

## 15. DELEGATION OF DISPENSING POWER FOR THE PURPOSES OF THE FIRES BYLAW 2006



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### PURPOSE OF REPORT

1. The purpose of this report is to recommend that the Council appoint a new officer subcommittee, to whom a delegation of the Council's powers under clause 16 of the General Bylaw 1990 should be made, in respect of applications for dispensation from the provisions of the Fires Bylaw 2006.

### EXECUTIVE SUMMARY

2. There have been issues with the implementation of some of the provisions of the new Fires Bylaw 2006, introduced by the Council last year, which applies to the whole of the Christchurch District, including Banks Peninsula. As a result, a report will be coming to the Council on the possible review and amendment of the bylaw. In the meantime, however, one of the provisions of the Fires Bylaw which is causing some Christchurch residents difficulty, is a clause which provides for a year round prohibition on outdoor burning in some areas of Christchurch, unless otherwise permitted by other legislative means or permits/consents.
3. Anyone who finds that compliance with any bylaw provision would needlessly affect them, can apply to the Council for a dispensation from that provision, pursuant to clause 16 of the General Bylaw 1990. This requires that the person make an application to the Council, which the Council considers, together with an officer's report, and then makes a resolution. Given the interest that has been generated recently by the Fires Bylaw, it seems likely that a large number of people may wish to rely on clause 16 to apply for a dispensation. This may become an onerous task for the Council to deal with over the next few months.
4. For the efficient and effective conduct of the Council's business, instead of having the Council deal with every dispensing application made in relation to the Fires Bylaw, the staff recommendation is that the Council delegate its power under clause 16 to an officer subcommittee, in relation to the Fires Bylaw only. This subcommittee can then deal with each application rather than the Council's time being taken up. It is also recommended that no fee be payable for such application, as it is intended to make the process very simple, and it is only anticipated that applications will be made during the next few months. It would take longer than this period to prescribe a fee, as required, by using the special consultative procedure.

### FINANCIAL CONSIDERATIONS

5. Although there is a cost to the Council whether staff deal with these applications or the Council does, it is considered a better use of time and resources for an officer subcommittee to be considering applications rather than the Council. The cost could be offset by imposing an application fee but, as discussed below, the application fee could only be imposed after using the special consultative procedure.

### LEGAL CONSIDERATIONS

6. The Council can delegate a large number of its powers in accordance with clause 32, Schedule 7 of the Local Government Act 2002 (LGA02) for the purposes of efficiency and effectiveness in the conduct of a local authority's business. The General Bylaw also provides for the delegation of any bylaw powers (clause 7). The Council is therefore able to delegate its power under clause 16 of the General Bylaw. However, because the decision on an application for dispensation must be made by way of a resolution the power cannot be delegated to a single officer, but must be delegated to a committee or subcommittee, who can make a resolution.

7. The Council also has the power under the LGA02 to appoint or discharge committees and subcommittees (clause 30). If the delegation of the power in clause 16 was to be to a committee of Council, that would require that a councillor be on the committee, and Council officers cannot be on a committee, only a subcommittee. A Councillor is not required to be a member of a subcommittee (clause 31).
8. In accordance with section 150 of the LGA02, the Council can prescribe fees or charges payable for an authority, approval, permit, or consent in respect of a matter provided for in a bylaw made under the LGA02, but it must do so by prescribing the fee in the bylaw or by using the special consultative procedure. The Council does not currently have a fee for an application made under clause 16 of the General Bylaw, so this could only be imposed by using the special consultative procedure, or by inclusion in a bylaw (which also requires the special consultative procedure). This is not a fee that could be imposed using the powers in section 12 of the LGA02.
9. Concerns were expressed at the seminar as to whether clause 16 of the General Bylaw could apply to both "old" Christchurch and Banks Peninsula, given that when the General Bylaw was made, and up until the merger/reorganisation order, it would not apply to the Banks Peninsula area. If the original two Fires Bylaws were still in existence, that would be the case: clause 16 could not be used to give a dispensation in relation to the former Banks Peninsula bylaw, only the Christchurch City Bylaw. However, the new Fires Bylaw, having been introduced in October 2006, is effective for the whole of Christchurch, including Banks Peninsula.
10. When any new Christchurch Bylaw is made it is in knowledge of the General Bylaw. The object of the General Bylaw is stated as: "*... to make provisions which shall be common to and form part of all other bylaws of the Christchurch City Council which shall come into force after the third day of July 1990 except as may otherwise be expressly provided*". The Fires Bylaw 2006 does not expressly provide that the General Bylaw provisions will not apply. The Legal Services Unit conclusion is that any resident of Christchurch, whether in the former Banks Peninsula District or elsewhere, can apply under clause 16 for a dispensation in relation to any bylaw that is new or has been reviewed since the reorganisation order, which includes the Fires Bylaw 2006.

#### **STAFF RECOMMENDATIONS**

It is recommended that the Council:

- (a) Appoint a new officer subcommittee to be called the Fires Bylaw Dispensing Power Officer Subcommittee.
- (b) Appoint the following persons/positions as members of the Fires Bylaw Dispensing Power Officer Subcommittee:  
  
Inspections and Enforcement Manager;  
Environmental Inspections and Enforcement Manager;  
Environmental Monitoring Team Leader;  
Environmental Policy and Approvals Manager; and  
Principal Rural Fire Officer  
  
with a quorum being any two members.
- (c) Delegate to the Fires Bylaw Dispensing Power Officer Subcommittee the powers of the Council in respect of clause 16 of the General Bylaw 1990 for the purposes of applications made in relation to provisions of the Fires Bylaw 2006.

## BACKGROUND

11. At a Council seminar on 27 February 2007, the Council discussed the Fires Bylaw 2006 (the bylaw), introduced by the Council in October 2006, and various options in relation to the bylaw.
12. The bylaw revoked both the previous Banks Peninsula District Council and Christchurch Bylaws relating to fires. The new bylaw covers both the control of spread of fires involving vegetation (as permitted under section 146 of the Local Government Act 2002), the protection, promotion and maintenance of public health and safety by preventing danger from fire, and also the control of nuisance, smoke, odour, ash, from any outside burning (not just vegetation) under section 145 of the Local Government Act 2002, and, in respect of nuisance, also under section 64 of the Health Act 1956.
13. Clause 7.1(a) of the bylaw is now proving to be somewhat problematic for some Christchurch residents, as it provides for a year round prohibition on outdoor burning in some areas of Christchurch, unless otherwise permitted, as follows:

*“7.1 Except as provided for in the Forest and Rural Fires Act 1977, or in Clause 8 of this bylaw, or by a regional plan, or by permits obtained from the regional council or the Department of Conservation the following activities are prohibited: -*

*(a) Making or lighting, or permitting to remain alight any fire in the open air in any residential area or within the Christchurch Clean Air Zone 1 at any time of the year;...”*

14. Some of the new bylaw provisions, including clause 7.1(a), were drafted so as to be consistent with the air quality rules of Environment Canterbury (ECan) under the Proposed Natural Resources Regional Plan (NRRP) Chapter 3: Air Quality.
15. Although the Council's bylaw making powers allow the Council to make bylaws to address fire safety/fire prevention and nuisances, there are potential issues around whether clause 7.1(a) in providing for a total prohibition, goes further than it should, and whether it really needs to address nuisance issues, given that the NRRP covers air quality matters, including the nuisances as stated above. It seems more appropriate for such things to be dealt with entirely by ECan rather than be addressed in the Council's Fires Bylaw.
16. As a result of the above issues the Council will shortly be considering whether or not it should amend the bylaw, but in the meantime, while the bylaw is still in force, the prohibition prevents people in residential and living zones, or clean air zone 1 areas from burning green waste, etc outside of the usual summer ban period of November to February. This problem was discussed at the seminar and a direction given to staff that a report should be provided to Council in relation to the Council's power of exemption from bylaws or certain provisions of bylaws.
17. The Fires Bylaw does not provide for any form of exemption from the prohibition on burning in clause 7.1(a) (or other provisions). However, the Council's General Bylaw does. Clause 16 of the General Bylaw states:

*“(1) Where in the opinion of the Council a full compliance with any bylaw or provision of a bylaw would needlessly or injuriously affect any person, or the course of operation of the business of, or be attended with loss or inconvenience to, any person without any corresponding benefit to the community, then in any such case the Council may, on the special application of the person so affected and subject to a report thereon by the officer of the Council usually or for the time being charged with the control or administration of the particular bylaw or provision of the bylaw affected, by resolution dispense with the observance or performance or relax the strict observance or performance of any such bylaw or provision of a bylaw or otherwise modify the same, with or without such additional terms or conditions which the Council may see fit to impose.*

(2) *Should the Council acting pursuant to the foregoing sub-clause dispense with the full compliance or relax the full compliance with any bylaw or provision of a bylaw or otherwise modify the same then a breach by such applicant of any term or condition thereby imposed by the Council shall be deemed a breach of such bylaw or provision of such bylaw."*

18. To gain a dispensation under clause 16 of the General Bylaw, from any provision of the bylaw a person must make an application to the Council, which the Council considers, together with an officer's report, and then makes a resolution. Given the interest that has been generated recently by the bylaw, it seems likely that a large number of people may wish to rely on clause 16 to apply for a dispensation. This may become an onerous task for the Council to deal with over the next few months.
19. The proposal therefore is that, for the purposes of efficiency and effectiveness in the conduct of the Council's business, the Council should delegate its power under clause 16, in relation to the Fires Bylaw only. The delegation will need to be made to an officer subcommittee, who can make a resolution in respect of any application, as required by clause 16. In accordance with the power in clause 16, the subcommittee can receive either a written or oral report from an officer in relation to 1, or a series of, applications, and can then, by resolution, approve or reject, with or without conditions, that or those applications.
20. Clause 16 also provides the power to impose conditions. The type of conditions that could be imposed by the subcommittee is to require that the applicant must comply with the other clauses of the bylaw, or that burning cannot occur within so many metres of any of the property boundaries, or specific boundaries. Conditions might also include time restrictions on burning (ie it must be carried out during daylight hours), or that any burning must take place before a certain date. Any dispensation that is granted should also include a note that it is only a dispensation in respect of the Council's bylaw and it does not exempt the person from complying with any regional council or other legislative requirements.
21. The dispensation application form should be available on the internet to be downloaded, as well as hard copies being made available to the public. The application can then be emailed or posted to the Council. It is also suggested that the application not be subject to the payment of any fee. This is because it is intended to make the process very simple, and it is only anticipated that applications will be made during the next few months. Under both the NRRP and ECan's transitional regional plan, winter burning in any residential area or within the Christchurch Clean Air Zone 1 is a non-complying activity, and it is not expected that applications for a dispensation will be made during the winter months. In addition, if a fee were to be imposed this could only be done by way of the special consultative procedure which would cause delay.

#### **OPTIONS**

22. The Council has three options:
  - (a) Delegate the power to a new officer subcommittee as recommended.
  - (b) Delegate the power to a Council committee, which would require that at least one councillor be a member of the committee, and no council officers could be members.
  - (c) Not delegate the power in clause 16, which would mean the Council would have to deal with every dispensation application.

#### **PREFERRED OPTION**

23. For the efficient and effective conduct of the Council's business the preferred option is option (a) above.