

Mayor and Councillors
COUNCIL

15 OCTOBER 2015

Meeting Status: **Public**

Purpose of Report: For Decision

FOOD SAFETY BYLAW 2006

PURPOSE OF REPORT

- 1 This report seeks Council's approval of the Food Safety Bylaw 2006 (Attachment - Appendix 1).

DELEGATION

- 2 Council has the power under the Local Government Act 2002 (LGA 02) to make bylaws.

BACKGROUND

- 3 The purpose of the Bylaw is to:
 - a) Ensure safe food is available in the district food premises;
 - b) Require food premises to have staff adequately trained in food hygiene;
 - c) Allow the Council to close premises that are insanitary;
 - d) Recognise food premises that exhibit high standards of excellence through use of a grading system.
- 4 The Audit and Risk Committee was recently advised (report SP-15-1705 29 September 2015) that following a review of all bylaws it was identified that the Food Safety Bylaw 2006 was not formally adopted by the Council and a report would be going to Council on 15 October 2015 to seek its approval of the bylaw.
- 5 The Food Safety Bylaw 2006 (the Bylaw) went through the consultation process required by the Local Government Act 2002 (LGA 02) with respect to the establishment of a bylaw in November/December 2006.
- 6 On completion of the consultation process the Bylaw was adopted by the Environment and Regulatory Committee on 1 February 2007. The decision of the Environment and Regulatory Committee was referred to Council in a report on 14 March 2007. Whilst the full Council considered the reports from Committees and Community Boards there was no formal resolution of Council adopting the Food Safety Bylaw 2006. Under the Local Government Act 2002 only full Council has the delegation to approve bylaws.

ISSUES AND OPTIONS

Issues

- 7 The Bylaw ensures safe food is available in the district by requiring food providers' staff are adequately trained and by promoting a fee regime that encourages high quality food hygiene practices by providing an incentivised grading provision.
- 8 The incentivised fee regime encourages providers to manage their business to a high level of hygiene and safety by creating a grading system. Operators are graded based on results from inspections conducted by Environmental Health Officers (EHO) and are required to display a grading certificate.
- 9 The Bylaw also includes a "closure" provision for operators that have significant issues with respect to food safety. These have never been used and would more likely be dealt with under the Health Act and not through the Bylaw.

Legal considerations

- 10 With the introduction of the Food Act 2014 (the Act) local authorities will no longer be required to make food safety bylaws. However, now that the final dates for transition from current legislation, to operators developing their own Food Control Plans (FCP) have been publicised, it is clear that the current Bylaw should remain in place until the new regime is fully implemented in 2019.
- 11 Once approved the Bylaw will require review under the Food Act 2014 to ensure there are no inconsistencies with the Act or Food Regulations. This review will not require use of the special consultative procedure as defined in the Local Government Act 2002. The review cannot be carried out until the Food Regulations have been promulgated.
- 12 Since the Food Safety Bylaw 2006 has been in place, Council has not closed any premises.
- 13 As a result of the failure of Council to formally "adopt" the Food Safety Bylaw in 2007, Council has arguably not had a valid bylaw for the past eight years. There is a risk that an operator could take legal proceedings against Council, based on the Council exercising powers it may have had due to the absence of a Bylaw. The main area of risk relates to grading of premises based on the level of compliance with food hygiene requirements. Staff consider that the risk of legal action is low given that an operator would likely need to show that it suffered a loss.

Financial considerations

- 14 Subject to the legal risk identified above there are no costs associated with the adoption of the Bylaw

Tāngata whenua considerations

15 There are no Tangata whenua considerations with respect to this report.

SIGNIFICANCE AND ENGAGEMENT

Degree of significance

16 There are no issues with respect to Council's significance and Engagement requirements.

Publicity

17 Council are required to publicly notify the adoption of the bylaw.

RECOMMENDATIONS

18 That Council adopts the Food Safety Bylaw 2006 (as attached at Appendix 1 to Report RS-15-1694).

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Approved for submission

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Approved for submission

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ATTACHMENT

Appendix 1 Food Safety Bylaw 2006