

Decision Report



To: The Mayor and Councillors

From: Policy Analyst and Strategic Policy Planner

Date: Monday, 11 March 2019

File reference: Document: 2548282
Appendix A: Statement of Proposal Draft Nuisance Bylaw 2019 (2548221)

Portfolio holder: Councillor Milner

Meeting date: Wednesday, 27 March 2019

Subject: **Adoption of the Draft Nuisance Bylaw 2019**

Recommendation:

THAT the report be received, and

THAT in accordance with section 155(1) of the Local Government Act 2002 the draft Nuisance Bylaw 2019 is the most appropriate way of addressing the perceived problems, and

THAT in accordance with section 155(2) of the Local Government Act 2002 the draft Nuisance Bylaw 2019 is the most appropriate form of bylaw and does not have any implications under the New Zealand Bill of Rights Act 1990, and

THAT in accordance with section 145 and section 159 of the Local Government Act 2002 the Council approves the draft Nuisance Bylaw 2019 (as contained in the Statement of Proposal attached) for public consultation, and

THAT the Council approves the proposed new fees for 'permission to keep pigs, poultry or bees in an urban area or low density residential zone' and the proposed new fee for 'permission to drive a vehicle on the beach' for public consultation, and

THAT the Council approves the proposed revocation of the Franklin District Council Brothel Bylaw 2010 and the Franklin District Council Trading in Public Places Bylaw 2008 for public consultation, and

THAT the special consultative procedure is used for community engagement on the draft Nuisance Bylaw 2019 (and associated fees and the revocation of the Franklin District Council Bylaws) and related timeframes and approach are approved, and

THAT in accordance with sections 156(1)(a) and 86 of the Local Government Act 2002 the Council adopt the attached Statement of Proposal for the Draft Nuisance Bylaw 2019.

1 Purpose

This report seeks the Council's approval of the draft Nuisance Bylaw 2019, the related fee changes and the adoption of the Statement of Proposal prior to public consultation.

This report also seeks approval for the proposed revocation of the Franklin District Council Brothel Bylaw 2010, and the Franklin District Council Trading in Public Places Bylaw 2008 for consultation.

The matter or suggested decision does not involve a new activity, service, programme, project, expenditure or other deliverable.

2 Background

At the Council meeting on 29 August 2018 Mayor Tregidga, Deputy Mayor Adams and Councillors Milner, Leonard, Spicer and Harris were appointed to a councillor working party to work with staff on the review of various bylaws. The majority of the Council's bylaws are due for a legally required 10-year review.

The Council also resolved the various Parts of the Hauraki District Council Consolidated Bylaw 2007 be separated into individual bylaws. Subsequently Part 3 (Public Safety) of the Hauraki District Council Consolidated Bylaw will be separated into the following bylaws:

- Dog Control.
- Freedom Camping.
- Alcohol in Public Places.
- Food Grading.
- Nuisance.

This report is on the review of the following clauses in Part 3 (Public Safety) of the Hauraki District Council Consolidated Bylaw:

- Clause 2.0 Safety in public places,
- Clause 3.0 Nuisance on private property, and
- Clause 5.0 Keeping of animals (excluding dogs).

The 2018/2019 bylaw review process does not include dog control, freedom camping or alcohol control in public places because these bylaws are not due for review. The draft Food Grading Bylaw 2019 is also on the Council agenda for adoption.

2.1 The Bylaw

The Nuisance Bylaw facilitates the enjoyment of living in and visiting the Hauraki District by managing and regulating council controlled public places and certain activities on private land. The bylaw has specific rules on the keeping of pigs, poultry and bees in the built up areas of our district to protect people from nuisance and maintain and promote public health and safety.

To view the full 2007 version of Part 3 (Public Safety) of the Consolidated Bylaw, go to <http://www.hauraki-dc.govt.nz/our-council/bylaws/>.

2.2 Issues analysis and community opinion

To determine if the 2007 bylaw is the most appropriate form of bylaw, staff and the councillor working party considered issues received through the service request system, bylaw enforcement action taken to date, staff feedback, Long Term Plan submissions and past submissions to the 2007 bylaw review process.

The Council received the following number of related requests for service on average per year over the past 3 years (from 1 July 2015 – 1 July 2018):

- Fires – 37 requests per year. Most related to neighbours burning material in backyard causing a smoke nuisance and a small number related to burning silage wrap.
- Nuisance, keeping of roosters and poultry – 19 requests per year. Most complaints related to crowing roosters, and a few were about roaming poultry.
- Rubbish dumped on a public reserve – 38 requests per year.
- Rubbish dumped on a road reserve – 36 requests per year.
- Nuisance – 51 requests per year. This category has a wide range of request types. *
- Excessive noise – 304 requests per year.
- General monitoring – 67 requests per year. This category also has a wide range of request types. **

*Rubbish on private property, café tables and chairs obstructing pedestrian access on footpaths, fly/smell nuisance due to chicken farm, fly/smell nuisance due to pigs over the back fence, too many cats at neighbours causing an issue, vermin in long grass on private property, untidy sections, offal being left in paddock, food premises complaints.

**Trees overhanging footpaths, rubbish on private property, sale of vehicles on a berm, tyres being stockpiled, pig in residential area, unfenced swimming pool, bees being kept in residential area, smoke nuisance, drone flying over private property, commercial sign chained to power pole, advertising sign attached to a tree.

There were three submissions to the 2018 Long Term Plan asking for parking time restrictions in the main street of Paeroa. This matter will be investigated when the Land Transport section of the Consolidated Bylaw is reviewed. There was one submission asking for better enforcement of noise and smoke nuisances. There were no relevant submissions to the 2015 Long Term Plan.

A community survey was undertaken in December 2018 to help inform the review process and seek public opinion on some specific bylaw matters. 96 people completed the survey and the results are summarised below (people could tick a 'no opinion' option):

- 80 people (83%) support the current ban of riding skating devices (skateboards, roller blades, roller skates and scooters) on the main streets in Ngatea, Paeroa and Waihi.
- 11 people noted they are aware of issues with people driving vehicles on our beaches; with a few comments specifically referring to the number of quad bikes on Whiritoa Beach.
- 66 people (69%) agreed with the current bylaw where pigs should not be kept in urban areas (for example commercial, industrial, residential, low density residential and townships zones). 22 people (23%) did not agree. The SPCA support the ban as pigs are social animals and should be kept in at least pairs and require adequate space.
- 81 people (84%) support the ban on roosters in urban areas of Paeroa, Ngatea and Waihi. 11 people (11%) do not.
- 48 people (50%) do not agree with a ban on bee keeping in urban areas. 46 people (48%) want a ban. The SPCA and a bee keepers expressed concern that if people are not trained correctly bees will be more susceptible to pests, diseases and poor welfare. (i.e. good husbandry and health practices for the bees).
- 12 people (13%) noted they have had issues with drones flying over public places, such as reserves, causing a nuisance.

- 30 people (31%) noted they have experienced fireworks on private property causing a nuisance.
- 13 people (14%) noted they have had issues with signs blocking footpaths.
- 25 people (26%) noted they have had issues with trees or other vegetation overhanging or blocking footpaths.

The survey link was placed on Facebook, on the Council's Hauraki Herald page and sent to key stakeholders, including iwi, Business After Five (BA5) distribution lists and previous submitters to the Long Term Plan.

2.3 What are the proposed changes to the 2007 Bylaw and why?

The councillor working party requested a 'plain English' rewrite of all the bylaws during the review process and are also recommending various policy changes to the Bylaw. For this reason, there were many wording 'tweaks' made to the bylaw as well as entire clauses re-written. The more substantial changes are outlined in the table below.

Changes in Draft Nuisance Bylaw 2019	Rationale
Remove the definition of 'Proscribed substance' and the definition of 'Boat'.	These terms are no longer required in the bylaw due to recommended policy changes.
Amend the definition of 'Nuisance' to mean the same as section 29 of the Health Act 1956, but also include; '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'.	The definition of Nuisance in the Health Act 1956 includes a list of situations where a nuisance shall be deemed to be created. The Act states the term 'nuisance' is not limited to that list and that is what we are trying to clarify in the bylaw definition.
Amend the definition of 'Urban area' and 'Rural area' in the bylaw so it lists the District Plan zones included in these areas, instead of referring readers to the District Plan. Add a separate definition for a Low Density Residential Zone so it is differentiated from the other zones in urban areas. (In definitions Clause 2.0)	A separate definition has been included for Low Density Residential Zone because the Council recognises that sometimes the rules for property in that zone need to be different than rules for the Residential Zone, Industrial Zone and Commercial Zone. This is because the Low Density Residential Zone is comprised of 'lifestyle' blocks and the size and location of the property differentiates them from other zones. This is outlined in more detail in the table below in relation to the keeping of stock, pigs, poultry and bees.
Remove the following clauses under 'Prohibited Conduct'; No person shall in any public place: a) place or leave litter or any materials or object or substance, which are likely to be hazardous or injurious to any person, or likely to create a nuisance.	The Litter Act 1974 addresses littering in public places. The Council can fine people up to \$400 for littering in a public place. This is more effective than prosecution under a bylaw, which is costly for the Council and requires considerable staff time.
Remove the following clauses under 'Prohibited Conduct'; No person shall in any public place: c) interfere with any refuse, which is awaiting collection by an authorised collector; d) drive any vehicle except on a formed road, or drive in a manner that is dangerous or inconsiderate to pedestrians or other vehicles;	The requirement to not interfere with refuse is in the Council's Solid Waste Bylaw (clause 12.0, Part 8 of the Consolidated Bylaw). The Ministry of Transport recommends vehicle matters are included in councils' traffic bylaws made under the Land Transport Act 1998. This enables the Police to enforce the bylaw and the Council to issue stationary vehicle infringements.

Changes in Draft Nuisance Bylaw 2019	Rationale
<p>Remove the following clauses under 'Prohibited Conduct'; No person shall in any public place:</p> <p>f) consume, inject or inhale any proscribed substances or offer or sell such substances to any person;</p> <p>h) use profane or obscene language on a public place or within the hearing of a person in a public place;</p> <p>i) loiter or remain in or on a public place after being directed to move on by an enforcement officer;</p>	<p>The Council believes disorderly behaviour and offensive behaviour is better addressed by Police Officers in accordance with the Summary Offences Act 1981 as they are trained and better equipped for these situations than Council officers. The Council cannot issue fines (infringements) to people for these bylaw breaches and taking people to Court over these matters is not seen as a prudent use of resources.</p>
<p>Remove the following clauses from 'Damage to public places':</p> <p>Except with the prior permission of the Council, no person shall in any public place:</p> <p>b) pollute, damage, deface or disfigure, apply graffiti, posters or advertising devices to, or interfere with an ornament, statue, building, structure, or facility;</p> <p>d) cause or permit to be done any act whatsoever by which damage is caused to a public place, or a work or object in, on, over or under the public place;</p> <p>g) drive or park a vehicle in a public place except on a road or in an area set aside for the driving or parking of vehicles;</p>	<p>Section 11 of the Summary Offences Act 1981 addresses wilful damage and section 11A graffiti and tagging. The Council believes a council bylaw is not the best way to address wilful damage as Police have more enforcement tools and community connections to address these issues.</p> <p>Causing damage is also an offence under the Summary Offences Act.</p> <p>The Ministry of Transport recommends vehicle matters are included in councils' traffic bylaws made under the Land Transport Act 1998. This enables the Police to enforce the bylaw and the Council to issue stationary vehicle infringements.</p>
<p>Remove the camping clause from the bylaw and include it in the Council's Freedom Camping Bylaw.</p> <p>'No person shall camp in an area not set aside for that purpose for a period exceeding one overnight stay in any one calendar month'.</p>	<p>The High Court noted in one of its Judgements that all camping matters in council bylaws should be developed in accordance with the Freedom Camping Act 2011 and consolidated under one bylaw. The Freedom Camping Act 2011 allows for councils to issue fines (infringements) for breaches of freedom camping bylaw, where the Local Government Act 2002 does not.</p>
<p>Remove the 'Assembly' clause from the bylaw: No person shall without the prior written permission of the Council:</p> <p>i) participate in any assembly or associate with other persons in a public place so as to impede pedestrians or traffic or to prevent or hinder ready access to shops or premises facing onto the public place; or</p> <p>ii) organise, hold or conduct any meeting, gathering, demonstration, parade, procession or competition in a public place so as impede traffic or cause an obstruction to, or impede, annoy or inconvenience any person.</p>	<p>The right to peaceful assembly, freedom of association and freedom of movement are human rights as outlined in sections 16-18 of the New Zealand Bill of Rights Act 1990.</p> <p>If issues arise where pedestrian movement and traffic is being affected and obstruction is occurring, the Council believes this should be considered and assessed by the Police on a case by case basis.</p>

Changes in Draft Nuisance Bylaw 2019	Rationale
<p>Remove size requirements for street numbers (clause 3.14) 'being in no case less than 50 mm in height for residential buildings and not less than 150mm in height for all other buildings'.</p>	<p>The Council has not issued or inspected the size of street numbers in the past twelve years. It is believed the stringent size requirements are not needed.</p>
<p>Remove the following clauses from 'Nuisance on private property':</p> <p>No person may:</p> <p>b) being the owner or occupier of premises use, or permit to be used or to remain on premises a lavatory other than a flush toilet, unless it be so maintained as to prevent the creation of a nuisance;</p> <p>e) being the owner or occupier of premises, cause or permit a sanitary fixture (as defined in the Building Regulations 1992, Schedule 1, "The Building Code") on those premises to be in such a state or defective condition as to create or be likely so to create a nuisance;</p>	<p>The matter of flushing toilets etc. is a matter for the Building Act 2004 and Waikato Regional Plan rules for effluent disposal.</p> <p>Any sanitary issues with Buildings can be dealt with directly under the Health Act 1956, without need for a bylaw.</p>
<p>Add clause to the Bylaw (draft Bylaw clause 5.2)</p> <p>a) No person may keep any stock on or within any premises in the urban areas of the District, except where the stock is less than 12 months of age and is being kept for participation in a children's agricultural day event.</p> <p>b) Clause 5.2 (a) does not apply where the premises is part of a Structure Plan in the District Plan and is not yet subdivided into lots as permitted by the Structure Plan, or where the section is in pasture and rural in nature.</p>	<p>The 2007 bylaw allowed for a ban or limit to be placed on the number of stock permitted in urban areas but a determination was never made. Given the small size of properties in urban areas (not including lifestyle blocks) and the community expectation that stock should be kept in rural areas not in town, the Council recommends a ban on the keeping of livestock with some exceptions e.g. calf club or group day or where the section is in pasture and rural in nature. The ban does not include Low Density Residential Zones.</p>
<p>Amendment – The 2007 bylaw states a person cannot keep any pigs on any property in urban areas of the District Plan. While the wording remains the same in the draft bylaw, please note the definition of urban area does not include low density residential zones.</p> <p>Add the following clause under 5.3 'pig keeping' in the draft bylaw:</p> <p>'With the prior written permission of the Council, up to four pigs may be kept on a property in the Low Density Residential Zone in the District'.</p>	<p>The Council does not believe the ban on keeping pigs should extend to low density residential areas where section sizes and the location of the property might make it appropriate for the keeping of a small number of pigs.</p> <p>According to the District Plan, if more than four pigs are kept on a property than it is no longer a domestic activity and may be classified as intensive pig farming and require a resource consent. This is not considered appropriate in a low density residential zone.</p> <p>In the public survey 66 people (69%) agreed with the current bylaw where pigs should not be kept in our urban areas (for example industrial, residential, low density residential and townships zones). 22 people (23%) did not agree and thought the keeping of pigs should be allowed. The SPCA supports the ban of keeping of pigs in residential areas where there is not adequate grass and the ability to keep more than one pig, as pigs are very social and should have a companion pig.</p>

Changes in Draft Nuisance Bylaw 2019	Rationale
<p>Add new clauses under 5.4 'Poultry Keeping' in draft bylaw:</p> <p>No person shall keep more than six head of poultry on or within any premises in urban areas, except with the prior written permission of the Council.</p> <p>No person shall keep more than twelve head of poultry on or within any premises in the Low Density Residential Zone, except with the prior permission of the Council.</p> <p>(Note: <i>The keeping of roosters is banned in Waihi, Paeroa and Ngatea</i>)</p> <p>No poultry house or poultry run is to be installed or maintained so that any part of it is within 10 metres of any dwelling or any other building on an adjoining property, whether wholly or partially occupied, or within 2 metres of the boundary of an adjoining property or road.</p>	<p>The 2007 Bylaw stated the Council would limit the number of poultry allowed to be kept in an urban area, but a determination on the number was never passed. However, you can only keep 25 poultry in a rural area before you need a resource consent. This recognises that keeping more than 25 poultry can impact on pasture growth, causing dust and other nuisance.</p> <p>The fact there is no limit on the number of poultry you can keep in an urban area, but there is in a rural area does not make for consistent policy. This, coupled with the fact the Council receives several service requests each year in relation to wandering poultry, noisy poultry and other nuisances related to poultry, provides rationale for limiting the number of poultry to be kept in residential areas.</p> <p>The Council assessed what limits other councils of similar size placed on their residential areas and a limit of 6 poultry allowed to be kept in urban areas, and a limit of 12 poultry in low density residential zones is appropriate.</p>
<p>Add new clause under 5.5 'Bee keeping' in the draft bylaw:</p> <p>When making a decision on the keeping of bees, the Council will consider, amongst other things, the size of the property where the hives are to be kept and the opinions of the owner and occupier of any adjacent property.</p> <p>Bee hives must be located at least 10 metres from any dwelling or any other building on an adjoining property, whether wholly or partially occupied, or at least 2 metres from any adjoining property boundary or road.</p>	<p>While the policy on bee keeping has not changed; people still need the permission of the Council to keep bees in an urban area and low density residential zone, the additional bylaw wording clarifies what the Council will take into consideration when making a decision on the keeping of bees.</p> <p>The public survey demonstrated there is community concern with bee keeping in populated areas with 46 people (48%) wanting a ban. However, it should be noted that 48 people (50%) do not agree with an outright ban on bee keeping in urban areas.</p> <p>A setback from dwelling and adjoining property is included in the bylaw as good flight path management is required and is less likely to be achieved if the hives are too close to the neighbour's house or boundary.</p>
<p>Add 'transitional provisions' to the draft bylaw:</p> <p>Any licence, permit, consent or other form of approval granted under Part 3 (Public Safety) of the Hauraki District Council Consolidated Bylaw 2007 continues in force but;</p> <p>a) expires on the date specified in that approval; or</p> <p>b) if no expiry date is specified, it expires on the date 6 months after the commencement of this bylaw; and</p> <p>c) can be renewed only by application made and determined under this bylaw.</p>	<p>Over the past twelve years the Council has given approval to a number of people to drive their vehicle on the beach at Whiritoa for the purpose of launching boats. Unfortunately, identification stickers were not given out and expiration dates were not stipulated, so the Council is no longer aware of exactly how many people have permission to use vehicles on the beach.</p> <p>In the community survey people raised concerns with the number of vehicles on the beach at Whiritoa and Council enforcement staff have noted difficulties with enforcing the bylaw when there is no clear way to identify which vehicles are</p>

Changes in Draft Nuisance Bylaw 2019	Rationale
	permitted on the beach. For these reasons the Council requires people to reapply for permission.

2.4 What has stayed the same?

The following matters may have been reworded for 'plain English' purposes, however the policy intent remains the same:

- No person can use any object in a public place (including skateboards and bicycles) in a manner that is dangerous or intimidates people or damages a public place.
- Objects, including signs and items for sale must not block the free flow of pedestrians.
- Skating devices are prohibited on the footpaths of certain streets in Paeroa, Ngatea and Waihi (as identified in Schedule 1).
- In urban areas, including low density residential areas, barbed wire and electrical fencing is not permitted on any boundary with public places.
- If any building/structure or vegetation is encroaching onto a public place without the permission of the Council, the Council can require the land owner to remove this.
- People are required to use designated access ways when accessing the beach.
- Vehicles are not permitted on beaches without the consent of the Council. However, as outlined in the table above people will have to reapply for permission under the 2019 Bylaw.
- Horses are permitted on beaches in the district, but must not endanger the safety of persons; or be an annoyance or inconvenience to persons.
- A person must get a licence from the Council to trade in a public place.
- The Council can require the change of a street name and numbering.
- People must pick up their animal's faeces in a public place.
- Council can limit access to reserves for specific reasons.
- No person may burn (on private property) anything in such a manner as to create a nuisance.
- A person may not slaughter an animal in a manner that creates a nuisance.
- A person cannot keep a rooster or cockerel in the urban areas and low density residential zones of Ngatea, Paeroa and Waihi. In the public survey 81 people (84%) support the ban on roosters in Paeroa, Ngatea and Waihi. 11 people (11%) do not.
- A person must get the permission of the Council to keep bees in an urban area and low density residential zone. In the public survey 48 people (50%) do not agree with a ban on bee keeping in urban areas. 46 people (48%) want a ban.

3 Issues and options

The Council is required by law to consider the following questions before adopting a bylaw.

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

Staff and the Councillor working party recommend retaining a Nuisance Bylaw as it is needed to regulate matters not regulated by statute law. It enables the Council to address community matters/complaints where the community expects the Council to play an enforcement role. For example, keeping a rooster in town is not an illegal activity under central government law, but the community believes it is not an acceptable activity for residential areas and the bylaw allows the Council to remove the rooster from the property.

A bylaw is the most appropriate enforcement option for the matters addressed in the draft Bylaw because if people do not comply with the bylaw, the Council can issue verbal warnings,

seize property, and prosecute through the District Court. It is a common enforcement tool' used by councils for regulating and managing public places and nuisance on private property.

3.2 Is the proposed bylaw the most appropriate form of bylaw?

The draft Nuisance Bylaw 2019 is considered to be appropriate because it is proportionate to the issues the Council faces. The Council receives a considerable amount of service requests each year for issues addressed in the Public Place and Nuisance Bylaw such as; noisy and wandering poultry, smoke nuisance from fires, smelly animals, the inappropriate placement of signs, etc.

The bylaw recognises the benefit in controlling certain activities in public and on private land so people can expect a certain level of amenity in their towns and neighbourhoods. It is believed the positive effects of the bylaw outweigh any inconveniences associated with seeking the Council's permission for certain matters.

3.3 Are there any implications under the New Zealand Bill of Rights?

A bylaw that unreasonably interferes with the rights and freedoms in the NZ Bill of Rights Act 1990 will be held to be unreasonable and invalid by the Courts. However, a human right can be interfered with if the issue is critical and the bylaw to address the issue is proportionate and therefore reasonable. Thus justifying the interference.¹ Rights likely affected by bylaws include freedom of expression, freedom of peaceful assembly, freedom of association and freedom of movement, and freedom from discrimination.

On review, staff believe the draft Nuisance Bylaw 2019 does not have any implications on the rights and freedoms contained in the Bill of Rights Act 1990. While the bylaw does place bans on certain activities in certain parts of the district, there are no bans or unjustified limitations on any of the rights and freedoms contained in the Act.

3.4 Approval of the Draft Nuisance Bylaw 2019

There are various policy options that must be explored during all bylaw reviews including:

- Revoke the existing bylaw without a replacement as a bylaw is no longer needed.
- Status Quo – keep the existing bylaw in its current form.
- Amend aspects of the existing bylaw.
- Develop a new bylaw to address an identified issue or need.

The Councillor working party recommends amending the 2007 Bylaw to better meet the current environment and issues experienced over the past ten years. The rationale for the amendments are outlined in section 2.3 above. As noted in section 2 the 2007 Bylaw has been split into subject area and renamed for ease of use.

3.5 Approval of the proposed changes to the Community Protection fees

Under Section 150 of the Local Government Act 2002, the Council may prescribe fees payable for a certificate, authority, approval, permit, or consent from, or inspection by the Council in respect of a matter provided for in a bylaw made under the Act. As a result of the bylaw review, two new fees are recommended to be introduced.

3.5.1 Permission to keep pigs, poultry or bees in an urban area or low density residential zone in accordance with the Nuisance Bylaw 2019

¹ Section 5 New Zealand Bill of Rights Act 1990.

The draft bylaw requires the permission of the Council for the following matters:

- Keeping of bees in an urban area or low density residential zone,
- Keeping of up to four pigs in a low density residential zone,
- Keeping of more than 6 poultry in an urban area, and
- Keeping of more than 12 poultry in a low density residential zone.

To recover the reasonable costs incurred by providing this permission, the following fees are proposed:

Description	Proposed fee
Application to keep pigs, poultry or bees in an urban area or low density residential zone in accordance with the Nuisance Bylaw 2019.	\$60
Inspection of property in respect to an application to keep pigs, poultry or bees in an urban area or low density residential zone in accordance with the Nuisance Bylaw 2019.	\$100

Any income expected to be received from applications is expected to be minimal, and as such not expected to materially affect income budgets for 2019/20. This activity is compliant with the Council's Revenue and Financing Policy (R&FP) allowance for 5-15% of all animal control funding to be received from fees and charges.

3.5.2 Permit to drive a vehicle on the beach

As noted above, the Council has previously given permission to a number of people to drive their vehicle on the beach at Whiritoa for the purpose of launching boats. As the Council is continuing to improve this process, a new fee of \$60 is proposed to meet the administration costs of assessing and providing this written permission and vehicle identification.

While the description of the Health (sub)activity in the Council's R&FP does not explicitly reference the Local Government Act 2002 as an enabling Act, this is the intent of the activity as stated under the Community Protection activity description in the Council's Long Term Plan. Our Community Protection activity ensures the safety of public places and we support that by monitoring and enforcing in a number of areas, which includes the use of vehicles on the beach. The funding of the Health activity allows for 10-25% of funding received from fees and charges. A fee charged to give consent to drive a vehicle on the beach is expected to generate approximately \$600 income in 2019/20 and is in compliance with the R&FP.

3.6 Revocation of the Franklin District Council Brothel Bylaw 2010

The Prostitution Reform Act 2003 allows councils to regulate the location of brothels and signage through a bylaw. When the Act was passed the Council took the approach that a bylaw was not an effective means of controlling the location and signage for brothels, as more robust and defensible controls can be implemented through the District Plan.

The Hauraki District Plan does not refer to brothels specifically, however they generally met the criteria for a commercial activity and have the right to operate either as permitted, controlled or discretionary activities in the appropriate zones. Prostitutes who work from their homes or in a residential area could qualify to be categorised as a home occupation and this would be a permitted or controlled activity in residential or rural zones provided activity standards relating to noise, signage, traffic effects, employee numbers, etc. were met. A number of enforcement mechanisms are available to Council under the Resource Management Act if breaches of standards occur in the permitted or consented operation of brothels. These range from abatement and infringement notices through to enforcement orders and prosecution.

In addition, under the Prostitution Reform Act² when considering an application for a resource consent (Resource Management Act 1991) for a land use relating to a business of prostitution, the council must have regard to whether the business of prostitution:

- is likely to cause a nuisance or serious offence to ordinary members of the public using the area in which the land is situated; or
- is incompatible with the existing character or use of the area in which the land is situated.

The Council has not received any complaints with the location or signage of brothels in the Kaiaua Coast area, or the wider district. If any small brothels are being run in the Kaiaua Coast area, it has not been brought to the attention of Council staff. The anecdotal evidence indicates that no issues or problems have been dealt with by staff and that any existing operators are low key and discreet. Staff have not 'used' the bylaw to date. Council staff will also discuss the matter with local Police to get their opinion on whether or not there is an issue in the District relating to signage or the location of brothels.

The Franklin District Council Bylaw can be viewed at <https://www.hauraki-dc.govt.nz/our-council/bylaws/franklin>.

The Council has the following options for the review of the Franklin District Council Brothels Bylaw:

- Revoke the bylaw and have no brothels bylaw. Any brothel wanting to operate in the Kaiaua Coast area would then have to comply with the signage and other rules for commercial operations in the Franklin District Plan. Staff recommend this option, however, this is subject to confirmation from the District Planner that there are appropriate mechanisms in the Franklin District Plan to control this activity.
- Keep a bylaw that only applies to the Kaiaua Coast area – this seems unnecessary as we are unaware of any brothels operating or any associated issues. In line with the Council's policy approach to date the location and signage requirements would be addressed via the Franklin District Plan.
- Have a bylaw that covers the entire district – this is not seen as a reasonable option as there are no issues to date with using the District Plan for regulation.

3.7 Franklin District Council Trading in Public Places Bylaw 2008

This bylaw requires people to obtain a licence from the Council before they can trade in a public place or from a vehicle in a public place. This is also known as hawking. It also prohibits the washing of windows of vehicles for payment or donation. The Council's current Public Safety Bylaw and the proposed Nuisance Bylaw 2019 also requires people to seek the permission of the Council to trade in a public place so this will not change if the Franklin Bylaw is revoked and the Draft Nuisance Bylaw is adopted. The Council has not received complaints about vehicle window washing, probably because the district only has one set of traffic lights which are located in a rural area. Therefore, staff conclude we do not need a bylaw to address this matter. Staff recommend the Franklin District Council Trading in Public Places Bylaw 2008 is revoked.

The Franklin District Council Bylaw can be viewed at <https://www.hauraki-dc.govt.nz/our-council/bylaws/franklin>.

3.8 Adoption of Statement of Proposal for Draft Nuisance Bylaw 2019

The Council must also adopt the statement of proposal for public consultation, attached as Appendix A. Staff do not consider that it is necessary to develop a summary of the information

² Section 15 Prostitution Reform Act 2003

contained in the statement of proposal to enable public understanding, as the statement of proposal is already concise.

3.9 Approval of the consultation approach

The recommended approach to community engagement is outlined in the Significance and Engagement Assessment section below. This approach needs to be approved by the Council.

4 Significance and Engagement Assessment

A bylaw made, reviewed or revoked under the Local Government Act 2002 must be publicly consulted on before the decision is made. If it is deemed significant or the local authority considers that there is a significant impact on the public due to changes or proposals, then the more prescriptive 'special consultative procedure' must be followed (section 83) in addition to the general consultation approach (section 82).

The special consultative procedure requires that a statement of proposal is adopted by the Council and people must be given a period of at least one month to provide their views to the Council. This can be done by written or verbal feedback. Any person who wishes to present their views must be given a reasonable opportunity to do so.

The alternative engagement approach (if these significance 'triggers' do not apply) is to solely use section 82 'principles of consultation' in the LGA which still requires that anyone who is affected or has an interest in a matter should be provided with clear information and encouraged to provide feedback to the Council, however the required one month feedback period is not mandatory. In reality, these two approaches can be quite similar when put into practice.

4.1 Recommended Engagement Approach

It is proposed the Council consult on the Draft Nuisance Bylaw at the same time as the Draft Wharves and Boat Ramps Bylaw, Draft Cemeteries Bylaw and the revocation of various Franklin Bylaws. It is believed the Nuisance Bylaw may be of significant interest or have significant impact on the general public as it affects how everyone uses public places and regulate certain activities on private land. Therefore, staff recommend that the special consultative procedure is used.

After considering the consultation needs and preferences of those likely to be affected by or have an interest in the proposals, it is proposed that provision be provided for people to provide feedback in both writing and verbally. In terms of written feedback, it is proposed that a one month written feedback period run from Friday 29 March – Monday 29 April 2019. The working party supports the forms of written feedback outlined in the Statement of Proposal as per Appendix A.

If people wish to provide spoken feedback to the Council, the working party recommend this is done by way of drop in sessions in Whiritoa, Waihi, Paeroa and Ngatea, and a formal hearing of feedback on Wednesday, 22 May 2019. Following the hearing, it is proposed that deliberations and decisions are made regarding the bylaw. As decisions are expected to be made on the same day, a resolution to hold an extraordinary meeting of the Council is contained in the Group Manager Planning & Environmental Services' monthly report.

5 Budget Implications

Consultation undertaken as part of the special consultative procedure will involve planned expenditure in the strategic planning budget. This is not considered to be additional expenditure as it can be met through existing budget provision.

6 Recommendation

It is recommended the Council pass the relevant resolutions for making a bylaw under the Local Government Act 2002 and adopt the Statement of Proposal for the Draft Nuisance Bylaw 2019 for the special consultative procedure. The Statement of Proposal also includes proposed additional fees and the revocation of the Franklin District Council Brothel Bylaw 2010 and Franklin District Council Trading in Public Places Bylaw 2008. The working party recommends the Council approve the draft Nuisance Bylaw 2019 in its current form.

Charan Mischewski
POLICY ANALYST

Sarah Holmes
STRATEGIC POLICY PLANNER