

## 6. REPORT OF THE LICENSED WASTE HANDLING FACILITIES BYLAW REVIEW HEARINGS PANEL

<b>General Manager responsible:</b>	General Manager City Environment, DDI 941-8656
<b>Officer responsible:</b>	City Water and Waste Manager
<b>Author:</b>	Kevin Roche, Assistant Council Secretary

### PURPOSE OF REPORT

1. The purpose of this report is to advise the Council of the outcome of the special consultative procedure undertaken in respect to the proposed amendments to the Christchurch City Licensed Waste Handling Facilities Bylaw 2005, and to recommend that the Council now resolve to adopt the amended Bylaw.

### EXECUTIVE SUMMARY

2. At its meeting on 5 April 2007 the Council approved the draft of an amended Christchurch City Council Licensed Waste Handling Facilities Bylaw to allow for the removal of the reference to waste levies and to make the Bylaw also applicable to the Banks Peninsula area.
3. A Hearings Panel consisting of Councillors Pat Harrow, Bob Shearing and Graham Condon was also appointed at this meeting (and the meeting of 21 June 2007) to hear and consider submissions on the draft Bylaw and report to an August 2007 meeting of the Council.
4. The period during which the public were invited to make submissions was between 18 April and 23 May 2007 and public notice of the special consultative procedure was given in the Press and Star newspapers and the Bay Harbour News on 18 April 2007.
5. A total of three submissions were received on the amended Bylaw from:
  - Canterbury Waste Services Limited
  - Waste Management NZ Limited
  - METANZ Limited

The Hearings Panel met on 20 July 2007 to hear and consider the submissions and Mr Gareth James, Manager Canterbury Waste Services Limited, Mr Ray Harris, Regional Manager, Waste Management NZ Limited, and Mr Adrian Marsh, General Manager METANZ Limited attended and spoke further to their submissions.

6. As a consequence of consideration of the submissions the Hearings Panel recommends one amendment be made to the revised draft Bylaw to allow for licensees to recover reasonable costs in the keeping of records and supply of data to the Council. It is proposed that a revision of the existing Clause 4.4 in the 2005 Bylaw be inserted into the Bylaw to read as follows:

*"5.4 To compensate the licensee for the costs of complying with its obligations under Clause 5.2(d) the Chief Executive may from time to time specify an amount to be paid to the licensee."*

### FINANCIAL IMPLICATIONS

7. When the Waste Minimisation Levy provision of the 2005 Bylaw was declared ultra vires by the High Court in March 2006, it meant a loss of more than \$2 million of revenue per annum for which adjustments were made in the Council's 2006/07 budget. The introduction of a clause allowing for recovery of data collection costs by licensees will have some financial implications. It is difficult to quantify these as the effort required by the Refuse Station operator to obtain the required data will vary depending on the detail of the information sought. However, as a guide when the Cleanfill Bylaw was fully operative six percent of the waste levy was provided direct to cleanfill operators to cover their costs for data collection. For the approximate 200,000 tonnes of waste that goes to landfill via the four main refuse stations this would convert to a reimbursement cost of about \$54,000 for the Council. This scale of cost could be managed within the solid waste budget for waste analysis. Discussion would take place with the station operators prior to any requirements for data collection being imposed to ensure costs were kept within budget.

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

- 8 See above - can be managed within existing budgets.

## **LEGAL CONSIDERATIONS**

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

9. 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.
10. 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.
11. 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 the Banks Peninsula area.
  - (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.
12. 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; firstly, regulating waste sorting at all waste handling facilities, and secondly, collecting waste minimisation levies (which was terminated by the Council as from 31 March 2006 after the High Court judgement).
13. The regulatory framework for Councils has not changed since 2004, and it therefore follows that the need for retaining the Bylaw, but with some amendments, still exists.
14. 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.

## **ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

15. Page 140 of the LTCCP, level of service under "Refuse Minimisation and Disposal" refers.

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

16. As above.

#### **ALIGNMENT WITH STRATEGIES**

17. The proposed new Bylaw aligns with the Council's Waste Management Plan 2006.

#### **Do the recommendations align with the Council's strategies?**

18. As above.

#### **CONSULTATION FULFILMENT**

18. Section 156(1) of the LGA 2002 provides that the Council, must follow the special consultative procedures set out in Section 86 of the Local Government Act 2002 when adopting a Bylaw. This procedure has now been completed in respect to the amended Bylaw.
20. Three submissions were received from the consultation process on the proposed Bylaw and as a consequence an amendment has been recommended by the Hearings Panel.

#### **HEARINGS PANEL RECOMMENDATION**

It is recommended that the Council resolve:

- (a) to adopt the amended Christchurch City Licensed Waste Handling Facilities Bylaw 2007, as attached and to revoke the previous 2005 Bylaw.
- (b) that public notice of the adoption of the Bylaw, and subsequent ramifications be given in the "Press" and the "Christchurch Star" newspapers and on the Council's website.
- (c) that the subsequently revoked Bylaw be removed from the list of Christchurch City Council Bylaws on the Council's website.

## **BACKGROUND ON CHRISTCHURCH CITY LICENSED WASTE HANDLING FACILITIES BYLAW 2007**

21. 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 the Banks Peninsula area.
22. The purpose of the Waste Handling Facilities Bylaw 2005 was 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 also apply to the Banks Peninsula area. In addition references to waste minimisation levies, which are contained in the Bylaw as it was passed in 2005, should now be deleted from the existing Bylaw in accordance with the High Court decision of March 2006.
23. 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. The amended Bylaw 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.
24. At its meeting on 5 April 2007 the Council approved for consultation the draft of an amended Christchurch City Council Licensed Waste Handling Facilities Bylaw to allow for the removal of the reference to waste levies, to make the Bylaw also applicable to the Banks Peninsula area, and remove the reference to the 2003 Waste Management Plan targets as above.
25. A Hearings Panel consisting of Councillors Pat Harrow, Bob Shearing and Graham Condon was also appointed at this meeting (and the meeting of 21 June 2007) to hear and consider submissions on the draft Bylaw and report to an August 2007 meeting of the Council.
26. The period during which the public were invited to make submissions was between 18 April and 23 May 2007 and public notice of the special consultative procedure was given in the Press and Star newspapers and the Bay Harbour News on 18 April 2007.
27. A total of three submissions were received on the proposed revised Bylaw from:
  - Canterbury Waste Services Limited
  - Waste Management NZ Limited
  - METANZ Limited

The Hearings Panel met on 20 July 2007 to hear and consider the submissions on the amended Bylaw and Mr Gareth James, Manager Canterbury Waste Services Limited, Mr Ray Harris, Regional Manager Waste Management NZ Limited, and Mr Adrian Marsh, General Manager METANZ Limited attended and spoke further to their submissions.

28. Copies of submissions from the above three organisations are attached as Attachment 2 and an analysis of the submissions and staff comments on these is as follows:

### **Canterbury Waste Services Limited**

#### **ISSUE 1 – LICENSEE'S OBLIGATION TO SUPPLY DATA TO THE COUNCIL**

The submitter proposes a new Clause to the Bylaw to permit licence holders to charge the Council for labour and materials costs incurred in providing data to the Council.

Staff do not support the wording as proposed by the submitter as it would be difficult to assess and administer different costing approaches by individual licence holders and instead propose that the provision in Clause 4.4 of the existing Bylaw be amended to read as follows and inserted into the 2007 Bylaw:

*“5.4 To compensate the licensee for the costs of complying with its obligations under Clause 5.2 (d) the Chief Executive may from time to time specify an amount to be paid to the licensee.”*

#### ISSUE 2 – APPLICATION OF TARGETS FOR WASTE MINIMISATION

The submitter does not propose any changes and therefore no staff response is required. The submitter does identify issues that would need to be considered if the Council in future decides to proceed with implementing Clause 5 of the Bylaw which makes provision for meeting diversion targets.

#### **Waste Management NZ Limited / Transpacific Industries Group**

##### ISSUE 1 – DELETION OF LEVIES

The submitter supports the deletion of levies as proposed by the Council. The submitter holds the view that the Council has the obligation to refund all the levies previously collected. As this falls outside the Bylaw review staff do not offer a comment.

##### ISSUE 2 – LICENSEE’S OBLIGATION TO SUPPLY DATA TO THE COUNCIL

The submitter requests that the draft Bylaw be amended to enable licensees to recover reasonable costs.

Staff proposes that the provision in Clause 4.4 of the existing Bylaw be amended as above and inserted into the 2007 Bylaw:

##### ISSUE 3 – APPLICATION OF TARGETS FOR WASTE MINIMISATION

The submitter does not propose any changes and therefore no staff response is required. The submitter does identify issues that would need to be considered if the Council in future decides to proceed with implementing Clause 5 of the Bylaw which makes provision for meeting diversion targets.

#### **METANZ Limited**

The submitter agrees with all the proposed changes to the Bylaw, and offers detailed advice to be considered if the Council in future decides to proceed with implementing Clause 5 of the Bylaw which makes provision for meeting diversion targets. The submitter is of the view that Council should be implementing the provisions of Clause 5 as soon as possible.

#### **SUMMARY**

29. The report seeks approval to the amended Christchurch City Licensed Waste Handling Facilities Bylaw 2007 and the revocation of the previous Bylaw as recommended by the Hearings Panel, appointed by the Council.