

Mayor and Councillors
COUNCIL

17 MARCH 2016

Meeting Status: **Public**

Purpose of Report: For Decision

ALIGNMENT OF FOOD BYLAW WITH THE FOOD ACT 2014

PURPOSE OF REPORT

- 1 This report recommends changes to the Food Safety Bylaw 2006 to address inconsistencies with the Food Act 2014 (the Act).

DELEGATION

- 2 Only Council has the authority to consider this matter.

BACKGROUND

- 3 The Food Safety Bylaw 2006 currently provides for the following:
 - a) ensure that safe food is available in all food premises throughout the district;
 - b) require food premises to have staff adequately trained in food hygiene;
 - c) allow the Council to close premises that are unsanitary;
 - d) recognise food premises that exhibit high standards of excellence through use of a grading system.
- 4 A full review of the current Food Safety Bylaw is not required as the Bylaw will be superfluous once the Food Act 2014 becomes fully operative in March 2019. The Bylaw expires (unless reviewed prior) in April 2019. What is required now is to make the adjustments necessary to reflect the new Food Act to cover the three year transitional period.
- 5 From March 2016 the Bylaw is no longer applicable with respect to c) above following the introduction of the Act; the new Act covering issues related to the closure of premises. However as premises transition over the next three years in relation to using the appropriate risk based tool for their business, the grading system covered in d) above must remain as well as parts a) and b) of the current Bylaw.
- 6 The grading provides consumers with easy to understand information regarding the operator's performance in relation to statutory requirements. Similar grading systems are used by a number of local authorities in New Zealand and there is strong support for their use both by consumers and food businesses. Council's current grading system is supported by a risk based fee structure which rewards high performance through lower fees.

- 7 The Act no longer provides a framework for the grading of food premises and associated fee setting that are currently operating under the Food Hygiene Regulations 1974, whilst transitioning to the new system. However, the Ministry for Primary Industries (MPI) is considering how a national grading system could be applied by all New Zealand territorial authorities. The system would be permitted by Regulation made under the Act, but Regulations may not be in place for some time. In the meantime Council can continue to use and apply its current grading system, but the Food Safety Bylaw must be consistent with the Act in order for it to remain in force.
- 8 Section 446 of the Act provides as follows:
Relationship with local authority bylaws
(1) This section applies to the following documents:
 (a) *this Act;*
 (b) *regulations under this Act;*
 (c) *adopted joint food standards;*
 (d) *domestic food standards;*
 (e) *notices under this Act;*
 (f) *directions given by the chief executive under this Act*
(2) If a bylaw made by a local authority is inconsistent with a document,—
 (a) *the document prevails and the bylaw has no effect to the extent of the inconsistency; and*
 (b) *the local authority must amend or revoke the bylaw to remove the inconsistency.*
(3) The local authority need not use the special consultative procedure set out in Section 83 of the Local Government Act 2002 to amend or revoke the bylaw to remove the inconsistency, despite anything in that Act.
(4) A local authority must not make a bylaw that is inconsistent with a document
- 9 As outlined above the existing Bylaw both authorises a grading system, but also provides for the closure of premises. While Council can continue to use a grading system through a Local Government Act 2002 bylaw, the Act now provides overriding enforcement procedures regarding the closure of premises and as such the current Bylaw is inconsistent with the new legislation.

ISSUES

- 10 To enable the Food Safety Bylaw 2006 to remain consistent with the Act amendments need to be made. These are:
- 11 Closure of Premises (clauses 3.3, 8 and 11.3 to be deleted from current Bylaw)**

The Food Act 2014 authorises Food Safety Officers to restrict use or close premises that do not comply with the applicable requirements of the Food Act 2014. Accordingly, clause 8 of the Bylaw which authorises Council officers to close premises, as well as clauses 3.3 and 11.3 are no longer required. Clause 3.3, 8 and 11.3 of the Bylaw should be deleted.

12 Grading of Premises (relating to setting of fees – new clause 8.1 in the proposed amended Bylaw)

“The grading process set out in paragraphs 8 to10 of the proposed amended Bylaw applies only to food businesses established under the Food Hygiene Regulations 1974 which have not transitioned to the requirements of the Food Act 2014. For all new Food Businesses or Food Businesses that have transitioned, the provisions of the Food Act 2014 apply.”

13 Typographical amendment only (clause 1 reference to section 164 Health Act 1956)

Clause 1 refers to the making of the Bylaw and powers under the associated legislation:

“The Kapiti Coast District Council makes by special consultative procedure the following Bylaw under the powers contained in section 145 of the Local Government Act 2002, section 164 of the Health Act 1956 and any regulations under that Act”

The reference to section 164 of the Health Act 1956 should refer to section 64 of the Health Act 1956. Therefore clause 1 should be amended accordingly.

CONSIDERATIONS

Policy considerations

- 14 There are no policy considerations with respect to the proposed amendments to the Food Safety Bylaw 2006.

Legal considerations

- 15 Under S446 (3) of the Act Council is not required to consult as prescribed in S83 of the Local Government Act 2002. The proposed amendments comply with S446 of the Act and have been reviewed and agreed with Council’s legal representatives.

Financial considerations

- 16 There are no financial considerations with respect to these proposed amendments and any advertising can be covered by existing budgets.

Tāngata whenua considerations

- 17 There are no Tāngata whenua considerations.

SIGNIFICANCE AND ENGAGEMENT

Degree of significance

- 18 This matter has a low level of significance under Council policy.

Publicity

- 19 If the proposed changes are introduced then a notice advising of the amendments will be placed in a local paper.

RECOMMENDATIONS

- 20 That Council approves the following amendments to the Food Safety Bylaw 2006:

(a) Clause 1 is amended to:

“The Kapiti Coast District Council makes by special consultative procedure the following Bylaw under the powers contained in section 145 of the Local Government Act 2002, section 64 of the Health Act 1956 and any regulations under that Act”

(b) Clauses 3.3, 8 and 11.3 are deleted from the Bylaw

(c) Clause 8.1 to be added to the Bylaw

“The grading process set out in paragraphs 8 to 10 of this Bylaw applies only to food businesses established under the Food Hygiene Regulations 1974 which have not transitioned to the requirements of the Food Act 2014. For all new Food Businesses or Food Businesses that have transitioned, the provisions of the Food Act 2014 apply.”

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Approved for submission

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ATTACHMENTS

- Appendix 1 Current Food Safety Bylaw 2006
Appendix 2 Proposed amended Food Bylaw 2006
Appendix 3 Highlighted for reference amended Food Bylaw 2006