

Proposed bylaw for trading and events in public places

Recommendation(s)

That the board:

- i. approves the commencement of the AT public consultation on the joint AC/AT Statement of Proposal (SOP) in accordance with sections 83 and 86 of the Local Government Act 2002 (LGA02) and section 22AD of the Land Transport Act 1998 (LTA98).
- ii. approves the consultation on the proposed the Auckland Transport Trading and Events in Public Places Bylaw 2014 that will apply to the Auckland transport system, to be made in accordance with sections 145 and 146 of the LGA02 and section 22(AB)(1)(zi) and (zj) of the LTA98 (attachment 1) noting that a complementary AC bylaw will apply to all public places under the control of AC including parks and reserves (a copy of the draft AC bylaw may be viewed at [http://infocouncil.aucklandcouncil.govt.nz/Open/2014/05/GB_20140529_AGN_4569_A T.htm](http://infocouncil.aucklandcouncil.govt.nz/Open/2014/05/GB_20140529_AGN_4569_AT.htm))
- iii. determines that the proposed bylaw is the most appropriate way of addressing the issues relating to trading and events in public places, in accordance with section 155(1) of the LGA02.
- iv. determines that the proposed bylaw is the most appropriate form of bylaw to address problems related to trading and events in public places identified as in scope, in accordance with section 155(2)(a) of the LGA02.
- v. determines that the proposed bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990, in accordance with section 155(2)(b) and section 155(3) of the LGA02.
- vi. authorises the Chair of the Board to make any minor edits or amendments to the SOP or proposed bylaw prior to consultation to correct any identified errors or typographical edits.
- vii. authorises the Chief Executive, in consultation with the Chair of the Board, to appoint representatives to the joint AC/AT panel to hear and consider submissions made on the proposed bylaw.

Executive summary

This report seeks AT Board's approval to undertake joint AC/AT public consultation on a proposed bylaw to regulate trading and events in public places which is outlined in a joint AC and AT SOP which can be viewed at [http://infocouncil.aucklandcouncil.govt.nz/Open/2014/05/GB_20140529_AGN_4569 AT.htm](http://infocouncil.aucklandcouncil.govt.nz/Open/2014/05/GB_20140529_AGN_4569_AT.htm). The AC Governing Body approved the SOP in relation to AC at its meeting on 29 May 2014

The SOP reflects the legislative requirement to review the legacy council bylaws under the Local Government (Auckland Transitional Provisions) Act 2010 and to propose new bylaws under the LGA02 and the LTA98.

The SOP contains:

- details of the review process and the proposal to revoke the existing legacy council bylaws;
- the proposal for complementary trading in public places bylaws that will apply across Auckland in AC and AT's respective areas of management and control;
- information on the bylaws to be revoked;
- the reasons for the proposals;
- the outcomes sought;
- the options considered and the recommended approach.

Strategic and Legislative context

AT seeks to be in line with the strategic direction of the Auckland Plan: *Auckland's transport system is effective and efficient, and provides for the region's social, economic and environmental and cultural wellbeing*. The proposed bylaw will assist in achieving this outcome by proposing controls which enable and encourage suitable trading activities whilst ensuring public places remain accessible; are safe for pedestrians and other road users; are free of nuisances; and are convenient for the enjoyment of the public.

AT and AC are required to review the current legacy council bylaws under sections 61 and 63 of the Local Government (Auckland Transitional Provisions) Act 2010 in accordance with section 46 of the Local Government (Auckland Council) Act 2009.

AC and AT may make bylaws under the LGA02 and the LTA98 convening their respective areas of management and control. AT proposes a new bylaw to regulate public places trading activities under sections 145(a), (b) and (c) and section 146(b)(vi) of the LGA02 and under section 22AB(1)(zi), (zj) and (zk) of the LTA98 to:

- protect the public from nuisance;
- protect promote and maintain public health and safety;
- minimise the potential for offensive behaviour in public places;
- regulate trading in public places (including the regulation of mobile shops);
- regulating road-related matters including enhancing road safety and protection of the environment.

Background

Joint AC/AT review of legacy bylaws

AC and AT have undertaken a joint review of legacy bylaws relating to trading in public places (or 'street trading') that occurs within areas of AC's jurisdiction for public places (including parks and beaches) and AT's jurisdiction for roads under the care, management and control of AT. The legacy bylaws controlled trading activities in a range of ways in their

respective legacy council areas. The SOP contains a comparison of the issues regulated by the bylaws.

Proposed AC/AT Trading and Events in Public Places Bylaws

Many of the trading activities proposed to be covered in each new region-wide AC and AT bylaw were covered in legacy council bylaws. The proposed bylaws propose a generally harmonised approach across the region.

Trading activities covered by the proposed bylaws include:

- markets and stalls;
- mobile shops;
- outdoor dining;
- fundraising (including soliciting or collection of subscriptions or donations);
- offering commercial services;
- distribution of promotional goods or materials;
- street performances and pavement art;
- requirement to obtain approval for events or filming in a public place;
- requirement to obtain approval for trading activities in parks and reserves;
- outdoor display of goods.

The proposed bylaws would require specific approval be applied for in relation to most forms of public trading and would allow for conditions to be placed on those approvals.

Approval conditions may relate to: the nature of the activity (location, size, and number), payment of fees or occupation charge or bond, hours, duration of permit, public liability insurance, and traffic management.

It is proposed that there would not be a requirement to obtain an approval for relatively benign forms of trading such as outdoor business displays, provided they comply with any relevant guidelines, standards, controls, policies or codes of practice set by the council or Auckland Transport.

The bylaw is supplemented by existing policies that apply to events and filming such as the Auckland Film Protocol, the Major Events Strategy and Events Policy. The proposed Trading and Events in Public Places Bylaw 2014 is considered the most appropriate way to provide regulatory support for those policies by requiring the organizer of an event or filming activity in a public place to obtain approval from AC or AT (e.g. traffic management plans).

Issues and options

Guiding principles for the issues and options

- ensuring safe access for pedestrians and other users of public places;
- maintaining a quality environment, heritage and character for Auckland's public places;
- appropriate and effective regulation and transparent decision-making;
- regional consistency in the use of public places for trading activities (with local variation where appropriate);

- ensuring traders pay for commercial use of a public place;
- encouraging business development and diversity of trading activities.

Options considered for the trading activities

Each of the trading activities was considered against the following options. The SOP sets out that in each case Option A was preferred.

- Option A: Region-wide Bylaws – Regulation through an Auckland Transport Bylaw and an Auckland Council Bylaw.
- Option B – Alternative tools – Use other approaches such as public information, education, signage and awareness campaigns or the Unitary Plan.
- Option C – Do nothing – No role for Auckland Transport or Auckland Council in managing the activity through a regulatory approach, rely on existing legislation such as section 357 of the Local Government Act 1974 and the food regulations, etc.

Issues

The issues related to all the trading activities in public places are discussed in the SOP and do not differ from the issues addressed by legacy bylaws. These include issues of traffic safety, nuisance, amenity, health, accessibility and food safety.

Recommended options

The proposed bylaws allow trading activities to be undertaken subject to controls to manage these issues. The bylaws provide that AC and AT policies and guidelines can be considered in approving or setting controls for trading activities.

The issues and options to address specific trading activities

Markets and stalls

Market operators are required to obtain approval subject to conditions under which they must operate the market and manage the stalls within that market. Well established processes are in place that supplements the bylaw controls addressing the potential impact on the area in which they operate – taking up car parks, public squares and the people who normally use that public place to address issues such as litter, noise and added traffic congestion.

Mobile shops

Mobile shops generally mean a vehicle located on a road or other public place offering goods for sale including vehicles selling ice creams, coffee or fruit and vegetables.

The specific issues relate to mobile shops include safety, accessibility and loss of public space. Their operation in high traffic /pedestrian volume areas such as main roads can create bottlenecks from cars slowing down to see what's on offer or pulling off the road to park and buy, as well as limiting visibility. Mobile shops may block driveways, car parks and/or footpaths. A particular concern with mobile shops, especially ice cream vans is the safety of children given this product's popularity and target market. Disabled stakeholders have emphasised the importance of queue management. Queues blocking footpaths can have an impact on wheelchair users and vision impaired pedestrians in particular.

These issues are proposed to be regulated in the bylaw by enabling controls on the number, location and duration of the operation of mobile traders. In addition this could be managed through Auckland Transport's Traffic Bylaw 2012 which enables Auckland Transport to prohibit unsafe manoeuvres and enact parking controls in particular locations.

Outdoor dining

Outdoor dining areas must be clearly defined to prevent furniture from being moved outside a permitted area. This may not be significant in certain areas (where there are wide footpaths), but it could be in places where space is more limited.

It is important to maintain a minimum clear access way on all footpaths and public places. Auckland Transport's draft Code of Practice sets out "zones" on the footpath. Generally, a minimum width of 1.8 is required for the "through route" on urban streets.

Outdoor dining areas can contribute to street "clutter", particularly where there is existing street furniture. This cumulatively reduces the amount of space available to pedestrians.

Fundraising

The issues arising are obstruction of public places including footpaths. This can be addressed by approving fundraising with limits on the location and duration to ensure it is carried out in a safe and appropriate manner by legitimate charitable and community organisations.

Offering commercial services

The use of public space for commercial purposes, or, as a location from which to offer commercial goods or services may have an impact on the use of those public spaces by members of the public not seeking to use those services or living or working adjacent to them. The bylaw would therefore allow for some controls to be imposed on such activities.

Distribution of promotional goods or materials

The distribution of pamphlets or promotional goods can create issues with the obstruction of footpaths and littering. The bylaw would allow for specific controls to be imposed on those seeking approval for this activity.

Street performance/busking and pavement artists

The use of public space for performances, busking and pavement artists can all have an impact on the use and enjoyment of the space by others but if done well can also improve the public's enjoyment of such spaces. The bylaw proposals seek to minimise the potential for harm or danger from these activities

Events

The use of the Auckland Transport System (roads, footpaths etc.) for various trading activities associated with events (including filming) is generally regulated by AT in accordance with the NZTA Code of Practice for Temporary Traffic Management (traffic diversion and management) which supplements the proposed bylaw provisions. The bylaw will allow for some additional matters to be considered to ensure events do not clash and have an undue impact on the use of public space.

Outdoor display of goods

The display of retail goods on tables and stands on footpaths outside shops is common in many areas of Auckland but if uncontrolled can cause obstructions for pedestrians and particular difficulties for the sight impaired.

Financial impact

No financial impact has been identified for AT. The administration and enforcement of AT's public places and street trading bylaws is currently delegated to AC's Licencing and Compliance Department.

Stakeholder engagement

Appendix 1 of the SOP outlines the stakeholder engagement lead by AC and which involved participation by AT. This included discussion with political, internal and external stakeholders including local boards, business development associations and discussions with internal groups and AC and AT and the CCOs responsible for the management of some trading activities such as events.

Public consultation will be undertaken in accordance with the special consultative procedure for bylaws made under the LGA02. In addition AT as a road controlling authority will also follow the consultation requirements set out in section 22AD of the LTA98.

Customer impact

Council will be responsible for administering and enforcing both bylaws. The proposed bylaw requires many trading in public places activities to only be undertaken once approval has been given but also covers activities for which an approval would not be required, such as the outdoor display of goods. Such activities would still be required to meet conditions in the proposed bylaw and any other standards and guidelines that the council may develop. This would capture activities such as small-scale individual or community trading activities and ensure an appropriate level of regulation through the bylaw (not creating excessive or onerous requirements for activities or traders with minimal impact).

Legal and regulatory issues

No legal or regulatory issues have been identified. The proposed SOP and bylaw were reviewed by the legal group at council.





Next steps

- The new bylaws are proposed to be notified for a one month public consultation period beginning following approval of the SOP by the Board.
- Hearings on the submissions and deliberations will be undertaken by a panel jointly appointed by AC and AT.
- The Board and the Governing Body of Council will each make the AT and council bylaws after consideration of a hearings report which is expected to be later in 2014.

Attachment

Number	Description
1	Auckland Transport Trading and Events in Public Places Bylaw

Document ownership

Submitted by	Terry Sugrue Regulations and Standards Manager	
	Randhir Karma Manager Road Corridor Operations	
Recommended by	Mario Zambuto General Counsel	
	David Warburton Chief Executive	
Approved for submission		

Glossary

Acronym	Description	Business Unit
LGA02	Local Government Act 2002	
LTA98	Land Transport Act 1998	
SOP	Statement of Proposal	



Trading and Events in Public Places Bylaw 2014

Te Ture ā-Rohe Te Mahi Tauhokohoko me nga Takunetanga ki ngā Wāhi Marea 2014

Governing Body of Auckland Transport

Resolution

xx Month 20xx

Pursuant to the Local Government (Council) Act 2009, and the Land Transport Act 1998 the Governing Body of Auckland Transport makes the following bylaw

Explanatory note:

The Local Government (Auckland Council) Act 2009 provides for Auckland Council and Auckland Transport to make bylaws under the Local Government Act 2002 and Land Transport Act 1998 to allow trading in public places with reasonable controls. The bylaw also includes clauses on events and filming in public places. Public places includes streets, roads, parks, recreation grounds and other public land owned, managed or under the control of Auckland Council and its council controlled organisations, including Auckland Transport.

Contents	Page
1 Title	4
2 Commencement	4
3 Application	4
Part 1	
Preliminary Provisions	
4 Purpose	4
5 Interpretation	4
Part 2	
General	
6 Requirement to hold an approval	8
7 Exemptions to holding an approval	8
8 Designated public places	8
Part 3	
Approvals and other administrative matters	
9 Application for approval	9
10 Deciding an application	9
11 Approval conditions	9
12 Fees	10
13 Display of an approval	10
14 Review of an approval	10
Part 4	
Trading and events in public places	
15 Markets and stalls	10
16 Mobile shops	10
17 Outdoor dining	11
18 Fundraising	11
19 Offering commercial services	11
20 Distribution of promotional goods and materials	11
21 Street Performance / busking	12
22 Pavement artists	12
23 Events	12
24 Outdoor displays of goods	12
Part 5	
Enforcement powers	
25 Non-compliance with conditions of approval	13
26 Removal of material or things	13

27 Exceptions 13

**Part 6
Offences and penalties**

28 Bylaw breaches 13

**Part 7
Savings, transitional provisions and revocations**

29 Savings and transitional provisions 13

30 Revocations 14

DRAFT

1 Title

This bylaw is the Auckland Transport Trading and Events in Public Places Bylaw 2014.

2 Commencement

This bylaw comes into force on DD month 2015.

3 Application

This bylaw applies to public places under the care, control or management of Auckland Transport.

**Part 1
Preliminary provisions**

4 Purpose

- (1) The purpose of this bylaw is to provide for the control of trading and events in public places by:
- (a) regulating trading activities and the conduct of persons selling or offering goods or services in public places by requiring approval from Auckland Transport;
 - (b) regulating events and filming in roads and other public places by requiring operators to obtain an approval;
 - (c) setting general and specific conditions for trading and events in public places to ensure that appropriate standards of health and safety, pedestrian and vehicle access and visual amenity are maintained;
 - (d) prescribing for fees in respect of any approval in relation to matters specified in subclauses (1)(a) and (b).

5 Interpretation

- (1) In this bylaw, unless the context otherwise requires,—

Act means the Local Government Act 2002 or Land Transport Act 1998 as the context requires.

amenity means the natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

approval means a licence, permit or other form of approval granted under this bylaw and includes all conditions to which the approval is subject.

Auckland has the meaning given by the Local Government (Auckland Council) Act 2009.

Explanatory note: section 4(1) states: "Auckland means the area within the boundaries determined by the Local Government Commission under section 33(1) (as that determination is given effect to by Order in Council under section 35(1))."

charity means a non-profit organisation that raises funds for the benefit of a community group or the overall benefit of the public.

commercial services means selling or hiring any goods or services which are offered or provided in a public place in exchange for payment, reward or otherwise. This includes, but is not limited to, the production and sale of personal portraits, hiring recreational equipment or, any other service of any kind whatsoever.

council means the governing body of the Auckland Council or any person delegated or authorised to act on its behalf.

council controlled organisation has the same meaning as substantive council controlled organisation in the Local Government (Auckland Council) Act 2009.

Explanatory note: section 4(1) states: “substantive council-controlled organisation”—

(a) means a council-controlled organisation that is either wholly owned or wholly controlled by the Council and either—

(i) is responsible for the delivery of a significant service or activity on behalf of the Council; or

(ii) owns or manages assets with a value of more than \$10 million; and

(b) includes Auckland Transport.

dangerous materials and objects means any material or object that pose risk or hazard to the public and performers. Dangerous materials include flammable materials and chemicals, fire, fireworks, smoke, flares, heated elements or anything giving off heat or toxicity that could harm or damage the public or the environment. Dangerous objects include chainsaws, knives, whips, spears, swords, spikes and sharp objects of any kind that could harm the public or performers.

event means an organised temporary activity that takes place on one or more days including an organised gathering, parade, protest, wedding, private function (which is independent of premises), festival, concert, celebration, multi-venue sports event of a significant scale, fun run, marathon, duathlon or triathlon. For the purposes of this bylaw a performance, private function, tasting and sampling activity, giveaway, market, sports practice or training that takes place indoors is not an event.

filming means the recording of images, moving or still, whether on film or by video tape, electronically or by any other means, but excludes the still or video recording of a wedding ceremony or other private celebration or event or the recording of current affairs or news for immediate release.

footpath means a path or way principally designed for, and used by, pedestrians.

fundraising umbrella organisation means any organisation recognised by the council as coordinating fundraising activities across charities, and includes the Public Fundraising Regulatory Association.

market means the whole of the place and the whole of the activity, where more than one stall at a common location where goods and / or services are offered for sale or hire, whether for commercial or charitable purposes.

market operator means any person who operates a market.

mobile shop means a vehicle, whether self-propelled or not, standing on a road or other public place and from which:

(a) goods are offered or exposed/displayed for sale; or

(b) goods may be ordered (whether or not in pursuance of an invitation to call with the goods); or

(c) services are offered for sale;

but does not include: any vehicle used for the purpose of transporting and delivering goods pursuant to a prior order being placed; or

(d) a mobile library.

outdoor display of goods means the display of goods and / or services in a road or other public place adjacent to business premises, and includes any display structure

outdoor dining (alfresco) means a road or other public place used by an adjacent business premise for the purpose of providing food or drink.

pavement art means temporary images or drawings created either directly on to the pavement or on removable surfaces such as paper or plastic laid out on the pavement. Advertising on the pavement is not considered pavement art under this bylaw.

pavement artist means any person or persons who create pavement art for the purposes of public exhibition.

park means-

- (a) any land vested in or administered by the council under the provisions of the Reserves Act 1977; or
- (b) any park, domain or recreational area under the control or ownership of the council or council controlled organisation

parks management plan means an adopted management plan for any regional or local park.

person includes a corporation sole, a body corporate, and an unincorporated body.

premises means any separately occupied land, building, or part of the same.

public place means any place that, at any material time, is owned, managed, maintained or controlled by Auckland Transport.

road has the meaning given by the Local Government Act 1974.

Explanatory note: section 315 states: Road means the whole of any land which is within a district, and which—

- (a) *immediately before the commencement of this Part was a road or street or public highway; or*
- (b) *immediately before the inclusion of any area in the district was a public highway within that area; or*
- (c) *is laid out by the council as a road or street after the commencement of this Part; or*
- (d) *is vested in the council for the purpose of a road as shown on a deposited survey plan; or*
- (e) *is vested in the council as a road or street pursuant to any other enactment;— and includes—*
- (f) *except where elsewhere provided in this Part, any access way or service lane which before the commencement of this Part was under the control of any council or is laid out or constructed by or vested in any council as an access way or service lane or is declared by the Minister of Works and Development as an access way or service lane after the commencement of this Part or is declared by the Minister of Lands as an access way or service lane on or after 1 April 1988:*
- (g) *every square or place intended for use of the public generally, and every bridge, culvert, drain, ford, gate, building, or other thing belonging thereto or lying upon the line or within the limits thereof;— but, except as provided in the Public Works Act 1981 or in any regulations under that Act, does not include a motorway within the meaning of that Act or the Government Roading Powers Act 1989*

sound performance means Is performance that involves amplification, musical instruments or other noise making objects or loud voices.

special street performance approval means any street performance including dangerous materials, objects or animals.

stall means a stand, stall, structure, vehicle, awning, table or temporary structure from which goods and / or services are offered for distribution or sale and which is erected, placed or maintained in or on a public place.

street furniture means any structure installed by or with the approval of the council or Auckland Transport in a public place and includes the following: pole, rubbish bin, telephone box, planter box, letterbox, seat, parking meter and bus shelter.

street performance / busking means the provision of entertainment on or in a public places, and includes playing an instrument, singing, dancing, juggling, mime, puppetry, performance art, conjuring, aerobatics, recitation, undertaking artworks and performing other acts of theatrical or visual forms.

trading goods means all structures, items, furniture, screens, barriers, objects, stalls, signs, vehicles, and any other equipment associated with the trading activity.

trading in a public place means an activity undertaken by any person or organisation involving the sale of goods in a public place or the offering of a commercial service for payment, reward or otherwise, including but not limited to:

- (a) markets and stalls;
- (b) mobile shops;
- (c) outdoor dining;
- (d) fundraising for a charitable cause, soliciting of any subscription or collection of any one-off or on-going donation;
- (e) offering commercial services in a public place;
- (f) distribution of promotional goods and materials;
- (g) outdoor display of goods;
- (h) street performance / busking;
- (i) pavement art.

trading activity has a corresponding meaning to **trading in a public place**.

vehicle has the meaning given by the Land Transport Act 1998.

Explanatory note: section 2(1) states: Vehicle-

- (a) *means a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved; and*
- (b) *includes a hovercraft, a skateboard, in-line skates, and roller skates; but*
- (c) *does not include-*
 - (i) *a perambulator or pushchair;*
 - (ii) *a shopping or sporting trundler not propelled by mechanical power;*
 - (iii) *a wheelbarrow or hand-trolley;*
 - (iv) *a pedestrian-controlled lawnmower;*
 - (v) *a pedestrian-controlled agricultural machine not propelled by mechanical power;*
 - (vi) *an article of furniture;*

- (vii) *a wheelchair not propelled by mechanical power;*
 - (viii) *any other contrivance specified by the rules not to be a vehicle for the purposes of this definition;*
 - (ix) *any rail vehicle.*
- (2) To avoid doubt, compliance with this bylaw does not remove the need to comply with all other applicable Acts, regulations, standards, bylaws, regional plan rules, condition of a resource consent; a reserve management plan prepared under the Reserves Act 1977, a park management plan prepared under the Local Government Act 2002 or any controls specified under this bylaw from time to time.
 - (3) Unless the context requires another meaning, a term or expression that is defined in the Local Government Act 2002 or the Land Transport Act 1998 and used in this bylaw, but not defined, has the meaning given by that Act.
 - (4) Any explanatory notes and attachments are for information purposes, do not form part of this bylaw, and may be made, amended and revoked without formality.
 - (5) The Interpretation Act 1999 applies to this bylaw.

Part 2 General

6 Requirement to hold an approval

- (1) A person must hold an approval issued by Auckland Transport to undertake the following activities in public places:
 - (a) trading in a public place;
 - (b) events;
 - (c) filming.

7 Exemptions to holding an approval

- (1) Notwithstanding clause 6 (1), the following are exempted from the requirement to obtain an approval under this bylaw so long as they comply with any relevant guidelines, standards, controls, policies or codes of practice set by the council or Auckland Transport:
 - (a) outdoor display of goods provided such displays comply with the provisions in clause 24;
 - (b) art installed on public places by Auckland Transport;
 - (c) goods or services delivered to private premises or service delivery vehicles such as milk vendors or newspaper delivery to private residences or businesses;
 - (d) the sale of goods (e.g. produce) or offering of services (e.g. hair stylist) from private premises.

8 Designated public places

- (1) Auckland Transport may, from time to time, by resolution, designate a specific road or part of a road or public place where all trading activities or any specified category of trading are prohibited to ensure public safety, prevent nuisance, minimise obstructions or mis-use of a public place.

Part 3**Approvals and other administrative matters****9 Application for approval**

- (1) Applications for approval must be made in the prescribed form, describe the activities in respect of which the approval is sought and be accompanied by further supporting information as Auckland Transport may require to enable processing of the application.
- (2) The holder of an existing approval may apply to Auckland Transport for a renewal of that approval.
- (3) Approvals may be granted or refused at the discretion of Auckland Transport, upon such terms and conditions as Auckland Transport thinks fit.

10 Deciding an application

- (1) The decision to grant or refuse an application for an approval together with any conditions on the approval, may be made in accordance with any relevant guidelines approved by the council or Auckland Transport specified under this bylaw from time to time.
- (2) In deciding to grant or decline an application for approval Auckland Transport may consider the following matters:
 - (a) the location of the activity and whether it is likely to cause a nuisance, obstruction or a hazard to pedestrians or vehicular traffic ;
 - (b) the specifications of any furniture, structures, equipment, vehicles and other items to be used for the activity;
 - (c) the impacts on the surrounding environment as a result of noise, smell, glare, light spill ,appearance or any other effects;
 - (d) the suitability of a person to hold an approval taking into account any known past operational issues and the applicant's experience and track record;
 - (e) where applicable, whether an applicant is a registered charity or a member of a registered organisation.
- (3) Any person who has an application declined or revoked by Auckland Transport may apply in writing for a review of the decision and Auckland Transport may review it accordingly.

11 Approval conditions

- (1) The conditions upon which an approval is granted may include, but are not limited to, the following:
 - (a) the designated times of operation (hours and days) including limitations on the hours of set up and pack down;
 - (b) the duration of the approval;
 - (c) the location of the activity including the minimum clear widths of footpaths required for pedestrian access;
 - (d) a requirement that the activity is not located in a public place (including near intersections, bus stops, vehicle crossings, accessways or service lanes) in a way that it is likely to cause a nuisance, obstruction or hazard to pedestrian and vehicle access;

As at May 2014 Draft Trading and Events in Public Places Bylaw

- (e) requiring compliance with a traffic management plan
 - (f) specifications on the use of any furniture, structures, equipment, vehicles and other items associated with the activity;
 - (g) safety, health and hygiene requirements;
 - (h) the requirement for public liability insurance;
 - (i) restrictions on the use of amplified music/sound.
- (2) Notwithstanding subsection(1) any trading activity involving use of the footpath must maintain a minimum unobstructed footpath width of no less than 1.8m.

12 Fees

- (1) Auckland Transport may prescribe fees for an approval, including fees to process an application, to review an existing approval and to inspect trading activities and charges for the period of the approval.

13 Display of approval

- (1) Unless exempted by Auckland Transport a person with an approval issued by Auckland Transport must prominently display their approval so that it is able to be read by the public at all times during activities.

14 Review of an approval

- (1) Auckland Transport may cancel, amend or initiate a review of an approval issued under this bylaw if:
- (a) the activity is likely to interfere with intended works undertaken by or on behalf of the council or Auckland Transport or a network utility operator that it is entitled by statute to undertake in a public place and provided all otherwise necessary authorisation is obtained;
 - (b) if urgent action is required to protect the public from unhygienic, unsafe or hazardous conditions;
 - (c) the activity authorised in the approval is likely to impact on public health and safety or cause a nuisance, obstruction or damage.

Part 4**Trading and events in public places****15 Markets and stalls**

- (1) In addition to any of the approval conditions specified under clause 11 of this bylaw Auckland Transport can impose the following conditions on an approval for markets and stalls:
- (a) the exact location of the market and any associated signs and displays;
 - (b) the type, number, size and position of stalls and any trading goods used within a market;
 - (c) where food is to be sold, requirements for compliance with food hygiene regulations.

16 Mobile shops

- (1) In addition to any of the approval conditions specified under clause 11 of this bylaw Auckland Transport can impose the following conditions on an approval for mobile shops:
- (a) the exact location of the mobile shop and any associated signs and displays;
 - (b) the hours or days that the mobile shop occupies a public place at any one time;
 - (c) the types of goods that may be sold from the mobile shop;
 - (d) where food is to be sold, requirements for compliance with food hygiene regulations.

17 Outdoor dining

- (1) In addition to any of the approval conditions specified under clause 11 of this bylaw Auckland Transport can impose the following conditions on an approval for outdoor dining:
- (a) a requirement that the approval holder delineate the exact operating location of the outdoor dining area;
 - (b) the numbers of tables and chairs permitted;
 - (c) that no additional tables and chairs are to be placed in the public place without approval from Auckland Transport;
 - (d) that any front and side awnings that have been given approval allow for clear visibility.

18 Fundraising

- (1) In addition to any of the approval conditions specified under clause 11 of this bylaw Auckland Transport can impose the following conditions on an approval for fundraising:
- (a) a requirement that the applicant is registered as a charity with the Department of Internal Affairs;
 - (b) that boxes, bags, clothing or collection devices used for charity appeals or fundraising organisations must clearly identify the appeal or organisation;
 - (c) that a collector must provide information on the charity to subscribers / donors.

19 Offering commercial services

- (1) In addition to any of the approval conditions specified under clause 11 of this bylaw Auckland Transport can impose the following conditions on an approval for offering commercial services:
- (a) the intended location including whether there are multiple sites;
 - (b) the quality and standard of services being offered;
 - (c) any potential impact on local businesses and the local environment;
 - (d) any potential impact on residential areas.

20 Distribution of promotional goods or materials

- (1) In addition to any of the approval conditions specified under clause 11 of this bylaw Auckland Transport can impose the following conditions on an approval for the distribution of promotional goods or materials:
- (a) the intended location including whether there are multiple sites;
 - (b) the quality and standard of promotional goods or materials being offered;

- (c) any potential impact on local businesses and the local environment;
- (d) any potential impact on residential areas.

21 Street performance/busking

- (1) Street performers must not approach any person requesting money or solicit funds in a manner that may cause a nuisance to any other person in their use of that public place.
- (2) Street performers must take all practicable steps to ensure that their performance causes no harm to themselves or members of the public.
- (3) Street performers must obtain a special street performance approval to use dangerous materials or objects.

22 Pavement artists

- (1) A person with an approval to create pavement art in a public place must use materials that can be washed off with water without leaving any residue. Materials must not be slippery or likely to impact on public safety.
- (2) Advertising is not permitted in pavement art.
- (3) Auckland Transport may, from time to time, designate specific areas where pavement artists are permitted or prohibited.

23 Events

- (1) In addition to decisions regarding an application for approval as specified in Clause 10 Auckland Transport will consider the following matters when assessing an application for an event approval:
 - (a) whether there is a prior booking of the public place and the two events cannot reasonably take place at the same time, or
 - (b) Auckland Transport reasonably believes that:
 - (i) there will be significant disruption to traffic flows or public passage; or
 - (ii) public safety cannot be maintained.

24 Outdoor displays of goods

- (1) All outdoor business displays must:
 - (a) not impede the movement of pedestrians or vehicles, create or likely to cause danger or obstruction to any person;
 - (b) not be in a public place outside the business hours of the business;
 - (c) be moved to another part of the public place if directed by Auckland Transport to do so;
 - (d) be placed immediately adjoining the premises from which the good and services displayed may be purchased;
 - (e) not display knives or firearms or be dangerous or offensive;
 - (f) not be placed in a carriageway, driveway, footpath, crossing, grass verge or traffic islands.

**Part 5
Enforcement powers**

25 Non-compliance with conditions of approval

- (1) Where a person does not comply with the conditions of the approval Auckland Transport may take one of more of the following steps:
 - (a) issue a written warning to the approval holder, which may be considered as evidence of a prior breach of an approval condition during any subsequent review of the approval;
 - (b) review the approval where:
 - (i) a person has failed to meet the conditions of their approval or any other requirements of any relevant criteria, policy or guidelines approved by the council or Auckland Transport;
 - (ii) a person that holds an approval fails to meet any written instructions in a notice issued by Auckland Transport within the time specified in that notice;
 - (c) enforce any breach of this bylaw, as provided for in the Local Government Act 2002, and/ or the Land Transport Act 1998 and/or the Health Act 1956 and/or Litter Act 1979.
- (2) A review of an approval, may result in:
 - (a) amendment of the approval; or
 - (b) suspension of the approval; or
 - (c) withdrawal of the approval.

26 Removal of material or things

- (1) Auckland Transport may recover from the person who committed the breach of this bylaw the appropriate costs in connection with the removal of the material or thing;
- (2) That the approval holder be liable for all costs of repair to any damage or cleaning to the footpaths that is caused by the trading activity.

27 Exceptions

- (1) A person is not in breach of this bylaw if that person proves that the act or omission was in compliance with the directions of an authorised officer.

**Part 6
Offences and penalties**

28 Bylaw breaches

- (1) A person who fails to comply with this bylaw commits a breach of this bylaw and is liable to a penalty under the Local Government Act 2002, and/ or the Land Transport Act 1998 and/or the Health Act 1956.

- (2) A person who commits a breach of this bylaw that is an offence under the Litter Act 1979 is liable to a penalty under that Act.

Part 7

Savings, transitional provisions and revocations

29 Savings and transitional provisions

- (1) This clause applies to:
- (a) Auckland Regional Council Parks Bylaw 2007;
 - (b) Auckland City Council No 20 - Public Places Bylaw 2008;
 - (c) Franklin District Council Trading in Public Places Bylaw 2008;
 - (d) Chapter 7 (Events and Trading in Parks and Public Places) of the Manukau City Consolidated Bylaw 2008;
 - (e) Part 3 (Trading in Public Places) of the North Shore City Council Bylaw 2000;
 - (f) Papakura District Council Trading in Public Places Bylaw 2008;
 - (g) Chapter 5 (Trading in Public Places) of the Rodney District Council General Bylaw 1998;
 - (h) Waitakere City Council Public Places Bylaw 2010.
- (2) Any resolution or other decision made under the bylaws referred to in clause 29 (1) remains in force in the area to which it applied until revoked or replaced by an equivalent resolution or decision made by Auckland Transport under this bylaw.
- (3) Any approval, consent, permit, dispensation, permission or other form of approval made under the bylaws referred to in clause 29 (1) continues in force but:
- (a) expires on the date specified in that approval; or
 - (b) if no expiry date is specified, expires 12 months from the date that this bylaw becomes effective; and
 - (c) can be renewed only by application made and determined under this bylaw.
- (4) Any application for an approval, consent, permit, dispensation, permission or other form of approval made under a bylaw referred to in clause 29(1) that was filed before the day on which this bylaw commences must be dealt with by Auckland Transport under the relevant former bylaw in clause 29(1).

30 Revocations

- (1) The following bylaws are revoked to the extent these relate to the regulation of trading in a public place.
- (a) Auckland Regional Council Parks Bylaw 2007 (Part 2);
 - (b) Auckland City Council No 20 - Public Places Bylaw 2008 (clauses 20.6 – 20.7);
 - (c) Franklin District Council Trading in Public Places Bylaw 2008;
 - (d) Chapter 7 (Events and Trading in Parks and Public Places) of the Manukau City Consolidated Bylaw 2008;
 - (e) Part 3 (Trading in Public Places) of the North Shore City Council Bylaw 2000;
 - (f) Papakura District Council Trading in Public Places Bylaw 2008;
 - (g) Chapter 5 (Trading in Public Places) of the Rodney District Council General Bylaw 1998;
 - (h) Waitakere City Council Public Places Bylaw 2010 (Part 5).