw is within its Local Government Act purpose (of managing nuisance behaviour and maintaining public health and safety) and is drafted no more broadly than is necessary.

Proposed amendments

Three changes are proposed to the bylaw to address damage:

a. Managing public places

The **current bylaw** enables the Council to prevent *"any activity whatsoever being undertaken that is likely to damage the place or harm a person or is otherwise undesirable, disorderly or dangerous"*. (clause 3.1)

The **new provision** no longer refers to *"undesirable, disorderly or dangerous"* behaviour (which is considered too broad) and enables the Council to restrict any activity being undertaken in a public place to *"prevent material damage to the place or a nuisance or harm to any person"*. (clause 4.1)

b. Disturbing, damaging or removing naturally occurring things

The **current bylaw** (clause 23.1) only prohibits the removal of any thing, such as soil, sand, gravel, rock, flora, fauna etc, and does not clearly specify that those things also cannot be **disturbed** or **damaged** within the park or public place.

The addition of the words "disturb" and "damage" in new clause 22.3t. clarifies that no public place may be deliberately damaged, and words such as "flora and fauna" have been replaced with plain English equivalents.

Current bylaw

No person may remove from a public place any soil, sand, gravel, rock, flora, fish, fauna, or any naturally occurring thing not previously left by that person without having obtained the prior approval from the Council. (clause 23.1)

New provision

No person may disturb, damage or remove from a public place any soil, sand, gravel, rock, plants, fish, animals (including eels), or any naturally occurring thing without having obtained prior written approval from the Council. (clause 22.3t.)

c. Preventing damage - general

- A new provision is proposed to specify that it is an offence to disturb or damage land or Council property without prior written approval from Council. (clause 22.3u.)

These changes are considered the most appropriate way of addressing the need to manage and protect our public spaces, while still enabling their enjoyment by members of the public. The proposed amendments do not give rise to NZBORA implications.

2. Sports and games

The existing provisions around managing public places for sports, games and other organised events are drafted very broadly and require prior Council notification for not only organised games and sports events, but also for any other group activity (see clauses 22.1 to 22.3 of the current bylaw). The proposed revised provisions (clauses 11.1 and 11.2) have been drafted to reflect that informal or casual play does not require prior Council approval.

The aim is to clarify the intent around informal or casual play. All people using Council grounds should be aware of clause 3.1 that it is an offence to damage the ground. If there are any questions or doubts, casual players can contact the Council to check it.

This change is considered the most appropriate way of managing access to public spaces - balancing the need to manage demand for and access to public spaces against the expectations of most Wellingtonians that they can access Council public spaces without prior notification to Council. The proposed amendment does not give rise to NZBORA implications.

3. Cigarette butt litter

Although it is currently an infringement offence to dump any form of litter (including cigarette butts) in Wellington public places, cigarette butt litter remains an issue in some CBD areas and has environmental impacts eg when the butts get into the drains and waterways.

A statement that it is an offence to deposit a cigarette butt outside of a provided receptacle in any public place (new proposed clause 22.3r) highlights this offence. The Council's existing Smokefree Wellington Action Plan takes an educational approach to reducing smoking prevalence in Wellington.

The proposed amendment does not give rise to NZBORA implications.

4. Changes to the size of the Evans Bay freedom camping site

The perceived problem is that there are not enough freedom camping sites within Wellington City to meet demand. The Council proposes to increase the capacity at a popular freedom camping site at Evans Bay by up to 30 spaces.

Is a bylaw made under the Freedom Camping Act 2011 the most appropriate way of addressing the problem?

The Freedom Camping Act 2011 is legislation put in place by the government that delegates the power to allow local authorities to make bylaws to regulate the use of freedom camping sites.

The Council can only make bylaws prohibiting or restricting freedom camping in specific public places if it is necessary to:

- protect the area
- protect the health and safety of people who may visit the area, or
- protect access to the area.

The Council has identified that the proposed bylaw amendment is necessary to help manage these issues.

Wellington City Council first introduced a bylaw made under the Freedom Camping Act in 2013.

An Amendment was last made to the bylaw in 2015 to restrict camping to self-contained vehicles only and to reduce the size of the most popular site, Owhiro Bay, due to overcrowding.

Protecting access to the area

The Council has monitored freedom camping sites across the region and has noted the popularity of the Evans Bay site. As it is part of an existing marina car park it is an ideal site to expand, particularly for larger camping vehicles that cannot easily park in smaller spaces. An extension of this site would provide a better configuration and cater for all sizes of self-contained camping vehicles.

Expanding this site by up to 30 parks will recoup sites the Council has recently lost, and cater for the projected growth in freedom camping.

New Zealand Bill of Rights Act 1990 (NZBORA) implications

Everyone lawfully in New Zealand has the right to freedom of peaceful assembly (section 16), association (section 17), and movement (section 18). The Freedom Camping Act 2011 provides a specific statutory framework for local authorities to manage camping by only restricting these rights in areas where it is justified and necessary.

The Council considers that by proposing to extend the site, the degree of encroachment into public space would only present a very small additional restriction of public freedom and does not unlawfully interfere with the rights of people to move and reside in Wellington. The restrictions on freedom camping are reasonable under the Freedom Camping Act in the interests of protecting public places and visitors.

Additional freedom camping information

Demand for freedom camping is increasing

- demand for 1-2 night stays in Wellington by freedom campers will continue
- the average demand is for 55 vans per night: 30 non self-contained and 25 self-contained
- demand peaks at around 70-100 camping vehicles per night during November-March

Forecast peak demand for growth is based on three scenarios:

- low growth at 2 percent - an extra 40-50 vans per night
- medium growth at 4 percent - an extra 50-60 vans per night
- high growth - an extra 70-80 vans per night

The current proposal is based on the medium-growth scenario, which is consistent with future tourism growth for New Zealand.

Wellington has recently lost 40 self-contained parks as a result of the closure of the Waterfront Motor Park. This was set up temporarily in 2011 for the Rugby World Cup.

Sites considered

Two types of controls were considered to address the issue of increasing capacity across the city. Staff considered whether sites were either suited for either a permanent expansion or for managing seasonal overflow.

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Recommended

Evans Bay	<p>The existing site has 45 freedom camping spaces. It is a well-established, highly desirable coastal site at a marina car park, close to the central city, the airport, and other city attractions.</p> <p>There are good public transport connections within walking distance to the Kilbirnie shops, pool, library and other facilities.</p>
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Not recommended

Owhiro Bay/Te Kopahou	<p>This site previously had 46 freedom camping spaces.</p> <p>The bylaw was amended in 2015 to restrict the site to 16 spaces due to issues with overcrowding, which restricted the public's access to the site.</p> <p>A change to the capacity of this site would likely raise similar public access issues and is not recommended.</p>
Kilbirnie Park (former Bowling Club)	<p>This site was considered as potentially suitable for seasonal overflow.</p> <p>This site presented too many operational challenges to become a successful freedom camping site, as it would require significant capital investment to upgrade the area to make it suitable for camping.</p> <p>Note that it is currently a prohibited camping area under the Suburban Reserves Management Plan.</p>
Happy Valley	<p>In 2015, a site at the northern end of Happy Valley Park was considered for its suitability for a camping ground. The public consultation process, however, showed strong local opposition.</p> <p>This site would also require significant capital investment to upgrade the area to make it suitable for freedom camping.</p> <p>It is also a site where camping is currently prohibited under the Suburban Reserves Management Plan.</p> <p>It is not proposed that there should be any attempt to re-consult over this location as a potential site.</p>
Princess Bay	<p>There is potential for seasonal overflow parking at this site. The available area is small and has limited facilities.</p> <p>Due to the narrow configuration of the site there is a strong possibility that campers could dominate the use of the area and restrict the public's access to the site.</p> <p>It is another site where camping is prohibited under the South Coast Management Plan.</p>

Lyall Bay Road Reserve	<p>A small site was investigated between the main road and building on the road reserve. There is potential for seasonal overflow camping, as it is also a small site with limited facilities.</p> <p>Camping is currently prohibited at this site under the South Coast Management Plan.</p> <p>This site has also been identified for alternative use under the Resilience Project so is not recommended to pursue this as a freedom camping site.</p>
Freyberg Car Park (at back of pool)	<p>Small site, central location, and walking distance to the central city. Scenic and nice amenity. Has power for five vans.</p> <p>This site is not recommended due to the potential impact on the local residents and nearby amenities.</p>

Summary

Smaller sites with the potential for managing seasonal overflow are not recommended as solutions to managing capacity long-term. Any sites where camping is currently prohibited under reserves management plans would require a change to make a bylaw allowing freedom camping on reserve land. The current approach is to prohibit freedom camping in reserves unless permission has been granted for education purposes. Therefore, sites where camping is prohibited under a reserves management plan are unsuitable at this stage.

Extending the Evans Bay site by up to 30 camping spaces will help manage Wellington's projections for peak demand by 2020.

New Zealand Bill of Rights Act 1990 implications

The Council considers that the proposed bylaw is not inconsistent with NZBORA, and does not unlawfully interfere with the rights of people to use a public place. The restrictions are reasonable in the interests of protecting public places and the environment.

Provisions made under other enactments

The following provisions are considered by the Council to be the most appropriate way of addressing the following issues:

Act	Issue
Local Government Act 2002	All other issues relating to causing a nuisance in a public place
Freedom Camping Act 2011	Freedom camping activities, restrictions, and prohibitions
Litter Act 1979	Cleaning any fish in a public place
Land Transport Act 1998	Prohibiting vehicles on beaches, vehicles causing an obstruction in a public place, vehicle access
Prostitution Reform Act 2003	Prohibiting advertising relating to sexual premises and services

Proposed Wellington City Council Public Places Bylaw 2017 | Wahi ā-iwi 2017

The Public Places Bylaw is consistent with the NZ Bill of Rights Act 1990 and does not affect iwi customary rights. The Council is committed to protecting fundamental rights and freedoms such as the right to freedom of expression and freedom of peaceful assembly.

1. Purpose

This part of the consolidated bylaw regulates a diverse range of activities. It seeks to protect the public from nuisance, minimise the potential for offensive behaviour, maintain public health and safety and manage land under the control of the Council to enhance the public's well-being and enjoyment of public places.

This bylaw is made under sections 145 and 146 of the Local Government Act 2002 and the following Acts:

- 1) section 10 of this bylaw is made under section 12 of the Prostitution Reform Act 2003;
- 2) section 12 of this bylaw is made under section 11 of the Freedom Camping Act 2011;
- 3) sections 17, 18 and clause 22(o) are made under section 22AB of the Land Transport Act 1998; and
- 4) clauses 22.3 (q) and (r) are made under section 12 of the Litter Act 1979.

2. Definitions

Beach means the foreshore (including the inter-tidal zone above the mean low water spring) and any area above mean high water springs that can reasonably be considered the beach environment including areas of sand, pebbles, shingle, dunes or coastal vegetation typically found in a marine environment.

Cable Car Lane means the public place connecting Lambton Quay to the Cable Car terminal (excluding the balcony extending at 6 Cable Car Lane).

Cemetery means any land held or otherwise set aside for the burial of the dead that is vested in or under the control of the Council from time to time.

Certified self-contained vehicle (CSC vehicle) has the same meaning as defined by NZS 5465.

Commercial sex premises means premises used or intended to be used primarily for exposing, selling or hiring goods or services related to sexual behaviour. To avoid any doubt this includes strip clubs, strip bars, rap parlours, peep shows, lap dancing bars, escort agencies, adult bookshops, adult video shops, adult cinemas, sex shops; but does not include hospitals, health care services, chemists, community welfare facilities, or premises where therapeutic massage is offered and which are not brothels in terms of the Prostitution Reform Act 2003.

Freedom camp means to camp (other than at a camping ground) within 200m of a motor vehicle accessible area or the mean low-water springs line of any sea or harbour, or on or within 200m of a formed road or a Great Walks Track, using 1 or more of the following:

- (a) a tent or other temporary structure;
- (b) a caravan; and
- (c) a car, campervan, house truck, or other motor vehicle.

Freedom camping does not include the following activities:

- (a) temporary and short-term parking of a motor vehicle;
- (b) recreational activities commonly known as day-trip excursions; and
- (c) resting or sleeping at the roadside in a caravan or motor vehicle to avoid driver fatigue.

Freedom camping provisions will not be used against the homeless.

Sign means a board, including any frame or other support device such as a notice board for displaying posters or notices announcing future events or advertising for election purposes, but excludes sandwich boards.

Nuisance has the same meaning as section 29 of the Health Act 1956 and includes a person, animal, thing or circumstance causing unreasonable interference with the peace, comfort or convenience of another person whether or not that person is in a public place.

Number includes any alphabetic symbol attached to the number allocated by the Council.

Public place means a place that, at any material time, is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from that place; and includes and hovercraft, ship or ferry or other vessel, train or vehicle carrying or available to carry passengers for reward.

Reserves management plan has the same meaning as “management plan” found in section 41 of the Reserves Act 1977.

Street appeals means coordinated and organised events by organisations who ask for, or seek, any subscription, collection or donation from members of the public, and usually involves more than one collection person operating at the same time.

Street performance means a musical, dramatic or other performance involving musical, theatrical or circus performance skills including busking, playing musical instruments, dancing, singing, clowning or juggling, pavement art, poetry or doing other acts of a similar nature.

Trading means the act of selling or trading, or offering to sell or trade goods or services, with or without use of a vehicle.

Vehicle access means any section of legal road that facilitates the access of vehicles from

private property to the formed carriageway, and includes that part of a driveway on private property that impacts on the point of entry onto or from legal road.

3. Council may set conditions

- 3.1 The Council may, from time to time and subject to the provisions of this bylaw, prescribe conditions by resolution, by way of licence or otherwise) for access to any public place.
- z The Council may by resolution, or by way of a licence set conditions for the use of a public place.

4. Restrictions affecting public access

- 4.1 The Council may restrict any activity being undertaken in a public place in order to prevent material damage to the place or a nuisance or harm to any person.
- 4.2 The Council may close any public place at any time for the purpose of maintaining or improving it, or for holding sports matches or any other performances, or for any other purpose that the Council considers necessary.
- 4.3 Any authorised officer under this bylaw may exclude or remove any person from a public place:
 - a. who has acted in a manner that is contrary to conditions of use set by the Council;
 - b. who is not bona fide using the place for its normal intended purposes;
 - c. who has contravened any of the provisions of this Bylaw; or
 - d. for any good and sufficient reason relating to the efficient, reasonable, and fair management of the place.

Section One: Public Places

5. Fees and charges

- 5.1 The Council may set fees and charges, either temporarily or permanently, where payment is a condition for access to, or use of any public place.

6. Assembly

- 6.1 To minimise disruption to pedestrians and other users, the organiser of any event, demonstration, competition, parade or procession that is likely to interfere with traffic or pedestrian thoroughfare in a public place shall notify the Council as soon as reasonably practicable prior to the event so that the Council may arrange any necessary traffic management.

7. Activities requiring written approval

- 7.1 Written approval from the Council is required for street appeals, charity fundraisers, street performances and busking. The Footpath Management Policy provides information on how to obtain approval for these activities.

8. Display of articles and trading

- 8.1 Written approval from the Council is required for retail displays, kiosks and stalls.
- 8.2 Council may consider and grant at its discretion licences for:
- open air markets;
 - outdoor dining;
 - trading in a public places;
 - any seating and furniture; and
 - any promotional signage associated with trading activities.
- 8.3 The Council may prescribe conditions for any licence and revoke any licence at any time.

9. Signage

- 9.1 Written approval is required for signage in public places. Approval may be subject to Council setting conditions including placement, fees and the duration a sign may be erected.
- 9.2 Any sign erected without approval must be removed within 1 hour of being instructed to do so, or as otherwise specified by the Council.
- 9.3 Posters or notices displayed on notice boards shall be covered or removed within 24 hours of the end of the event, or such other time as approved by the Council.
- 9.4 Responsibility for compliance with this bylaw lies with the person who displayed the poster or notice, or the organiser, promoter or person in charge of the advertised good, service or event or, in the case of an election, the candidate or a delegate of that candidate.

10. Advertising for commercial sex premises and services

- 10.1 Written approval is required from the Council for signage that advertises any commercial sex premise or commercial sex service that will be visible from any road or public place.
- 10.2 The following criteria may be considered when assessing an application for permission:
- the extent to which the signage depicts or implies sexual activity;
 - the extent to and manner in which the sign depicts nudity (the depiction of nudity is not encouraged);
 - the size, number and cumulative effects of the signage; and
 - the extent to which words and/or images could be offensive. (The Council will decline applications for signage that are found to be offensive.)

Section Two: Beaches, Cemeteries, Parks and Reserves

11. Sports and games

- 11.1 The organiser of any game, sporting activity or group activity (excluding informal or casual play) proposed to take place in any part of a public place must notify the Council as soon as reasonably practicable prior to commencing the activity.
- 11.2 The Council may set conditions for use of the public place such as to manage the potential for any damage caused by the activity and minimise conflict between users.

12. Freedom Camping

Restricted and prohibited areas as outlined in Schedule One

- 12.1 A person must not camp in an area in which freedom camping is prohibited, as identified in Schedule One: Restricted and prohibited areas for freedom camping in Wellington, unless they have prior written consent from the Council.
- 12.2 A person may camp in an area in which freedom camping is restricted, as identified in Schedule One: Restricted and prohibited areas for freedom camping, but must comply with the specific restrictions listed for that site unless they have prior written consent from the Council that waives these restrictions.

Areas where camping is permitted

- 12.3 Freedom camping is permitted in any local authority area in Wellington City, unless it is restricted or prohibited in an area under this bylaw or any other enactment.
- 12.4 Camping is prohibited on all land managed under the Reserves Act 1977 and Wellington Town Belt unless allowed in a reserve management plan. Campers are advised to camp in the restricted areas identified in

Schedule One of this bylaw. For clarity, the Freedom Camping Act's non-site-specific offences do apply to Council reserves, and any site-specific restrictions or prohibitions on Council reserves to be administered under this bylaw must be included in Schedule One of this bylaw.

Prior written consent from the Council

- 12.5 A written application is required two weeks in advance of the planned date for consent to camp in a prohibited area.
- 12.6 A written application is required two weeks in advance of the planned date for consent to camp in a restricted area.
- 12.7 Freedom camping in Wellington is restricted or prohibited as illustrated and described within the following aerial photographs: Maps - Schedule 1: Restricted and Prohibited Areas for Camping (11MB PDF)

Approval process

- 12.8 Written applications will be considered for camping in public places for special purposes. Consent may be granted at the Council's sole discretion, with or without conditions. Applications to camp in accordance with clauses 12.1 and 12.2 above must be made in writing and provide the following information:
 - a. the location;
 - b. the duration of occupation;
 - c. the number of people;
 - d. the provisions to ensure that there is no damage or effects to the public place; and
 - e. the reason why the camping is proposed.

16 Wellington City Council

13. Life-saving equipment

- 13.1** The Council may at its discretion authorise on any beach any volunteer life-saving club to provide and use life-saving appliances and boats, and erect and remove any danger notices as necessary.

Cemeteries

- 14.1** The purchaser of a plot or their representative must keep all fences, enclosures, tombstones, vaults, headstones and other monuments on any plot in proper order and repair.
- 14.2** The Council may from time to time set specifications for memorial hardware and structures that may be installed on plots.
- 14.3** Any memorial items, hardware or structures that do not comply with the Council's specifications that have fallen into a state of decay, become broken or pose a hazard may, at any time, be removed from the cemetery by the Council.

15. Conduct in cemeteries

- 15.1** Written permission must be obtained before installing a fence, tombstone, vault or other monument on any plot; prior to any interment or disinterment and carrying out any work in a cemetery.

Section Three: Property and Access

16. Road and property identification

- 16.1 The Council may require from time to time numbering to be painted or affixed on a building, the name of the road, private road or public place to which it has frontage.
- 16.2 The owner of a property, building or group of buildings forming part of a complex must mark the property with the number allocated by the Council, regardless of any other identification a property or building may have. The marking shall be:
 - a. at least 50mm in height and
 - b. of a colour in contrast to its background and
 - c. easily visible from the road to which it has frontage and
 - d. maintained by the owner in a way that easily identifies the property at all times.
- 16.3 Clauses 16.1 and 16.2 do not apply to property without buildings, and property not allocated a number by the Council.
- 16.4 When the Council advises the owner of a property that an address needs to be displayed or changed, the owner must arrange to do so within 15 working days, or as otherwise instructed.

17. Traffic

- 17.1 The Council may under the provisions in this bylaw or under the Traffic Bylaw impose any controls relating to vehicles in a public place to give effect to the proper use and enjoyment of the place.
- 17.2 If instructed to do so by an authorised officer, any person must move a vehicle in or from any public place where that vehicle may be impacting upon the safety, convenience and enjoyment of the public using that place.

- 17.3 Any vehicle, whether attended or not, in breach of this bylaw may be removed by the Council in accordance with the Vehicle Removal provisions in Part 7: Traffic of the Consolidated Bylaw.

18. Vehicle access

- 18.1 Prior written approval must be obtained before any person may construct, repair, remove, widen or narrow any vehicle access way.
- 18.2 When considering an application for vehicle access, the Council will take into account what is reasonably necessary to protect the grass berm from damage and ensure the safe and convenient use of the road by pedestrians and vehicles.
- 18.3 Conditions may be set by way of licence or written permission for the construction of a vehicle crossing which may include:
 - a. use of materials and dimensions;
 - b. timeframe for completion;
 - c. a requirement that the applicant pay a cash deposit or bond of up to 150% of the estimated cost of work as a guarantee the work is completed to the satisfaction of the Council and/or against any damage to Council's property;
 - d. a requirement that the applicant arranges the construction work to meet the approved conditions and pays all associated costs; and
 - e. a requirement that all construction work be carried out in compliance with the Wellington City Council Code of Practice for Working on the Road and/or with specific regard to any relevant NZTA guidelines in force within the Council's jurisdiction.

18.4 The Council may by notice require the property owner which the vehicle crossing provides access to, to repair, reconstruct, renew or remove such access to the satisfaction of the Council.

18.5 The Council may remove or alter any work located on the road constructed without prior written approval or contrary to the terms of written approval. Costs may be recovered from the person who undertook the work, or the property owner serviced by the vehicle access.

19. Encroachments

19.1 Any property owner ('the encroacher') may be authorised by the Council to occupy a public place controlled by the Council ('an encroachment'). The Council may at its discretion authorise an encroachment by granting land owner consent, and if required, an encroachment licence to the applicant in accordance with any relevant Council policy.

19.2 The Council may consider whether the proposed encroachment will compromise the primary use of the road to facilitate free pedestrian and traffic movement, and/or unreasonably interfere with a property owner's right of access to any road across the frontage between the road and the private property.

19.3 An encroachment licence may authorise the occupation of the encroachment area for parking, boundary marking, airspace, subsoil or access structures, for the maintenance or beautification of the encroachment area, or any other purposes the Council considers appropriate.

19.4 An encroachment licence issued by the Council shall be subject to such conditions that the Council considers appropriate, at the sole discretion of the Council.

19.5 The encroacher must own the land adjoining or in the vicinity of the encroachment area that benefits from the encroachment and continue to own this land for the period of the encroachment.

19.6 Any subsequent encroacher must complete a new encroachment licence with the Council in order to continue the occupation of the encroachment area.

20. Building work and excavations

20.1 Prior written approval of the Council is required before any person carries out building work or excavations on a public place.

20.2 Council approval may be subject to conditions, including a requirement that the applicant pay a cash deposit or bond of up to 150% of the estimated cost of work as a guarantee the work is completed to the satisfaction of the Council and/or against any damage to the Council's property. The estimated cost of work shall be approved by the Council.

20.3 The Council may remove or alter any work building or excavation work undertaken without prior written approval or contrary to the terms of written approval. Costs may be recovered from the person who undertook the work, or the person for whom the work was being done.

20.4 If any damage occurs to the place, the Council may require it to be reinstated.

21. Fences, walls and stability of land

21.1 The Council may require the owner of any land which has no fence, wall or retaining wall adjacent to a public place to erect a fence, wall or retaining wall if the Council considers that this is necessary for safety or other reasons relating to the use or administration of the public place.

21.2 Where any fence, wall, retaining wall or land adjacent to a public place is in a condition or state of disrepair which could cause injury to persons or damage to a public place, the Council may give notice requiring the owner to repair, remove or replace the fence, wall or retaining wall, or make the land safe.

22. Offences

22.1 Every person who does not comply with any requirement or condition, or acts contrary to any prohibition made in this bylaw, or made by resolution, commits an offence against this bylaw.

Public places

22.2 No person may:

- a. in any public place wilfully obstruct, disturb, annoy or interfere with any person in their use or enjoyment of a public place;
- b. use any public place in contravention of the conditions set by the Council regulating the use of that place;
- c. use a public place after closing hours;
- d. ride a skateboard in a manner which causes a nuisance or damage to a public place. (Skateboards and roller-skates may be used in a public place except where signage prohibits it);
- e. verbally advertise on behalf of, or distribute in any public place any handbills, writings or pictures of which the primary purpose, whether explicitly or implicitly, is to advertise, identify or inform the public of any commercial sex premise or commercial sex service;
- f. place posters on any Council ornament, statue, structure, building or facility in a public place without the Council's prior approval;

- g. smoke in close proximity to hazardous substances in any public place; or
- h. smoke in Cable Car Lane.

Beaches, Cemeteries, Parks and Reserves

22.3 No person may:

- i. install a fence, tombstone, vault or other monument on any plot, or carry out any interments, disinterments or other work in a cemetery without the prior written approval from Council;
- j. hunt game in a public place;
- k. carry or discharge a firearm, catapult or any other weapon in a public place;
- l. discharge a firework in a public place;
- m. obstruct any member of a life-saving club carrying out life-saving activities;
- n. use, move or damage any appliance or signal provided by the Council or by any volunteer life-saving club, at any beach, except for the purpose of saving life or with the approval of the Council or the club;
- o. operate or drive a vehicle on a beach;
- p. gather food or firewood in a public place without prior permission from the Council;
- q. clean or prepare any fish in a public place;
- r. deposit a cigarette butt outside of any provided receptacle in any public place;
- s. play a sport or game in a public place, if contrary to any notice, or if expressly forbidden to do so by an authorised officer; or enter in or remain on any part of a public place marked out as a playing area for a sport or game while the sport or game is in progress;

- t. disturb, damage or remove from a public place any soil, sand, gravel, rock, plants, fish, animals (including eels), or any naturally occurring thing without having obtained prior written approval from the Council; or
- u. disturb or damage land in a manner which is injurious or causes a nuisance to any person or causes material damage to land or Council property without having obtained prior written approval from the Council.

Property and Access

22.4 No person may:

- v. drive, stop, stand or park any vehicle in any public place other than on any roadway or in any car park provided for the purpose, and then only in accordance with any controls or restrictions imposed by the Council;
- w. drive, stop, stand, park or leave any vehicle, bulk bin, container or other object in a public place in such a manner as to obstruct the normal or safe entry to, or exit from, or movement of other vehicles, or pedestrians within a public place; or
- x. put up any structure of any kind or undertake an excavation in a public place without prior written approval of the Council, and then only in compliance with any condition under which such approval may be granted.

23. Penalties

23.1 Freedom Camping

A person in breach of section 12 of this bylaw commits an offence under the Freedom Camping Act 2011 and is liable to a fine not exceeding \$200.

23.2 Litter

A person in breach of clause 22(q) of this bylaw commits an offence under the Litter Act 1979 and is liable to a fine not exceeding \$400.

23.3 Land Transport

A person in breach of sections 17,18 and clause 22 (o) of this bylaw is liable to the fine in the Land Transport Act not exceeding \$500.

23.4 Local Government Act

A person who is convicted of an offence under this bylaw is liable to a fine not exceeding \$20,000.

23. Exemptions

- 23.1 The prohibitions and restrictions contained in this part of the bylaw do not apply to any Council agent or officer when engaged in the performance of their regular duties.
- 23.2 An Iwi's customary rights are not affected by this bylaw.

Schedule one:
restricted and prohibited areas for camping

Camping in Wellington is restricted or prohibited as illustrated and described within the following aerial photographs.

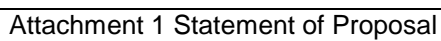












RESOURCE CONSENT APPLICATIONS AND APPROVALS FOR 16 NOVEMBER 2017 TO 17 JANUARY 2018

Purpose

1. In accordance with an agreement reached with the Makara/Ohariu Community Board, the purpose of this report is to advise the Board of all resource consents lodged, along with decisions made by Officers acting under Delegated Authority, on Land Use and Subdivision resource consent applications.

Recommendation

That the Makara/Ohariu Community Board:

1. Receive the information.

Background

2. This report advises the Community Board of resource consents decisions made during the period 16 November 2017 to 17 January 2018.

Discussion

3. For the period from 16 November 2017 to 17 January 2018, there were four applications lodged with the Council under delegated authority.

<i>Service Request</i>	<i>Address</i>	<i>Applicant</i>
401650	588 Makara Road, Makara	Lynne Carter, Dean Cater & Gault Mitchell Trustee Services Ltd.
Land use consent for a second dwelling.		
398124	79 Takarau Gorge Road, Ohariu	Sean O'Connor
Land use consent for a second dwelling.		
398157	609 Ohariu Valley Road, Ohariu	Dorothy James
Subdivision and land use consent for a three lot fee simple subdivision and associated earthworks.		
398924	511 Ohariu Valley Road, Ohariu	Simon Thomson
Land use consent to erect four self-contained cabins.		

4. For the period from 16 November 2017 to 17 January 2018, there were two applications approved under delegated authority.

MAKARA/OHARIU COMMUNITY BOARD

1 FEBRUARY 2018

Absolutely Positively
Wellington City Council
 Me Heke Ki Pōneke

<i>Service Request</i>	<i>Address</i>	<i>Applicant</i>
398124	79 Takarau Gorge Road, Ohariu	Sean O'Connor
Land use consent for a second dwelling.		
394815	897 Ohariu Valley Road, Ohariu	J L and A M Conder Family Trust
A two lot fee simple subdivision and land use consent for earthworks for a farm utility building.		

Attachments

Nil

Author	Nicole Tydda, Manager Cust Serv & BusSupport
Authoriser	Bill Stevens, Resource Consents Team Leader David Chick, Chief City Planner

CURRENT AND UPCOMING COUNCIL CONSULTATIONS AND SURVEYS

Purpose

1. To provide the Makara/Ohariu Community Board with an update of items upon which Council is currently seeking public feedback and to advise the Board on upcoming items for consultations or surveys the Council is undertaking.

Recommendation

That the Makara/Ohariu Community Board:

1. Receive the information.

Discussion

Surveys

2. Our City Tomorrow: Wellington is a great place to live, work, and play, but we need to be smart about how we invest in our city and deliver services. Closing at 9.00am on 12 March 2018.
3. Further information is available on the Council's website:
<https://wellington.govt.nz/have-your-say/consultations>

Current Consultations and Community Engagement

4. Draft Te Reo Policy: Te Tauihu Policy to make te reo more visible in Wellington. The start date is from 6 February 2018.
5. Further information is available on the Council's website:
<https://wellington.govt.nz/have-your-say/consultations>

Options

6. Should the Board wish to participate in the on-line surveys, there is no requirement for the Board to formally ratify this.
7. Should the Board wish to make a submission on the proposed fees and charges under the recent changes to the RMA, then the Board will need to approve the submission at its next meeting.

Attachments

Nil

Author	Joanne Smyth, Elected Member Support Advisor
Authoriser	Crispian Franklin, Governance Team Leader

SUPPORTING INFORMATION

Engagement and Consultation

<insert text here>

Treaty of Waitangi considerations

<insert text here>

Financial implications

<insert text here>

Policy and legislative implications

<insert text here>

Risks / legal

<insert text here>

Climate Change impact and considerations

<insert text here>

Communications Plan

<insert text here>

Health and Safety Impact considered

<insert text here>

FORWARD PROGRAMME

Purpose

1. To provide a current draft work programme for the Board's consideration.

Recommendation/s

That the Makara/Ohariu Community Board:

1. Receive the information.
2. Approve its current draft work programme subject to any alterations, additions, or deletions deemed necessary.

Discussion

2. The Forward Programme as it currently stands is outlined below:

Thursday 1 Feb 2017 (Makara Village Hall)
<ul style="list-style-type: none">• Standing Items:<ul style="list-style-type: none">○ Roding○ Resource Consents○ Forward Programme○ Upcoming Areas of Consultation (if any)• Community Plan

Attachments

Nil

Author	Joanne Smyth, Elected Member Support Advisor
Authoriser	Crispian Franklin, Governance Team Leader

SUPPORTING INFORMATION

Engagement and Consultation

<insert text here>

Treaty of Waitangi considerations

<insert text here>

Financial implications

<insert text here>

Policy and legislative implications

<insert text here>

Risks / legal

<insert text here>

Climate Change impact and considerations

<insert text here>

Communications Plan

<insert text here>

Health and Safety Impact considered

<insert text here>