

## 11. REVOCATION OF THE CHRISTCHURCH CITY DANGEROUS GOODS INSPECTION FEES BYLAW 1990

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### PURPOSE OF REPORT

1. The purpose of this report is to recommend the revocation of the Christchurch City Dangerous Goods Inspection Fees Bylaw 1990 on the grounds that the Act under which it was made has been revoked. Dangerous goods inspections are no longer undertaken by the Council. Adequate provisions for the management of hazardous substances exist under other legislation.

### EXECUTIVE SUMMARY

2. This reports on a review undertaken on the Christchurch City Dangerous Goods Inspection Fees Bylaw 1990, in accordance with s.158 of the Local Government Act, 2002 (LGA 02). Section 155 of the LGA 02 states that bylaws must be reviewed to establish whether a bylaw is the most effective way of addressing the perceived problem.
3. The purpose of the Christchurch City Dangerous Goods Inspection Fees Bylaw ("the Bylaw") is to outline the schedule of fees relating to the inspection of dangerous goods, supervision, and testing of plant and equipment for the purposes of the Dangerous Goods Act, 1974.
4. The Banks Peninsula District Council does not have a bylaw covering dangerous goods or hazardous substances and no bylaw review is required for that area.
5. The Christchurch City Bylaw was established under the Local Government and Dangerous Goods Acts 1974. Both Acts have been repealed. That, coupled with the implementation of the Hazardous Substances New Organisms Act (HSNO) 1996, resulted in the revocation of territorial authority inspection powers. In accordance with HSNO the Council no longer issues dangerous goods licences and does not conduct inspections referred to in the Bylaw, nor does it employ a Dangerous Goods Inspector.
6. The Christchurch City Plan provides for the prevention and mitigation of the adverse effects of the use and storage of hazardous substances. This fulfils the Council's functions regarding hazardous substances as per s.31(ii) of the Resource Management Act 1991 (RMA).
7. The Canterbury Regional Council (ECan) proposed Natural Resources Regional Plan also contains policies and rules regarding hazardous substances including the installation and removal of storage tanks for certain hazardous substances. In part, monitoring of regional council resource consents, during installation and decommissioning of hazardous substance facilities, supersedes the role of the Dangerous Goods Act 1974.

### FINANCIAL AND LEGAL CONSIDERATIONS

8. The bylaw has ceased to have effect and is invalid under the provisions of HSNO. However, for the avoidance of doubt it is considered appropriate to formally revoke the bylaw particularly as s.293 of the LGA specifies that bylaws made under the LGA 1974 continue in effect.
9. There are no financial constraints to the revocation.

## **STAFF RECOMMENDATIONS**

It is recommended:

- (a) That the Council resolve that it is satisfied that such a bylaw is not necessary in terms of sections 155 of the Local Government Act 2002 and therefore should be revoked.
- (b) That the attached statement of proposal be adopted and made available for public inspection at all Council Service Centres, Council libraries and on the Council's website.
- (c) That public notice of the proposal be given in "The Press" and in the "Christchurch Star" newspapers and on the Council's website on 21 June 2006.
- (d) That the period within which written submissions may be made to the Council be between 21 June 2006 and 9 August 2006.
- (e) That the period within which oral submissions will be heard by the Council be between 18 September 2006 and 22 September 2006.
- (f) That the Council appoint a Hearings Panel to consider and where necessary hear any submissions on this bylaw revocation and other bylaws being considered at a similar time.

## **BACKGROUND ON REVOCATION OF THE CHRISTCHURCH CITY DANGEROUS GOODS INSPECTION FEES BYLAW 1990**

10. In accordance with s.158 of the Local Government Act 2002 (LGA 02) the Council must review existing bylaws. The relevant sections of the LGA are:

s.293 Bylaws

*1) Bylaws made or having effect under provisions of the Local Government Act 1974 that are repealed by this Act, being bylaws that were in force immediately before the commencement of this section, are deemed to be validly made under this Act and continue in force accordingly if validly made under the Local Government Act 1974*

and

s.158 Review of Bylaws

...

*(2) Bylaws continued by section 293 must be reviewed within 5 years after the date of commencement of this section, unless they cease to have effect before a review would otherwise be required.*

As such, bylaws made under the Local Government Act, 1974, and in force at 1 July 2003, continue in force but must be reviewed within five years of 1 July 2003. The majority of Christchurch City Council bylaws must be reviewed by 30 June 2008. Bylaws that are not reviewed in accordance with s.158 cease to have effect two years after the date on which that bylaw was required to be reviewed [s.160], that being 30 June 2010.

11. Where bylaws are reviewed the Council must use the special consultative procedure in reviewing each bylaw [s.158]. Under s.158(2) a review of the Dangerous Goods Inspection Fees Bylaw 1990 may not be necessary as it ceased to have effect in 2001 and 2004 for new and existing activities, respectively. However, the LGA 02 does not include provisions on how to deal with bylaws that cease to have effect. To date, territorial authorities have included redundant bylaws in special consultative procedures.
12. The Bylaws Act, 1910 prevails over the relevant sections of the LGA 02. In accordance with the Bylaws Act, 1910 a bylaw (or any provision of a bylaw) is invalid if:

*...they are ultra vires of the local authority, or repugnant to the laws of New Zealand, or unreasonable, or for any other cause whatever, the bylaw shall be invalid to the extent of those provisions and any others which cannot be severed therefrom [s. 17]*

13. The powers embodied in the Christchurch City Dangerous Goods Inspection Fees Bylaw, 1990 are considered repugnant to the provisions invoked through the introduction of the Hazardous Substances and New Organisms (HSNO) 1996. The Bylaw is therefore invalid; the following provides background information to assist the Council in determining the best approach to deal with the bylaw.

### **Dangerous Goods Inspection Fees Bylaw**

14. The objective of the Christchurch City Dangerous Goods Inspection Fees Bylaw, 1990 ("the Bylaw") is to outline the schedule of fees relating to dangerous goods inspections. The Schedule attached at Clause 4 outlines the fees for inspection, supervision, or testing of plant equipment. The Bylaw was established under the Local Government Act, 1974 and the Dangerous Goods Act, 1974.

15. The Dangerous Goods Act, 1974 controlled packaging, handling and storage of dangerous goods. Under the Act territorial authorities were deemed licensing authorities with responsibility for provisions contained in the Act. These powers were revoked following the introduction of the HSNO<sup>31</sup>; a transitional period applied until 1 July 2004 for existing uses.
16. The HSNO consolidated controls on hazardous substances and new organisms and established the Environmental Risk Management Authority (ERMA). The majority of dangerous goods and scheduled toxic substances were transferred to the HSNO on 1 April 2004. ERMA are now responsible for approving annual licences for premises and making decisions on applications to introduce hazardous substances and new organisms, including genetically modified organisms. ERMA issue test certificates that verify compliance with various conditions associated with the Act.
17. HSNO provides for Codes of Practice to be approved by ERMA. Codes of practice are used as a method of achieving controls set out under HSNO. The codes act as a means of demonstrating compliance with regulatory requirements which, together with best practice, are intended to eliminate or minimise the risk associated with the management of hazardous substances. Monitoring of hazardous substances (including dangerous goods) falls to the various agencies as stated under s.97 of HSNO.
18. The Bylaw is now considered redundant given the transfer of powers under HSNO and the establishment of ERMA. Information on HSNO and changes to this effect have been available on the Christchurch City Council website for some time<sup>32</sup> and Council officers have acted accordingly.
19. Hazardous substances are also controlled through the City Plan. This fulfils the requirement of s.31(b)(ii) of the Resource Management Act, 1991 (RMA) which requires territorial authorities to prevent or mitigate any adverse effects associated with the storage, use, disposal or transport of hazardous substances. All hazardous substances, when discharged to air, to water, or onto or into land, are contaminants under the RMA.
20. The City Plan provides permitted baselines for hazardous substances in each zone. Hazardous substance manufacturing, use, storage and disposal are permitted where all the relevant zone rules and General City rules, Community, Development and Critical Standards are met. Key conditions include adequate bunding to contain 100–120% of the substances, collection and signage requirements.
21. Section 7 of the City Plan addresses the transportation of hazardous substances and promotes the use of rail, arterial roads and roads in industrial areas, for the transport of hazardous substances. The aim is to minimise the potential for hazards, particularly in areas where there are concentrations of people, or where the environment is dominated by residential occupation.
22. The Christchurch City Council's role in managing hazardous substances – or dangerous goods – is considered to be adequately covered by district planning provisions contained in the City Plan. As noted, the powers to inspect dangerous good facilities have been revoked and the Bylaw is now redundant.

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<sup>31</sup> The Explosives Act 1957, Toxic Substances Act 1979, and the Pesticides Act 1979, were also repealed with the introduction of HSNO

<sup>32</sup> Available at: <http://www.ccc.govt.nz/hazards/hsnoinfo.asp>

## Regional Council Role

23. In addition to the volume-based controls stipulated in the City Plan, the Canterbury Regional Council (ECan), has responsibility for use, manufacture, storage and transport of the following substances:

- Petroleum hydrocarbon (excluding LPG);
- chlorinated hydrocarbon
- agrichemicals
- timber preservatives
- substances containing arsenic, cadmium, cyanide, lead, mercury or selenium with a HSNO ecotoxicity classification of 9.1A, 9.1B or 9.1C.

These substances are controlled as part of the overall aim of preventing adverse effects on water quality.

24. As with territorial authorities, regional councils do not have an enforcement role under HSNO. However, s.30(v) and s.31(ii) of the RMA are identical with s.30(v) requiring regional councils to prevent or mitigate any adverse effects of the storage, use, disposal or transport of hazardous substances. In effect, ECan are responsible for controlling discharges of hazardous substances into or onto land, air, or water.

25. ECan exercises its s. 30(v) functions through Chapter 17 of the Regional Policy Statement and various chapters of the proposed natural resources regional plan (PNRRP). In particular Chapter 4, Water Quality, includes objectives and policies relating to hazardous substances.

26. The PRRNP was notified on 3 July 2004. The objective of Chapter 4 is to prevent impacts on surface and ground water quality. Certain activities are permitted while others, such as direct discharges to water or onto land where a hazardous substance may enter surface water, are prohibited. Exemptions apply, provided certain conditions are met, for example discharges from pest control and the maintenance of structures in surface water bodies.

27. The purpose of the key policies are summarised below. The relevant sections can be found at Attachment 2. Each policy is interpreted through various rules; sensitive areas such as the Christchurch Groundwater Recharge Zone are subject to more stringent rules than less sensitive areas.

**(i) Policy WQL2 Prevent the discharge of certain contaminants to surface water etc**

ECan states that the purpose of this policy is to prevent discharges that pose a significant risk to surface water quality, or the aquatic environment, by preventing and prohibiting the discharge of certain contaminants into surface water. A number of conditions regarding the siting of hazardous substance, in accordance with HSNO provisions, are listed.

**(ii) Policy WQL8 Prevent the entry of hazardous contaminants to groundwater**

The purpose of Policy WQL8(1) is to avoid locating new solid and hazardous waste landfills over aquifers where the groundwater would be vulnerable to contamination from persistent or toxic contaminants discharged over a long period.

**(iii) Policy WQL12: Avoid the potential for contamination of community drinking water sources**

The aim of Policy WQL12(2) is to avoid contamination of groundwater in Zone 1 of the Christchurch Groundwater Recharge Zone. It restricts certain new activities such as mineral extraction and hazardous substance use, storage and manufacturing. Existing activities must be managed accordingly to protect drinking water sources.

28. Rules relating to the policies control the use of certain hazardous substances. Of particular note are rules regarding the installation and removal of hazardous substance storage containers (including tanks). ECan must be advised of the removal of underground containers. Specific conditions apply for assessing spent petroleum hydrocarbon storage. Use, including storage in above and under ground containers is permitted, provided all the relevant conditions are met. Piping of hazardous substances is a controlled activity, where all the relevant conditions are met. Good practice, based on ERMA guidance notes and codes of practice, is stipulated for agricultural use.
29. Although the Plan is not yet operative, regard must be given to policies in accordance with s.104 of the RMA. ECan staff use the proposed rules in determining conditions for new activities. In particular, storage tanks are to be designed, constructed and tested in accordance with a standard approved by ERMA. A number of consents now contain rules with these requirements.

### **Conclusions**

30. The provisions contained in the Christchurch City Dangerous Goods Inspection Fees Bylaw 1990 are now redundant due to the repeal of the Dangerous Goods Act 1974 and the implementation of subsequent legislation. The two principal pieces of legislation that address the management of hazardous substances are the HSNO and the RMA.
31. While local authorities have a role in preventing or mitigating any adverse effects of the storage, use, disposal or transport of hazardous substances local authorities no longer have a role as inspectors of dangerous goods facilities. The Christchurch City Dangerous Goods Inspection Fees Bylaw 1990 may be considered repugnant to the HSNO and is therefore invalid in accordance with s.17 of the Bylaws Act 1910.

### **OPTIONS**

32. The Council has two options for dealing with the redundant bylaw:

#### **Option 1 - The Council may revoke the bylaw.**

In accordance with s.83 of the Local Government Act, 2002 a bylaw review, including its repeal, will be subject to special consultative procedures. When a bylaw is to be revoked a statement to that effect must be produced [LGA 02, s.86 (2)(b)].

#### **Option 2 - The Bylaw may be left to lapse.**

The bylaw ceased to have effect before a review would otherwise be required (1 July 2008). However, it is unclear in the provisions of the LGA how to address bylaws that fall into this category. It is understood that the bylaw, while redundant, would not lapse until the review date had passed, that being June 2010. Allowing the bylaw to lapse would remove the need to undertake any further review and special consultative procedures.

### **PREFERRED OPTION**

33. That Option 1 be adopted on the grounds that the bylaw now has no effect and could be considered invalid in terms of the Bylaws Act 1910. It is considered a more efficient method of dealing with the matter than waiting for it to lapse in 2010. The Council does not now operate under the repealed Dangerous Goods Act 1974 and provisions exist under HSNO for the control of hazardous substances previously dealt with by this bylaw.

## ASSESSMENT OF OPTIONS

### The Preferred Option

39. *That the Council give notice of its proposal to revoke the Christchurch City Dangerous Goods Fees Bylaw 1992 on the grounds that it is repugnant to the Hazardous Substances and New Organisms Act 1996 and invalid in terms of the Bylaws Act 1910.*

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	Reduce confusion regarding Council roles in the dangerous goods area.	No costs involved after revocation undertaken.
<b>Cultural</b>	No specific matters	No specific matters
<b>Environmental</b>	No specific matters	No specific matters
<b>Economic</b>	No specific matters	No specific matters

**Extent to which community outcomes are achieved:**  
None specific to the subject.

**Impact on Council's capacity and responsibilities:**  
None as legislation and duties no longer exist.

**Effects on Maori:**  
None as legislation and duties no longer exist

**Consistency with existing Council policies:**  
Not applicable

**Views and preferences of persons affected or likely to have an interest:**  
Supported by appropriate Environmental Services Unit staff

**Other relevant matters:**  
None known

**Maintain The Status Quo (If Not Preferred Option)**

40. *Leave the bylaw in place despite it having no effect and wait for it to lapse automatically in 2010.*

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	No action required at this time.	Retention of bylaw in system will require further consideration leading up to 2010.
<b>Cultural</b>	No specific matters	No specific matters
<b>Environmental</b>	No specific matters	No specific matters
<b>Economic</b>	No specific matters	No specific matters

**Extent to which community outcomes are achieved:**  
None specific to subject.

**Impact on Council's capacity and responsibilities:**  
None as legislation and duties no longer exist – retention of bylaw until it lapses inefficient as would need consideration at a later date.

**Effects on Maori:**  
None as legislation and duties no longer exist

**Consistency with existing Council policies:**  
None applicable

**Views and preferences of persons affected or likely to have an interest:**  
Supported by appropriate Environmental Services Unit staff

**Other relevant matters:**  
None known