



Statement of Proposal

DRAFT AMENDED URBAN ENVIRONMENTS BYLAW

1. The Proposal

1.1 Nelson City Council (Council) is proposing to make a new bylaw under the following sections of the Local Government Act.

- Section 145 of the Local Government Act 2002 (LGA) enables Council to make bylaws to:
 - protect the public from nuisance
 - protect, promote and maintain public health and safety
 - minimise the potential for offensive behaviour in public.
- Section 146A of the LGA enables Council to make bylaws related to keeping of animals; and trading in public places.
- Section 146B of the LGA enables Council to make bylaws related to management of cemeteries, reserves and recreation grounds.
- Sections 147 of the LGA enables Council to make bylaws related to alcohol in public places.
- Section 149 of the LGA enables Council (as a regional council) to make bylaws related to parks, reserves, recreation grounds or other land that the regional council owns or controls.

1.2 The proposed new bylaw will replace the existing Urban Environments Bylaw. In particular, Council proposes to:

- make a new Urban Environments Bylaw 2022
- revoke the existing Urban Environments Bylaw 2015.

1.3 The existing Urban Environments Bylaw 2015 can be found on the Council's website: <http://www.nelson.govt.nz/assets/Our-council/Downloads/bylaws/bylaw-225/Urban-Environments-Bylaw-updated-with-Kerr-St-changes-from-21-March-2019-Council-meeting-A2174442.pdf>

2. Reasons for the Proposal

2.1 The Council's existing Urban Environments Bylaw 2015 was made in mid-2015. Under section 158 of the LGA 2002, the Council is obliged to carry out a review of the bylaw within five years.

2.2 Although the review of the existing bylaw was not completed within the timeframe set out in section 158, section 160A of the LGA provides that this Bylaw will remain in force for a further two years, at which point it will be automatically revoked (unless revoked earlier). Council has until 1 June 2022 to make a new Urban Environments Bylaw (and revoke its existing bylaw).

2.3 Council officers have completed a review of the existing Urban Environments Bylaw and proposed some changes. Council proposes to retain all aspects of the Urban Environments Bylaw 2015, other than the 10 changes listed below. Some minor wording changes are also proposed, as outlined below.

- 2.4 The Draft Amended Urban Environments Bylaw is attached to this Statement of Proposal.

Proposed change 1 – Introduction/Burial and Cremation

- 2.5 Remove the fees provisions in Part One and Part Eight of the Bylaw.

Reason

This approach to fee setting does not comply with section 150 of the Local Government Act 2002. Fee setting does not need to be in the Bylaw because this is covered by the legislative rules.

Proposed change 2 – Health and Safety

- 2.5 Remove the 'caravans for residential purposes' provision from the Bylaw.

Reason

- 2.6 Caravan provisions in the Bylaw have been removed to avoid having controls in both the Bylaw and in Council's planning rules. Caravans come within the definition of buildings in the National Planning Standards, which means they will be managed through any new resource management plan standards for buildings.

Proposed change 3 – Trading in Public Places

- 2.7 Change the requirement (related to sandwich boards) relating to the width of the footpath which needs to be available to pedestrians from 2m to 1.5m.

Reason

- 2.8 Requiring a 1.5m width of footpath to be available for pedestrians is consistent with the more recent provisions of the City Amenity Bylaw 2017.

Proposed change 4 – Trading in Public Places

- 2.9 Remove the requirement for retailers to gain a permit before setting up a retail display on the footpath. Instead, state that retail displays cannot be a hazard to pedestrians, or reduce the width of the footpath available to pedestrians to less than 1.5 metres.

Reasons

- 2.10 No permits have been applied for in the last five years. Even though retail displays have occurred, they have not created any public access issues.
- 2.11 Requiring a 1.5m width of footpath to be available for pedestrians is consistent with clause 8.3 of the City Amenity Bylaw (No.226) adopted in September 2017.

Proposed change 5 – Trading in Public Places

- 2.12 Include a provision enabling Council to change its approach to sandwich boards and retail displays through a resolution.

Reason

- 2.13 This resolution enables Council to be more agile if issues arise that require a different approach to managing footpaths over the next 10 years (the life of the Bylaw).

Proposed change 6 – Reserves

- 2.14 Do not include a speed limit for vehicles in reserves in the Urban Environments Bylaw.

Reason

- 2.15 Speed limits can be more effectively enforced through the Land Transport Act 1998 than the Local Government Act 2002. This will be able to be addressed in future under the Land Transport Rule: Setting of Speed Limits 2021. When this comes into effect in 2022, speed limits will be included in the Register of Land Transport Records and bylaws will no longer form part of the speed limit-setting process.

Proposed change 7 – Reserves

- 2.16 Do not provide for golf practice in a designated area in Neale Park.

Reasons

- 2.17 North Road residents have raised substantive public safety concerns about golf practice occurring on Neale Park. This includes:
- someone being hit on the shoulder by a golf ball
 - near miss incidents with golf balls landing close to young children
 - golf balls landing in neighbouring properties, and breaking panels of a glasshouse.
- 2.18 Safety concerns have also led to people not using Neale Park – for example, monthly kite flying days have been discontinued.

Proposed change 8 – Burial and Cremation

- 2.19 Do not include an 'offences and penalties' clause in the Burial and Cremation part of the Draft Amended Urban Environments Bylaw.

Reason

- 2.20 Penalties and powers under the Local Government Act 2002, which apply to all aspects of the Draft Amended Urban Environments Bylaw, are outlined in Part 1 of the Bylaw. In contrast, the penalties currently included in the Burial and Cremation part of the Bylaw relate to the Health Act 1956.

Proposed change 9 – Legislative power

- 2.21 Explicitly state what section of the Local Government Act 2002 enables Council to make each part of the Bylaw.

Reason

- 2.22 Including the legislative basis for the making of each part of the bylaw provides clarity on powers and obligations.

Proposed change 10 – Minor wording changes

- 2.23 Council also proposes to make the following, minor wording changes:

- removal of details about previously revoked bylaws, when the Urban Environments Bylaw 2015 was adopted
- removal of definitions for words and phrases which are not included in the Bylaw
- amendments to definitions for 'residential property' and 'residential unit' to be consistent with Nelson's resource management plans
- minor editorial improvements.

Reasons

- 2.24 The review of the Bylaw is an opportunity to make minor wording changes to improve the clarity and consistency of the Bylaw.

No changes are proposed to Schedule A – Prohibition of Alcohol in Public Places

- 2.25 Section 147A(2) of the LGA states: "Before deciding that a bylaw under [section 147](#) should continue without amendment, a territorial authority must be satisfied that the level of crime or disorder experienced before the bylaw was made (being crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area concerned) is likely to return to the area to which the bylaw is intended to apply if the bylaw does not continue."

Reasons

- 2.26 Council is satisfied that it is appropriate to continue to include Schedule A in the bylaw because the areas where the alcohol bans apply are primarily within or near the Central Business District, where there are a number of licensed premises open until late in the evening. This means there is the same potential for alcohol-related crime and disorder to occur in these areas as there was when the Control of Drinking in Public Places Bylaw (No. 206) was adopted in 2009.
- 2.27 During the review process the Police advised they are very supportive of the list of areas included in Schedule A.

3. Scope of Council decisions following consultation

- 3.1 Once Council has considered all submissions made in response to the proposal, it will make a decision. The options available to Council will include:
- retaining some or all of the existing provisions in the Urban Environments Bylaw 2015;
 - adopting the proposal in its entirety;
 - adopting some aspects of the proposal but with modifications to the Draft Amended Urban Environments Bylaw, based on community feedback
 - adopting a different approach in the bylaw, based on community feedback.

4. Alternatives to be considered by Council

- 4.1 In order to enable the Council to respond to a wide range of submissions, the options to be considered for all issues include:
- increase restrictions

- reduce restrictions.

Options	Advantages	Disadvantages
Increase restrictions	More ability to protect people from nuisance, and health and safety risks, when they are in public places in Nelson.	<ul style="list-style-type: none"> • More bylaw administration (e.g. more permit systems) and more monitoring and enforcement. • Less freedom of choice.
Reduce restrictions	More freedom of choice.	<ul style="list-style-type: none"> • More likelihood of conflicts between neighbours and users of public places. • More complaints for Council to respond to on a case-by-case basis, with less ability to resolve issues through enforcement of bylaw provisions.

5. Section 155 of the Local Government Act 2002

5.1 Before making a bylaw, Council is required under section 155 of the LGA to determine whether:

- a bylaw is the most appropriate way of addressing the perceived problem;
- the proposed bylaw is the most appropriate form of bylaw; and
- the proposed bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990.

Question 1 – What is the perceived problem?

5.2 The bylaw regulates a wide range of activities which have the potential to cause problems for the community, as outlined in the following table.

Bylaw content	Perceived problem
Part 3 – Keeping of Animals	<ul style="list-style-type: none"> • Animal noises and odours can annoy neighbours. • Wandering stock can cause traffic accidents and property damage.
Part 4 – Health and Safety	<ul style="list-style-type: none"> • Harm from barbed wire and electric fences • Distress at seeing animals being slaughtered and/or dead animals being stored in a visible location. • Potential danger and/or visual impact of dangerous and/or bulky items being disposed of in public rubbish bins. • Risks to public health and safety of emergency services being unable to locate building numbers

	from the road and/or nuisance for visitors to the city of not being able to find a street address.
Part 5 – Trading in Public Places	<ul style="list-style-type: none"> • Uncontrolled activity by itinerant traders/mobile shops, and people seeking donations, or begging or busking has potential to impact on people’s enjoyment of the City Centre, with flow on effects for Nelson businesses. • Unlimited numbers of sandwich boards and retail displays located anywhere on the street creates accessibility for pedestrians, particularly people with low vision and wheelchair users. • If advertising (including of commercial sexual services) was not controlled in public places it could result in a distracting, unpleasant street environments. • People stepping out into the road to offer to wash of vehicles in public places (such as when drivers have stopped at intersections) can cause a nuisance, obstruct traffic and potentially cause traffic accidents.
Part 6 – Control of Alcohol in Public Places	<ul style="list-style-type: none"> • Uncontrolled drinking in public places can result in intimidation of other people, property damage and violence.
Part 7 – Reserves	<ul style="list-style-type: none"> • Driving and parking vehicles in reserves can be a safety risk and impact on other people’s enjoyment of an area. • Damage to reserves (and structures within them) can be a safety risk and impact on other people’s enjoyment of an area. • Playing golf in reserves (other than golf courses) has the potential to result in people being hit by golf balls. • Uncontrolled use of chainsaws, firearms, pest traps and toxins, and herbicides in reserves could result in intimidation and health and safety issues. • Removal of rocks, minerals and sand from reserves could impact on the pleasantness of a reserve for other people. • Uncontrolled livestock grazing in reserves would damage vegetation and may be intimidating for people encountering the livestock. • Uncontrolled placement of memorials, including plaques, would create maintenance issues in cemeteries and other reserves. • Uncontrolled public access to reserves can be a problem during drought periods when there is fire risk, or where the presence of people could undermine ecological restoration.
Part 8 – Burial and cremation	<ul style="list-style-type: none"> • Uncontrolled burials, including burial of ashes, has the potential to impact on social and cultural wellbeing and cause environmental damage. • Uncontrolled erection of headstones, plaques, fences and other structures associated with a plot or grave in a cemetery can make maintenance more difficult.

	<ul style="list-style-type: none"> • Uncontrolled tree planting and placement of wreaths and flowers can also make maintenance more difficult. • Uncontrolled access to cemeteries, including use of vehicles, can result in vandalism and damage to monuments. • Disruptive and noisy behaviour can impact on other visitors to cemeteries and affect funeral services.
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5.3 The further changes proposed in the Draft Amended Bylaw address problems identified during the officers' review of the Bylaw. These are:

- The fees and charges provision in the Introduction does not comply with section 150 of the Local Government Act 2002.
- The potential for duplication of provisions about use of caravans for residential purposes in planning rules and the Urban Environments Bylaw.
- Inconsistency between the Urban Environments Bylaw 2015 and the City Amenity Bylaw 2017 regarding the required width of footpath which must remain clear of sandwich boards and retail displays.
- Requiring a permit for a retail display is overly onerous.
- Lack of flexibility to reflect future city centre design guides in relation to sandwich boards and retail displays.
- It is best practice to set all speed limits consistently and have them enforced consistently, under the Land Transport Act 1998, rather than having a different approach for speed limits in reserves, under the Local Government Act 2002.
- There is a lack of clarity about the legal basis for each part of the Bylaw.
- The clarity and consistency of the Bylaw could be improved.

Question 2 – Is the Bylaw the most appropriate way to address the perceived problem?

5.3 In this case, Council is satisfied that a bylaw is the most appropriate way to regulate the range of potential problems listed above because they give Council (and in some cases the Police) the ability to stop people from impacting unreasonably on others.

Question 3 – Is the form of the Bylaw (the content) appropriate and if not, how should it be amended to be the most appropriate?

5.4 The Draft Amended Urban Environments Bylaw is the most appropriate form of bylaw because it meets the following tests:

- it is authorised by statutory authority under sections 145, 146, 147 and 149 of the Local Government Act 2002;
- it is not repugnant to the general laws of New Zealand;

- the bylaw is certain and provides clear direction;
- the bylaw is reasonable;
- the bylaw is not overly restrictive, onerous on any person, or impractical.

Question 4 – Will the Bylaw and any proposed amendments give rise to any New Zealand Bill of Rights Act (NZBORA) implications?

- 5.5 Part 2 of the NZBORA sets out 20 rights that are affirmed and protected under the NZBORA, subject to “such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society” (section 5 of the NZBORA).
- 5.6 Section 14 (freedom of expression) states that everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.
- 5.7 Section 18 (freedom of movement) of the NZBORA states that everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand.
- 5.8 Section 19 (freedom from discrimination) states that everyone has the right to freedom from discrimination.
- 5.9 Section 21 (unreasonable search and seizure) states that everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence or otherwise.
- 5.10 The Draft Amended Urban Environments Bylaw places some restrictions on these rights, as follows:
- The Trading in Public Places provisions place some limits on people’s freedom of expression by limiting the ability to beg, busk, or place advertisements on any street or other public place, or tree or structure, other than a dedicated “poster tower” without a Council permit.
 - The Control of Alcohol in Public Places provisions enable the Police to seize and remove alcohol, and to search vehicles, and to arrest people, where use of alcohol is in breach of the Bylaw’s prohibitions on the possession or consumption of alcohol in public places.
 - The Reserves provisions limit freedom of movement in reserves in some circumstances, for health and safety and environmental reasons.
 - The Burial and Cremation provisions limit freedom of movement in cemeteries overnight.
- 5.11 The Council acknowledges that the Amended Urban Environment Bylaw affects freedoms provided by the New Zealand Bill of Rights Act, as described above. It considers these limits on freedoms are reasonable and proportional in order to ensure all members of the community are able to enjoy Nelson’s urban environment.

6. Submissions

- 6.1 Anyone may make a submission about any aspect of the Draft Amended Urban Environments Bylaw and any alternatives to it. Council, in making its decision, will take account of all submissions made.
- 6.2 Submissions must be received no later than 8 December 2021.
- 6.3 A submission form is available on the Nelson City Council website at www.nelson.govt.nz or can be requested from Nelson City Council.
- 6.4 Submissions can be made:
- online at nelson.govt.nz
 - by post to Urban Environments Bylaw Review, Nelson City Council, PO Box 645, Nelson 7010
 - by email to submissions@ncc.govt.nz
 - by delivering your submission to Civic House, 110 Trafalgar Street, Nelson.
- 6.5 Please state in your submission whether or not you wish to speak at a hearing in support of your submission. Any person who wishes to speak in support of their submission will be given the opportunity to address the Council at a hearing. (Date to be advised.)
- 6.6 All submissions, including the name and contact details of the submitter, will be made available to the public and media on Council's website, unless a submitter specifically requests that their contact details be kept private and explains why it is necessary to protect their privacy. Council will not accept any anonymous submissions.

7. Related Documents

- 7.1 The Draft Amended Urban Environments Bylaw is attached to this Statement of Proposal, with the proposed amendments shown in underlining of new text and strikethrough of existing text.