

## 4.20. Proposed Environmental Health Fees 2023/2024

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(Report prepared by K Winter/G Ferguson)

E350-004-009-02

### Purpose of report

1. To provide Council with the review of fees and charges under the Food Act 2014 and Health Act 1956 and a proposed schedule of fees and charges for consideration.

### Executive Summary

2. Council can set fees under the Food Act 2014 through the special consultative procedure and for Health Act 1956 function by resolution.
3. Fees under the Sale and Supply of Alcohol Act 2012 are fixed fees set by Regulation. These can not be altered unless done under the development of a Bylaw by Council or a change in the Regulation by parliament.
4. A review of the current fees and the costs of undertaking the required activities has been undertaken.
5. It is proposed that the fees should increase for the 2023/2024 financial year to ensure that the fees recovered for the group's activities align with Councils Revenue and Financing Policy. These fees were last increased in 2022.

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### RECOMMENDATION

**That Council approve consultation on the proposed schedule of fees and charges using special consultative procedures under s83 of the Local Government Act 2002.**

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### Background/Context

6. The Food Act 2014 places responsibilities on Council in relation to registration, verification, compliance and monitoring of the food sector. Council is required to register both template Food Control Plans and National Programmes. Verification of template Food Control Plans is conducted through scheduled audits. Compliance checks are required following complaints received and on-going monitoring of food premises will take place to ensure food safety practices are maintained in Marlborough.
7. Council has the ability to fix fees for functions under the Food Act. The Act is prescriptive in what fees can be set and how they are set. These requirements are laid out in this paper.
8. The Health Act 1956 requires Council to Register certain activities and regularly inspect to ascertain if any nuisances or condition exist that could be offensive or injurious to health.
9. Council has the ability to set fees under the Health Act by resolution.

### Functions of Territorial Authorities under the Food Act 2014 and Health Act 1956

10. The provisions in the Food Act require Council to perform the following functions:
  - **Registration**  
Receiving and processing of applications for registration of food businesses.
  - **Verification**  
Undertake verification activities for those premises operating under a template food control plan.
  - **Compliance and Monitoring**  
Undertake compliance and monitoring activities across the district.

11. The Health Act 1956 requires that all Hairdressers, Offensive trades, Camping-grounds and Funeral Directors are registered and inspected by Council.

**Fee Setting**

12. Section 205(1) of the Food Act enables the Council to fix fees to recover the direct and indirect costs of any registration, verification, compliance and monitoring functions performed under the Act.
13. Council is not able to directly charge for its educative role but it is an indirect cost of providing the services for which fees may be charged. There is an educative cost in training food business operators in the requirements of Food Control Plans.
14. Section 205(5)(c) of the Food Act requires that fixed fees must comply with any regulations made under section 206 of the Act. To date no regulations have been made under this section of the Act. A review of Council fees would be required if a regulation under section 206 is made.
15. Council has previously determined that premises required to be registered under the Health Act 1956 should be self-funding. Other activities undertaken by the Environmental Health Team including monitoring and investigation of nuisance complaints are funded by rates due to their public benefit. This is in line with Council's Revenue and Financing Policy which requires that 40% of the activity is funded through general rates and 60% is funded by registered operators.
16. Council can set fees for premises registered under the Health (Registration of Premises) Regulations 1966 by Council resolution.
17. Council operates a fixed fee system for registrations under the Health Act. The fixed fee includes the cost of registration and annual inspection of premises.
18. The fixing of fees to recover the costs of Council's Environmental Health functions need to be consistent with the Council's Revenue and Financing Policy.
19. Councils Environmental Health fees were last increased in 2022.

**Consultation requirements for setting fees**

20. Prior to fixing new fees under section 205(1) of the Food Act, Council is required by section 205(2) of the Act to consult on the proposed fees using the special consultative procedure as provided in section 83 of the Local Government Act 2002 (LGA 2002).
21. The Environmental Health Team consider this procedure should also be applied to setting fees under the Health Act to ensure that those affected by any fee increase have an opportunity to provide a submission.

**Proposed Fees**

22. Environmental Health Officers in conjunction with the Council financial team have reassessed the costs of providing the functions under the Act and propose to alter the fee structure to recover the direct and indirect costs incurred by Council in performing their functions under the Act from 1 July 2023.
23. Table 1 (below) includes the fees that are currently in place and Table 2 (below) the adjusted fees to show the proposed increased charges.

Table 1: Summary of Current and Proposed fees under the Food Act and Health Act:

Function	Current Fee (GST Inclusive)	Proposed Fee (GST Inclusive)
<b>Food Act Fees</b>		
New Registration for a template food control plan or a business subject to a national programme.	\$270 fixed fee (includes processing of application and providing education for applicant)	\$315 fixed fee (includes processing of application and providing education for applicant)
	\$154 per hour spent on processing application or educating applicant after the first 2 hours	\$178 per hour spent on processing application or educating applicant after the first 2 hours
Each additional site under the same Registration	\$50 per site	\$60 per site
Renewal of Registration	\$115 fixed fee	\$135 fixed fee
Each additional site under the same Registration	\$50 per site	\$60 per site
Amendment to Registration	\$115 fixed fee	\$135 fixed fee
Amendment or significant change to registration of food control plan based on a template or model issued by MPI or a business subject to a national programme.		
Verification	\$154 per hour	\$178 per hour
Verification including site visits, corrective action follow up correspondence and documentation for template or model food control plans.		
Compliance	\$154 per hour	\$178 per hour
Complaint driven investigation resulting in enforcement action.		
Monitoring	No charge	No charge
Monitoring for food safety and suitability.		
Reschedule of Verification	\$115 fixed fee	\$135 fixed fee
Operator fails to be on site for scheduled verification or	Travel charge if appropriate	Travel charge if appropriate

Function	Current Fee (GST Inclusive)	Proposed Fee (GST Inclusive)
operator reschedules verification (without reasonable cause) within 48 hours of appointment.		
Travel Charge Zone map (map attached as Attachment 4.20.1)	<ul style="list-style-type: none"> <li>Zone One - No Travel Fee</li> <li>Zone Two - \$53</li> <li>Zone Three - \$90</li> <li>Zone Four - \$260</li> <li>Zone Five - Actual Travel Costs incurred.</li> </ul>	<ul style="list-style-type: none"> <li>Zone One - No Travel Fee</li> <li>Zone Two - \$65</li> <li>Zone Three - \$105</li> <li>Zone Four - \$300</li> <li>Zone Five - Actual Travel Costs incurred.</li> </ul>
Disbursements	Actual Cost	Actual Cost
<b>Health Act Fees</b>		
Camping Grounds Registration	\$280	\$325
Offensive Trades Registration	\$115	\$135
Hairdressers Registrations	\$190	\$220
Funeral Directors Registration	\$215	\$250
Transfer of Health Act Registration	\$50	\$135
Additional inspection of Health Act registered premises	\$154	\$178
Inspection on request	\$154	\$178
Late payment charge for Health Act registration renewal	\$50 per month	\$60 per month

Table 2: Details of new fee proposed

Function	Proposed Fee (GST Inclusive)
Food Act Fee Voluntary Suspension of Registration of food control plan or national programme	\$135 fixed fee
Health Act Fee Application fee for exemption from the requirements of the Health Act Regulations	\$135 fixed fee

### Reasons for the proposal

24. It is proposed that the cost of registration under the Food Act continues to be a fixed charge with the ability to charge an extra hourly fee if required. Registration involves maintaining our own register (along with that of the Ministry for Primary Industries (MPI)), providing registration documentation, education of food safety practices and implementing the Food Control Plan with operators. This fee is based on the average time taken to process a registration application and provide an education component to operators on the risk-based regime.

25. Initial processing of a Food Act registration is more time consuming than subsequent renewal and therefore the proposed charge reflects this.
26. It is proposed that each extra site on a multi-site registration or renewal continues to have a fixed charge. This is to cover the cost of maintaining extra sites on the MPI and Council databases, along with producing individual site registration certificates.
27. It is proposed that the cost for Verification continues to be an hourly charge that reflects the time involved in verifying the food business's Food Control Plan. Verification involves developing a scope and communicating this with the business, time on site to conduct the verification and writing up of the verification report.
28. The benefit of charging an hourly rate for verification is it recovers direct costs of Council from the business being verified; those who are performing well will require less time for verification and therefore be charged less than premises that are non-conforming and require more time to ensure compliance.
29. It is also proposed that a travel charge continues to be applied for food verification visits. The Food Act 2014 requires us to arrange a time to conduct a verification with the operator and these are on a set schedule depending on their previous verification outcomes. This means we cannot always schedule multiple verifications in the same location. The travel fees take into consideration the time and mileage taken to travel to each location with an adjustment made anticipating that some areas may provide the opportunity to conduct multiple verifications.
30. Some of the premises we are required to verify require significant travel including boat transport. The travel charge will recover the costs of travel including staff time and vehicle/boat charges. We still believe the most justifiable and transparent way to do this is to have costs associated with zones. A map of these proposed zones is attached (as **Attachment 4.20.1**).
31. The zone map has been previously adjusted slightly to ensure that outliers were not being unfairly treated.
32. It is proposed that a fee is set to process a voluntary suspension of a food control plan or national programme registration. These suspensions take place at the request of the food business if they have a period where they are not trading. This allows them to delay their verification requirements. There is work involved in processing this application for suspension in both updating our own and the Ministry for Primary Industries databases.
33. It is also proposed that a fee is set to process an exemption to requirements of the Health Act Regulations. We are seeing that more operators are seeking exemptions and these take time to process. We have not been charging any fee for this process to date.
34. It is proposed that monitoring and unsubstantiated compliance costs continue to be covered by a general rates component. These are of benefit to the general public.

***Food Act consideration for fixing fees***

35. The Council is required to take into account the criteria in section 198(2) of the Food Act when fixing fees. The following details consideration of these criteria.
  - a) **Equity**—in that funding for a particular function, power, or service, or a particular class of function, power, or service, should generally, and to the extent practicable, be sourced from the users or beneficiaries of the relevant functions, powers, or services at a level commensurate with their use or benefit from the function, power, or service.

Council considers it is equitable to recover the direct costs of the Council's functions under the Act solely from the direct beneficiaries.

The direct beneficiaries of Council's functions of registration and verification are perceived to be the food business to which the function applies.

Users of food businesses receive an indirect benefit from the functions performed by the Council under the Act due to the fact that the food premises where they purchase food is

compliant with the requirements of the Act and any applicable regulations. These indirect benefits result from the direct beneficiary's discretion to operate a food business for commercial gain and as such should not result in a public/private split of benefits of the Council's Functions of registration, verification and validated compliance functions under the Act.

Recovering the full costs of the Council's functions under the Act solely from the direct beneficiaries aligns with the public/private benefits assessment of the Compliance group's environmental health service in Council's Revenue and Financing policy. This assessment apportions a 40/60 percent split of the benefits to public versus private beneficiaries across the entire environmental health services recognising that some complaint investigation, education and monitoring activities under environmental health legislation are deemed to be for public benefit and are not cost recoverable from the food business operators.

The proposed fee's structure excludes charging food businesses operators for monitoring functions and complaint investigations that are not substantiated. This approach recognises that general complaint investigation has a public benefit and should not be directly recovered from the food business where the complaint is not justified. It also recognises that the monitoring of food business generally has a public benefit and should not be cost recoverable from food business operators.

- b) **Efficiency**—in that costs should be generally allocated and recovered in order to ensure that maximum benefits are delivered at minimum cost.

The Council seeks to deliver its functions in the most efficient manner possible and to ensure efficiency is reflected in the fixed fees to users. The Council will look to recover fees in the most efficient manner by setting an annual fee for registration and identifying travel charges by zone to reduce charge calculation and provide certainty to business operators on costs. Verifying fees, which have more potential variability as they are dependent on the food operator's performance, are charged on an hourly basis.

- c) **Justifiability**—in that costs should be collected only to meet the actual and reasonable costs (including indirect costs) of the provision or exercise of the relevant function, power, or service.

The proposed fees have been determined on time and costs to process registrations and verification functions based on Council's experience in carrying out the Food Act functions.

Charging verification on an hourly rate basis directly recovers the cost of verifying the food business. Those businesses which are performing well will require less time to verify and therefore be charged less than premises that are non-conforming and require more time to ensure compliance.

The hourly rate is based on the cost per hour of verifying officers. This cost includes the operating expenses of the section divided by the total available hours of the section's officers.

- d) **Transparency**—in that cost should be identified and allocated as closely as practicable in relation to tangible service provision for the recovery period in which the service is provided. The proposed fees are allocated to individual functions to ensure transparency and enable tracking of costs for the delivery of that function. The fees include a fixed fee for registration based on a specified timeframe to provide the function and additional hourly rates for anything beyond that timeframe. Verification fees are on an hourly basis. This provides transparency of delivery of service.

## Sale and Supply of Alcohol Act fees

36. Fees under this Act are set by Regulation. This Regulation has been in place since 2012 but the associated fees are currently being reviewed. Should these fees not be increased by the Ministry of Justice then Council will review the requirement for a fees Bylaw under Section 405 of the Sale and Supply of Alcohol Act 2012 to recover the direct costs of these functions.

## Timing of setting fees

37. The proposed fee charges if ratified by Council would come into effect on 1 July 2023.

## Goods and Services Tax

38. The charges described in this document include GST.

## Options considered

### Option One

39. Adopt the proposed fees to cover the direct and indirect costs of the Council's functions under the Food Act 2014 and Health Act 1956;
40. This is the preferred option;
41. This is considered to be the most equitable option ensuring that funding for the Council's functions under the Act will be sourced from the users or beneficiaries of those functions and not from rates and other funding sources.

### *Advantages*

42. This increase will allow Environmental Health group activities to be recovered in line with Council's Revenue and Financing Policy;
43. The proposed increase to fees will maintain the group's ability to meet statutory and customer demands by maintaining a fully resourced group;
44. Will avoid additional burden on Council's rate payers.

### *Disadvantages*

45. Will increase regulatory costs to Council customers.

### Option Two

46. Maintain current 2022/23 fee structure.

### *Advantages*

47. No increase in costs to the Council customers.

### *Disadvantages*

48. No increase to fees will place additional burden on Council's rate payers with a budgeted deficient of (\$33,000).
49. This option would not be consistent with the Council's Revenue and Financing Policy as transferring costs to rates or another funding source would not reflect the private to public benefit of the Council's function under the Act.

## Risk analysis

50. Council is required to undertake functions under these Acts. If fees are not set, these functions would need to be funded through general rates.

## Community and Food Business views

51. Affected parties and the general public will have the opportunity to submit their views and preference through the special consultative procedure.

## Attachments

Attachment 4.20.1: Travel Zone Map

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<b>Summary of decision-making considerations</b>			
<b>Fit with purpose of local government</b>			
The proposal enables Environmental Health activities to continue to be carried out professionally and cost-effectively.			
<b>Fit with Council policies and strategies</b>			
	<i>Contributes</i>	<i>Detracts</i>	<i>Not applicable</i>
LTP / Annual Plan	<b>X</b>	<input type="checkbox"/>	<input type="checkbox"/>
Financial Strategy	<b>X</b>	<input type="checkbox"/>	<input type="checkbox"/>
Infrastructure Strategy	<input type="checkbox"/>	<input type="checkbox"/>	<b>X</b>
Social well-being	<b>X</b>	<input type="checkbox"/>	<input type="checkbox"/>
Economic development	<b>X</b>	<input type="checkbox"/>	<input type="checkbox"/>
Environment & RMA Plans	<input type="checkbox"/>	<input type="checkbox"/>	<b>X</b>
Arts & Culture	<input type="checkbox"/>	<input type="checkbox"/>	<b>X</b>
3 Waters	<input type="checkbox"/>	<input type="checkbox"/>	<b>X</b>
Land transport	<input type="checkbox"/>	<input type="checkbox"/>	<b>X</b>
Parks and reserves	<input type="checkbox"/>	<input type="checkbox"/>	<b>X</b>
This proposal contributes to the financial strategy relating to supplying Environmental Health activities equitably, efficiently, justifiably and transparently.			
<b>Nature of the decision to be made</b>			
Approval of increased charges.			
<b>Financial considerations</b>			
The proposed fees will assist in ensuring the required income is obtained to maintain the function costs.			
<b>Significance</b>			
The decision is considered of low significance under Council's Significance and Engagement Policy.			
<b>Engagement</b>			
The special consultative procedure will be followed to allow stakeholder engagement.			
<b>Risks: Legal / Health &amp; Safety etc</b>			
There are no known significant risks or legal implications as fees are permitted to be charged through the Food Act.			
<b>Climate Change Implications</b>			
There are no known climate change implications to this decision.			

