

**STATEMENT OF PROPOSAL**

**TO MAKE THE**

**HUTT CITY COUNCIL BYLAW 2018**

**Prevention of nuisance from fires and  
smoke**

**AND REVOKE THE**

**HUTT CITY COUNCIL BYLAW 2008**

**Fire Prevention**

July 2018

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## **1. INTRODUCTION**

Hutt City Council proposes to replace the existing Hutt City Council Bylaw 2008 Fire Prevention (“the Bylaw 2008”) with a new bylaw relating to fire nuisance (“the proposed Bylaw”).

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 required to review its Bylaw relating to fire prevention before 1 July 2018, under section 159 of the LGA. Under sections 159 and 155, the review of a bylaw must take the form of reconsideration of the matters that the Council is normally required to consider before making a bylaw.

The Council must therefore 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 bylaw, and whether the proposed Bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (“NZBORA”). No bylaw can be inconsistent with the NZBORA. In reviewing a bylaw, the Council must use the special consultative procedure set out in section 83.

Under section 145, the Council may make bylaws for its district with the purposes of:

- (a) protecting the public from nuisance;
- (b) protecting, promoting, and maintaining public health and safety;
- (c) minimising the potential for offensive behaviour in public places.

The 2008 Bylaw can be viewed by visiting the Council’s website: [www.huttcity.govt.nz](http://www.huttcity.govt.nz)

### **2.1 The perceived problem**

The proposed Bylaw is a consequence of the enactment 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](http://www.checkitsalright.nz)

The proposed Bylaw is intended to meet 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.

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));

Hutt City Council has a commitment to achieving city-wide outcomes identified by the community. Community Outcomes (set out at page 7 of the Hutt City Council's *Long Term Council Community Plan 2015 – 2025*) states that the city's goal is to provide a city that is safe. In order to achieve this goal, the Council considers it necessary to have in place measures to regulate the control of nuisance or health and safety risk from smoke from fires.

The 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 Lower Hutt.

## **2.2 Most appropriate way to address 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.

### *Summary*

The Council considers that the proposed Bylaw is the most appropriate way to address the perceived problem. The Council also considers that the proposed Bylaw will contribute to achieving the community outcomes identified in the Council's Long Term Council Community Plan.

## **2.3 Most appropriate form of 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 proposed Bylaw reflects a number of the Council's existing policies and practices, and also reflects community goals that have been identified by the Council.

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

## **2.4 Implications under the New Zealand 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 implications under the New Zealand 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.

### **3.1 Additions, modifications and deletions made in respect of existing bylaw**

With the passing of the Fire and Emergency New Zealand 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 2008 bylaw needing to be completely updated.

### **3.2 Explanation of the proposed Bylaw content**

In general terms, the proposed Bylaw provides a mechanism by which the Council can prevent or manage the perceived problems associated with fire. The following outlines the rationale for the inclusion of each of the clauses in the proposed bylaw.

#### **Proposed clause 1 – Purpose and Application of 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.

#### **Proposed clause 2 – Interpretation**

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

#### **Proposed 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 to in those situations.

#### **Proposed 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**

The special consultative procedure will end **4.00pm on Friday 31 August 2018**. Hearings and meetings on the proposed bylaw will be open to the public, and people may speak to their submissions at the relevant committee meeting.

An analysis of all submissions will then be presented to the relevant council committee for consideration. The proposed bylaw will then be referred to the Council for consideration and adoption.