

**CONSOLIDATED BYLAW REVIEW:
PART 22 – FOOD PREMISES
PART 9 – COMMERCIAL POOLS AND SAUNAS
PART 16 – SWIMMING POOLS AND RESERVES**

1. Purpose of Report

- To revoke parts of the consolidated bylaw and replace with a Local Public Health Bylaw.
- To recommend that the Committee refer the attached Statement of Proposal to Council to initiate the special consultative procedure.

2. Recommendations

It is recommended that the Committee:

1. *Receive the information.*
2. *Note that the Council is required to review the bylaws pursuant to section 158 and 293 of the Local Government Act 2002.*
3. *Note that the Statement of Proposal includes a proposal to revoke the following parts of the Wellington Consolidated Bylaw 1991;*
 - *Part 22 Food Premises Bylaw (incorporating amendment no.5)*
 - *Part 9 Commercial Pools and Saunas*
 - *Provisions relating to swimming pools in Part 16 Reserves and Swimming Pools**and to create a Local Public Health Bylaw which incorporates Food Premises and Public Pools.*
4. *Recommend to the Council that it:*
 - a) *Note that the Council is required to review the bylaws pursuant to section 158 and 293 of the Local Government Act 2002.*
 - b) *Agree that the proposal proceed through the Special Consultative Procedure, as required by sections 86, 156, 158, and 160 of the Local Government Act 2002.*
 - c) *Agree that the proposed Local Public Health Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.*

- d) *Agree that the proposed Local Public Health Bylaw is the most appropriate way of addressing the perceived problem of preventing food borne diseases contracted from food premises and water borne diseases contracted from public pools in Wellington.*
- e) *Agree that the proposed Local Public Health Bylaw is the most appropriate form of bylaw as it provides the Council with the necessary provisions to fulfil its role in protecting the health of Wellingtonians and people who visit the city.*
- f) *Authorise the Chief Executive and Social Portfolio holder to make minor editorial changes to the Statement of Proposal, if required as a result of SPC amendments.*
- g) *Note that consultation will take place from 18 October 2007.*

3. Background

The Council has a statutory duty to improve, promote and protect public health and is empowered by the Health Act 1956 and Local Government Act 2002 to make bylaws to protect public health. In this regard the following parts of the consolidated bylaw have been reviewed:

- Food Premises (Part 22 incorporating Amendment 5)
- Commercial Pools and Saunas (Part 9)
- Reserves and Swimming Pools (Part 16) – provisions related to swimming pools only.
- The remainder of Part 16 is scheduled for review by June 2008.

Parts 9 and 22 of the consolidated bylaw serve to give effect to the Council's duty under the Health Act. These parts have been reviewed at this time so that they can be updated, and to enable the Council to continue to exercise the necessary regulatory tools in the future. If the bylaw parts are not reviewed they will expire on 1 July 2008.¹

The Council works alongside food premises and pool operators to help identify health risks and to promote best practice. The bylaws assist the work of officers by addressing gaps in the regulatory framework.

Officers found during the course of the review that substantial sections of the current bylaw are obsolete or duplicate statutory powers such as the Building Code, Health Hairdressing Regulations 1980, and provisions for Offensive Trades in the Health Act 1956.

The proposed bylaw provides the Council with the necessary tools to help minimise the potential for food and water-borne illnesses, and is more clearly phrased than the bylaws that are being replaced.

¹ S293 (3) Local Government Act 2002 (LGA)

The proposed Local Public Health Bylaw will show these public health related issues in one place which will make it easier for people to locate the information. It will also be helpful for Council officers when the bylaws are amended or reviewed in the future.² Amendments to the Local Public Health bylaw may be proposed in the future to control risks to public health.

4. Discussion

4.1 Food Premises

There are approximately 1400 registered food premises that will be subject to the proposed bylaw (amongst other regulations).

The proposed bylaw enables the Council to:

- promote the importance of safe food practices by requiring operators to undergo recognised training
- promote excellence by grading premises
- ensure food utensils and appliance hirers supply hygienic equipment
- issue notices (such as notices to cleanse)
- move swiftly to close a premise that poses an immediate and significant risk to public health.

The Government is currently preparing legislation that is expected to render Council's Food Premises bylaw obsolete. However as this legislation will not be enacted by 1 July 2008, a bylaw is needed.

4.2 Public Pools

There are approximately 50 public pools in Wellington. The proposed bylaw introduces rules that apply equally to Council swimming pools, school pools and privately operated commercial pools.

In the course of the review officers found that the provisions in part 16 of the consolidated bylaw were obsolete and can be revoked without creating an adverse impact on the effective management and control of Council pools.

Saunas have been found to present a negligible risk to public health and are not included in the scope of the bylaw.

The proposed bylaw enables Council to:

- register public pools
- ensure the premises and equipment are maintained in a hygienic condition
- minimise public health risks by specifying water quality standards and water quality testing and record keeping in accordance with the New Zealand Standard on Pool Water Quality (NZS5826:2000)

² Bylaws must be regularly reviewed to continue to have effect (S158 LGA 2002)

- promote good practice by requiring pool operators to undergo NZQA approved training
- require signage relating to conditions of entry and disease prevention to be displayed and for children under 8 years to be supervised
- issue a notice to cleanse
- move swiftly to close a public pool should it pose an immediate and significant risk to public health.

4.3 Options

The following options have been identified through the bylaw review and are noted in the statement of proposal attached as appendix A.

- ***Renewal of the current bylaws – status quo***
Renewing the current bylaws would provide certainty for food premise and public pool operators about Council requirements. However, substantial sections of the current bylaw are obsolete, or duplicate other regulations, are unnecessary, or required updating and amendment. This option does not satisfy the requirements in s155 of the LGA 2002.

This option is not recommended

- ***Educational approach (no bylaw).***
The removal of the bylaws is likely to result in increased health risks to the public and dilute the regulatory tools available to Council.

This option is not recommended.

- ***Revoke the current bylaw and adopt a revised bylaw.***
A Local Public Health Bylaw will ensure Council has the most appropriate range of regulatory tools in place to protect public health

This option is recommended.

5. Conclusion

The Council's bylaws relating to Food Premises and Swimming Pools and Saunas are being reviewed as a requirement of the Local Government Act 2002. A Local Public Health Bylaw is proposed which incorporates chapters relating to Food Premises and Public Pools.

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Supporting Information

1) Strategic Fit / Strategic Outcome

The proposed Local Public Health Bylaw supports Council's outcome '6.5 Healthier - Wellington's population will enjoy a healthy lifestyle and high standards of public health.'

2) LTCCP/Annual Plan reference and long term financial impact

The bylaws are monitored and enforced by the Building Consents and Licensing Business Unit under Activity 6.5.3 and are funded from the operating project C478 Public Health Inspection and Control. No long term financial impacts have been identified.

3) Treaty of Waitangi considerations

No Treaty of Waitangi issues have been identified through the review process.

4) Decision-Making

The report and Statement of Proposal outlines the various options that were considered in the review.

Although the matters affect all registered food premises and public pool premises, they are not expected to generate change to any material extent in terms of the criteria in the Significance Policy.

5) Consultation

a) General Consultation

Preliminary consultation has taken place with the New Zealand Food Safety Authority and Regional Public Health. Community consultation will take place as part of the special consultative procedure. Council will receive submissions as part of the bylaw making process.

b) Consultation with Maori

Mana whenua will be provided with the Statement of Proposal.

6) Legal Implications

Council's lawyers have been consulted during the development of this report.

7) Consistency with existing policy

The proposed bylaws retain the intent of the existing bylaws and have been drafted to meet Council's responsibilities in protecting public health.

APPENDIX A