



## *Proposed new Signage Bylaw*

### *Submission of the Greater East Tamaki Business Association Inc.*

#### **Introduction**

The Greater East Tamaki Business Association ('Association') welcomes the opportunity to make this submission to the new Auckland Council and Auckland Transport Signage Bylaws.

As the two Bylaws largely mirror each other, our submissions are directed mainly to the Auckland Council Bylaw, but should be treated as a submission to both.

By way of introduction, an important aspect of attracting business in an industrial area is the signage in or visible from roads and public places. Our businesses wish to maintain this.

While we accept it is necessary for some regulation of signage where there is potential for nuisance, care needs to be taken by Auckland Council and Auckland Transport that any regulation is reasonable, clear and certain. We hold concerns that in some instances these Bylaws do not meet these standards.

We also have concerns that the consultation relating to this Bylaw has not demonstrated clearly the differences between the existing regulatory environment for signage and the new proposed Bylaw. It has been very difficult and time consuming for our Association to identify the differences and make submissions in this regard.

Once in place, Bylaws must also be capable of and be seen to be appropriately enforced. Poorly enforced or overzealously enforced Bylaws weaken their legitimacy.

Any fees charged must also be appropriate to the locality in which they are charged and not be regionalised. An acceptable level of fee in the CBD is very unlikely to be acceptable in fringe industrial locations.

#### **Amenity**

Clause 7 of the Bylaw provides that a person must not add a structure to a roof, extend a structure above the architectural top of a building, or extend a structure above the outline or profile of a building for the sole purpose of displaying signage. Nor may a person display publicly visible signage on the roof of any building or that obscures the architectural top of the building.

It appears that the intention of clause 7 is to substantially tighten the regulation of signs on or over the roof of any building, or that extend above the profile of the front of a building. However, there are many examples of signs in our industrial business precinct that do just that, particularly on the front of the building facing the road. In our view, these signs generally add to the vibrancy of the street frontage and do not detract from 'industrial' amenity.

Submission: We suggest that the 'problem' to be regulated here should be considered more carefully and the Bylaw drafted to reflect the different environment in industrial areas as compared to a typical retail high street. In fact, we see little need for clause 7 to apply in industrial areas.

#### **Safety and maintenance**

Clause 8 of the Bylaw provides that a person must not display signage unless it is properly secured so that it does not endanger health or safety. It must not emit noise or smoke, or obstruct property numbering. Signage must be properly maintained.

Submission: We agree with this provision of the Bylaw.

## Traffic

Clause 9 of the Bylaw provides that a person must not display signage that obstructs the line of sight for traffic (such as near bends in roads or that interferes with the movement of people, traffic lights, or traffic travelling at legal speed limits; it must not contain reflective material or flashing lights).<sup>1</sup> Signage must not be displayed on a traffic island, kerb projection, traffic light, or guidance strip for blind people. Nor may signage be displayed closer to the kerb than 0.8m (where there is a bus route) or 0.6m (where there is no bus route).

Submission: While we generally agree with these provisions, we have concerns that clause 9(e) is drafted very broadly in that signs that contain reflective materials that 'may' reflect headlights are included. We believe the intention here is whether such signs may interfere with a road user's vision and suggest it be amended to address this issue.

Submission: We also have concerns about how clause 9(f) is to be interpreted, as most signage visible from roads is intended at some level to be read by people travelling in vehicles. The Statement of Proposal refers to the Land Transport Rule: Traffic Control Devices 2004 ('TCD Rule 2004'), which uses the phrase "causes alarm or unduly attracts the attention of people operating vehicles on the road".<sup>2</sup> We suggest this more narrow phrase be used in clause 9(f).

Submission: Clause 9(g) includes a broad reference to the 'amenity of the surrounding area'. We are concerned that the phrase 'surrounding area' is not defined, but might be interpreted broadly. The term 'amenity' is already defined very broadly in the Bylaw. We suggest that if there is a concern about the effects of flashing lights on amenity, this be carefully set out in clause 7 rather than in clause 9 (which regulates signage and effects on traffic).

Submission: We note that the set-back distance for signs from the kerb has been increased to 0.8m (where there is a bus route) or 0.6m (where there is no bus route). This appears to be along the entire route, rather than just at or near bus stops. The Statement of Proposal does not appear to discuss why this is necessary. We also have some concerns that clause 9(4) has immediate effect on the establishment of a bus route, rather than a six month or one year transition period. We do not agree that the set back is necessary other than near a bus stop.

## Changeable message signage

Clause 10 of the Bylaw provides that a person must not display certain changeable message signage (such as that which scrolls, changes rapidly or exceeds a certain luminage). While the Statement of Proposal states that the reason for this regulation is to address distraction to drivers, and states it is consistent with national transport legislation and NZTA guidelines, no specific reference is made to precisely what legislation or guidelines are being referenced. We note that the NZTA Traffic Control Devices Manual Part 3 Advertising signs includes a section (page 6-4) on changeable message signage, but this does not include the detail of regulation proposed in clause 10 of the Bylaw.

Submission: We suggest that the requirements in the NZTA Manual are sufficient.

## Static illuminated signage

Clause 11 of the Bylaw provides that a person must not display certain static illuminated signage (such as that which does not comply with the NZTA Traffic Control Devices Manual Part 3 Advertising Signs, has upwardly facing lighting unless shielded, or exceeds a certain luminage).

Submission: We suggest that the reference to the NZTA Traffic Control Devices Manual Part 3 Advertising Signs should be dated (i.e. First Edition, January 2011).

## Coastal marine area

We have no submissions to make on clause 12.

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<sup>1</sup> We note that the word "intersection" is used twice in this clause and the Austroads Guide to Road Design reference should be dated so it is clear what version the Bylaw refers to.

<sup>2</sup> See Statement of Proposal, *Introduction of a new Signage Bylaw 2014*, pg 13.

## Content of signage

Clause 13 of the Bylaw provides that a person must not display signage that does not comply with the latest Code of Ethics or relevant Code of Practice issued by the New Zealand Advertising Standards Authority. It also states that if the New Zealand Advertising Standards Authority upholds a complaint relating to a sign, effect must be given to the decision within two working days. Signage must not be discriminatory, objectionable, defamatory, or incite any person to commit any offence.

Submission: We have concerns that this clause of the Bylaw is inconsistent with the freedom of expression under the New Zealand Bill of Rights Act 1990.

Submission: In addition, the clause simply restates existing civil or private rights available to any person to raise complaints about signage that may infringe the latest Code of Ethics or relevant Code of Practice issued by the New Zealand Advertising Standards Authority, or that is discriminatory, objectionable, defamatory, or may incite any person to commit any offence. Complaints concerning these matters may be made to the New Zealand Advertising Standards Authority or to the Human Rights Commission. While the Chief Censor does have a role concerning signs that may be objectionable within the meaning of the Films, Videos and Publications Classification Act 1993, we understand these are typically handled by the New Zealand Advertising Standards Authority.

Submission: Overall, we do not believe that the Auckland Council or Auckland Transport are appropriate bodies to consider and decide matters or complaints of this nature. It is better to leave these matters and judgments to independent bodies dedicated to these issues who have far greater expertise. We submit that clause 13 be deleted from the Bylaw. Instead an Explanatory Note might be included acknowledging that the public have recourse to these other bodies should they wish to make a complaint about the content of a sign.

## Portable Signage

In accordance with clause 14, portable signage (such as sandwich boards and flags signs) must comply with certain size requirements.<sup>3</sup> Portable signage may only be displayed outside premises that have direct ground floor street frontage and access. Businesses without direct ground floor street frontage may display their name and contact details on one 'portable ladder board' located outside their premises.<sup>4</sup> Portable signage must be displayed outside the business entrance and towards the kerb. 1.8m of the footpath must remain clear. The set-back distance from the kerb must be 0.8m (where there is a bus route) or 0.6m (where there is no bus route), 5m from an intersection, 2m from a vehicle crossing, preferably on the grass verge, and at least 5m from a road if there is no kerb. Portable signage must not be displayed in a shared space area or in relation to a home occupation. All portable signage must be removed at the close of business or if it could be knocked over by the weather. Portable signage may be prohibited from specified roads or public places. The Bylaw also prohibits additional signs for advertising magazines or newspapers.

Submission: We agree with the sandwich board size requirements, which are larger than the legacy Manukau City Council requirements.<sup>5</sup>

Submission: We have concerns, however, about the set-back distances. As the Bylaw requires 1.8m of footpath to remain clear, an allowance of 0.715m for the portable board, and 0.8m (on a bus route) or 0.6m to remain clear, footpaths must (to comply with those dimensions) be at least 3.315m wide (on a bus route). Our observations are that few footpaths are that wide. In fact, the Auckland Transport Code of Practice (Section 12.4) provides that footpath width is to be no more than 3m in the Auckland region. Although we expect this is not the intention, the Bylaw seems to effectively prohibit portable signage on footpaths.

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<sup>3</sup> See Table 2 in Schedule 1. *Board signs* (not to exceed 1.1 metres high x 0.715 metres wide x 0.46 metres deep including frame). These measurements are greater than those permitted under the legacy Manukau City Council requirements. Part of a portable sign must be within 0.15m of the ground or able to be detected by a visually impaired person using a cane. *Flag signs* (not to exceed 1.85 metres high x 0.5 metres wide and a maximum total height of 2.2 metres from the base).

<sup>4</sup> A portable ladder board must be no more than 1.5m high, 0.715m wide and 0.46m deep including the frame.

<sup>5</sup> See Auckland Council Report '*Expected Impacts and Scale of Change*' (2014), pg 19.

## Stencil signage

We have no submissions to make on clause 12.

## Free standing signage

In accordance with clause 16, free standing signage must comply with new height and size requirements.<sup>6</sup> Under the legacy Manukau City Council Signs requirements, freestanding signs were permitted to be 7m in height and 8m<sup>2</sup> in size (or where the frontage was 100m, 8m in height and 14m<sup>2</sup>). While they now appear under the Bylaw to be allowed to be 8m in height, the size has been reduced significantly to only 4m<sup>2</sup>. Free standing ladder boards, which are common in industrial areas and provided for under the legacy Manukau City Council Signs requirements, do not appear to have been provided for in the new Bylaw.<sup>7</sup>

Submission: These quite significant changes do not appear to have been highlighted in the consultation documents. We suggest that free standing ladder boards, which are common in industrial areas, be provided for.

Submission: Also, in accordance with clause 16, only one free standing sign is allowed per street frontage per site and it must be located directly outside the premises/facility on that site. Provision needs to be made for free standing ladder boards, especially advertising businesses located to the rear of the street frontage or in an 'industrial estate'. These are common in industrial areas and do not appear to have been provided for.

Submission: It seems that flagpoles are included in the definition of a 'free standing sign'. Our submission is that flagpoles should be not be included as 'free standing signs' or if they are, be permitted in addition to any free standing sign, particularly if they fly 'national' flags.

Submission: We do not understand clause 16(2)(d), as it appears that generally only one sign identifying a business is permitted on a site, while this sub-clause gives the impression that more than one is permitted.

## Poster signage

We have no submissions to make on clause 17.

## Banners

We have no submissions to make on clause 18.

## Veranda signage

We have no submissions to make on clause 19.

## Wall mounted signage

In accordance with clause 20, wall mounted signage must comply with new requirements.

Horizontal wall mounted signs (formerly called 'Tavern' signs) must not exceed 2m<sup>2</sup>. They must be mounted at 90 degrees to the wall, with one allowed every 5m of wall face. They must not protrude more than 1m from the wall and must be located a minimum of 3m and a maximum of 8m above street level.

Submission: These changes do not appear to have been highlighted in the consultation documents or explained.

Flat wall mounted signs, in industrial areas must now not exceed 5m<sup>2</sup> and be a maximum of 5m above street or ground level. The legacy Manukau City Council requirements appear to have placed no size limit on these types of naming signs.<sup>8</sup>

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<sup>6</sup> See Table 3 in Schedule 1. *Freestanding identification sign* (not to exceed 8m height, 2m width, and surface area 4m<sup>2</sup>) in town centre zones or general business, heavy/ light industrial zones. One per street frontage, located directly outside the premises. While the term 'free standing signage' is defined, the terms used in Table 3 ('freestanding identification', 'menu board' and 'way finding') for signs are not. While it appears the zones correspond with the Unitary Plan, this is not explained.

<sup>7</sup> See Rule 5.14.9.5.1, *Manukau City District Plan*.

<sup>8</sup> See Rule 5.14.9.5.1, *Manukau City District Plan*.

Submission: These changes do not appear to have been highlighted in the consultation documents or explained. We suggest the Manukau City Council provisions were satisfactory and no change to them is necessary or desirable.

### **Window signage**

Window frontage on the ground floor of a building with a 'key retail frontage overlay' (as defined by the Unitary Plan) must not be more than 25% of its width and 25% of its height (i.e. a quarter of the window).

In certain specified areas, window frontage on the ground floor of a building must not be more than 50% of the width and 50% of its height (i.e. half of the window). Further, where the window fronts a public open space that is on the side or rear boundary, it shall be not more than 70% of the width and 25% of its height (about half of the window).<sup>9</sup>

Where a publicly accessible link is provided through a site, window signage on the ground floor of those buildings facing the through-link must not account for more than 70% of the length of the ground floor building façade that faces the through-site link and 25% of its height.

Submission: We agree with this provision of the Bylaw.

### **Signage in public open spaces**

As the activities of our business precinct do not generally affect public open spaces, we have no submissions to make on clause 22.

### **Signage advertising commercial sexual services**

Clause 23 addresses signage advertising commercial sexual services. These signs must be wall mounted signs no more than 0.33m<sup>2</sup> in a residential zone or 1m<sup>2</sup> in all other zones. They may only contain the business name, street and telephone number. They must not contain flashing lights, changeable message signage or sexualized shapes or images.

This is a significant change. Under the legacy Manukau City Council Brothels Bylaw, signs could not be visible from a Residential Zone. Now signs advertising commercial sexual services are permitted in residential zones.

The legacy Manukau City Council Brothels Bylaw also prohibited words that were sexually explicit, lewd or offensive, whereas the new Bylaw does not address these matters.

Submission: We are of the view that the provisions of the legacy Manukau City Council Brothels Bylaw should remain in force.

### **Real estate signage**

We have no submissions to make concerning the regulation of real estate signage under clause 24.

### **Vehicle signage**

Clause 25 addresses vehicle signage. Vehicles or trailers cannot be used primarily to display advertising. We note that no definition or explanatory note is provided of what is meant by this. Signage on vehicles must not protrude from the vehicle if that is unsafe or is causing a nuisance. Motor vehicle traders may only display sales signs on vehicles when they are on the road when they are being taken for a test drive or to a garage for testing.

The legacy Auckland City Council Signs Bylaw did not regulate vehicle signage.

Submission: We agree with this provision if the intention is to mainly restrict trailers primarily displaying advertising that are sited in a permanent way, but otherwise we do not believe this provision is necessary. We have concerns that the Auckland Council may interpret this clause very broadly. As vehicles with signage may travel in or outside Auckland, we believe a national approach to such signage is more appropriate and it is unreasonable to regulate these just in Auckland.

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<sup>9</sup> These specified areas are: (a) General Commercial Frontage Overlay; (b) Local centre Zone; (c) Neighbourhood Centre Zone; Mixed Use Zone; (d) Mixed Use Zone; (e) Business Park Zone; (f) General Business Zone; (g) those areas in the Metropolitan Centre and Town Centre zones not subject to a key retail frontage overlay.

## **Community event signage**

We have no submissions to make concerning the regulation of community event signage in clause 26.

## **Regional and major event signage and major recreational facilities**

We have no submissions to make concerning the regulation of regional and major event signage and major recreational facilities under clause 27.

## **Approval of signage and conditions**

Application may be made under clause 28 for approval to display signs that either require approval under the Bylaw or do not comply with the Bylaw. Approvals for signs that do not comply with the Bylaw may only be made if granting the approval would not significantly prejudice the achievement of the purpose of the Bylaw and along with other matters, be in substantial compliance with it. Certain matters may be considered when making approvals under clause 29. Conditions may be applied under clause 30.

By contrast, we believe the provisions for dispensations should be drafted broadly.

Submission: We suggest that the dispensation provisions should be drafted more broadly and not have to consider a complex set of matters as drafted.

## **Transitional Provisions**

Clause 35 provides that all portable signage will need to comply with the requirements of the new Bylaw within six months of it coming into force. The intention of the Bylaw is that all other legally established signage that meets current requirements or has a permit will be allowed to remain in place as long as there is no fundamental change to the signage. As and when any existing permit expires, at that point existing signage will have to meet all of the requirements of the new Bylaw. We have concerns, however, that the drafting of clause 35(1) suggests that only signage with approvals or permits obtains these rights.

Submission: We suggest clause 35(1) be redrafted as follows: "Signage, other than portable signage, lawfully established prior to this bylaw coming into force may remain in place without breaching this bylaw, subject to compliance with the requirements of Part 2 of this bylaw. In addition, signage, other than portable signage, that has an existing approval, may remain in place for the period of the approval without breaching this bylaw, subject to compliance with the requirements of Part 2 of this bylaw."

We also suggest clause 35(5) be redrafted as follows: "Any application for a licence, consent, permit, dispensation, permission or other form of approval made under a bylaw referred to in clause 36(1) that was filed before the day on which this bylaw commences must be dealt with by the relevant authority as if it had been made under the relevant legacy Bylaw set out in clause 36."

## **Revocation and savings**

We note that while clause 5 of the Manukau City Council Consolidated Bylaw 2008 (Chapter 3 Brothels) and Chapter 19 (Temporary Signs) have been revoked, the provisions concerning signs in the Manukau District Plan (Chapter 5.14) have not been revoked and remain in place.

As the Manukau District Plan is legally a Regulation, it's provisions will override the new Signage Bylaw 2014 where it applies (see *Ideal Laundry Ltd v Petone Borough* [1957]NZLR 1038 (CA)). As a consequence, our area will be faced with a very complex regulatory environment. It is our understanding that the provisions concerning signs of the Manukau District Plan will remain lawfully in effect. Where these provisions conflict with the new Signage Bylaw 2014, they will apply. However, where they do not, the provisions of the new Signage Bylaw 2014 will apply. Quite simply, this is an excessive, complex and inappropriate level of regulation.

Submission: In our view, until the provisions concerning signs of the Manukau District Plan are revoked through the Unitary Plan process, we believe the new Signage Bylaw 2014 should not apply. As a consequence, the Auckland Council will need to reaffirm clause 5 of the Manukau City Council Consolidated Bylaw 2008 (Chapter 3 Brothels) and Chapter 19 (Temporary Signs) rather than revoke them if they wish these to remain in place.

## **Conclusion**

The Association welcomes the opportunity to make this submission to the new Auckland Council and Auckland Transport Bylaws regulating Signage.

As noted above, while the Association is largely supportive of the Bylaws, there are a number of concerns that should be addressed.

For and on behalf of the Association

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Jane Tongatule

General Manager