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Auckland Council  
Public Trading, Events and Filming Bylaw 2022  
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## Submission to Public Trading, Events and Filming Bylaw

### Introduction

The Rosebank Business Association ('Association') - 'Rosebank – Gateway to the West' - welcomes the opportunity to make this submission on the proposed new Public Trading, Events and Filming Bylaw. As part of the bylaw review process, the Council has checked to see how well the current rules are working, and what improvements could be made. Public consultation has opened and closes on 16 July 2021.

The Rosebank Business Improvement District is a commercial and industrial hub of 650 + businesses located on the Rosebank Peninsula in West Auckland. It has direct access to the SH16 North-Western Motorway and when the Waterview tunnel was completed, it's traffic count increased to between 25 and 35,000 vehicles per day with immediate access and link to the SH20 Airport Motorway. Businesses in the area generate an estimated \$1 billion in revenue, pay significant rates and employ about 9,000 FTEs. The predictions are that this workforce will increase to 20,000 by 2035.

We note that the balance to be struck in the bylaw between regulating the use of streets, footpaths and civic spaces for trading activities, events and filming and managing the risks these activities pose is especially important in busy and vibrant centres, such as Rosebank.

### Background

Every day across Auckland, a wide variety of trading activities, events and filming occur in public places controlled by Auckland Council. These activities increase the vibrancy and appeal of public places such as streets, footpaths, local parks and civic spaces by enhancing amenity, and delivering social and economic benefits. However, in some cases, these activities may also increase the risk of preventable collisions, accidents, injuries, obstructions, nuisance or misuse of council-controlled public places. For example, by cluttering footpaths in town centres or commercial areas with furniture, displayed goods or parked micromobility devices, or by overusing public spaces for private gain.

Auckland Council is proposing a new bylaw that: • continues to regulate trading, events and filming in a similar way to the current Bylaw; • clarifies the need for rental micromobility devices to be approved under their own licence instead of a mobile shop licence as they currently are; • clarifies which activities require an approval, don't require an approval as long as certain conditions are met, and those which are not addressed in the bylaw; and • updates the title, structure, format, definitions, and wording to ensure that a new bylaw is easier to read, understand and comply with.<sup>1</sup>

Auckland Council notes that central government legislation (not the current or a new bylaw) sets rules about rental micro-mobility devices in relation to: • where users ride e-scooters and e-bikes (for example, use of devices on cycle paths attached to roads); •

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<sup>1</sup> See the differences between the current Bylaw and a new Auckland Council Public Trading, Events and Filming Bylaw 2022: [https://ehg-production-australia.s3.ap-southeast-2.amazonaws.com/72dbde11be71aa7cc17766d1ba8e1c433ddc36fe/original/1622420412/52a50c898cc8090658639e088a42870b\\_20210512\\_Bylaw\\_Comparison\\_Table\\_GB.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIAIBJCUK4D4Z04WUUA%2F20210701%2Fap-southeast-2%2Fs3%2Faws4\\_request&X-Amz-Date=20210701T101310Z&X-Amz-Expires=300&X-Amz-SignedHeaders=host&X-Amz-Signature=04076c0d8f342eb7aee0ce86076462a6602c891d4ad6d1d7bca35f0ef06196af](https://ehg-production-australia.s3.ap-southeast-2.amazonaws.com/72dbde11be71aa7cc17766d1ba8e1c433ddc36fe/original/1622420412/52a50c898cc8090658639e088a42870b_20210512_Bylaw_Comparison_Table_GB.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIAIBJCUK4D4Z04WUUA%2F20210701%2Fap-southeast-2%2Fs3%2Faws4_request&X-Amz-Date=20210701T101310Z&X-Amz-Expires=300&X-Amz-SignedHeaders=host&X-Amz-Signature=04076c0d8f342eb7aee0ce86076462a6602c891d4ad6d1d7bca35f0ef06196af)

use of helmets; • setting speed limits; • assessing suitability of hardware and firmware. No public feedback is sought on where users ride, the use of helmets, speed and suitability of hardware.

The Association's feedback on these improvements is set out below.

**Proposal 1: Continue to regulate trading, events and filming in a similar way to the current Bylaw**

*Auckland Council wants to ensure that a new bylaw continues to address public safety risks, nuisance and misuse caused by trading activities, events and filming in council-controlled public places. This means that most activities must either obtain an approval or comply with conditions, for example when, where and how the activity is allowed. Auckland Council are proposing that a new bylaw – • retains a similar regulatory approach to the one in the current Bylaw to address public safety risks, nuisance and misuse caused by trading activities, events and filming in council-controlled public places: • requires an approval (a licence or permit) for most activities in council-controlled public places, for example markets, mobile shops, hire of micromobility devices, events or filming [cl 7]; • allows for certain limited activities to operate without an approval, for example the sale of produce adjacent to the premises where it was grown or filming for the purpose of current affairs or news [cl 6]; • allows us to process approval applications and stipulate conditions [cl 10 to 14]; • clarifies the duration of an approval, requirement to display an approval, review of approval conditions, transactional provisions, enforcement and the transfer of approvals [cl 15 to 25]; • allows council to make additional rules in a 'control', for example conditions on activities that do not require a bylaw approval and how a bylaw approval will be considered [cl 9].*

Our feedback is that the Association broadly agrees with the proposal to regulate trading, events and filming in a similar way to the current Bylaw. More specifically, we broadly agree with the proposals that the new bylaw:

- retains a similar regulatory approach to the one in the current Bylaw, by again using a bylaw, to address public safety risks, nuisance and misuse caused by trading activities, events and filming in council-controlled public places;
- requires an approval (a licence or permit) for most activities in council-controlled public places, for example markets, mobile shops, hire of micro-mobility devices, events or filming [cl 7];<sup>2</sup>
- allows for certain limited activities to operate without an approval, for example the sale of produce adjacent to the premises where it was grown, the outdoor display of goods and / or services adjacent to a business premises from which the goods and / or services are usually provided, or filming for the purpose of current affairs or news [cl 6];<sup>3</sup>
- allows council to process approval applications and stipulate conditions [cl 10 to 14];<sup>4</sup>
- clarifies the duration of an approval, requirement to display an approval, review of approval conditions, transactional provisions, enforcement and the transfer of approvals [cl 15 to 25];<sup>5</sup> and
- allows council to make additional rules in a 'control', for example conditions on activities that do not require a bylaw approval and how a bylaw approval will be considered [cl 9].<sup>6</sup>

While we broadly agree with the regulatory approach, we remain concerned that Auckland Council has limited resources to process approvals (licences or permits), stipulate conditions on a case-by-case basis and especially monitor and enforce these approvals across the region (or at sub-regional pressure points, such as town centres). We consider there may be opportunities to allow for more activities to operate without an approval through council making additional rules in a 'control', but in this case we ask that the bylaw still require some consultation with key stakeholders, such as town centre managers.<sup>7</sup>

**Proposal 2: Clarify the need for rental micromobility devices to be approved under their own licence instead of a mobile shop licence as they currently are**

*Auckland Council wants to ensure that licensing of rental e-scooters, e-bikes and bikes parked in council-controlled public places reflects the significance of the potential issues that can result from the rental of power-assisted devices. Council are proposing that a new bylaw: • defines 'micromobility' and provides examples such as rental e-scooters, e-bikes and other devices; • clarifies that rental micromobility devices are approved under their own licence in a new bylaw (currently licensed as mobile shops because they were introduced in 2018 after the current*

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<sup>2</sup> See clause 7 of the proposed bylaw.

<sup>3</sup> See clause 6 of the proposed bylaw.

<sup>4</sup> See clauses 10-14 of the proposed bylaw.

<sup>5</sup> See clauses 15-25 of the proposed bylaw.

<sup>6</sup> See clause 9 of the proposed bylaw.

<sup>7</sup> Here we suggest an amendment to the Information Note in clause 9: "To make [a](#) decision, council must comply with the decision-making requirements under Subpart 1 of Part 6 of the Local Government Act 2002 (as reprinted on 26 March 2020), [including consulting with key stakeholders, such as BID Managers](#)."

*Bylaw was created); • provides links to relevant webpages, forms and codes of practice in a 'related information note'; • better reflects the information council may require when evaluating an application for an approval, assessment criteria and approval conditions, for example by limiting the number of micromobility devices that may be offered for rent. Central government legislation (not the Bylaw) sets rules in relation to where users ride micromobility devices, the use of helmets, speed and suitability of hardware. No public feedback is sought on these matters.*

Our feedback is that the Association agrees with the proposal to clarify the need for rental micromobility devices to be approved under their own licence instead of a mobile shop licence as they currently are under the Trading and Events in Public Places Bylaw 2015. More specifically, we agree that the proposed new bylaw:

- defines 'micromobility' and provides examples such as rental e-scooters, e-bikes and other devices;<sup>8</sup>
- clarifies that rental micromobility devices are approved under their own licence (currently licensed as mobile shops because they were introduced in 2018 after the current Bylaw was created);<sup>9</sup>
- provides links to relevant webpages, forms and codes of practice in a 'related information note';<sup>10</sup>
- better reflects the information council may require when evaluating an application for an approval, assessment criteria and approval conditions, for example by limiting the number of micromobility devices that may be offered for rent.<sup>11</sup>

We accept that central government legislation (not the Bylaw) sets rules in relation to where users ride micromobility devices, the use of helmets, speed and suitability of hardware and that no public feedback is sought on these matters.<sup>12</sup>

Turning to the more specific proposals advanced in the proposed bylaw, we note that clause 5 of the proposed bylaw defines micromobility to mean "small, lightweight devices and personally driven by users (for example, bicycles, e-bikes, electric scooters and skateboards, and electric pedal assisted (pedelec) bicycles)".

However, we have found that the market for micromobility devices is very dynamic, with new devices coming into the market on a regular basis and regulation struggling to respond quickly. As a consequence, we question whether the definition of micromobility is sufficiently agile? Perhaps council also needs to give itself the ability to use 'controls' in the bylaw to amend the definition of micromobility from time to time – or explain what is meant by 'small' and 'lightweight'.

Nonetheless, as it stands, we agree that the definition is best not to specify power levels (eg 300W to 600W limits) as the primary means of categorisation and control as these are set in the Land Transport Act 1998. Further, the Association believes that technological solutions (such as geo-fencing) could be utilised to self-regulate the use of micromobility devices and ask for this to be given consideration for use in the bylaw. Some consideration should also be given to allowing footpath cycling to include: • permitting users over the age of 65; • permitting caregiver users accompanying cyclists up to 12 years old. The Association believes speed limits on footpaths should be kept to 10 km/h maximum.

The Association also asks whether the bylaw is sufficiently nimble to ensure that the wide range of differing challenges and opportunities across the region in using public spaces (eg footpaths) for micromobility devices is captured. For example, the Association supports restricting cyclists from using footpaths or areas of footpaths in built-up retail areas (such as the main retail area in Broadway in Newmarket). On the other hand, some built-up retail streets are also in close proximity to primary schools where use of the footpath for cycling by primary children would be appropriate (such as in parts of Parnell). Still further, in some industrial/commercial areas, such as Rosebank, use of the footpaths by micromobility devices, transport devices or cyclists might be encouraged where using the road is more dangerous or congested. The Association believes these powers should be able to be used flexibly by council through the bylaw and controls.

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<sup>8</sup> See clause 5 of the proposed bylaw, which defines micromobility as means small, lightweight devices and personally driven by users (for example, bicycles, e-bikes, electric scooters and skateboards, and electric pedal assisted (pedelec) bicycles).

<sup>9</sup> See clause 7 (trading means the hire of micromobility devices) of the proposed bylaw.

<sup>10</sup> See clause 7 of the proposed bylaw.

<sup>11</sup> See clause 11 of the proposed bylaw.

<sup>12</sup> See Summary Information of the proposed bylaw.

**Proposal 3: Clarify which activities require an approval, don't require an approval as long as certain conditions are met, and are not addressed in the Bylaw**

*Auckland Council wants to clearly state which activities in council-controlled public places are regulated under a new bylaw and which are not required to obtain an approval under a new bylaw, with or without meeting certain conditions. Council are proposing that a new bylaw: • clarifies that the occasional sale of homemade goods by children outside the house where the goods were made is allowed (for example, the sale of cupcakes or lemonade); • clarifies that non-exclusive use of a council-controlled public place for informal recreation (for example, a family picnic) is allowed because that activity is not captured under the definition of an event; • reflects the right to protest under the New Zealand Bill of Rights 1990 and our operational practice by removing 'protest' from the definition of an event (disorder associated with events is regulated using existing legislation, for example the Public Safety and Nuisance Bylaw or the Summary Offences Act); • allows us to use controls to impose conditions on activities that do not require a bylaw approval, for example for fitness classes or training provided by outdoor fitness operators in parks.*

Our feedback is that the Association agrees with the proposal to clarify which activities require an approval, which don't require an approval (as long as certain conditions are met), and which are not addressed to be in the bylaw. The Association broadly agrees more specifically that the new bylaw:<sup>13</sup>

- clarifies that the outdoor display of goods and / or services adjacent to a business premises from which the goods and / or services are usually provided does not require an approval;
- clarifies that the installation of art by the council or a substantive council-controlled organisation does not require an approval;
- clarifies that goods or services ordered in advance and delivered to premises next to a council-controlled public place (for example, by a service delivery vehicle to a private home or business) does not require an approval;
- clarifies that the sale of produce adjacent to the premises where it was grown does not require an approval;
- clarifies that the occasional sale of homemade goods by children outside the house where the goods were made is allowed (for example, the sale of cupcakes or lemonade);
- clarifies that non-exclusive use of a council-controlled public place for informal recreation (for example, a family picnic) is allowed with that activity not being captured under the definition of an event;
- reflects the right to protest under the New Zealand Bill of Rights 1990 by removing 'protest' from the definition of an event;
- allows council to use controls to impose conditions on activities that do not require a bylaw approval, for example for fitness classes or training provided by outdoor fitness operators in parks.

**Proposal 4: Update the title, structure, format, definitions, and wording to ensure that a new bylaw is easier to read, understand and comply with**

*Auckland Council want to provide rules that are easier to read, understand and comply with. Council are proposing to update the format, structure and wording of the current Bylaw to ensure that a new bylaw: • explains the wider regulatory framework (other rules and permissions) and provides links to those rules; • acts as 'one-stop shop' for applicants by using 'related information notes' that provide links to relevant webpages and forms (notes do not form part of the proposed bylaw rules and can be easily updated); • reflects that busking and pavement art are considered in a similar way (street performance licence); • reflects in the title of a new bylaw and its structure that events and filming are treated separately as filming does not directly involve the general public (presents less risk to public safety); • clarifies the approval framework by outlining examples of the type of information Council may require when evaluating an application and examples of conditions Council may impose on a granted approval; • clarifies matters Council may address in a 'control' by stating what types of controls can be made and by improving certainty about who can make them.*

Our feedback is that the Association broadly agrees that the rules should be easier to read, understand and comply with. We agree with the proposals to update the format, structure and wording of the current Bylaw to ensure that a new bylaw:

- explains the wider regulatory framework (other rules and permissions) and provides links to those rules;
- acts as 'one-stop shop' for applicants by using 'related information notes' that provide links to relevant webpages and forms (notes do not form part of the proposed bylaw rules and can be easily updated);<sup>14</sup>
- reflects that busking and pavement art are considered in a similar way (with both requiring a street performance licence);

<sup>13</sup> See clause 6 of the proposed bylaw.

<sup>14</sup> See clause 7 of the proposed bylaw.

- reflects in the title of the new bylaw and its structure that events and filming are treated separately as filming does not directly involve the general public (that is, filming presents less risks to public safety);
- clarifies the approval framework by outlining examples of the type of information Council may require when evaluating an application and examples of conditions Council may impose on a granted approval;<sup>15</sup> and
- clarifies matters Council may address in a 'control' by stating what types of controls can be made and by improving certainty about who can make them.<sup>16</sup>

We note, with regard to the explanation of the wider regulatory framework (other rules and permissions) and the links provided to these other rules just how complex the wider regulatory framework has become.<sup>17</sup> We agree that this improves the certainty and understanding of what the Bylaw covers and provides clarity about a wider framework. However, we believe further clarity is required and we ask Council to provide a simple overall 'one page' guide to this complex framework for our members and other businesses.

As noted earlier in response to Proposal 1, while we broadly agree with the regulatory approach, we remain concerned that Auckland Council has limited resources to process approvals (licences or permits), stipulate conditions on a case-by-case basis and especially monitor and enforce these approvals across the region (or at sub-regional pressure points, such as town centres). We consider there may be opportunities to allow for more activities to operate without an approval through council making additional rules in a 'control', but in this case we ask that the bylaw still require some consultation with key stakeholders, such as town centre managers.<sup>18</sup>

## **Conclusions**

The Association welcomes the opportunity to make this Submission. Although we understand that there will be no opportunity to make a presentation on this Submission, should there be any questions or other matters arising from this Submission, we would be pleased to respond to those.

Yours sincerely,



Mike Gibson  
CEO  
Rosebank Business Association

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<sup>15</sup> See clause 11 of the proposed bylaw.

<sup>16</sup> See clause 9 of the proposed bylaw.

<sup>17</sup> The wider framework includes: • landowner approval (including but not limited to a lease or licence), particularly on parks • rules about activities on parks in any local or regional parks management plan • rules about food safety addressed in the Food Act 2014 • additional rules about noise addressed in the Auckland Council Public Safety and Nuisance Bylaw 2013 and Resource Management Act 1991 • rules about traffic and the sale of cars by the roadside addressed in the Auckland Transport Traffic Bylaw 2012 and Auckland Council Traffic Bylaw 2015, and the Auckland Council and Auckland Transport Signage Bylaw 2015 • rules about waste plans addressed in the Waste Management and Minimisation Bylaw 2019 • rules about protection of wildlife, flora, fauna, and significance of heritage areas addressed in the Reserves Act 1977, Resource Management Act 1991, Waitakere Ranges Heritage Area Act 2008 • rules about helmets and speed of micromobility devices (for example, e-scooters) and where they can be ridden addressed in the Road Users Rule 2004 and enforced by the New Zealand Police • rules about drones (UAVs) addressed in the Auckland Council Public Safety and Nuisance Bylaw 2013, Civil Aviation (Offences) Regulations 2006, Privacy Act 1993 and by Auckland Transport • rules about the health and safety of workers addressed in the Health and Safety at Work Act 2015 • the Commerce Act 1986, which prohibits anti-competitive behaviour.

<sup>18</sup> Here we suggest an amendment to the Information Note in clause 9: "To make a decision, council must comply with the decision-making requirements under Subpart 1 of Part 6 of the Local Government Act 2002 (as reprinted on 26 March 2020), [including consulting with key stakeholders, such as BID Managers.](#)