9. *Open Spaces Bylaw 2016 – adopt for public consultation*

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Summary

- The purpose of this report is to consider the draft Open Spaces Bylaw (Appendix 1) and decide whether it is fit for public consultation, having considered the section 155 tests under the Local Government Act 2002 (LGA), and the objectives of the Bylaw Review.
- The purpose of the Bylaw is …"*to protect Council's Open Spaces from damage or misuse and to allow their effective management for the benefit and enjoyment of all users."*
- Criteria for the review of the bylaw are:
  - Lawfulness – compliance with the LGA and the Reserves Act 1977
  - Affordability - Bylaw can be reviewed and implemented within existing resources
  - Effectiveness – the Bylaw can deliver on its purpose
  - Relevance – the Bylaw meets present and anticipated community needs
  - Timeliness – adoption of the bylaw by 1 September 2026.
  - Alignment – bylaw is aligned with existing strategies and plans.
- The problems identified during the review included:
  - operating issues such as:
    - omissions of current practices around organised events and permissions to use open spaces
    - omission of damage to buildings (including graffiti) from offences under the Bylaw
  - capture emerging best practice in open spaces bylaws and the wider regulatory environment, including adapting to changes in the regulation of remotely piloted aircraft (drones);

- align with other Council plans, strategies and bylaws, including the 2024 *Reserves Management Plan* and its policies on open fires and fireworks on open spaces

- For reasons set out in this report, Officers conclude that the proposal to amend the Open Spaces Bylaw meets the legal tests under section 155 of the LGA, addresses the issues identified, meets the assessment criteria and is fit for public consultation.

Recommendation

1. **That** Council determines that:

a. a bylaw is the most appropriate way of addressing the perceived problem; and

b. the proposed amendment to the Open Spaces Bylaw is the most appropriate form of bylaw; and

c. does not give rise to any implications under the New Zealand Bill of Rights Act 1990 (NZBORA) and is not inconsistent with NZBORA.

2. **That** Council adopts the proposal to amend the Open Spaces Bylaw 2016, attached as Appendix 1, as the basis for public consultation.

Attachment

Appendix 1 Draft Open Spaces Bylaw 2016 (2026 amendments) – consultation draft
Appendix 2 Draft consultation document
Appendix 3 Section 155 report and clause-by-clause analysis

Background

The current situation

1. The Open Spaces Bylaw was last reviewed in 2021. Council decided to review the Bylaw again in 2026.

2. This is five years' earlier than the maximum statutory review period. However, community use of open spaces is relatively dynamic, with new recreational opportunities, growing use of technologies such as drones, e-bikes and e-scooters, and more use of open spaces for public events. A review at five years is timely.

3. Council has developed the Play, Active Recreation and Sport Strategy 2022, Climate Change and Sustainability Strategy 2025, the Biodiversity Strategy 2024 and the 2024 Reserves Management Plan since 2021. It is sensible to review the Bylaw to ensure alignment with strategic and management changes, including emerging good practice in regulating open spaces.

Problems and issues

4. We found some parts of the bylaw were unclear and other issues were not addressed:

    - Our practices for holding organised events on open spaces were not in the Bylaw
    - Rules about aircraft (especially drones) needed to be updated
    - There were no rules reflecting our practice and policy on lighting open fires, fireworks displays or use of fireworks on open spaces.
    - Our practices around permissions for different activities were unclear or unstated

5. Officers have identified five focus issues and a range of other issues that we consider to be of lower public interest. The focus issues are fully described in the draft statement of proposal (consultation document) enclosed as Appendix 2.

6. Appendix 2 also contains a table describing the issues of lower public interest which are also being consulted on. These include new rules relating to watercraft on lakes and rivers in open spaces and new definitions. Bicycles and scooters are to be defined in terms that will allow E-bikes and E-scooters on open spaces unless Council puts up signs to restrict their use.

Options analysis

7. Officers considered the following five options, before eliminating options four and five on the grounds they were not reasonable and practicable options to achieve the objectives of the review.

    a. Option one – Amend the Bylaw per Appendix 1

    b. Option two – Make further amendments to the Bylaw per Appendix 1

c. Option three – Revoke and replace the Bylaw

d. Option four – Revoke the Bylaw

e. Option five – Continue with the Bylaw unchanged

Option one – Amend the Bylaw (RECOMMENDED)

8. Under this Option, Council would consult on the proposal to amend the Bylaw attached as Appendix 1. This Option is more fully discussed in Appendix 3.

Advantages:	***Disadvantages:***
• Option One meets the legal tests under the LGA. • Option One addresses the problems and meets the objectives of the Review, in terms of its lawfulness, affordability, effectiveness, relevance, timeliness and alignment. • Council can amend the Bylaw further should it receive submissions or further advice convincing them that such amendments would produce a better outcome.	• Option One represents an opportunity cost, if the resources were diverted into higher priority opportunities. Staff are operating on the understanding that their work programme reflects Council's priorities. • If Council is already of the view that a better outcome would be achieved by amending the Bylaw before consultation, failing to amend it before consultation may do the community a disservice.
Risks: The principal risks when reviewing a bylaw are the legal risk of making changes that are outside the bylaw-making powers of the Council or failure to follow the correct bylaw-making process. Non-compliance can result in operational, financial and reputational risk. Compliance risk has been mitigated with legal advice. Issues arising later in the process will be mitigated in the same way. Overall, this is considered **LOW** risk.	

Option two – make further amendments to the Bylaw

9. Under this Option, Council would debate and make further amendment to the Bylaw before embarking on consultation on an amended version of Appendix 1.

10. This is often the outcome achieved after consultation, hearings and deliberation.

Advantages:	***Disadvantages:***
• Option two meets the legal tests under the LGA. • Option two would better represent Council's collective thinking prior to consultation than Option one.	• Option two is difficult to assess until specific proposals to amend the Bylaw are debated. Major changes could require a special consultative

• Option Two meets the objectives of the Review, in terms of its lawfulness, affordability, effectiveness, relevance, timeliness and alignment. • If Council were of a mind to reduce the number of focus issues, or substitute one of the lesser issues for a focus issue, this could be achieved through option two.	procedure if they were assessed as being of high significance. • This option is not consistent with the feedback received from the Workshop on 28 January.
Risks: This is considered **LOW-to-MEDIUM** risk, partly for the same reason as Option One and for the risk involved in introducing new issues before Officers can give fully informed advice (assuming this cannot be addressed through oral advice at the meeting).	

Option three – Revoke and replace the Bylaw

11. Under this Option, Council would revoke the current Bylaw and create a new Bylaw to replace it. This Option is more fully discussed in Appendix 3.

Advantages:	***Disadvantages:***
• Option three meets the legal tests under the LGA. • Option three addresses the problems and meets the objectives of the Review, in terms of its lawfulness, affordability, effectiveness, relevance, timeliness and alignment.	• Option three requires more resources than Options one or two, although it is fully funded within operating budgets. • As described in Appendix 3, the level of change to the Bylaw proposed in Appendix 1 is too small to consider rewriting the Bylaw.
Risks: Overall, this is considered **LOW** risk for the same reasons set out in Option one.	

Legal/policy implications

Local Government Act 2002

12. Council must, under section 155 of the LGA, determine whether:

    a. a bylaw is the most appropriate way of addressing the perceived problem; and if so

    b. whether the proposal is the most appropriate form of bylaw; and

c. whether it gives rise to any implications under the New Zealand Bill of Rights Act 1990.

13. Each of the matters has been addressed in detail in Appendix 3.

14. Having carried out the review of the Bylaw in terms of section 155 of the Act (as detailed in Appendix 3), Officers concluded that:

    a. The proposed amendment to the Bylaw is the most appropriate way of addressing the perceived problems; and
    b. The proposed amendment to the Bylaw is the most appropriate form of bylaw; and
    c. The proposed amendment to the Bylaw does not give rise to implications under the NZBORA and is not considered to be inconsistent with the NZBORA.

Climate change

Climate adaptation

15. Adaptation is about adjusting to the actual or expected future climate. In this Bylaw, we are seeking to manage risks like flooding and wildfire. New provisions on the regulation of open fires and fireworks help to manage fire risk and protect people, the environment and assets. Existing provisions enable council to close access to areas that may be at risk from flooding or slips.

Climate mitigation

16. Mitigation is about reducing emissions or increasing carbon "sinks". Most open space bylaws prohibit damaging or removing plants. This protects the vegetation that acts as a carbon sink.

Other policy advice

17. At the Workshop on 28 January, Council discussed the implications of allowing e-scooters, e-bikes and mobility scooters to operate in open spaces. Council asked for further policy advice. Officers undertook to provide this and noted that ongoing legal review may result in other minor changes.

E-bikes

18. E-bikes are legally classified as "power-assisted cycles"[1] (at least two wheels, designed to be propelled primarily by the rider pedalling) and may have one or more auxiliary motors so long as the power output does not exceed 300W. E-bikes meeting these criteria are allowed to be treated as bicycles.

[1] https://nzta.govt.nz/regulatory/e-scooter-declaration-renewal-decision?hl=en-US#:~:text=About%20declarations,of%20300%20watts%20or20less

19. Industry data and market analysis for 2025-26 suggests that most e-bikes (likely over 90%) used on NZ roads are 300W or less.[2]

20. Police generally focus on behavioural enforcement. Under the Road User Rule 2004, all cycle riders must ride in a "careful and considerate manner" and give way to pedestrians and mobility devices. People riding safely are unlikely to be stopped. Dangerous riding, speeding on shared paths or other careless behaviour can lead to fines.

E-scooters

21. E-scooters are classified as wheeled recreational vehicles. Like e-bikes they must meet a 300W power limit. Wheels must not exceed 355 mm in diameter. E-scooters must have a footboard, two or three wheels and a long steering handle.

22. Industry data and regulatory reviews suggest that the proportion of e-scooters that are over 300W is likely to be 60% to 80% of all privately owned models on the market. Most e-scooters sold in NZ start at 350W and go up to 6000W or more. The 300W limit is impractical for NZ's often hilly topography, and NZTA Waka Kotahi is considering a move toward a speed-based limit rather than a power-based limit.

23. NZ Police generally focus on behaviour (speeding, no helmet, riding dangerously) rather than technical compliance (wattage labels).

24. Like e-bikes, e-scooters must be ridden in a careful and considerate manner and give way to pedestrians and mobility devices.

Mobility scooters

25. Mobility scooters are classified as a mobility device. This is a separate category from "motor vehicles", "cycles" and "wheeled recreational vehicles". A mobility scooter must be designed and constructed specifically for people who require mobility assistance and must be power solely by a motor with a maximum power of 1500W or less. The proportion estimated to be over 1500W is likely to be less than 5%.

26. Mobility scooters must also be driven in a careful and considerate manner.

27. Having considered this information, officers still favour enabling the use of e-bikes, scooters and mobility scooters on open spaces. Definitions have been added. The existing clause 10 contains provisions requiring safe and careful use of bicycles and scooters, in addition to the provisions in the Land Transport Act and Land Transport (Road User) Rules.

[2] https://www.mordorintelligence.com/industry-reportsd/new-zealand-e-bike-market

28. It should also be noted that some open spaces are specifically used as cycleways and for biking recreation, and we would expect that enforcement of safety in these areas will reflect the context of their use.

Review of legal / policy implications	
Reviewed by In-house Counsel	*Jacqui Watson; Senior Legal Counsel*

Strategic alignment

29. The recommendation relates to all Council's community outcomes for similar reasons to those described in the well-being table which follows.

Wellbeing		Reasons why the recommended outcome has an effect on this wellbeing
Economic	✓	The Bylaw codifies our practices around events, which in part support economic activity.
Environmental	✓	The environmental wellbeing of the environment is, in part, protected by bylaw provisions that help people to enjoy open spaces.
Cultural	✓	Open spaces are used for events that express cultural values
Social	✓	Social well-being includes issues of safety, and the Bylaw is a tool for keeping open spaces safe.

Financial implications

Requirement	Explanation
What is the cost?	Indirect costs are principally staff time, which is not measured. Direct costs are for advertising and public notices and a small amount for printing of consultation documents.
Is there budget available in LTP / AP?	Yes. The funding is provided in operating budgets.
Where is the funding coming from?	Indirect and direct costs for Strategy & Policy and Communications is funded through allocation of overheads.
Are there any future budget implications?	No. We do not anticipate higher compliance costs as a result of the changes to the Bylaw.
Reviewed by Finance	Erin Register; Finance Manager.

Significance and engagement assessment

30. Council must consult on all Bylaws, having regard to the significance of the matters being consulted upon. In this case, Officers have concluded that the matters are not of

high significance, and consultation will reflect section 82/82A of the LGA, the principles of consultation.

31. Our practice in these situations is to publicise the consultation through a variety of print media and on-line social media channels. We will also target specific stakeholders such as Reserves Boards. Information is available on-line through Council's website, including the consultation document, the draft bylaw, the current Bylaw and other supporting material. Hard copies are also available at Te Whare Whakatere or on request.

Requirement	Explanation
Is the matter considered significant?	No
Level of significance	Medium
Rationale for selecting level of significance	*N/A*
Level of engagement selected	**3.** Consult - formal two-way communication using consultation under s.82 of the LGA02
Rationale for selecting level of engagement	Consultation is always required for bylaws with this to be consulted on under Section 82 of the Local Government Act.
Reviewed by Strategy & Policy	Mark Low; Strategy and Policy Manager

Next steps

Date	Action / milestone	Comments
4 March – 7 April 2026	Public consultation opens.	
28-29 April	Hearings and deliberations	
20 May	Council to make final decisions on Bylaw adoption, form and content.	