

11. REVIEW OF THE LICENSED WASTE HANDLING FACILITIES BYLAW 2005

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| General Manager responsible: | General Manager City Environment, DDI 941-8656 |
| Officer responsible: | Manager Transport and Greenspace |
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PURPOSE

1. The purpose of this report is to consider proposed amendments to the Christchurch City Licensed Waste Handling Facilities Bylaw 2005 in order to update the bylaw to remove reference to waste levies, and to make the bylaw applicable also to the Banks Peninsula area.

EXECUTIVE SUMMARY

2. Waste handling facilities (also called refuse stations) in the Christchurch City area operate under the Licensed Waste Handling Facilities Bylaw 2005. No such provisions exist for Banks Peninsula.
3. The purpose of the Waste Handling Facilities Bylaw 2005 is to licence all waste handling facilities and through the provisions of the licence regulate waste sorting to achieve a level playing field regarding diversion of recoverable materials from the waste stream. In addition operators are required to collect specified waste data to be passed on to the Council. It has not yet been necessary to implement the provisions regulating the sorting of waste. The requirement for collecting and passing on waste data to the Council works well and assists in planning for waste minimisation. It is advisable that the same rules apply also to Banks Peninsula. References to waste minimisation levies which are contained in the bylaw as it was passed in 2005 will be deleted in line with the High Court decision of March 2006.
4. The bylaw is an important tool in monitoring diversion of waste away from disposal in accordance with the Council's Solid & Hazardous Waste Management Plan 2006. It is also proposed to change the bylaw so it does not refer to the 2003 Waste Management Plan targets but rather to whatever waste management plan targets have been approved by the Council from time to time after a special consultative procedure for the waste management plan.
5. The proposed review process is as follows:
 - (a) The Council resolves that a bylaw is the most appropriate way to address the issue of managing waste handling facilities, and that there are no inconsistencies with the New Zealand Bill of Rights Act (See recommendations below);
 - (b) The Council approves the statement of proposal and summary of information and publicises it for public submissions, and appoints a hearings panel to hear submissions (See recommendations below);
 - (c) A special consultative procedure will run from 4 April to 9 May 2007.
 - (d) Hearing of submissions to take place late in May 2007; and
 - (e) The Council to receive a report from the Hearings Panel in July 2007 to consider the recommendations of the panel regarding the review of the bylaw.

Attachment A is the draft Statement of Proposal including the proposed draft bylaw, and Attachment B is the Summary of Information.

LEGAL CONSIDERATIONS

6. Section 146 of the Local Government Act 2002 provides a specific bylaw making power in respect of the regulating of waste management. Part XXXI of the Local Government Act 1974 is also still in force and applies to waste management issues and specifically provides for the power to make a bylaw under Section 542.

7. Section 155 of the Local Government Act 2002 ("the Act") requires the Council to determine whether the making of a bylaw (including the review of an existing bylaw) is "the most appropriate way to address the perceived problem". The problem in this particular instance is to achieve optimal recovery and/or diversion of material at waste sorting facilities and collect specified waste data.
8. Section 77 of the Act requires the Council, in the course of a decision making process on new objectives, to seek to identify and assess all reasonably practicable options for the achievement of the objectives. In August 2004 the Council determined that the following options existed:
 - (a) Do nothing ie allow refuse stations to continue sorting and consolidating waste without regulation or controls. This was deemed unacceptable by the Council in 2004, and the Bylaw has since proved to work well, however it does not apply to Banks Peninsula.
 - (b) Seek voluntary cooperation. This was deemed impractical by the Council in 2004, and the Bylaw has since proved to work well;
 - (c) Make a bylaw requiring refuse stations to obtain a licence in order to operate, with the licence conditions requiring appropriate sorting of refuse and reporting of specified waste data. This option was recommended in 2004. Under Section 538 of the Local Government Act 1974 councils have the duty to encourage efficient and effective waste management. It is considered that this option meets that duty more effectively than either of the other options. It is therefore proposed that the draft 2007 bylaw be authorised for special consultative procedure purposes.
9. After considering these options the Council in August 2004 resolved that, as is required in terms of Section 155 of the Local Government Act 2002, a bylaw was the most appropriate way to address the issues of (1) regulating waste sorting at all waste handling facilities, and (2) collecting waste minimisation levies (which was terminated by the Council as from 31 March 2006 after a High Court judgement).
10. The regulatory framework for councils has not changed since 2004, and it therefore follows that the need for retaining the bylaw still exists and that a similar resolution should be adopted in this instance where the aim is to update the bylaw and include the Banks Peninsula area.
11. There are no provisions in the New Zealand Bill of Rights Act 1990 which have a bearing on the draft Waste Handling Facilities Bylaw 2007 and therefore there are no inconsistencies between the draft bylaw and the statute.
12. The Local Government Act 2002 also requires the Council to determine the form of the Summary of Information and to determine the appropriate manner for distributing that summary. Section 89(c) requires that it be distributed as widely "as reasonably practicable....having regard to the matter to which the proposal relates". In this case as the bylaw only concerns waste handling facilities operators and relevant waste industry organisations it is considered appropriate to distribute the summary of information to those persons and organisations.

FINANCIAL CONSIDERATIONS

13. When the waste minimisation levy provision of the bylaw was declared ultra vires by the High Court in March 2006 it meant a loss of more than \$2 million per year for which adjustments had to be made in the 2006/07 budget. This current bylaw review process will not cause any further financial changes.

Summary

14. The report seeks to set in motion the process to review the Waste Handling Facilities Bylaw 2005 by approving the Statement of Proposal and Summary of Information for public consultation as set out in the report.

STAFF RECOMMENDATIONS

It is recommended that the Council resolves:

- (a) It has determined pursuant to Section 155 of the Local Government Act 2002, that a bylaw is the most appropriate way to address the issue of regulating waste sorting at all waste handling facilities and the collection of specified waste data.
- (b) There are no inconsistencies between the draft Licensed Waste Handling Facilities Bylaw 2007 and the New Zealand Bill of Rights Act 1990.
- (c) The attached Statement of Proposal and Summary of Information for the Draft Christchurch City Licensed Waste Handling Facilities Bylaw 2007 be publicly notified and be distributed to the current waste handling facilities operators and related waste industry organisations, in compliance with the Local Government Act 2002 special consultative procedure.
- (d) A hearings panel of three members be appointed to consider all submissions, and to report to the July 2007 meeting of the Council.