

10. 3. 2005

**WASTE HANDLING FACILITIES LICENSING BYLAW SUBCOMMITTEE
14 FEBRUARY 2005**

**A meeting of the Waste Handling Facilities Licensing Bylaw Subcommittee
was held on Monday 14 February 2005 at 9.30am**

PRESENT: Councillor Carole Evans (Chairperson),
Councillor Barry Corbett and Pat Harrow.

The Subcommittee reports that:

PART A - MATTERS REQUIRING A COUNCIL DECISION

1. WASTE HANDLING FACILITIES LICENSING BYLAW

The purpose of this report is to advise the recommendations of the Waste Handling Facilities Licensing Bylaw Subcommittee regarding the adoption of the above proposed new bylaw.

BACKGROUND

At its meeting on 23 September 2004 the Council considered a report seeking approval to commence the special consultative procedure contained in the Local Government Act 2002 for a proposed new bylaw to license waste handling facilities. This followed a previous report to the Council on 26 August 2004 which recommended that a new bylaw would be the most appropriate way to:

1. Address the issue of waste sorting at refuse stations/waste handling facilities.
2. Ensure that waste minimisation levies are collected at all Council facilities and any commercially run facilities that might be established in the future.

This latter aspect is particularly important given that the Council has agreed that Canterbury Waste Services and the Recovered Materials Foundation will in the future operate the Council's three existing refuse transfer stations.

The Council resolutions adopted at the above two meetings were as follows:

- 26 August 2004

'That the Council resolve that:

1. *It has determined that, as is required in terms of section 155 of the Local Government Act 2002, bylaws are the most appropriate way to address the issues of collecting waste minimisation levies and regulating waste sorting at all waste handling facilities.*
2. *That a further report be submitted in September 2004 to the Council outlining the draft proposed bylaw as well as the statutory consultation process."*

- 23 September 2004

- "1. *That the attached Statement of Proposal for the draft Christchurch City Waste Handling Facilities Licensing Bylaw 2005 be publicly notified and be subject to the Local Government Act 2002 special consultative procedure with public submissions to be made between 2 October 2004 and 19 November 2004, as set out in the report.*
- "2. *That the licence fee of \$50 be reviewed on an annual basis in conjunction with other Council charges."*

10. 3. 2005

Waste Handling Facilities Licensing Bylaw Subcommittee 14.2.2005

1 Cont'd

CONSULTATION PROCESS

The draft proposal was publicly notified in the Press and Star newspapers on Saturday 2 October 2004 and Wednesday 6 October 2004, respectively and also in the City Scene on Friday 1 October 2004 with submissions closing on Friday 19 November 2004.

A total of thirteen submissions were received on the proposed new bylaw as follows:

- In support - 10
- In opposition - 3
- Total 13

Of the thirteen submitters two, Canterbury Waste Services and Waste Management New Zealand Limited, also requested the opportunity to make an oral submission.

As resolved at the Council meeting of 9 December 2004 a Hearing Subcommittee consisting of Councillors Carole Evans, Barry Corbett and Pat Harrow met on Monday 14 February 2005 and heard oral submissions from Mr Gareth James, General Manager, Canterbury Waste Services and Mr Patrick Clancy, Christchurch Branch Manager, Waste Management New Zealand Limited, who reiterated the main points made in their submissions.

A summary of the submissions together with relevant staff comments is attached as attachment A.

The main areas of concern raised in the written submissions and as also submitted orally by Canterbury Waste Services and Waste Management New Zealand Limited, related to:

1. The legality of the bylaw and the ability of the Council to collect a levy on waste disposed to landfill for such uses as the business development fund administered by the RMF.
2. The possibility of the levy causing waste to be transported cross boundary to a cheaper landfill elsewhere in the South Island.
3. Whether the proposed level of licence fee was set high enough to cover the cost of issuing and administering a licence.
4. The desirability of having a national level adopted to fund waste minimisation initiatives rather than a local Christchurch City Council levy.
5. The issue of confidentiality of the information collected on waste processed by licensees.

In respect to the concerns as detailed above, the Subcommittee discussed these with the staff and also with Mr John Buchan, Buddle Findlay and it noted:

- In respect to the issues raised by Canterbury Waste Services legal adviser Mr David Goddard QC it noted that Mr Goddard confirmed that the Council had the ability to both make a bylaw and to impose levies. In his opinion of 27 May 2003, however, while he noted that the Council had authority to set/impose levies to recover the cost of administration of the licence regime and costs involved in relation to the licensed activities, he was of the opinion that the levy could not seek to fund/recover other activities that the Council undertook as part of its waste management plan, such as the Business Development Fund. He conceded that recycling activities could be legitimately covered by the levy.

Mr John Buchan of Buddle Findlay was, however, of the view that a more broader/holistic approach to the licensed activity was required and the objectives of the licensed activity and the levy in terms of waste minimisation should be considered as well. The Business Development Fund administered by the RMF and funded via a separate levy was in fact concerned with waste minimisation and in his view was therefore a legitimate use of the levy. It was noted that the levies were not new and it had been in place for some six years and had not been legally challenged in that time period.

10. 3. 2005

Waste Handling Facilities Licensing Bylaw Subcommittee 14.2.2005

1 Cont'd

- Cross boundary transportation of waste has always been recognised as a possibility given the discrepancy in landfill charges in the South Island. As noted in the Canterbury Waste Services submission landfills in the Timaru, Dunedin and Blenheim areas offer much lower charges per tonne than those currently charged at the Council's Burwood landfill and to be charged at Kate Valley.
- As detailed later in this report the proposed licence fee of \$50 for the issuing of a licence for a ten year term has been reviewed by staff and a higher rate recommended.
- Both the major submitters, Canterbury Waste Services and Waste Management New Zealand Limited, considered that it was more desirable that there be a national levy rather than just a Christchurch City Council levy on waste disposed to landfill. This would ensure 'a level playing field' for all commercial operators and lessen the possibility of cross boundary disposal of waste. The Subcommittee has recommended that the adoption of such a national standard be pursued by Local Government New Zealand and the Ministry for the Environment.
- In respect to the concerns expressed by Waste Management New Zealand Limited regarding confidentiality of the information collected and possible breaches of their client contracts, staff gave an assurance to members that information would be collected in an aggregate form and not sought/provided on a customer basis. It also noted the advice of Mr Buchan of Buddle Findlay that the Council could in terms of the provisions of the Local Government Official Information and Meeting Act 1987 refuse to divulge any commercially sensitive information that it received.

In summary the Subcommittee noted that the majority of the submissions received supported the proposed new bylaw and that while the two major submitters, Canterbury Waste Services and Waste Management New Zealand Limited had reservations about the bylaw, they generally supported the concept but had concerns about some of the detail. The Subcommittee considered the bylaw as circulated for consultation should be adopted without amendment and that:

- The issue of a national levy be raised with the relevant Portfolio Group with a view to making a remit to a Local Government New Zealand Zone 5 meeting later in the year and that it also be raised with the Ministry for the Environment.
- The proposed licence fee be reviewed by staff to confirm it is appropriate.

LICENCE FEE

In accordance with the recommendation of the Subcommittee the licence fee of \$50 originally proposed for the issue of a licence under the bylaw has been reviewed. Having regard to the costs involved it is recommended that this be increased to \$225 GST inclusive to better reflect the anticipated staff time and costs involved. This fee is also in line with other Council charges, for example the fee for an Offensive Trades Licence.

PROPOSED NEW WASTE HANDLING FACILITIES LICENSING BYLAW

The proposed bylaw is attached as attachment B and the recommendation of the Subcommittee is that it come into effect on 1 June 2005. It requires:

- All waste operations to be licensed by the Christchurch City Council.
- Payment of a waste levy to the Council monthly on all waste transported outwards from the site to landfill
- The keeping of records recording data on waste as specified by the Council and supplying information to the Council.
- Complying with such waste handling requirements as the Council may impose.
- In addition the bylaw allows for compensation to the licensee for complying with the requests in respect to waste data collection and supply.

10. 3. 2005

Waste Handling Facilities Licensing Bylaw Subcommittee 14.2.2005

1 Cont'd

SUMMARY

The present report is the third and final step in the legal process for making a new bylaw. All legal requirements to make the new bylaw have been completed and it is recommended by the Subcommittee that the Council make the bylaw come into effect on 1 June 2005.

Subcommittee

Recommendation:

1. That the relevant Portfolio Group discuss the making of a remit to the Local Government New Zealand Zone 5 conference in July 2005 seeking the introduction of a nationally applied levy on solid waste disposed to landfill from refuse and transfer stations, to fund waste minimisation initiatives.
2. That the Ministry for the Environment be informed of the Council support for a national levy and that it is seeking to sponsor support from Local Government New Zealand to that effect.
3. That staff investigate the appropriateness of the proposed \$50 licence fee for the issue of a licence under the new bylaw and report a recommendation on an appropriate fee to the Council.
4. That the Council resolves that it has now determined, as required by section 155(2) of the Local Government Act 2002, that the bylaw attached as attachment B:
 - (a) Is the most appropriate form of bylaw to address the issues of waste sorting at refuse stations/waste handling facilities and the collection of waste minimisation levies and
 - (b) Does not give rise to any implications under New Zealand Bill of Rights Act 1994.
5. That the Council resolves that the bylaw attached as attachment B, being the Christchurch City Licence Waste Handling Facilities Bylaw 2005, now be made and that the seal of the Council be fixed to the bylaw as appropriate.

Staff

Recommendation:

6. That the licence fee for the issue of a licence be set at \$225 GST inclusive and be reviewed annually with other Council charges and fees.

The meeting concluded at 10.25am

CONSIDERED THIS 10TH DAY OF MARCH 2005

MAYOR