


41. REPORT OF HEARINGS PANEL ON CHRISTCHURCH CITY URBAN FIRE SAFETY BYLAW 2007



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PURPOSE OF REPORT

1. As requested at the Council meeting of 27 September 2007 to provide a further report back on the consideration of submissions received through the Special Consultative Procedure under the Local Government Act 2002 on the proposed Christchurch City Urban Fire Safety Bylaw 2007 and to recommend that subject to the making of certain minor alterations the Council adopt that bylaw.

EXECUTIVE SUMMARY

2. The proposal released for consultation was to make a new bylaw which allows fires in the open, subject to conditions, unless there is a fire ban in place. Barbecues and hangi are allowed even when there is a fire ban but subject to some simple fire safety measures. The bylaw will allow the Council to impose a ban on fires in the open for fire safety reasons, normally during the summer months. The Christchurch City Fires Bylaw 2006 which prohibited fires in the open on residential properties is to be revoked by the new bylaw. The proposed bylaw is to apply only to Fire Districts covering urban areas in the Christchurch City and urban Peninsula areas. These are fire districts which have been established under section 26 of the Fire Service Act 1975. There are nine such districts. They are not subject to the provisions of the Forest and Rural Fires Act 1977 for control of fires. The maps of the nine districts¹ were attached to the report considered by the Council on 12 July 2007 (as the first step in the Special Consultative Procedure to make the bylaw) and were available during the Special Consultative Procedure to the public. Those maps have now been attached to the proposed bylaw as part of the explanatory notes.
3. The Local Government Act 2002 (LGA 2002) contains a provision enabling bylaws to be made to prevent the spread of fires involving vegetation. The provisions of the Forest and Rural Fires Act 1977 (FRFA 1977) enable prohibitions on fires to be introduced at times of extreme fire hazard conditions. The FRFA 1977 covers all the areas outside the urban fire districts and the majority of rural use areas in the Council's district.
4. There would only be a prohibition for the areas designated as fire districts when the Council considers special reasons exist to prevent an outbreak or spread of fire. The conditions on fires in the open air that are set out in the proposed bylaw are based on advice from the New Zealand Fire Service relating to placement and times of operation of fires in the open air for fire safety reasons. Traditional cooking fires and barbecues are excluded from the definition of "fires in the open air" so they would not be caught by a prohibition imposed by the Council or the general conditions for fires in the open air specified in the proposed bylaw. Separate conditions for traditional cooking fires and barbecues are specified in the proposed bylaw for fire safety reasons. Provision is made for exemptions from a prohibition or certain conditions in very limited circumstances.
5. At its meeting on 12 July 2007 the Council resolved that the proposed Christchurch City Fire Safety Bylaw 2007 was the most appropriate way to address the perceived problems in the wider city area to do with fire hazards and fire safety, that it was the most appropriate form of bylaw, and that it did not give rise to any implications under the New Zealand Bill of Rights Act 1990. The Council appointed Councillor Sue Wells, Councillor Bob Shearing and Mr Stewart Miller (Chairperson, Akaroa/Wairewa Community Board) as the Hearings Panel to consider and where necessary hear any submissions on the proposed bylaw. A previous report back was made to the Council meeting of 27 September. However, that meeting decided to defer consideration of this item to the next Council meeting to allow for a further review of some clauses of the proposed bylaw.

¹ The Fire Districts are: Akaroa; Brooklands; Christchurch; Diamond Harbour; Governors Bay; Little River; Lyttelton; New Brighton; Sumner

FINANCIAL IMPLICATIONS

6. The expectation is that inspection and enforcement action should be significantly lower than required under the current or previous bylaws dealing with the subject. This is because the proposed bylaw does not deal with air quality. It only deals with matters of fire safety. The existing Christchurch City Fires Bylaw 2006 deals with both air quality and fire safety. Air quality is considered to be a matter which is more appropriately dealt with by the Canterbury Regional Council. Provision is made to recover costs of providing exemptions under the proposed bylaw should the Council so wish.

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

7. The budgets for the Regulatory Services Group of activities in Our Community Plan 2006-2016 Volume 1 Page 149 make general provision for the enforcement of bylaws. It is not anticipated that the introduction of this bylaw will significantly impact on that, and indeed may be more cost effective as the bylaw reduces the scope of Council involvement in burning, by limiting it to the management of burning only in defined periods of extreme fire danger.

LEGAL CONSIDERATIONS

8. Legal considerations in relation to the issues raised by the existing Christchurch City Fires Bylaw 2006 and the proposed Christchurch City Urban Fire Safety Bylaw 2007 were set out in the background section of the report considered by Council on 12 July 2007. They were also discussed with the Council at the Council seminar on 27 February 2007.
9. The provisions of the proposed Christchurch City Urban Fire Safety Bylaw 2007 are authorised by sections 145(b) and 146(c) of the Local Government Act 2002. Section 145(b) authorises the Council to make bylaws for the purposes of protecting, promoting, and maintaining public health and safety. Section 146(c) authorises the Council to make bylaws for the purposes:

“(c) subject to sections 20 to 22 of the Forest and Rural Fires Act 1977, of preventing the spread of fires involving vegetation.”

Sections 155-157 of the LGA 2002 specify the procedure for making and revoking bylaws.

9. The legal considerations in relation to the making of a new bylaw largely arise from section 155 of the Local Government Act 2002. It provides:
 - “(1) A local authority must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem.*
 - (2) If a local authority has determined that a bylaw is the most appropriate way of addressing the perceived problem, it must, before making the bylaw, determine whether the proposed bylaw-*
 - (a) is the most appropriate form of bylaw; and*
 - (b) gives rise to any implications under the New Zealand Bill of Rights Act 1990.*
 - (3) No bylaw may be made which is inconsistent with the New Zealand Bill of Rights Act 1990, notwithstanding section 4 of that Act.”*
10. In accordance with section 155 the Council resolved at its meeting on 12 July 2007 that a bylaw was the most appropriate way to deal with this issue, that the proposed form of bylaw was the most appropriate form, and that it did not give rise to any implications under the New Zealand Bill of Rights Act 1990. The matters to be controlled by the proposed bylaw are not covered by other legislation.

11. The existing Christchurch City Fires Bylaw 2006 prohibits the lighting of fires in the open air all year around not just for fire safety purposes but also for air quality purposes. In discussions with the officers of Environment Canterbury it has been made clear that the air quality and nuisance issues associated with burning in the open are covered by rules in plans made by ECan under the Resource Management Act 1991. ECan has accepted it is its role to enforce such provisions. There is therefore no need to have such provisions in this Council's bylaws. The proposed bylaw will help clarify the respective roles of the two Councils in regard to the issue of fires in the open air. The proposed bylaw relates solely to fire safety. The explanatory note to the proposed bylaw draws attention to ECan's role in relation to air quality.
12. The Council's role is now to consider the submissions received from the public during the special consultative procedure, together with the recommendations of the Hearings Panel in respect of those submissions, and make any changes to the proposed bylaw that it considers are warranted by those submissions.

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

13. Yes, as above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

14. See below in clause 14 and Our Community Plan Volume 1 Page 126 Parks, open spaces and waterways *Fire hazard to adjoining properties* identifies that fire hazard to adjoining properties may be a potential negative effects of the Parks, open space and waterways group of activities.

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

15. The proposed bylaw is intended to provide a level of regulation over open fires in periods of defined danger. The bylaw is consistent with the commitment in the Community Plan Volume 1 Page 145 *Legislative requirements are enforced to ensure the safety and health of people.*

ALIGNMENT WITH STRATEGIES

16. No specific strategies are related to this subject.

Do the recommendations align with the Council's strategies?

17. Aligns with strategic direction of reducing the likelihood and impact of hazards and emergencies. See Our Community Plan 2006-2016 Volume 1 Page 64.

CONSULTATION FULFILMENT

18. Through the Bylaw Review Subcommittee, Community Boards were given the opportunity to comment on the initial draft and some changes were included as a result of this initial consultation. The proposed bylaw, statement of proposal, and summary of information were adopted for consultation and made available for public inspection at all Council service centres, Council libraries and on the Council's website. Notice of the proposed bylaw was given by mail to the Department of Conservation, the New Zealand Fire Service, and all the Fire Chiefs in Fire Districts in the Banks Peninsula Ward. Public notice of the proposal was given in "The Press" and "Christchurch Star" newspapers and on the Council's website on 18 July 2007. Public notice was also given in the "Akaroa Mail" and "Bay Harbour News", as close as possible to 18 July 2007. The period within which written submissions could be made to the Council was between 18 July 2007 and 17 August 2007. Following adoption by the Council and as part of the special consultative procedure all residents groups, and a number of possible stakeholder groups in addition to those individuals who expressed interest in the subject and the persons who applied for dispensations to burn under the previous 2006 bylaw were sent the proposed bylaw and the Statement of Proposal.
19. Fifty-one submissions were received from 55 persons or organisations and a copy of those submissions is tabled. Thirteen of those making submissions originally indicated they wished to speak before the Hearings Panel. The table attached sets out each of the submitters and the matters they submitted on. An analysis of the submissions with officer's comments on each of the substantive issues is also attached.

20. On the basis of the submissions received 10 mentioned acceptance of the proposed Christchurch City Urban Fire Safety Bylaw 2007 either directly or conditionally, while a further 30 appear to support the bylaw, by indicating they wished to continue burning garden rubbish, or objected to the prohibitions placed on their activities by the 2006 bylaw. This represents about 78% of the total submissions. Some have raised matters relating to the content of the proposed bylaw. The majority of those not supporting the proposed bylaw consider that no outdoor fires should be permitted, largely on the grounds of the pollution they create, but also on the grounds that green waste should be disposed of in a more sustainable manner. Two submissions suggested that educational means of controlling fire risks should be introduced rather than regulatory methods as with this proposed bylaw.
21. Copies of all submissions were considered by the Panel and they heard those persons who indicated they wished to present their submissions orally. Notes of the proceedings of the Hearings Panel are attached. Following consideration of all submissions a number of amendments were considered, some editorial, and others of a clarifying nature and these have been included in the proposed Christchurch City Urban Fire Safety Bylaw 2007 which is attached to this report.
22. Attention was drawn to one written submission which had identified some grammatical and punctuation errors and it was agreed that the appropriate corrections be made. Another point made by the same submitter in relation to clause 11 (setting out how public notification of any prohibition was to be made) was that notice should be given by radio broadcast **and** by notice in a newspaper, whereas the proposed bylaw had these as alternatives (**or**, rather than **and**). After discussion, the suggestion was not adopted on the ground that notification might well be required in urgent circumstances, where radio was an effective option but the delays inherent in newspaper advertising could not be afforded.
23. Members of the Panel discussed clauses 11(1) and 11(2) further and, noting the wording of similar provisions in the Forests and Rural Fires Act 1977, recommended that the wording in the proposed bylaw be amended to read as follows:

"11 PROHIBITION OF FIRES

- (1) *The Council may at any time where in its opinion special reason exists or may exist to prevent the outbreak or spread of fire, prohibit the lighting of fires in the open air for any specified period of time within all or any parts of the Council's district referred to in clause 4*
- (2) *The Council shall give public notice of any prohibition made under clause 11(1) by:*
- (a) *broadcast from a radio station broadcasting in the locality; or*
(b) *notice in a newspaper circulating in the locality."*
24. It was noted that submission number 47 (Andrea Lobb for Nga Papatipu Runanga, Te Rununga O Ngai Tahu) had included the valid point that the plural of hangi is hangi, not hangis as in the heading to clause 7 in the proposed bylaw. It was recommended that this correction be made.
25. The Panel noted that the 'five metre clearance', referred to in clause 6(1)(b), about which a number of submitters had complained, had been in the city's bylaws for over 20 years. The Panel also noted the comment of Assistant Fire Commander Mark Chubb, that such a requirement was not "severe or conservative" and that, in his view, "it is more likely to be insufficient, than excessive". The Panel recommended that the provision be retained.
26. Subsequent advice from the Legal Services Unit in regard to clause 11(2) was that it is better drafting practice to say:
- "(2) The Council shall give public notice of any prohibition made under clause 11(1) by:*
- (a) *broadcast from a radio station broadcasting in the area subject to the prohibition; or*
(b) *notice in a newspaper circulating in the area subject to the prohibition."*

If the clause just referred to "locality" it could be open to question which locality is the clause referring to. The members of the Panel recommend that this change be made.

27. At its meeting on Thursday 27 September 2007 the Council considered the proposed bylaw with the recommendations from the Hearings Panel. The Council resolved that the proposed bylaw be referred back to the Hearings Panel in order that the wording of the bylaw be simplified while at the same time incorporating the changes recommended by the Hearings Panel as a result of the submissions received during the special consultative procedure.
28. As a result of its meeting on Friday 28 September 2007 the Hearings Panel has made a number of changes to the proposed bylaw in order to incorporate the changes it has recommended as a result of considering the public submissions and to make the proposed bylaw easier to understand.
29. The changes resulting from the public submissions have been recorded above.
30. To make the bylaw easier to understand the Panel has changed the order of several of the paragraphs. Previously clauses 6 and 7 set out the Council's powers to prohibit the lighting of fires in the open air and to grant exemptions from such prohibitions. It was considered that logically, these should follow after the general provisions which apply to fires in the open air and the general provisions which apply to barbecues and hangi. Consequently what were formerly clauses 6 and 7 are now clauses 11 and 12.
31. Previously clause 8 set out general restrictions on fires in the open air. These restrictions are now in simplified language and appear as clause 6.
32. Previously clause 9 set out general conditions relating to barbecues and hangi. These are now in simplified language and appear as clause 7.
33. The explanatory notes to the bylaw have also been amended to make it clear what parts of the city the bylaw applies to. Maps have been attached as part of the explanatory notes to assist in this regard.
34. The Panel has renamed the proposed bylaw the Christchurch City Urban Fire Safety Bylaw 2007 (previously the Christchurch City Fire Safety Bylaw 2007) to reflect the fact that the bylaw only applies to urban areas of the Council's district.
35. The changes to the proposed bylaw which have been made to make it easier to understand has altered the appearance of the proposed bylaw quite markedly. However, it must be pointed out that these changes have not altered the substantive content of the proposed bylaw from that which was put out to public consultation at the beginning of the special consultative procedure. The rules are still the same, however, they are now expressed in a manner which hopefully is more easier for people to understand.
36. **The Panel unanimously confirmed its recommendations to the Council.**

HEARINGS PANEL RECOMMENDATION

It is recommended that the Council resolve:

- (a) To adopt the Christchurch City Urban Fire Safety Bylaw 2007 which is attached to this report and which is to come into force on 15 October 2007.
- (b) To advertise the adoption of the Bylaw in "The Press" and the "Christchurch Star" on Wednesday 10 October 2007 and other suitable community newspapers at or close to that time.
- (c) To advise all submitters of the coming into force of the bylaw and to send to all residents groups, Chief Fire Officers, Department of Conservation, Federated Farmers and those interested persons who had applied for dispensations from the 2006 Fires Bylaw a copy of the bylaw.