

QLDC Council
28 January 2021

Report for Agenda Item | Rīpoata moto e Rāraki take : 6

Department: Finance, Legal & Regulatory

Title | Taitara Food Grading Bylaw and Fees Review

PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO

The purpose of this report is to recommend that the Council revoke the Food Grading Bylaw 2016 (**Bylaw**) which is now due for review and in conjunction agree to the fees and charges proposed for the Environmental Health Department to be consulted on through a special consultation procedure.

RECOMMENDATION | NGĀ TŪTOHUNGA

That Council:

1. **Note** the contents of this report;
2. **Approve** the commencement of public consultation using the special consultative procedure in accordance with section 83(1) of the Local Government Act 2002 in relation to the proposal to revoke the Bylaw and adjust the fees schedule.
3. **Appoint** three Councillors (to be named) to hear and consider the submissions on the proposal and make recommendations to the Council on the revoking the Bylaw and adjusting the fees schedule.

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7/01/2021

Reviewed and Authorised by:



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7/01/2021

CONTEXT | HOROPAKI

- 1 The Bylaw was first introduced in 2011 and created a framework for grading food businesses and required them to display a grade. The Bylaw was reviewed in 2016 and the current Bylaw is now due for review. As part of this review, an assessment under s 155 of the Local Government Act 2002 (**LGA**) requires a determination of whether a Bylaw is the most appropriate way of addressing a perceived problem.
- 2 A new Food Act 2014 (**Food Act**) came into force in 2016 and covers the same important functions as the Bylaw. Under s 446 of the Food Act, the Council must not make a bylaw that is inconsistent with the Food Act or documents made under the Act.
- 3 The review of the Bylaw in 2016 partially removed some inconsistencies with the Food Act 2014 but there are still sections of the Bylaw that do not comply with Section 446 of the Food Act.
- 4 This report provides a Section 155 LGA assessment as to whether it is appropriate to have the Bylaw in place in light of the Food Act 2014. This report also provides a review of the current fees structure for auditing food businesses, and details of a proposed amendment.
- 5 As part of the process to review the Bylaw and associated Fees Schedule, informal consultation has been undertaken with Focus Group meetings at Wānaka and Queenstown. Informal discussion with Councillors took place in late 2020.

ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

- 6 **Food Grading Bylaw:** The Food Grading Bylaw 2016 is due for review under s.158 LGA, and this report reviews the options available. Under s.155 (1) LGA, when undertaking a review, the Council must assess whether a bylaw 'is the most appropriate way of addressing a perceived problem'.
- 7 **Consultation:** If the decision is to revoke the Bylaw, the level of consultation required to do this under s.156 LGA would normally need to be decided. As the fees review requires public consultation using the Special Consultative Procedure the review of the Bylaw will be included in this consultation.
- 8 **Food Grading Bylaw – Assessment under Section 155 of the Local Government Act:** The Food Act overhauled the food safety legislation in New Zealand. The Food Act covers the same important functions as the Bylaw and provides a National Database of all registered operators. This provides a facility to check that a food operator is registered and details about food businesses including who is checking the operator's food safety systems. The Bylaw was introduced to address the 'perceived problem' of encouraging a safe and healthy community, enhancing public confidence, improving standards within food businesses and providing information on where to dine. However, the Food Act now covers these functions.
- 9 **Food Grading Bylaw – Issues with existing Bylaw** The existing Bylaw aimed to provide information to customers with the use of a grading structure of A, B, C and D. However, there are issues with the Bylaw providing this information to our community. Under the

Food Act, a proportion of food operators in our District are not registered by QLDC or do not have their food safety systems checked by Council. This means they have no QLDC registration or food grade to display. The lower risk operators only have one food safety audit and if this is successful then have no further checks and therefore retain the grade obtained for the foreseeable future.

- 10 The grade is only a snap shot in time of when the audit took place and it has been noted that operators have been too highly focused on the grade rather than meeting the requirements under the Food Act. Despite the review of the Bylaw in 2016, we have now identified that there are areas of conflict with the Food Act. This includes the provisions in the Bylaw for a regrade inspection which is not allowed under the Food Act.
- 11 **Present Fees Structure:** At present the fees for work undertaken under the Food Act are set in accordance with the Bylaw grading system. The current fees are based on two criteria:
 - a) the grade achieved at audit as prescribed by the Bylaw (A – D); and
 - b) the level prescribed by the QLDC Fee Schedule (1 – 4) based on whether the food business is single or multi-site and based on the risk categories in the Food Act.
- 12 **Issues with Existing Fees Structure:** Poor performing operators are being hit twice with fees; the lower the grade the higher the fee but additionally poorly performing operators as determined by the Food Act are audited more frequently (at a cost to the operator). There are also issues with the multisite operators. Small operations trading from more than one site are paying a higher fee in relation to the work undertaken. The system is also difficult to manage, as multi-site operators do not always have an audit for each site at the same time.
- 13 **Fees Review:** The fees need to be reviewed because of the proposal to revoke the current Grading Bylaw and the issues identified. In addition there also needs to be an adjustment to fees to ensure that the cost recovery targets in the Revenue and Financing policy are met. Changes are proposed to better align the charges for registration and auditing of food businesses to achieve the Revenue and Financing policy and to align with the reasonable costs of completing the work. **Attachment C** provides details of the average amount of time taken to undertake audits on the different risk categories and this can then be compared to the proposed fees in **Attachment D**. The proposed fees reflect the actual time spent on auditing a business.
- 14 **Focus Group:** The focus groups at Queenstown and Wānaka were made up of food businesses. The groups discussed both the Bylaw and the Fees Structure. The food businesses had a range of thoughts on the Grading Bylaw as summarised at **Attachment A**. There were however, a significant number of businesses that did not want two systems – The Food Act and the Bylaw, and felt the new Act covered all the requirements. Given the businesses must comply with the Food Act requirements, it made sense for that to be the primary system or regime. There was also a clear view that the Fees Structure should reflect the work undertaken and that poor performance should lead to a higher fee.

- 15 **Recommendations - The Food Grading Bylaw:** The Food Act now in place covers the important functions of the Bylaw. The Act is a risk-based approach to food safety with improved systems to regulate the sale of food. The Food Act requirements mean that the Bylaw provisions do not now work effectively. The problems that the Bylaw was initially introduced to solve has now been comprehensively addressed with national legislation - The Food Act 2014. Accordingly, the Bylaw is not the most appropriate way of addressing the perceived food safety issues and should be revoked to avoid duplication or any inconsistency and enable the Food Act to address food safety for our community.
- 16 **Recommendations - Fees Structure:** If the Bylaw is revoked, the associated fees need to be amended to reflect a standalone fees structure that is not dependent on the grade given under the Bylaw. The amended fees structure must relate clearly to the Food Act risk categories and be based on a user pays system. The fees need to reflect the work undertaken and to ensure fees reflect the actual cost of completing the work it is recommended the fees are increased for registration and verification.
- 17 The recommendation is that there is a fee depending on which of the four Food Act risk categories a food business falls into. These risk classes are National Programme levels 1, 2 and 3, and Template Food Control Plans.
- 18 The idea with the risk categories is that a National Programme level 1 is the lowest risk. An example of this type of food business would be a business just selling hot drinks. In theory, this type of operator would be less work to audit as the food business has a simple food production system. Moving up the levels, the Template Food Control Plan is a highest risk category and this includes businesses that are restaurants and cafes and these type of operators would take more time to audit.
- 19 In practice National Programme level 2 and 3 are very similar in terms of the time required to audit these operators, therefore it is proposed the fee for these two risk categories is the same. An example of a National Programme level 2 would be a manufacturer of bread products and an example of a National Programme level 3 would be a brewer of beer.
- 20 Operators with multisite registrations will be charged the fee relating to the risk category associated with the registration and then an hourly rate for the time take to audit each site.
- 21 Extra charges will be incurred by the operators if the amount of hours allocated for the audit of the risk class are exceeded. For example, this may be due to the operator not being prepared for the audit, significant issues identified or the operator not providing the information as requested by the auditor.
- 22 A breakdown of the numbers of food operators we register and audit in the District are shown at **Attachment B**.
- 23 A comparison to some other councils' fees has been included in **Attachment E**. It is noted however that there is no consistent fees schedules nationally and there is variation from council to council.
- 24 The existing and proposed fees structure is included in **Attachment D**.

Options:Option 1 – Do Nothing*Advantages:*

- 25 The Bylaw will continue in place with no further work undertaken and the fees remain the same until the bylaw expires in 2023.

Disadvantages:

- 26 If the Council has identified that the Bylaw is no longer fit for purpose or that it either does not address a perceived problem or that there actually is no problem, it should take steps to remedy the situation.
- 27 To leave the bylaw to expire, will mean that the bylaw will still need to be applied until March 2023 and issues identified in this report continue to be in place. The problems with the bylaw including the duplication with the Food Act requirements, inconsistency with the Food Act, concerns around the value of grading food operators and the fees link to the bylaw causing unreasonable charges to some operators would continue until the expiry date.
- 28 The fees will not cover the cost of running the service. The fees do not align with the Revenue and Financing Policy and ratepayers would be paying a larger proportion of the cost of the Environmental Health Team.

Option 2 – Undertake public consultation using the special consultative procedure to consult on the recommendation to revoke the Bylaw and implement the new Fees Structure.*Advantages:*

- 29 The Food Act covers all the food safety requirements rather than trying to use two systems.
- 30 The conflict between the Food Act and the Food Grading Bylaw is addressed and resolved.
- 31 The fees are easier to understand, reflect the Food Act and maintain a user pays approach
- 32 The fees cover the cost of running the service and the meet the Revenue and Financing Policy with no additional cost to the ratepayers.
- 33 Comply with the requirements of s 155 LGA where a bylaw is only used if it is the most appropriate way of addressing the perceived problem. A bylaw is not the most appropriate way and the Food Act needs to be utilised to manage food safety.
- 34 Removes the duplication of having the Food Grading Bylaw and the Food Act without any benefits to food safety systems.

Disadvantages:

- 35 Some food operators and the community may have preferred to have a grading system. However, they will have an opportunity to express their views through the consultation process and Council will then need to decide whether or not to revoke the Bylaw.
- 36 Increases cost to the food operator, with increased cost for registration. For some food operators there will be increased costs for verification.
- 37 This report recommends **Option 2** for addressing the matter because there is no perceived need or requirement to have a Food Grading Bylaw and it is important to use the specific legislation to address food safety. The fees would ensure a clear structure based on the work undertaken and the proposed fees would ensure there is no increased cost to the ratepayer.

CONSULTATION PROCESS | HĀTEPE MATAPAKI:

> SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

- 38 **Need for Consultation** Under section 156 of the LGA, the special consultation procedure is required to be used in revoking a Bylaw if the Bylaw:
 - a) concerns a matter identified in the local authority's policy under section 76AA as being of significant interest to the public; or
 - b) the local authority considers that there is or is likely to be a significant impact on the public due to the revocation of the Bylaw.
- 39 This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy because there is minimal impact on the environment, culture and people of the district and there is no impact on the objectives set out in the Financial Strategy, Ten Year Plan and Annual Plan.
- 40 There is a requirement under the Food Act 2014 s.205 (2) in making any resolution relating to a Territorial Authority setting fees, the special consultative procedure as provided in section 83 of the Local Government Act 2002 must be used. An increase in fees for any financial year must not come into effect other than at the commencement of that financial year.
- 41 In respect of a Bylaw, while in some cases the special consultative process is required to revoke a bylaw, the Council's Significance and Engagement policy provides the Council does not generally consult on decisions in relation to regulatory and enforcement activities (refer page 6 of the policy).
- 42 Accordingly, the issue is whether there will be a significant impact on the public due to the Bylaw being revoked. It is considered that because the Food Act now manages the 'perceived problem' the Bylaw was created to address, there would not be a significant impact on the public or public interest relating to revoking the Bylaw, such that the special consultation procedure is not required. However, due to the Food Act requirements that when fees are to be changed the special consultation procedure must be followed it

therefore makes sense to use this process for both the change of fees and proposal to revoke the Bylaw.

- 43 Informal engagement has already taken place. The Council has undertaken informal consultation by facilitating focus group meetings at Wānaka and Queenstown. An invite went out to all food operators in our district with an invite to attend.
- 44 While the persons who are affected by or interested in this matter are Food Operators, individuals who are aware of the food grading system may also be affected by the repeal of the grading system.
- 45 It is recommended that the special consultative procedure is used for the review of the fees as determined by the requirements of the Food Act and the procedure is also used to consult on the revoke the Bylaw.

> MĀORI CONSULTATION | IWI RŪNANGA

- 46 The Council has not consulted with specific iwi and this relates to the assessment that the main group affected are the food operators. The Food Act during consultation engaged with iwi.

RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

- 47 This matter has not been identified on the QLDC risk register as a risk.

FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

- 48 The removal of the Bylaw does not involve any operational or capital expenditure requirements. The review of the fees will ensure we meet the revenue and finance policy and additional meet expectations of the Annual or Ten Year plans.

49 COUNCIL EFFECTS AND VIEWS | NGĀ WHAKAAWEAWE ME NGĀ TIROHANGA A TE KAUNIHERA

- 50 The following Council policies, strategies and bylaws were considered:

- The recommendation to repeal the Food Grading Bylaw and review the fee structure aligns with the Vision Beyond 2050, our everyday experiences are enriched by focusing on shared values not volume, and growth is through thoughtful management.
- The following Council policies, strategies and bylaws were considered:
 - The Food Grading Bylaw
 - The Revenue and Finance Policy

- 51 The recommended option is consistent with the principles set out in the Revenue and Finance Policy.

- 52 This matter is included in the Ten Year Plan/Annual Plan

- It is included in the Ten year plan – “What we deliver for Regulatory Functions and Services” and references that Environmental Health promote, protects and improve the health of our community through the application of various legislative requirements. The revoking of the Food Grading Bylaw and adjustment of the fees respectively will therefore not affect the ten year plan.

LOCAL GOVERNMENT ACT 2002 PURPOSE PROVISIONS | TE WHAKATURETURE 2002 O TE KĀWANATAKA Ā-KĀIKA

53 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by ensuring the national legislation is implemented for food safety and a clear fees schedule is assigned to the function.
- Consistent with The Local Government Act
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

ATTACHMENTS | NGĀ TĀPIRIHANGA

A	Focus Group Summary of Comments
B	Risk Category Breakdown of Food Operators in QLDC
C	Estimated Time Scales for work Undertaken
D	Current Fees and Proposed Fees
E	Fee Comparison to Other Councils
E	Statement of Proposal