

12. CHRISTCHURCH CITY FIRES BYLAW 2006

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8177
Officer responsible:	Programme Manager Strong Communities
Author:	Rochelle Hardy and Terence Moody

PURPOSE OF REPORT

1. The purpose of the report is to advise the Council of the outcome of the special consultative procedure which was undertaken in respect of the proposed amendments and consolidation of the Christchurch City Council Fires Bylaw (1991) and the Banks Peninsula Fire Prevention Involving Vegetation Inside Urban Fire Areas (1994) bylaw ("the bylaws") and to recommend that the Council now resolve to adopt the amended bylaw.

EXECUTIVE SUMMARY

2. At its meeting on 15 June 2006 the Council approved a draft to amend and consolidate "the bylaws" as attached and marked Attachment 1. At that meeting the Council resolved to commence the special consultative procedure under the Local Government Act 2002 ("LGA 2002") required to undertake the revocations.
3. The period during which the public were invited to make submissions was between 21 June 2006 and 9 August 2006. One submission was received as attached (Attachment 2), which objected to the proposal on the grounds that *The Christchurch City Council should keep their noses out of my backyard and what I choose to burn on my fire, unless they are offering to allow me to dump waste at the dump for nothing.* The alternative suggested was *Remove the Christchurch City Council from the management of open air fires. Let people take responsibility for their own backyards!* The submitter advised he did not want to appear to present the submission. Accepting the option put forward by the submitter would mean that no controls existed over fires being burnt in the open in the whole of Christchurch City, which would not fulfil the requirements to protect health and safety in the City.
4. In examining the proposal further staff have considered some minor amendments require to be made to the proposed bylaw that went out for consultation. These are attached (Attachment 3) and the changes in the bylaw have been made in ***bold italics*** so Councillors may see their effects. One change relates to making provision for the revocation of the current Christchurch City and Banks Peninsula bylaws on the coming into force of the new bylaw. This was not included in the draft that went out for consultation although it arises from the adoption of the new bylaw. It is recommended that the bylaw come into force on the 1 November which is the starting date of the fire ban period in Christchurch City under the present City Council bylaw. A further minor change has been to advise that the bylaw is also made under the Health Act 1956 to cover the public health and nuisance provisions it addresses in relation to smoke and odour emissions.

Reasons for Adoption of the Bylaw

5. A bylaw is considered necessary to ensure that fires in the open do not cause danger to persons or property. The bylaw also removes some current provisions relating to indoor fires and chimneys which are now covered by fire and building regulations. The bylaw consolidates the bylaws of the previous Christchurch City and Banks Peninsula District providing for one bylaw over the whole of the City and in addition satisfies the requirement to review bylaws prior to 2008.

FINANCIAL AND LEGAL CONSIDERATIONS

6. Section 156(1) of the LGA 2002 provides that the Council must follow the special consultative procedure set out in section 86 of the LGA 2002 when adopting a bylaw. This procedure has now been completed in respect of the above bylaw. Only one submission was received in regard to the proposed bylaw which would require a complete revocation of the bylaws to comply with. It is not considered to be reasonable at this time as it fails to meet general public expectations of controls over such activities. For this reason it is recommended the Council adopt the bylaw as attached.

7. Section 157(1) of the LGA 2002 provides that as soon as practicable after making a bylaw the Council must give public notice of the making of the bylaw. That notice must state the date on which the bylaw will come into force and that copies of the bylaw may be inspected and obtained at the office of the Council upon payment of a specified amount. In this regard it is recommended that the Council resolve that such notice be given in *The Press* and the *Christchurch Star* newspapers and on the Council's website on Wednesday 11th October 2006. It is also recommended that the Council resolve that the purchase price of copies of the bylaw be \$2; this will cover printing costs.

STAFF RECOMMENDATIONS

It is recommended that the Council resolve:

- (a) To adopt the Christchurch Fires Bylaw 2006 as attached.
- (b) That public notice of the adoption of the bylaw and subsequent revocations be given in 'The Press' and the "Christchurch Star" newspapers and on the Council's website.
- (c) That the subsequently revoked bylaws be removed from the list of Christchurch City Council and Banks Peninsula bylaws on the Council's website.

BACKGROUND ON CHRISTCHURCH CITY FIRES BYLAW 2006

8. The object of the Christchurch City Fires Bylaw (“the City Bylaw”) was the conservation of public safety by preventing danger from fire. The City Bylaw was implemented in accordance with the Clean Air Act, 1972 (repealed) and the Local Government Act, 1974. Conservation of public safety was achieved by restricting and / or prohibiting open air fires during specific times.
9. The object of the Banks Peninsula Bylaw was to prevent the spreading of fires involving vegetation by restricting open air fires in the “urban fire district”. There is no set time prohibiting open air fires in the bylaw; restrictions are generally imposed at the same time as restrictions in rural areas in the Peninsula.
10. The purpose of the Bylaws was to ensure that, where permitted, fires do not create any danger to persons or properties. As such, it is not a question of ‘what’ is burnt, but when open air fires are undertaken and in what manner. Since the Bylaws were enacted more stringent standards on outdoor burning in residential areas have been implemented. This is due to an improved understanding of the impacts on health from discharges to air and growing concern with air quality in Christchurch City. Additional provisions contained in the City Bylaw on indoor fires and chimneys, have also been superseded by more recent fire and building regulations.
11. Discharges to air are now covered by central and regional planning mechanisms. Open air fires are subject to the relevant provisions of these documents. The proposed Regional Air Plan¹ (“the Plan”) controls the discharge of contaminants into air in Canterbury. Under the Plan, outdoor burning is a discretionary activity in residential areas of Canterbury and in the Christchurch Clean Air Zone 1 as specified in the map in the bylaw. Winter burning in these areas is non-complying. The Bylaws have a specific role in regulating open air fires to prevent the risk of fire spreading in the CCC territorial area, but are inconsistent with external controls on discharges to air.
12. From May 2003 to May 2005 the Christchurch City Environmental Services Unit dealt with 240 complaints related to open air fires including nine complaints relating to the storage of waste which the complainant considered posed a fire risk. Just over 90 percent of complaints were directly related to open air fires. The total number of complaints referred to 199 properties within the City or 0.15 percent of the estimated 135,000 households at June 2005. The former Banks Peninsula District Council did not maintain a complaints register for fire-related issues but reported low numbers of complaints.
13. It is difficult to justify controls on all of the matters covered by the current fire Bylaws. However, a bylaw is considered an appropriate method for dealing with open air fire matters, as written in its attached form, and is consistent with the New Zealand Bill of Rights Act. A more succinct bylaw incorporating conditions that are consistent with recent air discharge provisions is deemed most appropriate. This equates to a ban on open air fires in urban and residential areas and controls on cooking fires such as barbecues, unless specific resource consents are granted in individual cases.

Financial And Legal Considerations

14. Certain aspects of the Christchurch Fire Prevention Bylaw and Banks Peninsula Bylaw are inconsistent with regional policies and rules on open air fires. The draft that went out for consultation included provisions that implement such regional policies and rules and will ensure consistency with these external, legislative documents. Fires will still be permitted (subject to regulations and restrictions) in areas outside the Clean Air Zone 1 and residential areas
15. The general bylaw-making power is contained in s.145 of the LGA 02 and covers bylaws for the purposes of protecting the public from nuisance; protecting, promoting, and maintaining public health and safety; and minimising the potential for offensive behaviour in public places. Specific bylaw-making powers apply including prevention of the spread of fires involving vegetation². Bylaws may also be implemented to conserve public health, and preventing or abating nuisances under s.64 (a) of the Health Act, 1956.

¹ Proposed Natural Resources Regional Plan Chapter 3: Air Quality

² S 146 (c) subject to sections 20 to 22 of the Forest and Rural Fires Act 1977.