

Mayor and Councillors
KĀPITI COAST DISTRICT COUNCIL

1 OCTOBER 2009

Meeting Status: Public

Purpose of Report: For Decision

POLICY: APPROVAL OF FOODSTALLS AT EVENTS, MARKETS AND OTHER SITES

PURPOSE OF REPORT

- 1 The purpose of this report is to present a proposed policy in relation to registration and approval of mobile food stalls and food stalls at any site, market or temporary event (fair, fundraiser, concert, festival or special occasion) and to seek support from the Council for this policy (Attachment A).

SIGNIFICANCE OF DECISION

- 2 The recommendations in this report do not trigger the Council's significance policy.

BACKGROUND

- 3 A large number of events (fundraisers, fairs, festivals and concerts) are held within the Kāpiti Coast District during the summer season and attract not only locals, but people from the greater Wellington region. In addition, Kāpiti has an abundance of regular weekend markets that have in recent years become a popular venue for residents to purchase local produce, prepared foodstuffs and art and crafts.
- 4 Over recent years food sales at events and markets have been occurring on a largely unregulated basis. The Council has responsibilities and duties under the Health Act 1956, Food Act 1981, Food Hygiene Regulations 1974 and Food Safety Bylaw 2006 to ensure that all food sales within the Kāpiti Coast District are properly regulated and the public are consuming safe food.
- 5 When Council officers started contacting event managers this past summer in relation to approving food stalls operating at their events, it became obvious that many event managers and food vendors were unclear about the legislative regime they were operating within. Many of the food vendors are casual and operate infrequently on a domestic scale preparing food at home for sale at another venue. These are referred to in the legislation as Occasional Food Premises (OFP's) and differ from operators who are licensed and generally overtly commercial in scale and frequency of business.
- 6 The first instance of conflict between the requirement to comply with the regulations and past practice occurred in the run-up to the Paekākāriki Fair and Kāpiti Food Fair early in 2009. The organisers were concerned that the Council requirements had changed and had become quite draconian and that allowing only charities and community groups to sell food at their events would limit the success of their event. In managing these situations, Council cannot operate outside the regulations but must remain responsive to the community benefits

these events generate while at all times ensuring that the safety of the public is maintained through safe food hygiene practices.

- 7 It is noted that the information currently available to event and market organisers and food vendors is ambiguous and lacks clarity. Council needs to more clearly state and communicate its policy and legislative requirements in relation to food stalls so that market and event organisers, food vendors and the Council staff understand and accept the requirements. With clarity comes certainty which in turn will benefit the operators and the public without limiting the opportunities for the community events which are essential in community building throughout the District.

Occasional Food Premises

- 8 Most Council's in New Zealand interpret how to enforce the provisions of the Food Hygiene Regulations 1974 differently in relation to food stalls at events and markets. The reason for this lack of consistency is the varied interpretation of what is termed as an "Occasional Food Premises" in accordance with Regulation 4 (4c) of the Food Hygiene Regulations 1974 (Appendix B). This regulation allows for food sales at premises (termed Occasional Food Premises) to be exempt from registration requirements.
- 9 As written in the Food Hygiene Regulations 1974 the definition of **Occasional Food Premises** means food premises that are used only for:
 - (a) *The sale of fruit, eggs, poultry, and vegetables, that are produced either on the land on which those premises stand or on land adjacent to the land on which those premises stand; or*
 - (b) *For the preparation or handling of food for sale, or for the sale of food, on special occasions:*
- 10 Notes from the explanatory commentary to the Food Hygiene Regulations 1974 further explain the definition of Occasional Food Premises:
 - a. *This is a new definition, to clear up doubts regarding the application of these regulations to certain classes of premises. For example a producer of food has the right to sell products as specified which he produces on his land. Administratively it must be clearly established that the food offered for sale is in fact grown or produced on the land where the stall stands.*
 - b. *Stalls for charitable purposes (non profit organisations) are a recognised accepted means of trading. Every one agrees that such places must be subject to a form of control by the local authority, accordingly provision for their recognition is made in these regulations, and appropriate conduct provisions can be applied to the satisfaction of the local authority.*
 - c. *This definition is not meant to include food premises which are obviously covered by these regulations such as racecourse eating houses and show grounds etc where permanent facilities are available. Such premises are not occasional although they may only operate a few days in a year.*
 - d. *Where a caterer is in business selling food for a wedding reception and the like his premises should be registered. It would be a special occasion to the bride and groom but not be construed as such for the caterer.*

- 11 If the Council is to ensure it has a clear policy around approval of food stalls, then there is a need to have a clear interpretation of what food sales fit within the definition of Special Occasions in terms of “Occasional Food Premises”. For this reason, a legal opinion from Council’s solicitors was commissioned and the interpretation contained in the attached policy is based on that legal opinion.

CONSIDERATIONS

- 12 The proposed policy is intended to help Council better manage Occasional Food Premises and food stalls at markets, whilst ensuring a level of flexibility, and responsiveness in the management of food risk. The policy is intended to safely lean to the permissive in relation to Occasional Food Premises but without compromising the safety of the public.

Issues

- 13 In developing the policy the following issues have been considered:
- a. **Community Outcomes:** The proposed policy has links to Community Outcome 7 (the district has a strong, healthy and involved community) and Outcome 5 (there is an increased choice to work locally).
 - b. **Definition of an Occasional Food Premises for the purpose of the policy:** In addition to the definition of Regulation 4(4c) it is noted that in order to have a clear policy in relation to operation of food stalls “special occasion” should be further defined. After gaining a legal opinion on the subject staff are satisfied that a Special Occasion within the meaning of Occasional Food premises could be *an occasion of selling food that occurs infrequently, and at an event that is of some importance to the community*. Allowing Occasional Food premises to operate infrequently (two times per year) at events achieves the purpose of the Occasional Food Premises exemption while allowing the Council to minimise the risk involved in allowing unregistered food premises to sell food.
 - c. **Clear, easy to understand information is provided to the public, market and event managers and proposed food vendors:** The proposed policy is very clear and easy to understand and will be freely available.
 - d. **Recognition of Charities and Community Groups:** The proposed policy recognises that food stalls are an important form of fundraising for these groups. This policy will not limit the amount of times a fundraising stall operating at any sports ground or outside any shop (such as the Warehouse and others) can operate. The policy will require that 100% of the profits from the fundraising go to the named charity or community group, and the type of food sold is low risk. In addition the policy will require that fundraising stalls do not operate at regular markets. Charities and community groups will need to accept that if they wish to fundraise on a regular basis they are no longer an “Occasional Food Premises” and are therefore not exempt from being registered under the regulations. The policy will give these groups greater flexibility in what types of foods they choose to prepare and sell at events (as they have generally been limited to low risk foods only). **A matrix demonstrating the approval process is attached on page 7 of the proposed policy.**

- e. **Increased economic development opportunity for locals to promote value added food products:** The proposed policy recognises that Kāpiti Coast District sits within the Kāpiti Horowhenua food basket and that while many people enjoy the fresh local produce it is difficult for growers or fledgling foodies to turn their ideas into legislatively compliant cottage industries. Allowing opportunities for people to showcase their product or culinary skill at an event on an occasional basis will support and nurture those food vendors who may grow into a vibrant part of the local economy.
- f. **Greater flexibility to vendors in relation to styles and types of foods sold:** The proposed policy recognises that where an exemption is given from the Food Hygiene Regulations 1974 then the Council should not limit or restrict the types of foods sold (within legal constraints). This policy will allow the opportunity for the sale of a larger range of food types at events.
- g. **Increased food vendor responsibility:** The proposed policy will achieve a greater level of operator compliance and responsibility due to improved application documentation, which requires Occasional Food Premises applicants to sign off that they have read, understood and agree to comply with rules and guidance in relation to how they prepare and sell food at the event.
- h. **Improved collaboration between Council and event and market managers:** The proposed policy accepts that these managers are placed in the best position to manage food vendors at their event or market. The proposal to issue overarching licences to these managers does impart a greater degree of responsibility however it is a system now used widely throughout the country with few if any complaints. In fact this approach fosters and encourages a more proactive and collaborative relationship between the Council and market and event managers. The policy clarifies and simplifies decisions around who is eligible to sell food at the market or event and supports managers in managing risk at their event.
- i. **Clear differentiation between market and event food stalls:** The proposed policy recognises the difference between regular markets and infrequent events. Markets operate on a regular and frequent basis and do not fit the definition of a special occasion or an event. In addition it is quite clear that all individuals who sell food at Markets must be registered to do in accordance with Regulation 4(1) and 4(2) of the Food Hygiene Regulations 1974 (see Appendix B). All vendors selling prepared food at a market will need to hold the appropriate registrations at a base premise. It should be noted that the Council has received a number of verbal enquiries from registered food premises operators unhappy about the amount of unregistered operators they believe are currently selling prepared foods at markets and how unfair this situation seems. The policy will not allow Occasional Food Premises (including charities and non profit organisations) to operate a food stall at a market. In addition only mobile food stalls registered with the Kāpiti Coast District Council will be able to prepare or cook food at a market. It is unlikely that any exceptions will be made to this rule, because to do so could put the interpretation of Occasional Food Premises and the integrity of the policy at risk, which would lead to less clarity.

- j. **Improved risk management for Council: Provision of safe food:** The proposed policy will improve regulatory compliance and ensure safe food is delivered to the public from mobile food stalls and food stalls at events and markets. The proposed policy will give the Council greater assurance of operator responsibility, and will provide the Council with more information on itinerant food vendors. This will in turn improve traceability of food vendors in the case something goes wrong.
- k. **Regional Consistency:** The Kāpiti Coast District Council is part of a regional working group (Wellington Region Cluster Group) whose aim is to improve the quality and consistency in relation to the application of new and existing food law in the region. This group has identified food stall approvals as an area to work on in the future. All of the councils represented in the cluster group have slightly different interpretations on the definition of and times that an Occasional Food Premises can operate. After consultation with all members of the group it is considered that Wellington City Council is operating under the clearest operating procedures and the best enforcement model and this policy is based that model (with the exception of allowing *bona fide* community and charity groups to operate on more than two occasions each year). Having two councils promoting the same procedures in relation to food stalls will improve the prospects of the Wellington Region Cluster Group achieving regional consistency in the application of this part of the food legislation in the future.

Financial Considerations

- 14 There are no financial considerations to be considered at this point in time. During the next annual plan review it is anticipated that fees will be introduced for overarching and or individual food stall registrations.

Legal Considerations

- 15 Council has responsibilities to ensure that all food for sale in the district is safe and food sales are compliant with current legislative requirements as set out in the Food Act 1981, Health Act 1956, Food Hygiene Regulations 1974, Local Government Act 2002 and Kāpiti Coast District Council Food Safety Bylaw 2006.
- 16 Council has commissioned a legal opinion on further defining the term “Occasional Food premises” to ensure the policy supports and does not override the definition already contained in the Food Hygiene Regulations 1974.

Delegation

- 17 The Council may make a decision under Section A2 of the Governance Structure 2007-2010 (28 May 2009) where Council has “*Overall strategic direction including planning and oversight of the districtwide strategies and policies in accordance with the Community Plan...*”

Consultation

- 18 There is no consultation required as this policy is about establishing procedures around existing statutory requirements.

Policy Implications

- 19 It should be noted that the proposed policy does have links to the Temporary Events Management Plan and if the proposed policy is accepted, this plan will need to be updated.

Publicity Considerations

- 20 A communications plan is being developed to launch the new policy.

Other Considerations

- 21 No other considerations have been identified.

CONCLUSION

- 22 Implementation of the proposed policy will ensure that Kāpiti Coast District Council will meet legislative requirements. Compliance with the policy will mean some increased responsibilities for Market and Event Managers but it will improve communication and collaboration between them and the Council.
- 23 *Bona fide* charities and community groups selling low risk foods will not have restrictions in relation to the amount of times they can operate but they will have more flexibility in the types of food they can prepare and sell at an event. While the policy tightens up the requirements in relation to sale of food at regular Markets it significantly increases the ability of any person or group to sell food at events.
- 24 The policy will result in an increased level of food vendor responsibility and awareness, will ensure Councils duties are discharged appropriately and will ultimately result in safe food being provided for sale from food stalls.

RECOMMENDATIONS

- 25 That the Council adopts (inclusive of any agreed amendments) the “Policy: Approval of Food Stalls at markets, events and other sites” policy **attached** as Appendix A to report AS-09-538.

Report prepared by:

Approved for submission by:

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ATTACHMENTS:

- A. Policy: Approval of food stalls at markets, events and other sites
B. Related legislation