
REPORT 1
(1215/52/IM)

LOCAL PUBLIC HEALTH BYLAW – REPORT BACK AFTER CONSULTATION

1. Purpose of Report

To report on the special consultative procedure carried out for the proposed Local Public Health Bylaw and to recommend that the Committee refer the attached bylaw to Council for its consideration and approval.

2. Recommendations

It is recommended that the Committee:

- 1. Receive the information.*
- 2. Note that 8 written submissions were received and that 1 oral submission was heard by the Strategy and Policy Committee on 5 December 2007.*
- 4. Agree that the special consultative procedure has been completed pursuant to sections 86 and 156 of the Local Government Act 2002.*
- 5. Agree that the Bill of Rights Act 1990 implications have been considered for the proposed Local Public Health Bylaw and that the bylaw is appropriate in accordance with section 155 of the Local Government Act 2002.*
- 6. Recommend to the Council that it:*
 - a. Note that the Strategy and Policy Committee considered the submissions received in response to the Statement of Proposal for the proposed Local Public Health Bylaw.*
 - b. Agree that the special consultative procedure has been completed pursuant to sections 86 and 156 of the Local Government Act 2002.*
 - c. Agree that the Bill of Rights Act 1990 implications have been considered for the proposed Local Public Health Bylaw and that the bylaw is appropriate in accordance with section 155 of the Local Government Act 2002.*

- d. *Agree to revoke the following parts of the Wellington Consolidated Bylaw attached as Appendix 3 - Part 22 – Food Premises (incorporating amendment no 5), Part 9 – Commercial Pools and Saunas, and provisions pertaining to public pools in Part 16 of the Wellington Consolidated Bylaw 1991 –and resolve to make the Local Public Health Bylaw attached as appendix 1.*

3. Background

The Local Government Act 2002 requires the Council to review its bylaws by June 30 2008. The proposed Local Public Health Bylaw, attached as appendix 1, is the result of a review of the Council's current controls for food premises and public pools set out in the Wellington Consolidated Bylaw 1991.

The Council has a statutory duty to improve, promote and protect public health and is empowered by the Health Act 1956 and the Local Government Act 2002 to make bylaws for this purpose. A Local Public Health Bylaw is proposed to help minimise risks of food and water-borne illnesses contracted at food premises and public pools in Wellington.

The Council approved the statement of proposal at its meeting of 26 September 2007 and thereby initiated the special consultative procedure.¹

The statement of proposal recommended:

- the revocation of the following parts of the Wellington Consolidated Bylaw 1991
 - i. Food Premises (Part 22 incorporating Amendment 5)
 - ii. Commercial Pools and Saunas (Part 9)
 - iii. Reserves and Swimming Pools (Part 16) – provisions related to swimming pools only.
- Adoption of a Local Public Health Bylaw covering food premises and public pools.

Submissions opened on Thursday 18 October 2007 and closed on Wednesday 28 November 2008.

4. Discussion

4.1 Consultation

Revoking, reviewing and making bylaws is a statutorily prescribed process that requires the Council to follow the special consultative procedure. The consultation document was sent to Mana Whenua, food premises and public pool operators, schools, community boards, residents associations, representative industry groups, and public health agencies. The review was publicly notified in the Dominion Post and the consultation document was

¹ The Strategy and Policy Committee, at its meeting of 6 September, agreed to refer a statement of proposal for the proposed bylaw to Council

placed in libraries and service centres and was accessible via the Council's website.

The Council received 8 written submissions (1 individual and 7 organisations) and the Strategy and Policy Committee heard 1 oral submission at its meeting of 5 December 2007. Written submissions are attached as Appendix 2.

4.2 Submission themes

In general there was support for the public health outcomes the proposed bylaw seeks to promote. The key issues raised by submitters, along with officers' comments are set out in the tables below.

4.2.1 Food Premises

Food hygiene training (bylaw reference – section 2.3)			
Sub ref:	Submission	Officers comment	Amend bylaw
4	Food hygiene training is good if practised, but a certificate at any level means nothing if the training isn't executed during work.	Training is important and is a gap in the current food hygiene regulations. Training ensures food handlers understand how to minimise the health risks associated with food preparation, cooking and storage. Officers inspect premises to ensure food hygiene practices comply with the Food Hygiene Regulations.	No
7	'There are a number of unit standards for food safety, food safety handlers and food safety advisors that are appropriate'. The bylaw could provide more certainty about recognised food safety training.	The bylaw provides officers with flexibility to acknowledge different types of training for different circumstances, including courses targeted for migrants. Embedding specific training programmes in the bylaw removes that flexibility.	No
Notices of closure / enforcement (bylaw reference – section 4.2)			
Sub ref:	Submission	Officers comment	Amend bylaw
4	'Health officers are powerless to enforce the absolute[ly] necessary thing – clean up your shop, or else.'	The proposed bylaw provides an appropriate enforcement tool in the Council's work with food premises	No
7	Graduated response to enforcement and closure – with clear and appropriate reasons for the action being required. Closure, only if unavoidable, and after all alternatives have been exhausted.	In practice the Council employs a graduated response to enforcement and officers issue requisition notices which clearly set out what needs to be done to resolve any issues.	No

		A graduated response is not appropriate in all circumstances and swift closure of premises in the interest of public health is an important protective power granted under the bylaw. As with other infringements officers provide clear written guidance on what is required to bring the premises up to required standard.	
7	The inclusion of the following clause in section 4.2 'notice to cleanse, repair or cease use of premises': <i>'All such notices provided under this section shall state sufficient particulars, including particulars of any corrective action required to ensure that any risk to public health is removed'.</i>	The suggested clause reflects the way Council goes about its enforcement and officers have incorporated wording to this effect in the proposed bylaw to provide clarity.	Yes
3	Clear definition of immediate and significant risk to public health.	Officers consider section 4.2 of the bylaw provides the relevant threshold for Officers to issue notices requiring premise to clean, and/or repair, and potentially to close until such work is completed.	No
Grading and fees (bylaw references – section 2.1 and 4.1)			
4	Compulsory display of grading. Grading at the top level should receive a discount.	All registered premises are graded. Premises with an excellent grading receive a certificate to display. Registration fees are graduated according to grading with those receiving an excellent grade paying less.	No
3	There should be no additional fees added to the bylaw as premises already pay for fees and inspections under the Food Hygiene Regulations.	Bylaw fees only apply when a premises breaches the bylaw, otherwise the usual fees apply for the Council's administration of the Food Hygiene Regulations 1974.	No

4.2.2 Public Pools

Supervision (bylaw reference – section 3.7)			
Sub ref:	Submission	Officers comment	Amend bylaw
5	Pool supervision wording to be extended to include a wider definition of actively supervised – to include <i>'watching your child at all times</i> and able to provide immediate assistance'.	Agree that this provides clarity in what is expected when actively supervising a child at a public pool.	Yes

Exemptions for some pool operators (bylaw references – sections 3.1, & 3.6)			
8	Definition of public pool is too wide and there should be exemptions for:		
	a) pools used in conjunction with private residential accommodation	Bylaw includes exemptions for pools used in conjunction private residential accommodation.	No
	b) pools associated with commercial operations where the number of users of the pool in a day are below 10. Enables low use pools to avoid compliance costs	The pool water quality standard specified in the bylaw represents the minimum industry standard for keeping pool users safe. One infected pool user can quickly infect others.	No
2	Training – operators of small establishments (e.g. one spa pool) should not be required to hold a qualification in water quality treatment.	Training is required to ensure that operators of public pools are qualified to provide safe water for pool users, and to know how to treat water borne illnesses when they are detected through testing.	No

4.3 Amendments to the proposed bylaw

Changes to the proposed bylaw are noted and explained in this section. The amended bylaw, with changes highlighted, is attached as Appendix 1.

4.3.1 Part 3 - Supervision of children under 8 years

A submission from Water Safety New Zealand recommended an amendment to the wording of clause 3.7.1 to clarify that to provide immediate assistance a care giver must be first watching their child. Officers support this proposed amendment as it adds clarity and is consistent with ACC PoolSafe Quality Management Scheme and the bylaw has been amended to incorporate wording to this effect in section 3.1.

4.3.2 Part 4 – Administration and Enforcement

Based on a submission from the Hospitality Association of New Zealand officers support the inclusion of the following wording to be inserted under clause 4.2.1. *'All such notices provided under this section shall state particulars of any corrective action required to ensure that any risk to public health is removed'*. The suggested clause adds certainty for the premises that the Council will specify what it requires to be done under any notice issued under section 4.2 of the bylaw.

4.3.3 Editorial changes

To improve the flow of the bylaw for the reader and to ensure the bylaw operates as intended the following changes have been incorporated:

- clauses 2.2.6 and 2.2.7 have been swapped to improve the flow for the reader
- clauses 4.2.1 (a) and 4.2.1 (b) – which relate to notices for cleaning, repair or closure – have been reworded slightly to make it clear that the premises may be required in a notice to both *repair and clean* - the

previous wording suggested that only one or the other could apply. The words 'pursuant to the certificate of registration' have been removed from clause 4.2.1 (b) to avoid any doubt that the Council may issue notices to cleanse, repair and/or close to both registered and unregistered premises.

5. Next steps

The next step is for the Committee to recommend to Council that it 'make' the Local Public Bylaw at its meeting of 28 February 2008. The bylaw will come into force on 1 July 2008. When the bylaw is made officers will contact submitters to inform them of the result. Officers will also publish the bylaw and make it available to the food and public pool sectors prior to commencement.

6. Conclusion

The Council consulted on a proposed Local Public Health Bylaw during October and November 2007. Feedback from the consultation has been considered and a final proposed bylaw is attached for consideration and approval by the Committee to refer the bylaw to Council.

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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 Property Consents and Licensing Directorate 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

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

The Council employed the special consultative procedure as required by the Local Government Act 2002. Mana Whenua, food premises and public pools received copies of the bylaw, along with industry groups in the sectors.

6) Legal Implications

Council's lawyers have been consulted during the development of the proposed bylaw.

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 1

APPENDIX 2

APPENDIX 3