

## 5. BYLAW TO LICENCE CLEANFILL SITES AND TO LEVY WASTE DEPOSITED IN SUCH SITES

<b>Officer responsible</b> City Water and Waste Manager	<b>Author</b> Zefanja Potgieter, Resource Planner Solid Waste, DDI 941-8271
--	--

The purpose of this report is to update the Council on the work to date on this new initiative and to recommend that the mechanism of a new bylaw be used for the licensing of cleanfill sites.

### BACKGROUND

The Council's Solid and Hazardous Waste Management (draft) Plan Part 2 will outline various tools to achieve the Part 1 high level goals. One of these tools is levying waste into cleanfills. This will both raise money for the Council's Waste Minimisation Fund for financing waste reduction initiatives and also act as a tool to provide an incentive for waste sorting and recycling.

### CLEANFILL PROPOSALS

There are fourteen privately owned cleanfill sites in Christchurch, which accept mainly hardfill and building construction and demolition waste. Smaller quantities of these materials are also disposed of at the Burwood landfill together with general municipal refuse. Data on actual volumes is not available, however, estimates put cleanfill disposal at a possible 300,000 to 350,000 cubic metres per year.

The Resource Management Act 1991 requires resource consents for all disposal sites and all the above cleanfill sites do in fact operate with resource consents issued by Environment Canterbury. The aim of these resource consents is the protection of the environment in terms of groundwater pollution.

The purpose of this new proposal to licence cleanfill sites is to promote and facilitate the future resource recovery of materials currently dumped at these sites. It is proposed that this be achieved through a licensing system that includes various conditions, including a condition requiring payment of a differentiated levy (ie monetary fee) on disposal of all materials dumped at cleanfill sites. By increasing the cost of disposal, it is anticipated that alternative options for the recycling, reuse and recovery of materials would be stimulated. The levies so raised would be used by the Council to supplement the funding of current and future waste minimisation initiatives. This initiative therefore amounts to extending the current waste minimisation levy on waste going to Burwood to also include waste going to cleanfill sites.

The revenue from licensing clean fill sites was included in the City Water and Waste Unit's long term operating plan for the 2003/04 Annual Plan. Furthermore in Part 1 of the Waste Management Plan for Solid and Hazardous Waste 2003, adopted by the Council in April 2003, the Council also signalled its intention to license cleanfill sites. This report provides the first step towards creating the legal mechanism for doing that. It will be followed in August 2003 with a report containing the detail of the proposal, with a formal public consultation process during September 2003 and a final report to the Council in October 2003.

### EARLY CONSULTATION WITH STAKEHOLDERS

Early consultation on the proposal with the operators/owners of the fourteen cleanfill sites and a representative selection of significant stakeholders in associated industries, such as general cartage and demolition contractors and recycling businesses was seen to be important and was conducted during March and April 2003. The consultations included individual meetings with all site operators, and a selection of stakeholders plus a joint meeting on 15 April 2003 where preliminary conditions for a licensing system were discussed. A summary of the points discussed at the meeting is included as Appendix A.

The existing principle of funding waste minimisation (from a levy on waste going to Burwood landfill) would be applied most equitably if it is sourced from a levy on the residual disposal of **all** waste/materials, going not only to landfill, but also to cleanfills. It should be emphasised that non-disposal options, such as temporary storage, sorting, recycling, reuse and recovery (eg composting), would not attract such a levy. By applying a levy in a differentiated way (eg a low levy on hardfill and higher on recyclable demolition materials) the reality of differing levels of recycling potential is acknowledged, while still 'taxing' all wastes/materials earmarked for residual disposal.

## **LOCAL GOVERNMENT ACT 2002**

Section 155 of the Local Government Act 2002 ("the Act") obligates the Council to determine that the making of a new bylaw is the most appropriate way to encourage resource recovery and waste diversion from cleanfills, and to impose waste minimisation levies on materials going to cleanfills.

Section 77 of the Act requires the Council, in the course of a decision making process on new objectives, to seek to identify and assess all reasonably practicable options for the achievement of the objectives. It is considered that the following options exist:

- (a) Do nothing ie allow the cleanfill sites to continue to operate as they are without licensing and without payment of a differentiated levy,
- (b) Seek voluntary licensing and levy payments ie seek to implement the proposal without making a Bylaw,
- (c) Make a Bylaw requiring cleanfill operators to obtain a licence and to pay the differentiated levy.

It is considered that (a) is in fact not an option. Leaving cleanfill sites to continue to operate in their present manner would be totally inconsistent with the obvious benefit from promoting and facilitating resource recovery and diversion of materials disposed of at cleanfill sites.

It is further considered that a voluntary licensing scheme and voluntary levy payments as per option (b) is impracticable and unrealistic. Without a legal obligation to comply then, human nature being what it is, operators will not be encouraged to comply. It would be analogous to expect motorists to voluntarily pay money into parking meters without any sanction for failing to pay. Furthermore while some cleanfill operators may be prepared to voluntarily pay such a levy, it is extremely unlikely that all would, and it is essential that a level playing field be established for all.

Option (c) - the making of an appropriate bylaw represents the only realistic option. It has previously been accepted by the Council and has continued to be accepted, that resource recovery and waste minimisation are laudable objectives and in the community interest. Accordingly, it is submitted that in order to achieve waste minimisation and the resource recovery of materials currently being disposed of at cleanfill sites, the making of a suitable bylaw is the appropriate means of addressing this issue.

Section 78 of the Act requires the Council to give consideration to the views and preferences of persons likely to be affected by or have an interest in the decision. While the Council is required to give consideration to the views and preferences of such people, it is not obligated to engage in consultation at this stage. However, early consultation has been undertaken as detailed above - see section headed "Early Consultation With Stakeholders". It is stressed that this was never intended to be comprehensive consultation but was targeted to waste operators. It is now essential that all affected and interested parties including the wider public will have the opportunity to be fully consulted as part of the special consultative procedure required to make the bylaw. Accordingly, it is submitted that in light of the fact the special consultative procedure has still to be undertaken, it is appropriate for the Council to decide that a bylaw is the most appropriate way to deal with the issues of resource recovery and waste minimisation at cleanfill sites having regard to the views and preferences of persons likely to be affected or having an interest in the matter.

Neither in Christchurch, nor anywhere else in New Zealand is there currently a legal mechanism available to achieve the aims of resource recovery from cleanfill sites, nor to collect waste minimisation levies from such sites. A new mechanism is therefore required, and as a territorial authority with the power to make bylaws, it is apparent that the making of an appropriate new bylaw to encourage diversion from cleanfills and to generally fund waste minimisation is necessary. Therefore it is recommended that the Council formally determines that a bylaw is the most appropriate way to deal with this issue.

## **THE PROCESS FROM HERE**

Assuming that the Council determines that a bylaw is the most appropriate way of dealing with the issues that are the subject of this report, then the process from here is as follows:

- (a) Documents, including a draft of the proposed bylaw, will be prepared in accordance with the special consultative procedure set out by section 83 of the Local Government Act,
- (b) A report will be submitted to the August 2003 Council meeting incorporating a draft of the proposed bylaw and meeting other statutory requirements,
- (c) The special consultative procedure under the Act will then be undertaken including the giving of at least one month's public notice,
- (d) A final report will be made to the Council at the October 2003 meeting reporting on the special consultative procedure and asking the Council to determine whether or not the bylaw should be made with an affirmative decision bringing the bylaw into force as at 1 November 2003.

#### **LEGAL COMMENT**

The Council's Legal Services Unit (David Rolls) and Buddle Findlay (John Buchan) have both been involved in determining the bylaw introduction process described in this report and are satisfied it complies with the new Local Government Act 2002.

#### **SUMMARY**

The report sets out the reasoning behind licensing cleanfills and proposes that a bylaw is the most appropriate way to encourage resource recovery and waste diversion from cleanfills and to levy a waste minimisation contribution from materials disposed of at cleanfills.

- Recommendation:**
- 1. That the Council resolve that it has determined that, as is required in terms of Section 155 of the Local Government Act 2002, a bylaw is the most appropriate way to address the issues of:
    - (a) resource recovery of materials from cleanfill sites, and
    - (b) levying a waste minimisation contribution on materials disposed of at cleanfill sites.
  - 2. That a further report be submitted in August 2003 to the Council outlining final details of the bylaw and the process for implementing it.