



Statement of Proposal to make

The Upper Hutt City Council Prevention of Nuisance From Fires and Smoke Bylaw 2018

And revoke

The Upper Hutt City Council Urban Fire Prevention bylaw 2005

October – November 2018

1. Introduction

Upper Hutt City Council proposes to replace the existing Urban Fire Prevention Bylaw 2005 with a new bylaw relating to fire nuisance.

This Statement of Proposal has been prepared in accordance with section 83 of the Local Government Act 2002 ('LGA'). It includes information about the review process and whether it is appropriate for the Council to have a bylaw relating to the prevention of nuisance from fires and smoke.

2. Background

The Council is reviewing the bylaw as a consequence of the Fire and Emergency New Zealand Act 2017 and the Fire and Emergency (Fire Permits) Regulations 2017. It established Fire and Emergency New Zealand (FENZ) as the organisation that will bring together urban and rural fire services. This also requires Council to amend its current bylaw to reflect the new legal framework.

To obtain a fire permit applicants now need to apply online to the Fire and Emergency (FENZ) website. The FENZ website is: www.checkitsalright.nz

The proposed Bylaw is intended to meet Upper Hutt City Council's new role and responsibility under the Act and Regulations as noted above. This new role is focussed on the ability to regulate for the control of nuisance or health and safety risk from smoke from fires.

When making a bylaw, Council must determine whether a bylaw is the most appropriate way of addressing the perceived problem. If so, the Council must determine whether the proposed Bylaw is the most appropriate form of the bylaw, and whether the proposed bylaw gives rise to any implications under the NZ Bill of Rights Act 1990 ('NZBORA'). No bylaw can be inconsistent with the NZBORA.

a. The perceived problem

The perceived problem is the potential nuisance and health and safety risk from smoke from fires.

The perceived problem means that a bylaw about nuisance from fires and smoke from a fire is consistent with the provisions in the LGA relating to the Council's bylaw-making powers and also with the Act and Regulations 2017 as noted above. The Council considers that it is still necessary to have a bylaw relating to nuisance from smoke and fire for the purposes of:

- Protecting the public from nuisance (section 145(a)); and
- Protecting, promoting and maintaining public health and safety (section 145 (b)).

Council therefore proposes to make the proposed Bylaw to regulate nuisance from fires and smoke. The proposed Bylaw is generally intended to ensure adequate controls and monitoring are established to meet public expectations of the Council's legal responsibilities concerning nuisance from fires and smoke in Upper Hutt.

b. *Most appropriate way to address the perceived problem*

Changes have now been created with the passing of the Fire and Emergency New Zealand Act 2017 and the Fire and Emergency (Fire Permits) Regulations 2017. The appropriate option is to meet the new requirements resulting from this new legal framework. This will require Council to amend the current bylaw to meet the new legal framework.

Section 11 of the FENZ Act 2017 outlines the main functions of FENZ that includes the following:

- (a) to promote fire safety, including providing guidance on the safe use of fire as a land management tool; and
- (b) to provide fire prevention, response, and suppression services.

FENZ has advised that given their legal requirement around fire safety (to ensure a fire is well managed and doesn't get out of control) the control of nuisance or health and safety risk from fires and smoke is something Council needs to address via a bylaw.

The Council considers that the proposed Bylaw is the most appropriate way to address the perceived problem.

c. *Most appropriate form of the bylaw*

The proposed Bylaw addresses the perceived problem by providing Council with the necessary legal powers to address a number of unwanted consequences from certain activities associated with fire.

The proposed Bylaw clearly states the Council's position by stating whether or not an activity is permitted and which activities constitute an offence of the proposed bylaw. The Bylaw also sets out what action needs to be taken to comply with it.

The Bylaw is therefore the most appropriate form of bylaw. It clearly states the Council's position, how the Bylaw can be complied with and address the perceived problem.

d. *Implications under the NZ Bill of Rights Act 1990 ('NZBORA')*

As mentioned, section 155(2)(b) of the LGA requires the Council to determine whether the proposed Bylaw gives rise to any implications under the NZ Bill of Rights Act 1990. It is the Council's view that no provision of the proposed Bylaw is inconsistent with the Bill of Rights Act 1990.

3. The proposed bylaw

This section outlines the outcome of the review of the existing Bylaw, and provides an explanation of the proposed Bylaw.

a. *Additions, modifications and deletions made to the existing bylaw*

With the passing of the Fire and Emergency NZ Act 2017 and the Fire and Emergency (Fire Permits) Regulations 2017 a new legal framework has been established with a new role and responsibility for the Council to undertake. The proposed bylaw reflects that new role and responsibility which has resulted in the clauses in the existing bylaw needing to be completely updated.

b. *Explanation of the proposed bylaw content*

- i. Clause 1 – Purpose and application of the bylaw

This clause is proposed to identify what the purpose of the bylaw is, the legal powers this bylaw is being made under and the specific matters to be addressed by this bylaw.

ii. Clause 2 – Interpretation

The purpose of this clause is to state the meaning of certain words so it is clear what is intended.

iii. Clause 3 - Nuisance or health and safety risk from fires or smoke

The purpose of this clause is to define what creates a nuisance, health risk, or safety risk and what an Authorised Officer can do where a nuisance or risk exists.

iv. Clause 4 – Offences and cost recovery

The purpose of this clause is to outline how a person can commit an offence and how Council may recover any costs when it acts under the provisions of the bylaw.

4. Process for the development of the proposed bylaw

Public consultation using the special consultative procedure will end at 5.00pm on 30 November 2018. Hearings and meetings on the proposed bylaw will be open to the public, and people may speak to their submissions at the relevant meeting. An analysis of all submissions will then be presented to the relevant meeting(s) for consideration and adoption.