

Chairperson and Committee Members
STRATEGY & POLICY COMMITTEE

9 MARCH 2017

Meeting Status: **Public**

Purpose of Report: For Decision

**KĀPITI COAST DISTRICT COUNCIL FIRE PREVENTION
BYLAW**

PURPOSE OF REPORT

- 1 This purpose of this report is to:
 - a) provide the Committee with an update on the Fire and Emergency New Zealand (FENZ) Bill;
 - b) seek the Committee's approval to stop the review of the Kāpiti District Coast Council 2010 Fire Prevention Bylaw; and
 - c) seek the Committee's approval to let the Kāpiti District Coast Council 2010 Fire Prevention Bylaw lapse on 30 September 2017.

DELEGATION

- 2 Under B1 of the Governance Structure and Delegations for the 2016-2019 Triennium, the Strategy and Policy Committee is responsible for the development and/or review of strategies, plans, policies and bylaws.

BACKGROUND

- 3 On the 26th of November 2015, the Regulatory Management Committee considered and agreed to proposed amendments to the 2010 Fire Prevention Bylaw to create a Draft Kāpiti Coast District Council 2016 Fire Prevention Bylaw (Draft 2016 Bylaw) (Report RS-15-1750 refers).
- 4 The Draft 2016 Bylaw went out for consultation using the special consultative procedure on 2 December 2015. Submissions closed on 12 February 2016. Two submissions were received.
- 5 On 9th of June 2016, the Committee considered the submissions (RS-16-1897 refers) and resolved to:

Recommend to Council that the Draft 2016 Kāpiti Coast Fire Prevention Bylaw attached as Appendix 3 to Report RS-16-1897 be carried to the next meeting of this Committee. Further consultation will be undertaken with the ART Confederation and the Fire Service (RMC 16/06/186 refers).

Fire and Emergency New Zealand Bill

- 6 The Fire and Emergency New Zealand Bill (FENZ Bill) was introduced into Parliament on 30 June 2016. The purpose of the Bill is to introduce legislation to modernise New Zealand's fire services by setting up a single fire organisation responsible for urban and rural fire.
- 7 This Bill is intended to enable —
 - “fit-for-purpose” 21st century fire services that are flexible, modern, effective, and efficient; and
 - fire services that work well, are funded appropriately, and value the paid and volunteer workforce.
- 8 The Bill repeals the two Acts governing fire services, the Fire Service Act 1975 and the Forest and Rural Fires Act 1977, to give effect to a single, unified fire services organisation for New Zealand. The new organisation, Fire and Emergency New Zealand (FENZ), is proposed to be established on 1 July 2017.
- 9 The Bill made clear that, when New Zealand's' urban and rural fire services are unified, local government will no longer operate or separately fund rural fire services.¹ However, at that time, it was not clear what that meant for existing council fire prevention bylaws and for Councils' role in issuing fire permits for urban areas.
- 10 Given that the 2010 Bylaw does not expire until 30 September 2017, work on the 2010 Bylaw review was suspended pending further information on whether Council would still need a fire prevention bylaw after 1 July 2017.

ISSUES AND OPTIONS

Update on the FENZ Bill

- 11 The FENZ Bill was reported back from Select Committee on 22 December 2016.
- 12 On 11 January 2017, the Department of Internal Affairs (DIA) released a document, *Regulating fire permitting under the FENZ Bill* which confirmed that from 1 July 2017, FENZ will be responsible for fire in open air including setting fire seasons and granting fire permits (see Appendix 1 for further information).
- 13 In order to activate this approach, FENZ is required to promulgate regulations setting out how it will manage fire permitting. The 11 January document sought feedback on how fire permitting should be managed with submissions closing on 26 January 2017.

Submission on Regulating fire permitting under the FENZ Bill

- 14 Officers made a submission to the FENZ Project Committee on preferred options and covered the following matters:

¹ Department of Internal Affairs. *Fact Sheet: Local government role in fire services.*

Options:

In response to the 3 options put forward, the Council prefers Option 1B because it provides potential applicants with some clarity on what FENZ will consider when issuing fire permits.

One of the key issues which came up during Council's recent review of its fire prevention bylaw, was about making provision for fires that are lit to support cultural purposes. The Council thinks it important that FENZ develop decision making criteria to support such cultural activities.

Transition period

The Council would like more clarity about how the transition of this activity from councils to FENZ will be undertaken.

The Council's 2010 Fire Protection Bylaw will expire in September 2017. When it became apparent that fire permitting would be transferred to FENZ, the review was put in hold pending further information. Now that it is clear that fire permitting will be transferred to FENZ from 1 July, Council will not do any further work on the review and the 2010 Bylaw will consequently expire in September 2017. This means that it will be necessary for the appropriate regulations to be in place to establish FENZ permitting in this district by 30 September.

Given the relatively short time period from July to September, we seek further information on how the handover will be undertaken and positive confirmation that this can be achieved by 30 September

- 15 On 2 February 2017, the Council received further information on how the transition to FENZ would be managed (see Appendix 2). Officers have been in contact with the FENZ Transition team and expect to meet with them soon to initiate the handover.

Fire Prevention Bylaw review

- 16 The 2010 Fire Prevention Bylaw will expire on 30 September 2017. Given that FENZ will be responsible for fire management from 1 July 2017, it is suggested that the review of the 2010 Bylaw is now stopped and that the 2010 Bylaw is allowed to expire.

CONSIDERATIONS

Policy considerations

- 17 As policies are reviewed, changes may need to be made to take account of the changes initiated by the FENZ Bill.

Legal considerations

- 18 Council's legal team have been involved in reviewing the implications of these changes for Council.

Financial considerations

- 19 Given that the fire permitting function is being moved to FENZ, a minimal amount of compliance monitoring time will reduce as Council staff are no longer required to assess applications and monitor compliance. Council will see an increase on insurance budgets. The exact cost is not known. As a result of the transfer of function to FENZ there will be significant reduction in our rural firefighting budget.

Tāngata whenua considerations

- 20 Refer paragraph 14.

SIGNIFICANCE AND ENGAGEMENT

Degree of significance

- 21 This matter has a moderate degree of significance under Council policy.

Consultation already undertaken

- 22 There is no requirement for Council to consult on this matter.

Publicity

- 23 Publicity material will need to be prepared to advise people that the system for getting fire permits has changed and to direct them to FENZ. This material will be placed on Council's website and distributed through the usual communication channels such as Facebook and Everything Kāpiti.

RECOMMENDATIONS

- 24 That the Strategy and Policy Committee recommends to Council that:
- a) the review of the Kāpiti Coast District Council 2010 Fire Prevention Bylaw is stopped; and
 - b) the Kāpiti Coast District Council 2010 Fire Prevention Bylaw is allowed to expire on 30 September 2017.

Report prepared by	Approved for submission	Approved for submission
Jacque Muir	Max Pedersen	Kevin Currie
Environmental Standards Manager	Group Manager Community Services	Group Manager Regulatory Services

ATTACHMENTS

- Appendix 1: Regulating fire permitting under the FENZ Bill
Appendix 2: Transition Direct

APPENDIX 1**REGULATING FIRE PERMITTING UNDER THE FENZ BILL**

The Department of Internal Affairs would like your views on how to regulate fire permitting.

This document targets people who likely know fire permitting best (e.g. frequent applicants/permit users, and issuers). Please provide responses to the questions in this document by **Thursday 26 January 2017** to FireServicesTransition@dia.govt.nz. Your feedback will help inform the proposals we progress, ready for the establishment of Fire and Emergency New Zealand (FENZ) on 1 July 2017.

The FENZ Bill, and FENZ's controls on fire in open air

The FENZ Bill was reported back from Select Committee on 22 December 2016. If passed, the Bill will establish FENZ as a single, unified fire services organisation.

From 1 July 2017, FENZ will be responsible for fire in open air. Responsibility for setting fire seasons and granting fire permits will sit with FENZ, rather than fire authorities or enlarged rural fire district committees or territorial authorities.

Permits granted under the Forest and Rural Fires Regulations 2005 before 1 July 2017 will remain valid (e.g. after 1 July 2017), until they expire. FENZ will work with territorial authorities on the transfer of their permitting responsibilities. But territorial authorities could continue granting fire permits until FENZ and the territorial authority agree to FENZ's permitting system applying in the territorial authority's area.

To continue to allow fires in open air to be lit, we need to regulate permitting

Under the FENZ Bill, fire permits can only be granted if permitting regulations are in place. A person cannot light a fire in open air during a restricted or prohibited fire season, without a permit. Permits are important to the continued use of fire as a land management tool.

The need to comply with other obligations remains, despite a fire permit (e.g. rules for discharging smoke or other contaminants into air).

Fires in open air without permitting – other possibilities for allowing fires are limited

If we don't regulate permitting, FENZ cannot grant fire permits when the FENZ Bill becomes law.

Without permitting, FENZ could adapt its setting of restricted or prohibited fire seasons to cover small areas of land and frequently review the seasons. But FENZ, and those lighting fires, could find this complicated. Unlike fires lit under fire permits, FENZ would not know about intended fires, and FENZ would be unable to place appropriate conditions on fires lit in open air.

Options for regulating permitting under FENZ Bill

Option 1A – regulating information to grant fire permits (preferred)

Option 1A is our preferred option. Option 1A would update the approach of the Forest and Rural Fires Regulations 2005 (FRF Regulations).

The FRF Regulations include a form for fire permits. The form requires information like the permit holder's name, address and location of the fire, and imposes specified conditions.

Taking this approach, permitting regulations under the FENZ Bill could require certain information (but without prescribing a permit form). For example, regulations under Option 1A could:

- require certain information from the applicant (e.g. applicant's name and address, location of fire, fuel types to be burned, and other specified information); and
- require FENZ to provide compliance information when granting permits (e.g. a validity period and specific conditions such as no lighting fires in strong winds. Other conditions could also still be set).

Option 1B – regulating information to grant fire permits, plus decision-making criteria

Option 1B is the same as Option 1A, but would also regulate how FENZ determines a permit application. This would help ensure safeguards around FENZ's exercise of its power to grant permits.

In addition to the matters under Option 1A, permitting regulations for Option 1B could:

- regulate criteria that FENZ must consider when assessing a permit application (e.g. whether FENZ is granting a permit to light a fire in open air for cultural practices. Another example is whether granting a permit broadly aligns with the aim of reducing the incidence of unwanted fire).

Options 1A and 1B – potential impacts

Applicants would be broadly familiar with these approaches in Options 1A and 1B, as the FRF Regulations' approach is longstanding.

For Option 1A, the matters considered when granting permits are flexible; they're not specifically regulated (except for specified conditions), meaning applicants do not know how FENZ will assess the application. Option 1B specifically regulates the criteria FENZ must consider, which provides some certainty to applicants over how FENZ would determine a permit application. Option 1B does not go as far as regulating types of matters FENZ must consider when imposing permit conditions. This is left to FENZ's discretion, given FENZ's expertise in fire matters.

The broad ability in Options 1A and 1B for FENZ to impose other conditions allows for local variation. The administrative burden of Options 1A and 1B is generally low (for issuers and applicants), and unlikely to significantly change with minor updates.

Implementing Option 1A would be straight forward compared to taking a new approach. Regulating decision-making criteria (which do not currently sit in the FRF Regulations) could make it difficult for FENZ to implement Option 1B by 1 July 2017.

Question 1: *what are the advantages and disadvantages of Option 1A, and Option 1B?*

Question 2: *do you agree with the described impacts from Option 1A, and Option 1B? If not, why not?*

Option 2 – regulating FENZ’s use of power to grant permits

Another option involves regulating how FENZ uses its power to grant permits. Permitting regulations could:

- enable FENZ to require information from applicants which it considers reasonably necessary (instead of requiring the same information from all applicants);
- regulate criteria that FENZ must consider when assessing a permit application (e.g. criteria like whether the permit is for lighting a fire in open air for cultural practices, and whether granting a permit broadly aligns with the aim of reducing the incidence of unwanted fire); and
- regulate the types of matters FENZ must consider when determining conditions on permits (e.g. matters like fire safety).

Option 2 – potential impacts

This option provides flexibility, with little detail. It would be unfamiliar to applicants, compared to Options 1A or 1B. But applicants would have greater certainty over how FENZ determines a permit application (i.e. as the criteria for decision-making are regulated, along with matters FENZ must consider when determining conditions on permits).

The regulations would likely differ significantly from the current form in the FRF Regulations. This new approach could be difficult for FENZ to implement in time for 1 July 2017.

Question 3: *what are the advantages and disadvantages of Option 2?*

Question 4: *do you agree with the described impacts of Option 2? If not, why not?*
Other suggestions for regulating fire permitting – we’d like to hear your ideas

The two scenarios above are suggested options to consider. But we’re also interested in other ideas for regulating fire permitting (while bearing in mind that FENZ’s operational policy would likely detail the permitting processes).

Question 5: *what do you consider is crucial to regulate for fire permitting, and why?*

APPENDIX 2**TRANSITION DIRECT**

February 2017

Hello everybody

Welcome to 2017. We are five months from the start of Fire and Emergency NZ when 40 organisations amalgamate into one. There will be a lot happening over these five months and I understand you will have a range of questions about exactly what Fire and Emergency NZ will mean for you.

As we wrap up the information gathering and high-level planning phase, and move into detailed planning and preparation for implementation, and decisions are made, the information available to you will increase - through meetings, your leaders, in print and online. This means Day One - and what you need to know to prepare for Day One - will become clearer.

Over the past few months the Transition Project Team has been focused on gathering information, particularly across rural – currently made up of 38 different organisations and the National Rural Fire Authority (NRFA). This information provides us with better understanding of current assets, volunteers and employees who work across fire and other council business, IT systems, the cost of delivering rural services... the list goes on. For the NZFS, knowing this detail is just as important, but has been a little easier, as it is already one organisation with mainly centralised corporate functions and systems to work with.

The information gathering process highlights both the scale and implication of what the amalgamation means for New Zealand. Together we are creating an organisation that will serve all New Zealanders across the length and breadth of the country; that's a real honour and one not lost on the Transition Project Team. Find out more about the work that has been done to date in the [End of Year Progress Summary](#), which is on our website.

Working out the detail

We're now into working out the detail in areas that need to be addressed before 1 July, as outlined in our [Blueprint for Day One](#). For example, workshops on how we support fire permits and corporate ICT systems are in progress. Thanks to the rural survey responses, we have a good picture of rural assets – the results will be shared with the Rural Fire Authorities shortly. We're already building the new website, new intranet, developing the Statement of Intent, Statement of Performance Expectations, Operational Service Agreements with the Department of Conservation and the New Zealand Defence Force, and budget processes. Much of this work is under the hood, but is vital from the perspective of creating an operational Crown Entity on Day One.

Discussing our identity

Over the next few weeks, representatives from across the fire services sector will start taking part in sessions where we'll be talking about our identity and what's important to people. This is building on the feedback some of you have already provided in a number of forums in December. Identity is rightly an area that many people are passionate about, and we are focussing on getting it right

Local Advisory Committees

Local Advisory Committees (LAC) are designed to help Fire and Emergency NZ stay close to the risks and needs of communities across New Zealand. Formerly referred to as Local Committees, the name was changed as part of [updates made to the Fire and Emergency New Zealand Bill](#) by the Select Committee and reported in late December. Each LAC may have a different makeup as they'll reflect the needs of their local community. They are not operational, management or governance committees.

It's important we understand how these will work early, so we can plan for their implementation after 1 July 2017. In December we held the first meeting of the first greater Auckland pilot to start developing guidelines and processes for the LACs, and the second meeting will occur soon. In February, the Board will decide on the location of the second pilot.

Keeping you in the loop

One way you can stay in touch with what's happening is by following us on [Facebook](#). You'll find us under fenztransition. Otherwise you can email us on myvoice@fenzproject.co.nz – we aim to answer questions within a few days.

This update, and other information about the Project's background and progress, including resources for our leaders, is on our [website \(fenzproject.co.nz\)](#).

David

PS – Please feel free to forward this update to your team, or print it out to go on your noticeboard.



David Strong

Transition Director
The FENZ Transition Project

(04) 4744 819

021 508 370

FENZproject.co.nz