

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

Officer responsible:	Programme Manager Strong Communities
Author:	Hearings Panel on the Proposed Christchurch City Fire Safety Bylaw 2007

PURPOSE OF REPORT

1. The purpose of this report is to report on the consideration of submissions received through the Special Consultative Procedure under the Local Government Act 2002 and to recommend the Council adopt the Christchurch City Fire Safety Bylaw 2007.

EXECUTIVE SUMMARY

2. The proposal released for consultation was to revoke the Christchurch City Fires Bylaw 2006 and adopt a new bylaw (the Christchurch City Fire Safety Bylaw 2007) controlling the open air burning of vegetation and other materials for fire safety reasons, and providing for prohibitions during times of potentially serious or extreme fire hazard conditions in the whole or parts of Christchurch City.
3. The Local Government Act 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 enable prohibitions to be introduced at times of extreme fire hazard conditions, and that covers all the areas outside the urban fire districts and the majority of rural use areas in the city.
4. The bylaw proposes that there would only be a prohibition for the areas designated as Urban Fire Districts when the Council considers special reasons exist to prevent an outbreak or spread of fire. Some restrictions are included in the proposal for a bylaw 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 fires in the open air definition, so they would not be caught by the prohibitions. Conditions on traditional cooking fires and barbecues are included for fire safety reasons. Provision is made for exemptions from a prohibition in very limited circumstances.
5. The Council at its meeting on 12 July 2007 resolved that the Proposed Christchurch City Fire Safety Bylaw 2007 was the most appropriate way to address possible issues in the wider city area to do with fire hazards and fire safety, was in the most appropriate form, and did not give rise to any implications under the New Zealand Bill of Rights Act 1990. The Council appointed Councillors Sue Wells, Bob Shearing and Mr Stewart Miller (Chairperson, Akaroa/Wairewa Community Board) to consider and where necessary hear any submissions on the Bylaw.

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. Provision is made to recover costs of providing exemptions 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 the Council's 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 current Fires Bylaw 2006, were set out in the background section of the report to the Council on 12 July 2007, and were also discussed with the Council at the seminar on 27 February 2007.

Section 145 of the Local Government Act 2002 provides the Council with a general bylaw-making power, and there is also a specific bylaw making power in section 146 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.”

The Council has the power to review bylaws (section 158) and may revoke bylaws (section 156), but can only do so after considering the matters in section 155, and it must follow the special consultative procedure.

9. The legal considerations in relation to the review and adoption of a new bylaw largely arise from section 155 of the Local Government Act 2002. This sets out the matters that must be determined to decide whether a bylaw is appropriate, as follows:
 - “(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 order to comply with section 155 the Council needed to formally resolve that a bylaw is the most appropriate way to deal with this issue, and if so, that the proposed form of bylaw is the most appropriate form, and that it is not inconsistent with the New Zealand Bill of Rights Act 1990. The conclusion reached was that the bylaw was the most appropriate way to deal with the issues covered by the proposed bylaw. The matters to be controlled are not covered by other legislation or Regional Council provisions. The LGA contemplates that bylaws will be used for the purpose of preventing the spread of fires. The Legal Services Unit also considers that the form of the bylaw is the most appropriate form and that the bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990. In fact, by removing the total prohibition this bylaw is less restrictive on rights than the 2006 bylaw.
11. 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 the plans made under the Resource Management Act 1991 and they have accepted it is their role to enforce such provisions. The introduction of the proposed bylaw by this Council will clarify the respective roles of the two Councils in regard to the issue of fires in the open and the proposed bylaw in an explanatory note draws attention to the Regional Council's role in this matter.

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

12. Yes, as above, and in the report to Council on the delegation of the dispensing power for the purposes of the Fires Bylaw 2006, considered by the Council on 22 March 2007.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

13. 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?

14. 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

15. No specific strategies are related to this subject.

Do the recommendations align with the Council's strategies?

16. 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

17. 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 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 bylaw and the Statement of Proposal.
18. 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 (Attachment 1) 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 (Attachment 2).
19. On the basis of the submissions received 10 mentioned acceptance of the Christchurch City 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 bylaw. The majority of those not supporting the 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 bylaw.
20. Copies of all submissions were considered by the Panel and they heard those persons who indicated they wished to present their submissions verbally. Notes of the proceedings of the Panel are attached (Attachment 3). 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 recommended Christchurch City Fire Safety Bylaw 2007 (Attachment 4).
21. 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 6 (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.

22. Members of the Panel discussed clauses 6(1) and 6(2) further and, noting the wording of similar provisions in the Rural Fires Act, recommended that the wording in the proposed bylaw be amended to read as follows:

"6 PROHIBITION OF FIRES DURING PERIODS OF EXTREME FIRE HAZARD

- (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 the whole or any specified part of the city referred to in clause 4.
- (2) The Council shall give public notice of any prohibition made under clause 6(1) by:
- (a) broadcast from a ~~national or commercial~~ radio station ~~operating within the district~~ broadcasting in the locality; or
 - (b) notice in a ~~daily~~ newspaper circulating ~~throughout the district~~ in the locality."

23. 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 9 in the proposed bylaw. It was recommended that this correction be made.

24. The Panel noted that the 'five metre clearance', 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.

25. Minor changes were recommended as follows:

- in clause 4 by the insertion of the word "Act" after the words "*the Fire Service*";
- in clause 8 by deleting the comma after the word "*shall*"; and
- in clause 10(4) by amending "9(1)" to read "10(1)".

26. Subsequent advice from the Legal Services Unit in regard to clause 6(2) was that it is better drafting practice to say:

- "(2) *The Council shall give public notice of any prohibition made under clause 6(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. The Panel unanimously confirmed their recommendations to the Council.

HEARINGS PANEL RECOMMENDATION

It is recommended that the Council resolve:

- (a) To adopt the Christchurch City Fire Safety Bylaw 2007 attached to this report 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) That all submitters be advised of the coming into force of the bylaw and copies be sent to all Residents Groups, Chief Fire Officers, Department of Conservation, Federated Farmers, those interested persons who had applied for dispensations from the 2006 Fires Bylaw.