

## 14. REVOCATION OF DANGEROUS GOODS INSPECTION FEES BYLAW, 1990

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### 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 revocation of the Christchurch City Dangerous Goods Inspection Fees Bylaw 1990 ("the bylaw") and to recommend that the Council now revoke the bylaw.

### EXECUTIVE SUMMARY

2. At its meeting on 15 June 2006 the Council approved a draft to revoke "the bylaw" as above. At that meeting the Council resolved to commence the special consultative procedure under the Local Government Act 2002 ("LGA 2002") required to undertake the revocation.
3. The period during which the public were invited to make submissions was between 21 June 2006 and 9 August 2006. No submissions were received.

### FINANCIAL AND LEGAL CONSIDERATIONS

4. 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 revoking a bylaw. This procedure has now been completed in respect of the above bylaw. No submissions were received in regard to the matter. Subsequently the Council may now formally adopt the revocation.
5. The Legal Services Unit advises that under the LGA 2002, the revocation of these bylaws can be done by Council resolution and does not need a Bylaw to revoke the bylaws. Section 86(2) of the LGA 2002 requires that for the purposes of the special consultative procedure process, the statement of proposal must include a copy of the draft bylaw when making or amending a bylaw. No draft bylaw is required to be included in the statement of proposal when the proposal is to revoke a bylaw.

### STAFF RECOMMENDATIONS

It is recommended that the Council resolve:

- (a) To revoke the Christchurch City Dangerous Goods Inspection Fees Bylaw 1990.
- (b) That public notice of the revocation of the bylaw be given in 'The Press' and the 'Christchurch Star' newspapers and on the Council's website.
- (c) That the bylaw be removed from the list of Christchurch City Council bylaws on the Council's website.

## BACKGROUND ON DANGEROUS GOODS INSPECTION FEES BYLAW 1990

6. The objective of the Christchurch City Dangerous Goods Inspection Fees Bylaw, 1990 (“the Bylaw”) was to outline the schedule of fees relating to dangerous goods inspections. The Schedule detailed at Clause 4 in the Bylaw outlined 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.
7. 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>5</sup>; a transitional period applied until 1 July 2004 for existing uses.
8. 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 licenses 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.
9. 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.
10. 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>6</sup> and Council officers have acted accordingly.
11. 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.
12. 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.
13. 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.
14. 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>5</sup> The Explosives Act 1957, Toxic Substances Act 1979, and the Pesticides Act 1979, were also repealed with the introduction of HSNO

<sup>6</sup> Available at: <http://www.ccc.govt.nz/hazards/hsnoinfo.asp>

15. In addition to the volume-based controls stipulated in the City Plan, the 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.
16. These substances are controlled as part of the overall aim of preventing adverse effects on water quality.
17. 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.
18. 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.
19. 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.
20. 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 agrichemical use.
21. 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**

22. 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.
23. 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.