

# Extra-ordinary Whangarei District Council

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## Notice of Meeting

A extra-ordinary meeting of the Whangarei District Council will be held in the Council Chamber, Forum North, Whangarei on:

**Wednesday  
3 February 2016  
12.30pm**

## Committee

Her Worship the Mayor (Chairperson)  
Cr S J Bell  
Cr S J Bretherton  
Cr C B Christie  
Cr P A Cutforth  
Cr S J Deeming  
Cr S M Glen  
Cr P R Halse  
Cr C M Hermon  
Cr G C Innes  
Cr G M Martin  
Cr B L McLachlan  
Cr S L Morgan  
Cr J D T Williamson

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**OPEN MEETING**

**APOLOGIES**

**CONFLICTS OF INTEREST**

Members are reminded to indicate any items in which they might have a conflict of interest.

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**Local Government Act 2002 Amendment Act 2012**

*Full consideration has been given to the provisions of the Local Government Act 2002 Amendment Act 2012 in relation to decision making and in particular 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. Consideration has also been given to social, economic and cultural interests and the need to maintain and enhance the quality of the environment in taking a sustainable development approach.*

**Recommendations contained in the Council agenda may not be final Council decisions.  
Please refer to Council minutes for resolutions.**

# 1 Deliberations on proposal to adopt Food Act fees

**Reporting officer:** Grant Couchman (Regulatory Services Manager)

**Date of meeting:** 4 February 2016

## 1 Purpose

The purpose of this report is to deliberate on the submission received to Council's proposed new fees for functions under the Food Act 2014 and if appropriate adopt the fees and charges as proposed in the statement of proposal.

## 2 Recommendation

1. That Council deliberate on the submission received.

Following deliberations:

## Recommendation

1. That Council having considered the submission adopts the fees and charges as proposed in the statement of proposal.

## 3 Background

The sections of the Food Act 2014 (the Act) that come into force on 1 March 2016 include those provisions relating to the charging of fees for registration, verification and monitoring functions for food businesses that are operating under Food Control Plans.

Without fees being adopted under the Act and being in place on 1 March 2016, those operators utilising Food Control Plans would not be able to be charged any related fees. Additionally, any new premises established between 1 March and 30 June 2016 would not be able to be charged.

Council must now consider the matters raised in the submission before determining the final fees and charges schedule for relevant fees for functions under the Food Act 2014 for the period of 1 March to 30 June 2016.

## 4 Discussion

The submission from Hospitality New Zealand raises two primary concerns.

1. Hospitality New Zealand submits that territorial authorities should not be able to develop cost recovery systems without an immediate requirement for regulations prescribing methodologies to be used. The submitter has drawn attention to the Sale and Supply of Alcohol Act 2012 as an example of a fee structure being prescribed through regulations.

**Staff response:**

The methodology of fee setting for food compliance activities is different to that of alcohol licensing activities and parliament has chosen to not use regulation at this time to specify this under food legislation. The Food Act 2014 sets down the broad criteria which territorial authorities must follow and provides Councils with the authority to set fees irrespective of the absence of regulation. The proposed fees have been set in accordance with the Food Act 2014.

2. Hospitality New Zealand submit that regulatory compliance is a compulsory action and that the entire cost of the regulatory compliance functions are for the public good and should therefore sit with the public, i.e. the rate payer.

**Staff response:**

Under the Food Act 2014 Council is entitled to recover reasonable direct and indirect costs associated with registration, verification and enforcement activities of food businesses operating under Food Control Plans.

The proposed fee structure aligns with Council's Revenue and Financing Policy, which was consulted on with the community in 2014. The policy identifies that in funding regulatory services functions, the majority of funds should be sourced through fees, with a minority funded through general rates. Council believes that it is reasonable for food businesses to contribute 70% of this cost. To date Council has used the same balance of public/private benefit for setting fees by resolution in accordance with the requirements of the Food Hygiene Regulations.

## 5 Considerations

Staff consider that the points raised in the submission received do not warrant making any changes to the proposed fees. It is a central government function to legislate for regulations that would provide a framework for the setting of fees for functions under the Food Act 2014. The proposed fees have also been set in accordance with Council's Revenue and Finance Policy which Council consulted on with the community in 2014.

## 6 Significance and Engagement

The decisions or matters of this Agenda do not trigger the significance criteria outlined in council's Significance and Engagement Policy, and the public will be informed via the agenda publication on Council's website.

## 7 Attachments

[Submission from Hospitality New Zealand](#)

## Mail Room

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**From:** Jill.Davey@hospitalitynz.org.nz  
**Sent:** Friday, 4 December 2015 12:13 p.m.  
**To:** Mail Room  
**Subject:** Submission Food Act Fees  
**Attachments:** Whangarei DC Submission Proposed Food Act 2014 Fees.pdf

Please find attached our submission on the Food Act Fees and Charges review.

Kind Regards  
**Jill Davey**  
Regional Manager

M:027 503 5408  
24hr:0800 500 503

F:04 384 8044  
E:[jill.davey@hospitalitynz.org.nz](mailto:jill.davey@hospitalitynz.org.nz)



PO Box 301985  
Albany  
Auckland 0752

 [www.hospitalitynz.org.nz](http://www.hospitalitynz.org.nz)

 [Hospitality New Zealand on Twitter](#)

 [Hospitality New Zealand on Facebook](#)

Submission by

**Hospitality New Zealand**



to the

**Whangarei District Council**

on the

**Proposed Food Act 2014 Fees**

**4 December 2015**

Hospitality New Zealand  
Level 2, Orbit Systems House 94 Dixon St  
PO Box 503, Wellington  
Phone: 04 385 1369  
Fax: 04 384 8044  
[www.hospitalitynz.org.nz](http://www.hospitalitynz.org.nz)

**Contact Details:**

**Name:** Jill Davey, Regional Manager, Northland  
**Telephone:** 027 503 5408  
**Organisation:** Hospitality New Zealand  
**Email:** [jill.davey@hospitalitynz.org.nz](mailto:jill.davey@hospitalitynz.org.nz)  
**Address:** PO Box 503  
Wellington

Hospitality NZ is a voluntary trade association with over 3,200 members nationally. Members come from across the hospitality industry including:

- Hotels/Motels/Major Accommodation Providers/Lodges
- Taverns/Pubs/Bars/Night Clubs
- Restaurants/Cafes
- Off-Licences

A significant proportion of our members' businesses have a considerable focus on food. The Sale and Supply of Alcohol Act 2012 requires that all premises licensed to sell alcohol for consumption on the premises have available a range of food items at all times they are open for the sale and supply of alcohol. This requirement means that virtually all of our members (excluding off-licences) have a food component to their business. Food safety is therefore of great importance to our members.

Hospitality NZ has previously submitted its position on the Food Act 2014 at a national level. In general Hospitality NZ supported the Act, its objects, its framework and is fully supportive of the Acts move to shift responsibility for food safety to the producers and handlers individual circumstances. Hospitality NZ has considered the proposed Food Act 2014 Fees for Whangarei District Council and makes comment on the following:

Hospitality NZ did not believe that territorial authorities were able to develop cost recovery systems without an immediate requirement for regulations prescribing methodologies to be used. We believed it was imperative that regulations were developed to provide clear guidelines to assist territorial authorities in developing their fee structure. It is important that every territorial authority takes a consistent approach to fee setting. This could have been similar to the approach taken with the Sale and Supply of Alcohol Act where default fees were developed and are being universally applied as being simpler, fairer and more cost effective for territorial authorities having to develop their own fee structure and consultation on the process. By providing a clear template for all territorial authorities to use, it would have made development of the fees easier and simpler for all of the authorities and industry. Equally developing such a template would have reduced the costs associated for all parties in undertaking the consultation process.

Nevertheless, given the clear direction under the Act for cost recovery there is no nationwide alternative to fees and charges for cost recovery and we are concerned at the level of charges being set and the robustness being applied to ensure that the costs and therefore the fees involved are not more than they should be. It is presumed that the fees being proposed reflect what MPI consider to be the most efficient way to deliver those fees. So while we understand there is no alternative to fees and charges we are concerned at the level that they are being set and the onus on the private business owner.

Hospitality NZ argue that regulatory compliance is a compulsory action to comply with relevant laws and regulations and the cost of that regulatory compliance is for the good of the public and therefore should sit with the public i.e. The Rate Payer. The setting of standards is, in our view more of a public good than a private one. Standards are set to protect the public and are developed in the public interest.

There is no justification for the level of fees that have been set. The Food Act 2014 was supposed to reduce compliance costs and we suspect that the fees you have set are set to recover fees at a level of intensity of staff that is not justified. How do we know that these fees are cost recovery and not over recovery?

Whangarei District Council considers that it is equitable to recover the full direct costs of the council's functions from the direct beneficiaries of those functions and state that this is the food business as they cannot operate without registration and verification, but consumers also receive benefits from Food Act functions. Therefore Hospitality NZ supports an option for fixed

fee for registration to simplify the process as a direct beneficiary. Verification and compliance cost is a public benefit and this should in part be covered by the rate payer.

**Our recommendation and the decision we seek is therefore:**

Application for Registration	\$130 fixed fee (inclusive of GST)
Application for Renewal of Registration	\$130 fixed fee (inclusive of GST)
Verification, Monitoring and Reporting	no charge to the Business Owner
Complaint Driven Investigation (invalid)	no charge for complaints not validated
Complaint Driven Investigation (validated)	\$130 per hour
Travel Cost	no charge to the Business Owner

**In Conclusion:**

Cost recovery and fees, levies and charges are a concern. The fundamentals of food safety activity are of a public good rather than a business good. In the absence of Crown funding Hospitality NZ therefore supports a balance to cover fees under the Food Act 2014 to be both a private and public cost, with the bulk of the cost being recovered from the rate payer.

We do not wish to be heard on our submission

**Jill Davey**

**Regional Manager, Northland**

**Hospitality New Zealand**

## 2 Amendment to Minutes

**Reporting officer:** C Brindle (Senior Meeting Co ordinator)  
**Date of meeting:** 4 February 2016

### 1 Purpose

To correct a typographical error in the minutes of the Extra ordinary Council Meeting 8 September 2015.

### 2 Recommendation

That the minutes Extra ordinary Council Meeting held on 8 September 2015 be amended as follows:

- "i) Hours for Off licensed premises**  
*Generally agreed that the maximum opening hours for all Off Licensed premises Monday to Sunday be 9.00am to 9.00pm."*

### 3 Background

At the Extra ordinary Council meeting 8 September 2015 Council deliberated and reached an agreed position on elements of the Local Alcohol Policy.

Subsequent to the minutes being adopted by Council on 23 September to 2015 the agreed position for Hours for Off licensed premises in the deliberations section of the minutes was found to have been recorded incorrectly. Council generally agreed that the maximum opening hours for all Off Licensed premises be '*Monday to Sunday*' not '*Monday to Friday*' as recorded.

The minutes of the Extra ordinary Meeting 8 September highlighting the error are attached.

An amendment to the official record of the minutes to correct a typographical error is required. All other minutes from the 8 September Council meeting are correct as confirmed by Council on 23 September.

### 4 Significance and Engagement

The decisions or matters of this Agenda do not trigger the significance criteria outlined in Council's Significance and Engagement Policy, and the public will be informed via Agenda publication on the website.

## **Attachments**

Minutes of the Extra ordinary Council Meeting 8 September 2015

### 3. Minutes: Extra-ordinary Whangarei District Council Tuesday 8 September 2015

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*Minutes of an Extra-ordinary Whangarei District Council meeting held in the Council Chamber, Forum North on Tuesday 8 September 2015 at 9.00am*

**Present:**

Her Worship the Mayor S L Mai

Crs S J Bell (9.02am), C B Christie, P A Cutforth, S J Deeming, S M Glen, C M Hermon, G M Martin, B L McLachlan, S L Morgan and J D T Williamson

**Apologies:**

Crs S J Bretherton, P R Halse and G C Innes

**Moved: Cr Martin**  
**Seconded: Cr Morgan**

“That the apologies be sustained.”

**CARRIED**

**In Attendance:**

Chief Executive (R Forlong), Group Manager District Living (P Dell), Team Leader Environmental Health (R Mussle), Executive Assistance (J Crocombe) and Senior Meeting Co ordinator (C Brindle)

#### 1. Interim Deliberation Report – Local Alcohol Policy (LAP)

**Moved: Cr Glen**  
**Seconded: Cr Hermon**

“That Council continue its deliberations on the draft Local Alcohol Policy.”

**CARRIED**

*Cr Bell joined the meeting at 9.02am during consideration of the above recommendation.*

*Temporary suspension of Standing Orders*

**Moved: Her Worship the Mayor**  
**Seconded: Cr Deeming**

“That Standing Order 3.8 Rules of Debate and 3.9 Motions and Amendments be temporarily suspended to enable free and frank discussion on the submissions and evidence presented on the draft Local Alcohol Policy.”

**CARRIED**

**Deliberations**

Prior to discussion P Dell outlined the key elements of the staff report including:

- Introduction
- What may be contained in a LAP
- Matters that cannot be included in a LAP
- Precautionary principle
- Key Findings – District Profile
- Analysis of submissions.

Council then deliberated and reached an agreed position on the following elements of the policy:

**(i) Hours for Off licensed premises**

Generally agreed that the maximum opening hours for all Off Licensed premises Monday to Friday be 9.00am to 9.00pm.

**(ii) Hours for On licensed and Club licensed premises**

Generally agreed that the hours for on licensed and club licensed premises (outside of the CBD) are Monday to Sunday 8.00am to 1.00am with the option of 11.00pm closing for premises close to or within residential zones.

**(iii) Hours for On licensed premises in the CBD**

Generally agreed that the hours for on-licensed premises in the CBD be Monday to Sunday 8.00am to 1.00am with an extension to 3.00am where they have a one-way-door policy.

**(iv) Hours for Special licences**

1. Maximum Trading Hours - General agreement no change to clause 4.4 of the draft LAP.
2. Discretionary conditions – Generally agreed the discretionary condition for potentially “restricting the use of outdoor areas” and the condition in regard to the need to “keep an incident book” (opposed to violence register); be retained but the others removed.

**Submissions on Sensitive sites**

Generally agreed that a specific position be drafted and included in the provisional LAP being “That all new licenses of any type, except for restaurants or cafes, and Special licenses must be considered in relation to the “sensitive sites” provision.”

Definition of sensitive sites to be similar to that in the Gisborne decision (referenced in the agenda report) and including a ‘generalised’ proximity reference for the District Licensing Committee (DLC) to consider.

**Specific restrictions on the issue of further off licenses for new bottle stores**

Generally agreed no new bottle stores allowed for in the first three years after the LAP becomes operative.

**CBD Zone**

Generally agreed existing CBD area sufficient and appropriate to control hours and concerns relating to amenity in the area directly adjoining the CBD zone.

**Impact Assessments – Health impact assessments**

Generally agreed not to include a requirement for a social health impact assessment to be lodged with an application.

**General**

General agreement that issues raised that could not be addressed through a LAP be documented/captured.

The possibility of an inter agency approach through education, lobbying central government and the mayoral forum may be other options council could consider going forward.

Strategy for management of alcohol issues could be an option in talking to the wider community going forward from this process.

*Cr Christie left the meeting at 11.05am during discussion on Health impact assessments.*

*Reinstatement of Standing Orders*

**Moved: Her Worship the Mayor**

**Seconded: Cr Hermon**

“That NZ Standing Order 3.8 Rules of Debate and 3.9 Motions and Amendments be reinstated.”

**CARRIED**

**Moved: Cr McLachlan**

**Seconded: Cr Williamson**

“That staff be directed to prepare:

- a) A Comprehensive Deliberations Report including all deliberations to date; and
- b) A track change document of the draft Local Alcohol Policy encompassing the direction of deliberations.”

**CARRIED**

**The meeting closed at 11.19am**

Confirmed this 23<sup>rd</sup> day of September 2015

S L Mai (Chairperson)

## RESOLUTION TO EXCLUDE THE PUBLIC

That the public be excluded from the following parts of proceedings of this meeting.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

1.	The making available of information would be likely to unreasonably prejudice the commercial position of persons who are the subject of the information. {Section 7(2)(c)}
2.	To enable the council (the committee) to carry on without prejudice or disadvantage commercial negotiations. {(Section 7(2)(i)}.
3.	To protect the privacy of natural persons. {Section 7(2)(a)}.
4.	Publicity prior to successful prosecution of the individuals named would be contrary to the laws of natural justice and may constitute contempt of court. {Section 48(1)(b)}.
5.	To protect information which is the subject to an obligation of confidence, the publication of such information would be likely to prejudice the supply of information from the same source and it is in the public interest that such information should continue to be supplied. {Section7(2)(c)(i)}.
6.	In order to maintain legal professional privilege. {Section 2(g)}.
7.	To enable the council to carry on without prejudice or disadvantage, negotiations {Section 7(2)(i)}.

## Resolution to allow members of the public to remain

If the council/committee wishes members of the public to remain during discussion of confidential items the following additional recommendation will need to be passed:

### Move/Second

"That \_\_\_\_\_ be permitted to remain at this meeting, after the public has been excluded, because of his/her/their knowledge of Item \_\_\_\_\_.

This knowledge, which will be of assistance in relation to the matter to be discussed, is relevant to that matter because \_\_\_\_\_.

Note:

*Every resolution to exclude the public shall be put at a time when the meeting is open to the public.*