

4. **REVIEW AND SUGGESTED REVOCATION OF CHRISTCHURCH CITY COUNCIL REFUSE BYLAW 1995 AND BANKS PENINSULA DISTRICT REFUSE BYLAW 2002, AND ADOPTION OF CHRISTCHURCH CITY COUNCIL WASTE MANAGEMENT BYLAW 2009**



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PURPOSE OF REPORT

1. To recommend confirmation of the review and revocation of the above mentioned bylaws; the making of one new bylaw, and the commencement of the statutory special consultative procedure.

EXECUTIVE SUMMARY

2. The Christchurch City Council Refuse Bylaw 1995 and Banks Peninsula District Refuse Bylaw 2002 must be reviewed and it is intended to replace them with one comprehensive bylaw. In terms of the provisions of the Local Government Act 2002 the two bylaws are in force up to 30 June 2010. The Council's new wheelie bin kerbside collection service is scheduled to start in February 2009, and it is planned that the new bylaw will come into effect on 1 February 2009.
3. The provisions included in the draft bylaw deal with the following issues:
 - (a) A requirement that using the Council's kerbside collection services requires compliance with specific terms and conditions to be determined by the Council by resolution, and the powers for dealing with non-compliance.
 - (b) A requirement that using the Council waste collection points (for those areas with no kerbside collection services) requires compliance with specific terms and conditions to be determined by the Council by resolution, and the powers for dealing with non-compliance.
 - (c) Prevention of unauthorised removal of recyclable materials from containers.
 - (d) Provisions for the Council to prohibit the disposal of certain identified wastes or materials.
 - (e) Provisions to prohibit placing waste in another person's container.
 - (f) Provisions to prohibit placing waste arising from domestic of business premises into public places bins.
4. Attachment A is a Statement of Proposal (incorporating the draft bylaw and a table analysing the new bylaw provisions in relation to section 155 of the Local Government Act 2002) and Attachment B is a Summary of Information, as required in terms of the Local Government Act 2002, for formal approval by the Council.
5. The report on the terms and conditions relating to the use of the Council's kerbside collection services and waste collection points mentioned in paragraph 3 above is scheduled for the September 2008 meeting of the Council.
6. The review process in this instance is as follows:
 - (a) The Council resolves that the two previous bylaws are no longer required because of the changes proposed by the Council in relation to the new wheelie bin kerbside collection service, and that a bylaw is the most appropriate way to address the perceived problems identified in the draft bylaw concerning the management of municipal waste. The Council also resolves that the proposed bylaw is in the most appropriate form, and that there are no inconsistencies with the New Zealand Bill of Rights Act (See recommendations below);

- (b) The Council approves the statement of proposal and summary of information and publicises it for public submissions, and appoints a hearings panel to hear submissions (See recommendations below);
- (c) The special consultative procedure will be from 6 August 2008 to 10 September 2008;
- (d) The hearing of submissions will take place on 13, 14 and 17 October 2008; and
- (e) The Council will receive a report from the hearings panel in November 2008 to consider the recommendations of the panel.
- (f) The proposed date for the bylaw to come into effect is 1 February 2009.

FINANCIAL IMPLICATIONS

- 7. The review and revocation of the existing bylaws and the introduction of the new bylaw will not have an impact on rates and charges, other than those already identified through the LTCCP amendment process in relation to the introduction of the new wheelie bin kerbside collection service.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

- 8. Not affected by the proposed changes.

LEGAL CONSIDERATIONS

- 9. Section 145 of the Local Government Act 2002 (the Act) provides a general bylaw making power, which includes for the purposes of protecting the public from nuisance and protecting, promoting, and maintaining public health and safety. Section 146 of the Act provides a specific bylaw making power for the purposes of regulating solid wastes and waste management. In addition the Local Government Act 1974 still contains current bylaw making powers which could be used to make these bylaws (and are the provisions under which the old bylaws were made). It is considered appropriate to make the new bylaw jointly under both acts, but to rely on the enforcement powers in the 2002 Act for any enforcement of the bylaw.
- 10. The Local Government Act 2002 contains provisions for the review of bylaws made under the Act (see section 158). Section 160 requires that in reviewing a bylaw a local authority must make the determinations required by section 155. After the review, if a local authority considers the bylaw should be amended, revoked, or revoked and replaced, then it must use the special consultative procedure.
- 11. Section 155 of the Act requires the Council to determine whether the making of a bylaw (and the review of an existing bylaw) is *"the most appropriate way to address the perceived problem"*. The problem in this particular instance is the regulation of the management, including collection, of municipal waste. The purpose of this bylaw is to prevent the contamination of waste and maximise the recovery of reusable resources. It is also to ensure that waste is collected in a safe and efficient manner, and that waste does not cause a nuisance. Provisions have been included in the new bylaw that deals with all of these matters. In this case, because the proposal for the new wheelie bin kerbside collection service means the old bylaws could not be continued with, a general review under section 155 of the old bylaws, as to whether a bylaw is the most appropriate way to manage municipal waste, has been made, and a detailed analysis has been made of the new bylaw clauses.
- 12. Section 77 of the Act requires the Council, in the course of a decision making process, to seek to identify and assess all reasonably practicable options for the achievement of the objectives. The following options exist:
 - (a) Do nothing i.e. permit the management, including collection, of municipal waste with no regulatory powers. The Councils' existing two bylaws worked well but under section 158 of Local Government Act 2002 the provisions need to be reviewed and in doing so certain improvements and changes are necessary, as a result of the Council's new wheelie bin kerbside collection service.

- (b) Seek voluntary cooperation. This was presumably deemed impractical by the two respective Councils because they enacted bylaws rather than seek voluntary cooperation, and the bylaws have generally proved to work well;
 - (c) Make a bylaw regulating management, including collection, of municipal waste. This option was recommended respectively in 1995 and 2002 when the previous bylaws were made. It is considered that a bylaw is still required in 2009 to provide appropriate regulation around the management, including collection, of municipal waste, particularly in relation to the proposed new wheelie bin kerbside collection service. It is considered that this option addresses these issues more effectively than either of the other options above. It is therefore proposed that the draft 2009 bylaw be authorised for special consultative procedure purposes.
13. The regulatory framework for councils has changed since the adoption of the two existing bylaws, but the need to retain a bylaw regulating these matters still exists. The relevant legislation is either the Local Government Act 1974 or the Local Government Act 2002, and it is considered appropriate to use the powers under both Acts to make this Bylaw. There is also a need to update the bylaws to recognise that the new Christchurch City district includes the Banks Peninsula area. It is considered that the new bylaw is in the most appropriate form.
 14. There are no provisions in the New Zealand Bill of Rights Act 1990 which have a bearing on the draft Christchurch City Council Waste Management Bylaw 2009 and therefore there are no inconsistencies between the draft bylaw and the statute.
 15. The special consultative procedure under the Act requires that the Council prepare a statement of proposal that must include:
 - “(a) as the case may be,—
 - (i) a draft of the bylaw as proposed to be made or amended; or
 - (ii) a statement that the bylaw is to be revoked; and
 - (iii) the reasons for the proposal; and
 - (iv) a report on any relevant determinations by the local authority under section 155.”
 16. The Act also requires the Council to determine the form of the summary of information. Section 89(c) requires that it be distributed "*as widely as reasonably practicable (in such a manner as is determined appropriate by the local authority, having regard to the matter to which the proposal relates)...*". Section 83(e) of the Act also requires that the Council must give public notice of the proposal and the consultation being undertaken. Due to the fact that a bylaw dealing with the management of municipal solid waste affects all ratepayers as well as tenants, it is proposed that the summary of information be published through the local newspaper/s, which will also serve as public notice of the proposal, as required under section 83(e). Copies of the consultation documents will also be available from the Civic Offices, and all Council service centres and libraries.

Have you considered the legal implications of the issue under consideration?

17. See above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

18. Yes.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

19. Yes.

ALIGNMENT WITH STRATEGIES

20. The Council's Solid and Hazardous Waste Management Plan 2006 applies, as well as the subsequent adoption by Council of a new kerbside collection system.

CONSULTATION FULFILMENT

21. The statutory special consultative procedure will follow the adoption of the recommendations of this report.

REGULATORY AND PLANNING COMMITTEE RECOMMENDATION

It is recommended that the Committee recommend to Council that it:

- (a) Resolve that a bylaw is the most appropriate way to manage and regulate the management of municipal solid waste.
- (b) Resolve that there are no inconsistencies between the draft Christchurch City Council Waste Management Bylaw 2009 and the New Zealand Bill of Rights Act 1990, and that the draft bylaw is in the most appropriate form (including that it will revoke the Christchurch City Council Refuse Bylaw 1995 and Banks Peninsula District Refuse Bylaw 2002).
- (c) Resolve that the attached Statement of Proposal (which includes the draft bylaw) and the Summary of Information be adopted for consultation and made available for public inspection at all Council Service Centres, Council libraries and on the Council's website, and that the Summary of Information be published in a daily newspaper, or other newspaper that has at least an equivalent circulation to a daily newspaper, circulating in the Council's district.
- (d) Appoint a hearings panel to consider submissions on the draft bylaw.