

Proposed AT Election Signs Bylaw 2013

Recommendations

That the board:

- i). Notes and considers the full written submissions contained in Attachment 3 and the Hearing Panel Summary of Submissions and Recommendations in Attachment 1.
- ii). Makes the bylaw proposed in Attachment 2 to take effect on 8 June 2013.
- iii). Pursuant to section 54 of the Local Government (Auckland Council) Act 2009 delegates the power for the passing of resolutions under the bylaw to the Traffic Control Committee subject to an additional independent member with knowledge and experience in relation to elections being appointed by the chief executive.

Executive summary

The proposed AT Election Signs Bylaw 2013 has been finalised for consideration by the board. It is intended for the bylaw to be in place prior to the local elections in October 2013.

AT staff reviewed the provisions for elections signs which are covered in a variety of ways in legacy council bylaws and developed a new proposal rather than suggesting the expansion of any one legacy bylaw across the region.

The proposal is for consistent rules to control election signs and an integrated system of determining the sites on public places for the display of election signs across Auckland, to be specified by resolution made under the bylaw.

Consultation was undertaken with specific stakeholders in December 2012 and with the public in February 2013. The hearing panel appointed by the board considered nineteen written and oral submissions on the proposal.

Strategic context and legislative requirements

AT has to give effect to the strategic direction in the Auckland Plan as well as any other strategic documents such as the Unitary Plan. The Auckland Plan sets out the strategic direction for Auckland to become the world's most liveable city for the next 30 years by identifying the targets and priorities that need enhancing, whilst the Unitary Plan will combine both regional and district planning functions to give effect to the Auckland Plan, using rules and incentives to achieve high quality outcomes. The proposed bylaw provides an administering function to complement both plans. It is consistent with the Auckland Plan's strategic direction 12: *plan, deliver and maintain quality infrastructure to make Auckland liveable and resilient*, through the control on the location of the election signs. The proposed bylaw will discourage the proliferation of signs on public land and ensure safety and amenity values are retained.

Legislation applying to elections signs

The display of election signs is a significant part of campaigning for elections and by-elections. Election signs are subject to the provisions of the Electoral Act 1993 and the Electoral (Advertisements of a Specified Kind) Regulations 2005 as well as bylaws made under the Land Transport Act 1998 (LTA98).

Legacy bylaws

The legacy council bylaws relating to signs (including election signs) were made by the legacy councils under section 684 of the Local Government Act 1974. However that section was repealed and those bylaws are now deemed to have been made by AT under section 22AB(1)(y) of the LTA98.

Sections 61 of the Local Government (Auckland Transitional Provisions) Act 2010 provides that the legacy council bylaws about the AT system that are transport-related remain valid within the respective legacy areas until they are revoked or expire and must be reviewed by AT.

AT bylaw making powers

AT has statutory powers as a road controlling authority to make bylaws that control signs (including election signs) that are on, or visible from the AT system in accordance with section 22AB(1)(y) of the LTA98.

AT's legislative authority derives from sections 45 and 46 of the Local Government (AC) Act 2009. Section 54 of that Act provides that AT cannot delegate the power to make a bylaw and Section 50 prohibits AC from making a bylaw where the legislative power has been conferred on AT.

Background

In December 2012 the board approved a special consultative procedure on the proposed bylaw. Public consultation was undertaken in February 2013 on the various options for a bylaw. Submissions were heard in March by the hearing panel appointed by the board. The hearing panel has prepared a summary of considerations on these submissions with recommendations on the bylaw for the board to consider in Attachments 1, 2 and 3.

It is noted that the extent of this review is limited to election signs. A separate review of the signs bylaws is being considered separately to ensure the unitary plan rules can be considered also.

Issues and options

Various controls in legacy bylaws

The legacy council bylaws contain various controls and provisions to determine the approved location of election sign sites. These bylaws remain in place across Auckland until they are revoked or expire.

In certain areas of Auckland the display of election signs on specified sites in public places (including roads) is allowed for and requires no approval as long as certain standards are met, while in other areas the display of election signs on public places is prohibited. Some legacy councils prohibited election signs on public sites e.g. Manukau and Franklin.

Three community boards (Waiheke, Takapuna and Devonport) prohibited elections signs in public places. Waitakere prohibited specific sites while no sites were designated allowing signs, and therefore signs can be put almost anywhere so long as they did not cause traffic safety issues.

Consistent controls in a single AT bylaw across Auckland

As the purpose of election signs is to draw attention to the candidates to generate more votes, they will generally be placed on locations visible from the AT system.

The options to control the display of election signs were included in the proposal that the board approved for public consultation. The recommended option was to regulate the erection of election signs by an Auckland-wide bylaw with specific controls for strength and safety but to limit signs on public land to sites designated by resolution made under the bylaw.

The proposed AT Election Signs Bylaw includes a consistent set of controls for election signs on or visible from the roads that are controlled and managed by AT that will apply across Auckland.

The controls on the display of election signs have been identified as best suited to be regulated through a bylaw as it will be the most effective mechanism to ensure election signs within public places, private places or on vehicles do not create a nuisance, impact on public safety, cause damage to public property or interfere with the public's ability to use public places. The use of private sites will be subject to agreement with occupiers (or owners if no occupier can be identified). (Noting there are also some provisions in district plans which apply to signs on private land).

Consistent controls (largely based on national legislation) for election signs in a bylaw across Auckland, will provide certainty for candidates, political parties and the public and will enable effective enforcement under the Local Government Act 2002.

Scope of the Bylaw

The bylaw covers local government elections (including licensing trusts and district health boards) and parliamentary elections. The bylaw will not cover elections for school boards or tertiary institutions. Signs for these elections will continue to be subject to the current legacy signs bylaws and district plan rules and signs for these elections will not be able to utilise the proposed sites resolved under the proposed bylaw.

Resolution making provision to specify public sites

A list of public sites for election signs will not be included in the bylaw itself to allow flexibility in adding or deleting new sites without the need to amend the bylaw. The bylaw contains a resolution making power to enable sites for election signs to be

specified on public places. The use of resolutions for matters of detail is expressly authorised by section 22(AB)(3) of the LTA98.

Public sites for election signs and the process for consultation on the sites

Potential sites in public places across Auckland were identified by referring to sites specified under legacy bylaws, sites that had traditionally been used in Waitakere and sites that appeared appropriate in areas where currently no sites were allowed for. These potential sites were then assessed by traffic engineers against the controls set out in the proposed bylaw e.g. site lines, setbacks.

The list of potential public sites were placed on the AT website during the public consultation on the bylaw and the local boards and the public and other stakeholders such as political parties were invited to submit on both the proposed bylaw and the potential public sites. It was made explicitly clear that because the sites are not listed in the bylaw any feedback received would be considered during the process to resolve these sites after the bylaw is in effect. Submissions on the list of possible specified public sites will continue to be received from the local boards until 30 June 2013.

Submissions on sites are included in the full submissions in Attachment 3 of this report, for the sake of completeness, where they formed part of the general submissions on the proposed bylaw.

Reports have been sent to the 21 local boards formally requesting their approval to specify the use of the public sites within their local parks, to provide comments on other sites and to suggest additional sites.

New Zealand Bill of Rights Act 1990

As a road controlling authority, AT is authorised to make a bylaw regulating the display of signs on roads or visible from roads and the bylaw is consistent with the purpose of AT in section 39 of Local Government (AC) Act 2009 to contribute to an effective and efficient transport system to support Auckland's social, economic, environmental and cultural well-being.

Consideration was given as to whether the types of controls in the bylaw would give rise to any implications in terms of this Act and in particular whether the controls place unreasonable limits on the right to freedom of expression. The controls included in the bylaw are considered reasonable restrictions which are fair to all candidates, and will minimise adverse impacts on road safety and amenity values and ensure the mandate and purpose of AT are appropriately delivered.

Delegation

Some local boards suggested delegating authority to pass the resolutions to specify sites within their local board boundaries for the display of election signs, however it is seen as preferable to delegate the power for the entire region to a single entity to provide for consistency and independence. It is recommended that a committee of AT be delegated the power to make resolutions under this bylaw. It is noted that the Traffic Control Committee is currently delegated responsibility for passing resolutions under other bylaws but that it could be enhanced by an additional member with an understanding of election issues and maybe of amenity issues.

Financial Impact

No direct financial impact is identified for AT to make the bylaw. The administration and enforcement of the bylaw will be undertaken by Licensing and Compliance at AC in accordance with their current delegation.

Stakeholder engagement

Consultation was undertaken with specific people in accordance with Section 22AD of the LTA98 which requires AT to give written notice to certain persons of its intention to make a bylaw and to give a reasonable time for people to make written submissions on the proposal. AT is not a local authority as defined in the LTA98, and is not required by that Act to undertake the more exacting special consultative procedure (SCP) when making a bylaw. However, this was done as it is best practice consultation in the local government sphere to use the SCP as it may be seen to be more transparent, and avoids the possibility of any legal challenge arising from not choosing to use that process.

In addition to the public, the specific parties consulted included all registered political parties, the licensing trusts, district health boards, the New Zealand Transport Agency, the Commissioner of Police, affected iwi, Maori organisations, the Automobile Association, the Road Transport Forum and the adjoining territorial authorities.

Local boards were consulted on the proposals through a series of cluster workshops held during October 2012 and a presentation was also made to a workshop of the Regulatory and Bylaws Committee of council. Consultation was undertaken with internal stakeholders and representatives from council departments (including Licensing and Compliance and Parks staff). Comments from those consulted were incorporated into the drafting of the proposed bylaw.

The hearing panel appointed consisted of 4 members: 2 members were from the board (Rabin Rabindran as Chair, and Councillor Fletcher), a member from the executive leadership team (Greg Edmonds, Chief Operations Officer) and a member from senior management (Andrew Allen, Manager of Road Corridor Operations).

The panel considered the 19 written submissions and heard 8 oral submissions on the proposed bylaw at a public hearing on 19 and 20 March 2013. The panel considered submissions on the scope of the proposed bylaw, the controls on signs listed in the bylaw and the use of local parks for the display of election signs.

The key recommendations from the panel for the board to consider include:

- extending the scope of the bylaw to allow the use of public sites for election signs during Auckland Energy Consumer Trust elections;
- an amendment to the bylaw to require the approval of the relevant local board for any specified site within a local park allocated to the control of that local board and to take into consideration local board comments on other public sites.

Legal issues

Kensington Swan reviewed the board report and attachments. They have advised that they do not believe there are any significant legal issues that arise from the hearing panel's summary of submissions and recommendations document or from the changes that have been made to the proposed bylaw. They do not believe any of the changes necessitate a further round of public consultation. They confirm that the consultation process followed is in accordance with the requirements of the LTA98 and that the board has been presented with appropriate information upon which to validly decide to make the bylaw.

Next steps

The Minister of Transport will be notified in accordance with section 22AB(4) of the LTA98 within one week of the bylaw being made.

Public notice confirming the date the bylaw comes into effect will be made as soon as reasonably practicable after the bylaw is made in accordance with section 22AE of the LTA98. Subject to the approval of the board it is anticipated that the bylaw will come into effect on 8 June 2013.

The Traffic Control Committee (TCC) will make resolutions under the bylaw to specify public sites that may be used for the display of election signs and the chief executive may appoint an additional independent person to the TCC.

The bylaw and the specified sites will be published on the AT and council websites.




The Electoral Officer at council will be informed of the sites that can be used by electoral candidates.

The Licensing and Compliance Department at council will be responsible for administering and enforcing the bylaw in accordance with their current delegation.

Attachments

Number	Description
1	AT Election Signs Bylaw 2013 – Hearing Panel Summary of Submissions and Recommendations
2	Proposed AT Election Signs Bylaw 2013
3	Full written submissions

Document ownership

Hearing Panel Recommendations in Attachment 1 Approved by	Rabin Rabindran Chair Hearing panel	
Submitted by	Terry Sugrue Regulations and Standards Manager - RCO	
Recommended by	Greg Edmonds Chief Operating Officer	
Approved for submission	David Warburton Chief Executive	