

QLDC Council
3 June 2021

Report for Agenda Item | Rīpoata moto e Rāraki: 4

Department: Finance, Legal & Regulatory

Title | Taitara: Food Grading Bylaw Review and Fees Review

PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO

- 1 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 Environmental Health.

EXECUTIVE SUMMARY | WHAKARĀPOPOTOTANGA MATUA

- 2 The Queenstown Lakes District Council 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'.
- 3 The fee structure in place is linked to the Food Grading Bylaw and a review is required to remove the link to the Bylaw and to align with the Revenue and Financing Policy.
- 4 Public Consultation using the special consultative procedure in accordance with section 83(1) of the Local Government Act 2002 has been undertaken on the proposal to revoke the Bylaw and to adjust the fee schedule.
- 5 A hearing to consider submissions on the proposal to revoke the Bylaw and to adjust the fee schedule took place on the 19 March 2021. The hearings panel recommends that the Food Grading Bylaw 2016 should be revoked in favour of the Food Act 2014 and that Council approve the new fees schedule.

RECOMMENDATION | NGĀ TŪTOHUNGA

That Council:

1. **Note** the contents of this report;
2. **Approve** the hearings panel recommendation to revoke the Food Grading Bylaw 2016 and rely on the provision of the Food Act 2014 to manage food safety; and
3. **Approve** and adopt the proposed fee schedule [as detailed in attachment B] Current Fees and Proposed Fees to commence on the 1 July 2021.

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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.
- 3 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.
- 4 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 s 446 of the Food Act.
- 5 As part of the process to review the Bylaw and associated Fee Schedule, informal consultation has been undertaken with Focus Group meetings at Wānaka and Queenstown. A workshop with Councillors was also undertaken on 3 September 2020.
- 6 At the 28 January 2021 meeting, the Council resolved to approve the commencement of formal public consultation in relation to the proposal to revoke the current Food Grading Bylaw and review the associated fee schedule.
- 7 Following Council approval, Council staff commenced a special consultative procedure on the proposed Bylaw and Policy. Consultation was undertaken using the Special Consultative Procedure for the fees review and the review of the Bylaw was included in the consultation.
- 8 The consultation period began on 29 January 2021 and concluded on 1 March 2021. Twenty-three submissions were received. The results for the proposal to revoke the Bylaw were: 47.8% were neutral, 39.1% supported and 13% opposed. In respect of the proposal to adopt the amended fee structure 78.3% opposed, 13% were neutral and 8.7% supported the proposal.
- 9 A hearing was held on the 19 March 2021. Two submitters indicated that they wished to be heard in support of their submission. One submitter attended the hearing and was heard in support of their submission by the hearing panel.
- 10 The Hearings Panel, comprising Councillors Lewers (Chair), Gladding and Clark gave full consideration to the submissions received and determined the extent to which the submissions were accepted or disallowed. Of the submitters heard, the main points of discussion were the proposed changes to the Fees Schedule. The Hearing Panel acknowledged the concerns raised by the submitter in regard to small businesses. The Food Act does provide a system that audits higher risk and/or poorly performing operators at an increased frequency. Lower risk categories are audited less frequently under the Act and registration requirements are every two years. On considering the

submissions to the proposal to revoke the Food Grading Bylaw 2016 and the proposed fees and charges for the Environmental Health Department, the panel agreed to recommend to Council the revoking of the Bylaw and to adopt the proposed fees and charges.

- 11 The key submission points made either in support or opposition to the proposed changes are included in the appendices.

Submissions in opposition to revoking the Bylaw

- 12 For those opposing the revoking of the Bylaw, the comments relating to opposing were all related to fees rather than specific issues relating to revoking the Food Grading Bylaw.

Neutral submissions to revoking the Bylaw

- 13 For those neutral to the revoking of the Bylaw, the comments received related only to concerns about any increase in fees.

Submissions supporting the revoking of the Bylaw

- 14 For those supporting the revoking of the Bylaw supporting comments included - streamlining the process and removing any double up of processes, not having the Bylaw in place would reduce stress on employees and the current Bylaw is excessive in cost by both time and money. A comment also noted that the changes to the Food Act increased the accountability of food operators to prove they are following safe food practices.

Submissions in opposition to adopting the amended fee structure

- 15 For those in opposition to adopting the amended fee structure, concerns were raised about the increase in fees causing issues to businesses suffering losses due to Covid-19. Submissions in opposition also noted concerns about the increase not being fair to businesses that do not use the 6 hours auditing time (Food Control Plan proposed limitation of 6 hours for work undertaken) and that it would be a fairer system to charge by the hour and this would encourage good performance. It was noted by five submitters that time on site for small or low risk businesses was much lower than the minimum hours that are charged and that small and low risk businesses should not be charged the same as businesses that were higher risk and took longer.

Neutral Submissions to adopting the amended fee structure

- 16 For those neutral to adopting the amended fee structure, concerns were raised about fee increases. One submitter commented that there should have been further fee comparisons undertaken with other councils and advocated one price for audits nationally. Further comments were noted from a submitter on the category of charges for each operator and noted that specific operators should be classified as higher risk and audited more often.

Submissions in support of adopting the amended fee structure

- 17 For those in support of adopting the amended fee structure, one submitter commented that the new fee structure would be fairer.

Consultation for the draft Ten Year Plan 2021-2031

- 18 Consultation for the draft Ten Year Plan 2021-2031, submissions closed on Monday 19 April 2021 at 5.00pm. One submission was received which requested further information on the increase in Environmental Health Fees. The submitter requested information on what is meant by Environmental Health, noting that the increase of the fees was the largest increase in percentage terms and this cost should be matched against income.

ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

- 19 Option 1 Revoke the Food Grading Bylaw and approve the revised Fee Schedule for Environmental health.

Advantages:

- 20 The Food Act covers all the food safety requirements rather than trying to use two systems.
- 21 The conflict between the Food Act and the Food Grading Bylaw is addressed and resolved.
- 22 The fees are easier to understand, reflect the Food Act and maintain a user pays approach.
- 23 The fees cover the cost of running the service and the meet the Revenue and Financing Policy and maintain the user pays ratio of 70/30 with no additional cost to the ratepayers.
- 24 Complies 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 should be used to manage food safety.
- 25 The Food Act 2014 provides legislative requirements for frequency of auditing and this system is based on risk and operator compliance. The revised fees schedule reflects the risk based measure the operator is registered under and the frequency and hence charges will both reflect the risk and also the operator compliance at the audit.

Disadvantages:

- 26 Some food operators and the community may have preferred to have a grading system. This however was not reflected in the submissions.
- 27 Potential increase of costs to some food operators, with increased cost for registration. For some food operators there will be increased costs for verification.

Option 2 – No action is taken to revoke the Food Grading Bylaw and no changes to be implemented to the existing fee schedule.

Advantages:

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

Disadvantages:

29 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.

30 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 included 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.

31 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 3 - Food Bylaw is revoked and the fees are charged on an hourly rate with a set registration fee.

Advantages:

35 Concerns received from submitters reflect on the issue of the hours charged do not reflect the work undertaken for the smaller and lower risk processes. An hourly rate will address these concerns.

Disadvantages:

36 The operator will not know in advance the fee to be charged and this may be difficult for operators to plan financially.

37 The fees may not cover the cost of running the service. The fees may not align with the Revenue and Financing Policy and ratepayers may be required to pay a larger proportion of the cost of the Environmental Health Team.

38 This report recommends **Option 1** 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**

- 32 **Need for Consultation** Under section 156 of the LGA, the special consultative procedure is required to be used in revoking a Bylaw if the Bylaw:
- concerns a matter identified in the local authority's policy under section 76AA as being of significant interest to the public; or
 - 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.
- 33 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.
- 34 There is a requirement under s 205 (2) of the Food Act 2014 that a Territorial Authority making any resolution to set fees must use the special consultative procedure as provided in section 83 of the Local Government Act 2002. Further, an increase in fees must not come into effect other than at the start of the financial year.
- 35 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 states that the Council does not generally consult on decisions in relation to regulatory and enforcement activities (refer page 6 of the policy).
- 36 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' that 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 consultative procedure is required. However, due to the Food Act requirements that when fees are to be changed the special consultation procedure must be followed it therefore made sense to use this process for both the fee change and proposal to revoke the Bylaw.
- 37 Prior to formal consultation, Council has undertaken informal consultation by facilitating focus group meetings in Wānaka and Queenstown. All food operators in the district were invited to attend.
- 38 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.
- 39 The special consultative procedure was used for the review of the fees as determined by the requirements of the Food Act and the procedure was also used to consult on the revoke the Bylaw.

- 40 The review of fees and charges was signalled in the consultation document for the 10 Year Plan. Most submissions were in favour of increasing fees as opposed to rates funding. The assumption in the draft budgets is that these fees will increase.

> MĀORI CONSULTATION | IWI RŪNANGA

- 41 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.

ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

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

FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

- 43 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 meet expectations of the Annual or Ten Year plans.

COUNCIL EFFECTS AND VIEWS | NGĀ WHAKAAWEWE ME NGĀ TIROHANGA A TE KAUNIHERA

- 44 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
 - QLDC Enforcement Strategy and Prosecution Policy

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

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

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

- 47 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 fee 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

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| A | Estimated Time Scales for Work Undertaken |
| B | Current Fees and Proposed Fees |
| C | Summary of Submissions Fee Structure |
| D | Summary of Submissions Food Grading Bylaw |
| E | Summary Frequency of Verifications under the Food Regulations – Template Food Control Plan |
| F | Summary Frequency of Verifications under the Food Regulations – National Programmes |