

General Consolidated Bylaw

Summary of submissions and staff comments

1. Out of scope matters

This table summarises the topics raised by submitters that cannot be addressed by the General Consolidated Bylaw and/or need to be addressed through other regulatory mechanisms.

Submitter comment	Staff comments
Submitter would have liked better consultation on this matter. The document and amount of information in it made it hard to assess and understand properly. Council should have anticipated this and broken it down to make it easier for the public to understand.	Staff agree that the Consolidated General Bylaw is a large document and therefore difficult to read and understand. Council has had this type of combined bylaw for over two decades at least, however this is not a legislative requirement and consideration to split the Bylaw up into more manageable and aligned topics is an option, should Council wish to see this happen.
Submitter requests staff who issue notices regarding upgrading wastewater disposal systems, provide evidence of their findings a part of the process.	This matter pertains to Council's Wastewater Drainage Bylaw. The comment has been provided to the relevant team and a note made for future Wastewater Bylaw reviews.
Submitter makes some general comments that there is no point in submitting to Council as they don't listen to any community feedback. Submitter has now moved out of the District.	The submitter's comments are noted for future engagement activities.
Submitter has requested a speed limit change to 40km/hr, together with the introduction of adequate signage.	This matter pertains to Council's Speed Limits Bylaw. The matter has been forwarded to the relevant Council staff.
Provide adequate speed bumps on Kedge Drive to reduce traffic speed	This is an operational roading matter and has been referred to the relevant team.
Submitter would like to see Council develop a Health and Hygiene Bylaw.	This issue is a new matter that has been raised and staff will discuss the concern with the Regulatory Team in the first instance. This matter has not previously been raised with Council as far as staff are aware.

2. Smokefree matters (Parts 1, 2, 3 and 9)

Three submitters requested changes in relation to smokefree clauses, this includes requests for appropriate definitions, but also more stringent application of the smokefree matters as well as requests for clarity on what public areas Council may potentially designate as smoke free.

Staff comments/initial recommendations

The submissions made relating to smoke free environments and thus also Council's Smoke Free Policy indicate that there is potentially a lack of clarity and direction in the Policy and that this may need review. In order to ensure the Bylaw accurately reflects the Policy in a manner that is lawful, it is recommended that clause 204 is removed from the Bylaw at this point in time. Given the intent of the Policy and the proposed Bylaw was to undertake community engagement prior to establishing any designated smoke free areas, this clause can be proposed to be re-inserted and consulted on at the same time as any proposed designated smoke free areas, therefore this doesn't change the overall approach that contemplates community consultation prior to the designation of any smoke free areas. This approach acknowledges all the matters raised in the various submissions received and can ensure the relevant matters are addressed through the above proposed process. Staff agree that definitions should align to national legislation where possible and that the definition for mind altering substances should be amended accordingly.

3. Footpath use (Part 2)

One submission was received on this matter. The focus of the submitter's request appears to be on the conflict, or potential conflict, between pedestrians and non-pedestrians on the footpaths within the Kaipara District and that the definition of 'recreational devices' should be extended to include bicycles, electric bicycles and other devices. The submitter has also provided considerable background information on shared paths.

Staff comments/initial recommendations

The Land Transport (Road User) Rule 2004 (the Rule) contains most of the relevant matters relating to this issue:

- Bicycles (including electric bicycles) are defined as 'cycles' in the Rule. Clause 11.11 of the Rule already prohibits the riding of cycles on footpaths, unless they are delivering mail, newspapers or other printed material.
- Mobility devices (also defined in the Rule) are permitted on footpaths but must be operated at a speed and in a manner that does not present a hazard to pedestrians, they are not wheeled recreational devices.
- Wheeled recreational devices are defined in the Rule. The definition includes bicycles which have a wheel diameter smaller than 355 mm (anticipated to allow for small children's bicycles on a footpath), as well as wheel conveyances that are propelled by human power or gravity, but which can also be propelled by small motors with a power output of less than 300 W.
- Scooters and e-scooters are also included in the definition of wheeled recreational devices and further, scooters meeting certain criteria (aligned to the definition of a wheeled recreational device) have been declared not be motor vehicles (which are prohibited from driving on footpaths) by Gazette notice in 2018.
- Footpaths are not shared paths. The Traffic Control Devices 2004 provides that Council must install appropriate signage to signal that a path is a shared path and what kind of devices are allowed to use that path and how.

It is therefore unnecessary to duplicate the existing regulations regarding bicycles on footpaths. However, the submitter's comments regarding other devices on footpaths are

relevant. Currently clause 203 refers to skateboards, roller skates, rollerblades or other similar recreation devices and the associated definition of 'skating device' includes roller skates, in-line skates and similar recreation devices. The definition and the clause terminology are not clearly aligned, nor is it clear what a 'similar recreation device' is.

Staff are therefore recommending that the definition of skating device is changed to the definition of 'wheeled recreational device' as provided in the Rule and that clause 203 is amended so that it allows Council to designate areas to prohibit some or all types of wheeled recreational devices, to ensure alignment and consistency with legislation.

Skating device

~~means a wheeled device controlled or propelled by gravity or by the muscular energy of the rider, including roller skates, in-line skates, or similar recreational devices. The definition does not include any bicycle, wheelchair, recognised mobility aid or baby carriage.~~

Wheeled recreational device has the meaning given by the Land Transport (Road User) Rule 2004.

Definition here for completeness:

Wheeled recreational device

(a) means a vehicle that is a wheeled conveyance (other than a cycle that has a wheel diameter exceeding 355 mm) and that is propelled by human power or gravity; and

(b) includes a conveyance to which are attached 1 or more auxiliary propulsion motors that have a combined maximum power output not exceeding 300 W.

203 ~~Skating Devices~~ Wheeled recreational devices

(1) Council may by resolution publicly notified:

(a) designate areas in which the use of ~~skateboards, roller skates, rollerblades or other~~ all or specified ~~similar~~ wheeled recreational devices is prohibited;

(b) add to, amend, or remove areas designated under (a).

(2) Except with the prior permission of Council or an Authorised Officer, a person shall not use a ~~skateboard, roller skates, rollerblades or any other similar~~ wheeled recreational device:

(a) in an area contrary to a prohibition made under clause 203(1);

(b) in any public place, in a manner that may cause damage to any property or is inconsiderate or harmful to others.

Explanatory Note: A list of the areas which are subject to a resolution made under clause 203(1) is maintained together with this Bylaw.

4. Vehicles, and horses on Mangawhai Wildlife Sanctuary (Part 2)

Four submitters expressed concerned about the number of vehicles and horses that are accessing the Mangawhai Wildlife Sanctuary on Mangawhai spit and the effect that they are having on nesting shorebirds, particularly the critically endangered fairy tern.

Vehicles and horses pose a significant threat to nesting shorebirds, they can flush birds from the nest, run over or trample eggs and chicks, and cause stress to adult birds. They believe that their requests are necessary to eliminate any 'grey areas' for the Public around the use of vehicles and animals within this area.

The submissions request that Council prohibits vehicles, including bikes and e-bikes, horses, dogs, drones and motorised gliders, on the beach below mean high water springs adjacent to the Mangawhai Government Purpose Wildlife Refuge Reserve.

Staff comments/initial recommendations

There are several considerations regarding the beach area of the Mangawhai Spit, as well as any other beaches in the District. The Mangawhai spit is surrounding by privately owned properties and beach access can only be gained through these properties or from the Auckland Region. Council would therefore also have difficulty gaining access to enforce any bylaw. Council's enforcement options for this type of matter within the Bylaw are only seeking prosecution, there is no ability to issue 'fines'. Additionally, there are legal limitations on environmental matters Council can address through a bylaw mechanism.

Historically, vehicles on beaches are a reoccurring theme for a variety of reasons. A wider understanding of the issues, why they are occurring, and the level of the problem, needs to be established first in order to be able to consider the appropriate response or mechanism.

Making the requested amendments to the Bylaw are not recommended as any changes would be considered significant and further consultation would be required.

Legal guidance is being sought to help understand all the moving parts of legislation within the area between HMWS and LMWS and to help present options, including the possibility of extending the wildlife sanctuary down to LMWS.

Staff will discuss with the Regulatory Team how to work with DoC to better understand how Council may help, with potential to support with education around the problems vehicles and horses cause on the Mangawhai Spit.

It is also noted that this matter is under appeal with Northland Regional Council's Proposed Regional Plan for Northland and the outcome of that process may provide solutions to the problem.

5. Solid Waste (Part 4)

Two submission points were received regarding solid waste. The first point relates to a request to increase fines for fly dumping. The second matter is a request to allow for the recycling of materials from disposal sites where possible to reduce the environmental impacts.

Staff comments/initial recommendations

The amount of 'fines' are regulated through the legislation within which the Bylaw is made and therefore Council cannot set the amounts for fines. In this matter, any fines would be issued in accordance with the Litter Act 1979.

There is a second chance area at the Dargaville transfer station where some items are set aside which people may recycle back. They also have certain items not put into the mainstream to be recycled, e.g. metal, iron which is picked up by a recycler. Staff consider clause 427 of the Bylaw should be reworded to explicitly allow for the re-use of these materials.

'A person must not enter, loiter at, or disturb any deposit of waste at any land or premises set aside by Council for the disposal of waste, nor remove from such a place any article or material of any kind, unless those premises have specific approved facilities that allow for members of the public or other agencies to purchase or obtain waste materials for the purposes of re-use or upcycling.'

6. Bees (Part 8)

Two submissions were received on the keeping of bees. One supported the provisions that allows Council to address nuisances caused by bees in rural areas.

The other submission supported owner obligations, however had concerns around extending these obligations beyond the urban area and into the rural area. The submitter also recommended a proactive approach for limited numbers of hives in urban areas, rather than requiring permits for all hives in these locations. It was also recommended that Council refers to the ApiNZ Code of Conduct as a guideline when faced with responding to failures of beekeepers to abide by the bylaw's obligations of owners.

Staff comments/initial recommendations

Staff have reviewed the submissions and recommend some proposed changes that retains the necessary enforcement options in rural areas around nuisances but allows for a slightly more permissive approach for urban areas. The proposed changes, together with associated proposed amendments, are provided below. It is also recommended to include a detailed guideline for bee keepers as an explanatory note in the Bylaw.

Beehive and hive mean any receptacle housing a honeybee colony and includes 1 receptacle per colony used solely for the purposes of queen breeding, hive maintenance and swarm prevention purposes between 1 October and 31 March. ~~Hive means any receptacle housing a honeybee colony.~~

806 Bee Keeping (*replacing the entire existing section 806 of the proposed Bylaw*)

- (1) No person shall keep bees in the District if in the opinion of an authorised officer, the keeping of bees is likely to become a nuisance or potential danger to any person.
- (2) For the avoidance of doubt, clauses 802(1) and (2) and 806 (1) apply to any keeping of bees in the District, including in a rural area.

(3) A person may keep bees in the urban area as follows:

Property Area	Maximum number of hives
1000 square metres or less	2
1001 square metres or greater	4

(4) Council may give written approval to persons to keep additional hives to those permitted under clause 806 (3) and may prescribe any conditions, including specifying distances from boundaries, maximum number of hives and time limits on such licences.

Explanatory note: Beekeepers have a legal obligation to register their apiary under the Biosecurity (National American Foulbrood Pest Management Plan) Order 1998. Registration of apiaries is intended to protect honeybees from American foulbrood disease. The register also allows the Ministry for Primary Industries to carry out surveillance for exotic pests and diseases of honey bees and respond to an incursion. Registrations are processed byASURE Quality Ltd and registration codes are required to be displayed in a visible manner in each apiary, usually on a beehive. Further information on American foulbrood disease can be found at www.afb.org.nz. In addition to the registration of hives, beekeepers are also required to comply with the on-going management requirements as provided in the AFB Pest Management Plan and are required to provide evidence of this compliance where required. Honey and bee products that are produced for commercial purposes are also subject to additional legal requirements, such as the Food Act 2014. Information on these requirements is available on the Ministry for Primary Industries website.

Apiculture New Zealand Incorporated provides a Code of Conduct for beekeepers.

In cases where enforcement officers respond to complaints about bees, the initial assessment will include determining whether the bees are being kept in accordance with national regulations as well as the Apiculture NZ Code of Conduct.

Additional Guidelines

Compliance with the following guidelines is also recommended to minimise potential nuisances arising from beekeeping activities. Kaipara District Council also advises every person wishing to keep bees in an urban area to participate in a beekeeping course.

Flight path management

Honey bees will fly at head height for some distance from their hives unless their surrounding environment directs their flight path upwards. Honey bees can be encouraged to fly above head height if a flyway barrier, two or more metres tall, is placed 1-2 metres out from the front of the hive entrance. It is important that flightpaths are not directed across public pathways on private and public land. Barriers that can be used include shrubs or trees, a wall, a hedge or a fence. Beehives can be placed on top of sheds or buildings, but it may be more difficult to work with the bees in these restricted locations.

Swarming/seasonal build up

Swarming is the natural means of dispersal of honey bee colonies. However, beekeepers can undertake responsible bee management practices to minimise the occurrence of swarms in urban areas. These practices can include re-queening on an annual basis, taking a nucleus colony out of populous hives (artificial swarming) and re-queening colonies that have been started from swarms.

Honey bee colonies are more likely to swarm if there are limited cells in the hive for the worker bees to store honey and pollen. Responsible bee management practices include providing plenty of room for the queen to lay eggs and for the bees to store honey.

Water provision

Providing a source of clean water may reduce the number of bees foraging elsewhere for water and creating a nuisance to neighbours, especially if they own a swimming pool.

Bee excrement management

Like other animals, bees excrete waste products. Honeybees going on orientation, foraging or cleaning flights often excrete after exiting the hive. This can leave distinct trails of coloured bee excrement within a 500 metre radius of the hive and can cause a nuisance to neighbours. The colour of the excrement is typically yellow to brown. The excrement may be hard to remove from clothing, vehicles and buildings. Hives can be re-positioned on the property or rotated so that flight paths can be encouraged in a direction away from neighbouring properties.

809. Savings

10.1 Any permissions, approvals or other authorisations issued under the General Bylaw 2008 continue in force in accordance with their terms, unless cancelled by Council.

7. Cemeteries and Crematoria (Part 9 General Bylaw)

Submitter considers the Bylaw should have reference to any replacement in the current legislation by including 'or its replacement' in the reference to the Burial and Cremation Act 1964.

Staff comments/initial recommendations

It is not standard practice to do this. Staff keep up to date with any legislative changes and where they relate to a bylaw, a review is undertaken to determine if there are any consequential impacts. If there are and they do not change the substantive nature of the bylaw, then Council can make an amendment via resolution. If the legislative changes would mean a substantive change to the bylaw, then an amendment after consultation is considered appropriate in any case.

8. Water supply (Part 16)

Two submitters commented on this Part. The table below summarised the submission items and provides staff comments and initial recommendation for each matter.

Submission matter	Staff comments/initial recommendations
<p>The submitter has interpreted section 16 to mean that the processing plant would fall into the 'Extraordinary Supply' category. They object as their licence for Council water supply already contains clauses that in times of water shortage the Dargaville plant may be required to limit its water use and at extreme circumstances stop taking water from the Council system all together.</p> <p>The submitter also raises other concerns regarding their water supply arrangements during a drought situation, including the matter of animal welfare.</p>	<p>The submitter's initial comments are valid, and staff suggest adding a savings clause that would cover Council's existing arrangement with the submitter appropriately.</p> <p><i>Any permissions, approvals or other authorisations given under the General Bylaw 2008 for ordinary or extraordinary water supply will continue to be in force in accordance with their terms, until such time as it is re-ordered, cancelled, re-negotiated or renewed.</i></p> <p>The bylaw currently allows for customers, including customers utilising an extraordinary supply, to apply for an exemption from a restricted water supply. As per the above there is an existing arrangement in place and this application and approval can be re-negotiated with the submitter to address their concerns.</p>
<p>For properties with no ordinary water supply, the submitter wishes to see the inclusion of a clause that requires water tanks to be of sufficient storage to allow for a 100 year drought event.</p>	<p>This Part of the Bylaw addresses the provision of water through council's water supply network. The provision of water tanks and the volumes of those for properties that are not connected to the water supply network is regulated through other mechanisms such as the Building Code. Should Council decide to allow dwellings that are connected to the reticulated water system to also have water tanks, further work and consideration needs to be undertaken by staff as to what terms and conditions need to be in place to ensure quality of supply and risks around stopping contamination of the reticulated system is managed. Once this analysis is completed and a decision is made to proceed, an amendment to the Bylaw will be necessary.</p>
<p>Submitter wants a definition of 'emergency'.</p>	<p>Suggest adding an Explanatory note: 'An emergency is where a situation arises that requires prompt action and delays may cause a situation to be made worse.'</p>
<p>The submitter has raised issues regarding the definition of restricted water supply and associated concerns regarding Councils' obligations under the Health Act 1956 and concerns regarding a fee to remove any restrictions imposed.</p>	<p>Staff agree that sections 1610 and 1620 lack clarity and that the Bylaw should allow Council to waive fees in certain circumstances. Staff will review and recommend associated changes as part of the deliberations report to the Panel. A clause in Part 1 of the Bylaw can be amended to allow for fees to be waived in certain circumstances.</p>

9. Other changes - staff recommendations

Since the draft Bylaw was adopted for consultation, several matters have been brought to the attention of staff or have come to light in undertaking the analysis for matters raised in submissions. The table below summarises these matters. The proposed changes are not considered to provide substantive changes to the context and application of the Bylaw, they are primarily proposed for clarity and cohesiveness throughout the document.

Proposed changes	Reason
Remove clause 202(1)(b)	The research into footpaths also provided some insights into the use of vehicles in public places. The <u>driving</u> of vehicles in a manner that is unsafe or causes a nuisance is addressed through various legislative tools already. In addition to this, only NZ Police Officers have the power to stop moving vehicles and thus undertake any associated enforcement activities.
Reword clause 211(4)	Vehicle crossings can also be required through resource consenting processes. It is important that the clause is clear to avoid confusion between any resource consent conditions for crossing as opposed to crossing permits under the Bylaw. Reword clause 211(4) to read: A permit for the construction, repair, removal, reconstruction, relocation or widening of a vehicle crossing <u>and is not subject to a resource consent</u> , shall be valid for six months, during which time the work shall have been completed, to the satisfaction of an Authorised Officer.
Remove clause 438	The clause states – ‘A person must not light any fire outside of a building within 150 metres of any waste disposal site without the express permission of Council or within an approved incinerator.’ It has been found that this clause is not appropriate as there are resource consents in place for landfills that address any risk related matters for neighbouring properties.
Amend clause 929(3)(b)	A technical request from Council’s Parks Officers to amend the height from 650mm to 900mm to accommodate existing circumstances.
Amend heading of clause 1611	Replace heading of 1611 from ‘Exemption from Restricted Water Supply’ to ‘Exemption from Water Supply Restrictions’ to accurately reflect the purpose of the clause.
Renumber Bylaw Parts	This would provide for a continuous numbering of the Bylaw and not appear to have Parts missing (e.g. it currently skips from Part 5 to Part 8)
Various amendments Some of these proposed amendments are as a result of legal advice, some are to provide clarity on the	Part 1 Definitions – proposed amendments: <i>Animal</i> Animal means any member of the animal kingdom, but does not include humans or dogs. <i>Nuisance</i> shall include but <u>is not</u> not be limited to the meaning assigned to it by the Health Act 1956 and includes a person, animal, thing or

<p>operational aspects of the Bylaw</p>	<p>circumstance causing unreasonable interference with the peace, comfort or convenience of another person.</p> <p>Explanatory note: <i>Circumstances that may be deemed a nuisance can include noises and odour associated with the keeping of animals.</i></p> <p>Approval or Approved means written approved <u>approval</u> by Council or by any Authorised Officer.</p> <p>Urban area means any area that has been zoned Residential, Commercial or Industrial in the Operative Kaipara District Plan and may include land that is associated with residential activities in other zones.</p> <p>Consequential amendments to Part 8 – Animals</p> <p>Animal Animal means any member of the animal kingdom, <u>that is kept in a state of captivity or is dependent upon a human being for its care and sustenance,</u> but does not include humans or dogs.</p> <p>Insert this clause: 801(3) <u>An Authorised Officer may give written approval subject to any conditions and payment of any prescribed fee.</u></p> <p>And remove individual clauses: 803(2), 804(2), 805(5), 807(2).</p> <p>Add a new clause 809 for clarification: 809 Consequences of breach of bylaws</p> <ol style="list-style-type: none"> (1) Council may remove or alter a work or thing that is, or has been, constructed in breach of this Bylaw. (2) Council may recover the costs of removal or alteration from the person who committed the breach. (3) If an authorised officer is issued with a warrant under the Search and Surveillance Act 2012 the authorised officer may enter private property pursuant to section 165 of the Local Government Act 2002 and: <ol style="list-style-type: none"> a. seize stock, poultry and bees that are on the premises in breach of this Bylaw b. seize property other than stock, poultry and bees that is materially involved in the commission of an offence under this Bylaw. <p>Add a new clause 810 for transitional purposes 810 Savings</p> <ol style="list-style-type: none"> (1) Any permissions, approvals or other authorisations given under General Bylaw 2008 continue in force in accordance with their terms, unless cancelled by Council.
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Editorial and consequential amendments from final staff review	<p>This is to correct any cross referencing and or changes in wording that do not alter the intent of a clause, e.g. 1613 needs to say 1614(3), take out further doubling up of provisions. Also, some simplification of terms and clauses such as:</p> <p><i>The Authorised Officer shall be given not less than <u>at least</u> 2 working days' notice prior to any burial.</i></p>
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