


10. REVIEW OF CLEANFILL LICENSING BYLAW 2003



General Manager responsible:	General Manager City Environment, DDI 941-8656
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PURPOSE OF REPORT

1. The purpose of this report is to recommend the review of the Cleanfill Licensing Bylaw 2003, the making of a new bylaw and the commencement of the statutory special consultative procedure.

EXECUTIVE SUMMARY

2. The Cleanfill Licensing Bylaw 2003 came into effect on 1 March 2004 and is due for a review in terms of the provisions of the Local Government Act 2002. In addition the disposal levy provisions in this bylaw became redundant when the Council suspended collecting levies under this bylaw subsequent to the High Court judgement end of March 2006 relating to the Waste Handling Facilities Bylaw 2005. The review process also includes recommendations to make some minor changes to the list of materials that can be disposed of at cleanfills, plus some formatting and wording improvements. It is considered appropriate to revoke the current Bylaw and adopt a new Bylaw, rather than simply amend the current Bylaw, given the amendments being made, and the fact that the new Bylaw, once adopted, will also apply to the Banks Peninsula wards (the current bylaw does not). A list of factors to consider when assessing new license applications have also been added – clause 3.3.
3. The attached draft bylaw also includes a new provision for an annual monitoring fee to be paid by licence holders – an amount of \$3,470 (plus GST) per site to be revised from time to time. Since the cessation of the levies the monitoring costs have been rates funded. It is furthermore proposed to increase the licence application fee for new licences from \$50 to \$250 (plus GST).
4. Non-statutory consultation with cleanfill site licence holders has taken place during the last 12 months in the process of developing the new bylaw.
5. The review process is as follows:
 - (a) The Council resolves that a bylaw is the most appropriate way to address the issue of managing cleanfill sites, the proposed bylaw is in the most appropriate form, 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 17 October to 21 November 2007;
 - (d) Hearing of submissions to take place late in December 2007; and
 - (e) The Council to receive a report from the Hearings Panel in December 2007 or February 2008 to consider the recommendations of the panel regarding the review of the bylaw.
6. Attachment A is the draft Statement of Proposal including the proposed draft bylaw, and Attachment B is the Summary of Information.
7. *Note: Due to the October 2007 local government elections a hearings panel will be appointed in November.*

FINANCIAL IMPLICATIONS

8. The proposed licence monitoring fees to be paid by licence holders will mean a saving of \$41,600 from rates funded operating costs.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

9. Not applicable.

LEGAL CONSIDERATIONS

10. Section 146 of the Local Government Act 2002 (the Act) provides a specific bylaw making power for the purposes of regulating waste management. It also provides for the review of bylaws made under the Act, and applies to the Cleanfill Licensing Bylaw 2003.
11. Section 160 requires that in reviewing a bylaw a local authority must make the determinations required by section 155. After the review, if a local authority considers the bylaw should be amended, revoked, or revoked and replaced, then it must use the special consultative procedure.
12. Section 155 of the Act requires the Council to determine whether the making of a bylaw (and the review of an existing bylaw) is *"the most appropriate way to address the perceived problem"*. The problem in this particular instance is to regulate the intake of materials to cleanfill sites in order to maximise diversion from disposal, and, in addition, to collect specified waste data.
13. Section 77 of the Act requires the Council, in the course of a decision making process, 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 i.e. allow cleanfill sites to operate without a licensing requirement with no controls over what is disposed of. 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 cleanfill sites to obtain a licence in order to operate, with the licence conditions regulating what can, and what cannot, be disposed of, plus reporting on 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 above. It is therefore proposed that the draft 2007 bylaw be authorised for special consultative procedure purposes.
14. After considering these options the Council in August 2004 resolved that, as is required in terms of section 155 of the Act, a bylaw was the most appropriate way to address the issues of regulating disposal at cleanfill sites, and that the bylaw was in the most appropriate form.
15. The regulatory framework for councils has not changed since 2004, and it follows that the need for retaining the bylaw still exists. A similar resolution should be adopted in this instance where the aim is to update the bylaw and include the Banks Peninsula area. As mentioned above the waste levy provisions in the current bylaw are no longer enforced and are recommended for deletion. Together with the other changes suggested to the Bylaw, it is also considered that the new Bylaw is in the most appropriate form,
16. There are no provisions in the New Zealand Bill of Rights Act 1990 which have a bearing on the draft Cleanfill Licensing Bylaw 2007 and therefore there are no inconsistencies between the draft bylaw and the statute.

17. The special consultative procedure under the Act requires that the Council prepare a statement of proposal that must include:
- (a) As the case may be:
 - (i) a draft of the bylaw as proposed to be made or amended; or
 - (ii) a statement that the bylaw is to be revoked; and
 - (iii) the reasons for the proposal; and
 - (iv) a report on any relevant determinations by the local authority under section 155.
18. The Act 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 cleanfill site operators and relevant construction and waste industry organisations it is considered appropriate to distribute the summary of information to those persons and organisations. Section 83(e) of the Act also requires that the Council must give public notice of the proposal and the consultation being undertaken.

Have you considered the legal implications of the issue under consideration?

19. See above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

20. Supports waste minimisation objectives.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

21. Not applicable.

ALIGNMENT WITH STRATEGIES

22. The bylaw aligns with the waste minimisation targets of the 2006 waste management plan.

CONSULTATION FULFILMENT

23. The statutory special consultative procedure will follow the adoption of the recommendations of this report. Prior consultation with licence holders have taken place during the preparation of the bylaw (see Background section below).

STAFF RECOMMENDATION

It is recommended that the Council resolve that:

- (a) It has determined that, as is required in terms of Section 155 of the Local Government Act 2002, a bylaw is the most appropriate way to manage cleanfill sites and regulate disposal at all cleanfill sites and the collection of specified waste data.
- (b) There are no inconsistencies between the draft Christchurch City Cleanfill Licensing Bylaw 2007 and the New Zealand Bill of Rights Act 1990, and the draft Bylaw is in the most appropriate form.
- (c) The attached Statement of Proposal and Summary of Information for the draft Christchurch City Cleanfill Licensing Bylaw 2007 be publicly notified, and be distributed to cleanfill site operators and relevant construction and waste industry organisations for the Local Government Act 2002 special consultative procedure.

BACKGROUND

24. Resulting from the decision of the Council to stop collecting cleanfill bylaw levies as from 30 March 2006 it is appropriate to remove any provisions relating to levies. By reviewing the bylaw now it will also in future apply to the two Banks Peninsula wards where no such bylaw or other provisions exist at present.
25. The proposed draft bylaw also includes a new provision for an annual licence monitoring fee to be paid by licence holders – an amount of \$3,470 (plus GST) per site to be revised from time to time. To date monitoring costs have been rates funded. It is furthermore proposed to increase the once-off licence application fee for new licences from \$50 to a more realistic \$250 (plus GST).
26. To clarify which factors will be considered in assessing applications for new licenses a list of four factors have been included in clause 3.3.
27. A study has been commissioned by the Council to evaluate the current state of market options for reuse of materials currently permitted to be cleanfilled. When the report becomes available in April 2008 a review of all the permitted materials in Schedule A will be undertaken in conjunction with cleanfill site operators. In the mean time there are a few minor changes that are proposed to Schedule A. The following changes are therefore currently proposed:
 - (1) Reduce the permitted vegetative content in cleanfill from 2.5% to 1% per load. The amount of vegetation being disposed of into cleanfill sites is minimal – this being the case the proposed 1% would allow for error only.
 - (2) Regarding reinforced concrete as a permitted material, it is proposed to restrict the length of reinforcing rods that cannot be separated from the concrete to a maximum length of 1m. Experience has been that in a high number of incidences iron far outweighs the concrete that it is attached. Furthermore Iron can be readily recycled. To give guidance to Council Enforcement Officer(s), Cleanfill Operators and Demolition Contractors a transparent and enforceable measurement is required.
 - (3) Regarding glass as a permitted material, it is proposed that glass that contains any non-glass material such as laminating, wire reinforcing, rubber lining (for example windscreens will not be permitted for disposal.
 - (4) Delete fibre cement building products from Schedule A '. The majority of buildings being demolished are of this era and fibre cement board containing asbestos is difficult to detect when compared with other concrete fibre cement board. Due to the difficulty in detecting what board is hazardous and what is not both cleanfill operators and enforcement officers support the removal of this material from Schedule A.
28. Some formatting and minor typographic updating have been included.
29. Consultations with cleanfill site operators on possible changes to the bylaw have been ongoing over the past eighteen months, including the changes proposed in this report. The special consultative procedure will provide a formal opportunity for the site operators, and other interested parties, to make written submissions on any issues of concern.
30. The bylaw ensures a consistent acceptance criteria across all cleanfills within Christchurch and is supported by ECAN.

THE OBJECTIVES

31. To advance the waste diversion targets of the Council's waste management plan 2006 by regulating what can and what cannot be disposed of at cleanfill sites, and to obtain specified waste data.

THE OPTIONS

32. See "Legal Considerations" above.