

Statement of Proposal

Revoking the Mobile Trading Bylaw 2008 Proposal

This document constitutes the Statement of Proposal and the Summary of the Statement of Proposal for the purposes of Section 83(1)(1) of the Local Government Act 2002 (the Act).

Introduction

Whakatāne District Council (the Council) adopted Part 4: Mobile Trading Bylaw as part of the Consolidated Bylaw in July 2008.

Under sections 158 to 160 of the Act, the Council is required to review all its bylaws within five years of their adoption and every ten years thereafter.

Proposal

The Council proposes to revoke its Mobile Trading Bylaw 2008 (the bylaw).

In accordance with section 86(2) of the Local Government Act 2002 (the Act), the Council, when revoking a bylaw, is required to include in the Statement of Proposal, the following:

- a) A statement that the bylaw is to be revoked;
- b) The reasons for the proposal; and
- c) A report of any determinations by Council under section 155 of the Act.

Reasons for the Proposal

The bylaw was adopted in 2008 to address concerns raised around the behaviour of some mobile traders. The bylaw required all mobile traders to obtain a Mobile Trading Licence from Council and enabled Council to set licence fees. Conditions were attached to the granting of a licence which licence holders were required to carry when engaged in mobile trading.

The bylaw also set requirements around compliance with the Food Hygiene Regulations 1974 and outlined limitations around where traders could operate and how long mobile traders could remain in an approved site.

The review of this bylaw has identified a number of issues:

- The current bylaw is poorly drafted and definitions are unclear.
- Some clauses are overly restrictive. The bylaw allows traders to trade for 90 minutes in one location before being required to cease trading and move at least 100 metres away. Council cannot enforce this restriction except by prosecution (section 4.98.1).

- One reason the bylaw was adopted was to protect shop-based retailers from competition with mobile traders. The Act states that Councils may make bylaws to protect the public from nuisance; protect, promote and maintain public health; and minimise the potential for offensive behaviour in public places. Whakatāne District Council has other bylaws to address these issues, including the Nuisances and Public Health Bylaw, the Public Places Bylaw and the Traffic and Speed Limits Bylaw.
- Council can only enforce this bylaw through prosecution, which can cost up to \$10,000 per prosecution.
- This bylaw is not aligned to Council's strategic and policy objectives. The Council's current strategic direction (as set out in the Long Term Plan 2015-2025) has a strong focus on Economic Development with the purpose of creating a diverse and vibrant district economy. Tourism is becoming an increasingly significant part of this focus. A vibrant public trading, markets, events and street entertainment scene is identified as a desirable feature within the local economy.
- The bylaw is no longer relevant in terms of managing the food safety aspect of mobile trading. A new regulatory regime relating to the preparation and sale of food was established under the Food Act 2014.
- The mobile traders licensing regime is not working and cannot be enforced except through prosecution, which is expensive and unreasonable. Although a number of mobile traders operate in the Whakatāne District throughout the year, only 22 licenses were issued in 2016/17.

Options

In proposing to revoke the Mobile Trading Bylaw, Council considered the following options:

- Use other methods – existing statutes and regulations.
- Make a new bylaw.

Council has determined through this review that existing statutory and regulatory controls adequately provide for the management of mobile trading in Whakatāne without the need for a new bylaw, and does not propose to make any new bylaw to replace the bylaw it proposes to revoke.

Council will introduce a number of other initiatives including an education programme, a voluntary licensing regime and a web-page on the Council's website providing useful information for mobile traders.

Legal Requirements

Under section 155 of the Local Government Act, Council must determine whether a bylaw is the most appropriate way for addressing the perceived problem.

Council is of the view that a bylaw is not the most appropriate means of addressing any issues relating to public health, nuisance or the potential for offensive behaviour arising as a result of mobile trading taking place within the district.

Consultation and Submissions

Council invites the community to give us feedback on the proposal to revoke Part 4: Mobile Trading of the Whakatane District Council Consolidated Bylaw 2008.

The formal consultation process will take place between **23 January and 2 March 2018**. Council will hold a hearing be held in early April 2018.

Any person or organisation is welcome to make a submission on the proposal to revoke Part 4: Mobile Trading of the Whakatane District Council Consolidated Bylaw 2008. The Council take into account all submissions when it decides on the final content of the bylaw.

Copies of the Statement of Proposal are available on Whakatane District Council's website <http://www.whakatane.govt.nz>

Hard copies are available from:

- Whakatane District Council 14 Commerce Street, Whakatane
- Whakatane Library 49 Kahahoroa Drive, Whakatane
- Edgumbe Library 38 College Road, Edgumbe
- Ohope Library 4 Harbour Road, Ohope
- Murupara Library / Service Centre Civic Square, 48 Pine Drive, Murupara

Consultation will take place during the period from **23 January to 2 March 2018**.

Formal submissions may be made:

Online: <http://www.whakatane.govt.nz>

Post to: Mobile Trading Bylaw, Private Bag 1002,
Whakatane 3158.

Deliver to: Mobile Trading Bylaw, Whakatane District Council, 14 Commerce Street,
Whakatane.

Email to: submission@whakatane.govt.nz Attention Bylaw Review

Informal submissions can be made by commenting on our Facebook page at <http://www.facebook.com/WhakataneDistrictCouncil>

Submissions close at 5pm on Friday 2 March 2018.

Submitters should not that their submission will be copied and made available to the public after the submission period closes.

Submission should include your name, address, telephone number and email address and should state if you wish to speak to Council in support of your submission. The Council will contact in writing, all submitters who wish to be heard to advise the confirmed time, date and venue of the hearing.