

# Delegation to Auckland Council

## Recommendations

That the Board:

- i. Delegates to Auckland Council the power to make resolutions under bylaws made or deemed to have been made by Auckland Transport to the extent that they apply to street trading and other activities in public places and to signs (except traffic control devices), billboards and hoarding on, or visible from, the Auckland Transport system, as set out in the Auckland Transport Delegation Instrument 2015/01 attached as Schedule 1 to this report.
- ii. Notes that the delegation does not include the following powers which are retained by Auckland Transport:
  - a. The power to make resolutions in relation to cross street and vertical banner signage; and
  - b. The power to specify sites for election signage.
- iii. Notes that the Chief Executive of Auckland Transport has already delegated all other matters (i.e. anything that is not required to be done by resolution) regarding the administration and enforcement of those bylaws to Auckland Council.
- iv. Notes that the delegation may be reviewed, amended or revoked by Auckland Transport at any time.

## Executive summary

Auckland Transport (AT) has made bylaws that relate to street trading, other activities in public places and signage.

AT has delegated the administration and enforcement of those bylaws to Auckland Council.

Some of those bylaws contain clauses that require decisions to be made by resolution. Legal advice provides that resolutions cannot be made by individual officers and must be made by a Board, the governing body or a committee or sub-committee of one of those bodies. Consequently, the power to delegate decisions that must be made by resolution is held by the Board.

The purpose of this decision is for the Board of AT to delegate the power to make resolutions under those bylaws to Auckland Council so that the Council can properly administer and enforce the bylaws.

AT propose to retain the power to make resolutions that relate to cross street and vertical banner signage because AT recently signed an agreement with QMS media relating to banners and it was considered appropriate that these matters remain with AT.

## Strategic context

AT seeks to be in line with the strategic direction of the Auckland Plan: that Auckland's transport system is effective and efficient, and provides for the region's social, economic and environmental and cultural wellbeing.

The signage bylaw will assist in achieving this outcome by proposing controls which enable the display of signage on or adjacent to roads considering the benefits for the general public, local businesses and the local economy whilst ensuring the location, placement and size of signage does not have any negative impact on public safety for pedestrians and other road users.

The street trading 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.

Under the Local Government (Auckland Council) Act 2009, AT may delegate to a committee or an employee of AT, or to the Auckland Council, any of its responsibilities, duties, functions, and powers except those listed in section 54(1). The power to make resolutions under bylaws is a power that is capable of being delegated to Auckland Council.

## Background

Council and AT conducted a joint review all legacy bylaws including bylaws that related to trading and events in public places, other activities in public places and signage. The focus of this review was to achieve a consistent application of rules and a harmonised approach to those matters across the Auckland region. As a result of this review, legacy bylaws were revoked and replaced by a joint bylaw in relation to signage and separate but consistent bylaws in relation to other activities in public places.

Since the establishment of AT, Council has been delegated the power to carry out administration and enforcement of these bylaws (AT enforces and administers traffic bylaws for both itself and Council).

Bylaws relating to signage and activities in public places sit with Council for the following reasons.

- Customer focus – members of the public and businesses find it easier to deal with one authority rather than two for a single matter.
- Resources and experience – Council have processes, procedures and teams already in place to deal with the administration and enforcement of these bylaws, including handling prosecutions.
- Internal considerations – some of these matters, for instance a package of signage for a comprehensive development, had resource consent implications and would require liaising with teams within Council.
- AT involvement – AT would work with Council to provide input into decision making, in particular in relation to traffic management and public safety matters.

- Committee structure – Council has the Regulation and Bylaws Committee and appropriate sub-Committees in place that make decisions by resolution.

As noted above, administration and enforcement of these bylaws had been delegated to Council by the Chief Executive of Auckland Transport. This delegation has been amended from time to time, most recently on 2 April 2015.

Some of the new bylaws, which were made as a consequence of the legacy bylaw review, contain clauses that require decisions to be made by resolution, as follows:

- under the signage bylaw – specifying roads where portable signage is prohibited, specifying footpaths where stencil signage is allowed, specifying sites for posters, cross street and vertical banners, community event, and regional and major event signage; and
- under the street trading bylaw – specifying roads where trading may be prohibited.

Legal advice provides that resolutions cannot be made by individual officers and must be made by a Board, the governing body or a committee or sub-committee of one of those bodies. Consequently, the power to delegate decisions that must be made by resolution is held by the Board, which is the reason for this decision.

Under the Local Government (Auckland Council) Act 2009, AT may delegate to a committee or an employee of AT, or to the Auckland Council, any of its responsibilities, duties, functions, and powers except those listed in section 54(1). The power to make resolutions under bylaws is a power that is capable of being delegated to Auckland Council.

## Issues and options

### Issue 1: banners

Recently, AT signed an agreement with QMS media which related to, among other things, cross street and vertical banner signage. These banner signs are attached to on-street infrastructure that are AT's assets.

Given that this contract is held by AT, for customer focus reasons, it was deemed appropriate that resolutions relating to banners be determined by AT.

### Issue 2: AT involvement in decision making

Officers at AT have worked with Council to establish good processes that ensure that AT's views are taken into account in decisions.

AT has nominated a single point of contact who will liaise with the relevant teams at AT and coordinate a single response back to Council.

AT's level of involvement has been assessed: some matters involve information review and others require action and response from AT. This will provide AT with an opportunity to feed in to decision making.

In the event that this approach does not work, AT can review the situation and if necessary consider amending or revoking the terms of the delegation arrangements.

## Options

AT may:

1. Retain the power to make resolutions under bylaws;
2. Delegate the power to make resolutions under bylaws, but retain the power to make resolutions relating to cross street and vertical banners; or
3. Delegate all powers to make resolutions under bylaws.

## Recommended option – 2

It is recommended that AT delegate the power to make resolutions under bylaws to Council, so that Council may effectively enforce and administer these bylaws on behalf of AT. It is further recommended that AT retain the power to make resolutions in relation to cross street and vertical banners as a consequence of the recently signed contract with QMS media.

## Next steps




Council will make arrangements for the appropriate Committee or sub-Committee to determine resolutions.

AT and Council will continue to work together to ensure AT can feed into the decision making process.

## Attachment

Attachment Number	Description
Schedule 1	Auckland Transport Delegation Instrument (ATDI) 2015/01

## Document ownership

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Approved for submission	David Warburton <b>Chief Executive</b>	

## **Appendix 1: Auckland Transport Delegation Instrument 2015 ATDI2015/01**

Further to the delegation on 2 April 2015 made from the Chief Executive of Auckland Transport to Auckland Council:

The Auckland Transport Board delegates to Auckland Council the power to make resolutions under bylaws made or deemed to have been made by Auckland Transport to the extent that they apply to street trading and other activities in public places, and to signs (except traffic control devices), billboards and hoardings on, or visible from, the Auckland Transport System.

This delegation excludes:

- (a) the power to make a resolution specifying sites over a road or public place that may be used for the display of horizontal banners and specify controls for such banners under the Auckland Transport and Auckland Council Signage Bylaw 2015; and
- (b) the power to make resolutions to specify election sites under the Auckland Transport Election Signs Bylaw 2013.

For the avoidance of doubt, this delegation does not affect the delegation made by the Chief Executive of Auckland Transport on 2 April 2015.

This delegation takes effect immediately and remains in force until further notice and may be reviewed or revoked by Auckland Transport at any time.