**Item No: C1217 Item 4**

**Subject: Permitting dogs in Pubs in the Inner West**

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| **SUMMARY**The purpose of this report is to respond to Council resolution C1017 dated 31 October 2017 which required a number of matters to be responded to. These matters include providing information on Council’s operational regulatory approach, consultation with pub operators and options for how to deal with complaints associated with ‘dogs in pubs’ across the Inner West Council Local Government Area. |

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| **RECOMMENDATION****THAT Council:**1. **Publicly exhibit a proposed amendment to the 2017/2018 Fees and Charges to provide for full fee waivers for Development Applications (and associated modifications), footpath use applications and any lease fees associated with establishment of new low-impact *‘Dog-Welcome Zones’* (only) in outdoor areas such as footpath dining, courtyards or beer gardens, where a premises does not currently have such an area; and**
2. **Provide a further report to Council outlining the outcomes of the application fee waiver public exhibition process at its completion.**
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**BACKGROUND**

This report seeks to respond, in part, to Council resolution C1017 dated 31 October 2017 which stipulated the following:

*“1. Produce a report which will investigate allowing access to dogs in pubs across the Inner West Council area. The report will address:*

*a) Explaining the reasons for and the process that resulted in the ban being implemented and hotels systematically being threatened with fines if they were found to have dogs on their premises;*

*b) Identifying the past mechanisms through which statutory food safety and WHS requirements have been upheld by Council officers without implementing a blanket ban; and*

*c) Exploring options for how complaints about dogs in pubs could be resolved through mitigation rather than litigation of punitive action from Council.*

*2. Consult with relevant hotel owners, licensees and managers about how the ban on dogs has affected their business and to identify practical measures that could maintain food safety standards without banning dogs from pubs. The results of this consultation are to be reported back to Council;*

*3. That the report includes further information on the Companion Animal Amendment (Dining Areas) Bill 2017 moved in NSW Parliament by Jamie Parker MP; and*

*4. That the Mayor write to all State MPs asking them to support legislation that*

*comes to parliament which will enable people to bring their dogs into pubs.”*

**Report**

In response to Council resolution C1017 dated 31 October 2017 the following information is provided:

***How is Council’s Food Safety Program implemented?***

Under New South Wales legislation, which includes the Food Act 2003, the Food Regulation 2015 and the Australian / New Zealand Food Standards Code Council Authorised Officers undertake inspections of all registered food premises annually in addition to responding to community complaints. The inspection and compliance regime is designed to:

* Prevent food contamination
* Ensure that food is being handled and produced hygienically, is under effective temperature control, is not using products in a hazardous manner and will be safe to eat
* Minimizing the potential risk for food poisoning
* Ensuring that business operators and food handlers have appropriate skills and knowledge in food safety and food hygiene
* Assessing the condition and cleanliness of premises, equipment and appliances

In both proactive audits and responding to complaints, Council Officers check to ensure premises are compliant with legislative requirements. These requirements aim to ensure that safe and suitable food is provided to consumers and the risk of food-borne illness is reduced. Where non-compliances are detected Council will take appropriate regulatory action variable on the risk associated with the breach, this can range from education, re-inspections, improvement notices, trading prohibitions, fines or court prosecutions.

***Is Council able to allow access to dogs in indoor areas of pubs across the Inner West Council area?***

Food Safety laws in New South Wales which include the Food Act 2003, the Food Regulation 2015 and the Australian / New Zealand Food Standards Code prevent animals (except assistance dogs) from being located in indoor areas that food or beverages are handled / served. Animals are prevented in internal areas as they can carry pathogenic organisms that can contaminate food. Notwithstanding, under the *Food Standards Code* all food business operators are permitted to allow dogs in *‘outdoor dining areas’* such as foot path dining, courtyards or beer gardens.

This is not a Council policy issue, but a matter of state law that Council as an Enforcement Agency is required to ensure compliance with. The same rules apply to the entire state of NSW and are also applied to cafes and restaurants.

***Why did Council Officers ban dogs in pubs and threatened pub operators with fines if they were found to have dogs on their premises***

A review of Council records and discussions with Councils Authorised Officers has revealed that when dealing with *‘dogs in pubs’* an education approach has always been applied. This includes notifying the responsible business operator of the consequences of non-compliance. This is confirmed by the fact to date no fines have been issued for this type of matter.

***Can Council direct the way that Authorised Officers deal with the issue of dogs in pubs?***

Enforcement powers to deal with breaches of the Food Safety legislation is vested directly with the Authorised Officers of Council. Council is unable to direct the manner in which an Authorised Officers exercises their powers or how they apply discretion.

***Does Council receive get a large volume of complaints?***

A review of all former Leichhardt, Marrickville, Ashfield and current Inner West Council records since 2011 shows the following:

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| **Year** | **No. of Complaints** | **Suburb** |
| 2017 | 13 | Rozelle Balmain |
| 2016 | 12 | Rozelle Balmain |
| 2015 | 1 | Balmain |
| 2014 | 2 | Balmain |
| 2013 | 0 | N/A |
| 2012 | 2 | Balmain  |
| 2011 | 1 | Balmain East |

***Has Council commenced consultation with pub operators?***

Council’s Business Improvement & Education Officer is currently collating a list of all pubs within the IWC LGA and preparing a questionnaire to be distributed to pub operators. The outcomes will be reported to Council in ea2018.

***Details associated Companion Animal Amendment (Dining Areas) Bill 2017***

A copy of the Companion Animals Amendment (Dining Areas) Bill 2017 is attached detailing an explanatory note and an overview of the legislation.

The Bill proposes to amend the Companion Animals Act to extend provisions that allow dogs in outdoor dining areas, to include indoor areas also.

However, a review of the amendment of Companion Animals Act 1998 indicates that the current status of dogs not being permitted within areas of pubs where food and beverages is served will not be altered as the amendments do not affect or alter the requirements of the *Australia New Zealand Food Standards Code* or the *Food Act 2003*.

***Correspondence from the Mayor to all State MPs asking them to support legislation that comes to parliament which will enable people to bring their dogs into pubs***

Correspondence from the Mayor to State MPs has been issued.

***What immediate options are available?***

Increased Outdoor Dining Areas
Given the current legislative framework, Council’s ability to permit dogs to be present *inside* pubs is limited. Council can however reduce barriers to allow for an increase in pubs with low-impact ‘dog-welcome’ *outdoor* areas.

As an inducement for premises without any outdoor drinking/dining areas it is suggested that Council may waive all application and any lease fees associated with establishment of low-impact ‘Dog Welcome Zones’ in outdoor areas including footpath dining, courtyards or beer gardens.

Development Applications for the outdoor drinking/dining areas will still need to be assessed on their merits. As many licensed premises within the LGA are situated in residential zones or at a residential interface, it is considered that the approach of waiving fees for outdoor areas be for those of low impact only. Appropriate parameters are considered to be:

* Outdoor areas within 50m of residential premises shall be limited to opening until 7pm in the evening. Other applications seeking to use an outdoor area beyond 7pm must be accompanied by an Acoustic Report prepared by a suitably qualified expert;
* Should accommodate no more than twenty (20) people;
* Outdoor areas should not be used for functions, and music (live or amplified) should not be audible outside the premises;
* The placement of tables and chairs on footpaths must accord with the relevant Development Control Plan and/or Local Approvals Policy.

Should be fee waiver be endorsed, officers will establish educational documents to notify pub operators of fee waivers for outdoor areas.

Further Representations for Legislative Change

In addition to making representations to State MPs in relation to the *Companion Animals Amendment (Dining Areas) Bill 2017*, Council can consider obtaining specialist advice from a relevant industry expert to undertake scientific risk analysis.

This analysis would seek to evaluate the health risks of allowing dogs in internal areas of pubs; whether it is in areas for beverages only, or food and beverages.

This analysis could provide an evidence-based scientific approach in order to lobby the NSW Food Authority or Members of the NSW Parliament. The cost of such analysis is currently unknown (estimated $10,000 - $20,000) and if Council seeks to proceed in obtaining this information quotations would need to be obtained, reported to Council in early 2018.

**FINANCIAL IMPLICATIONS**

The cost per premises to waive all fees is variable depending on which of the three (3) former LGAs the premises is located in. Generally, this is considered to be less than $1000 per premises. It is unclear how many new applications would be lodged. Irrespective, this can be funded with existing budgets.

Officers have not yet been able to get quotations for the scientific risk analysis outlined above, although it is estimated to be $10,000 - $20,000 and is currently unfunded.

**PUBLIC CONSULTATION**

The proposed amendment to the Fees and Charges will be the subject of public consultation, the outcomes of which will be reported to a further Council meeting post-exhibition.

Furthermore, Point 2 of Council resolution C1017 dated 31 October 2017, specified:

*2. Consult with relevant hotel owners, licensees and managers about how the ban on dogs has affected their business and to identify practical measures that could maintain food safety standards without banning dogs from pubs. The results of this consultation are to be reported back to Council;*

The outcomes of this consultation will be reported to Council it is completion in early 2018.

**CONCLUSION**

It is understood that there has been an ongoing custom and practice that some pub operators in the LGA permit dogs in internal area of pubs where food and drinks are being served. Under current legislation there is no scope for Council to enable this to lawfully occur.

Council is an Enforcement Agency for the purposes of food safety and is required to ensure food premises operators are aware of their obligation through various regulatory methods if breaches are detected.

Whilst consultation with pub operators is being undertaken it is considered there is some areas Council can assist to help aid in maintaining the cultural practice, specifically by undertaking a public exhibition process regarding a proposed fee waiver for Development Applications (associated modifications), footpath use applications and any lease fees associated with establishment of low-impact ‘Dog-Welcome Zones’ in outdoor areas such as footpath dining, courtyards or beer gardens.

**ATTACHMENTS**

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| **1.**  | Companion Animals Amendment (Dining Areas) Bill 2017 |