


14. TERMS AND CONDITIONS FOR THE USE OF THE KERBSIDE COLLECTION SERVICES AND WASTE COLLECTION POINTS



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PURPOSE OF REPORT

1. The purpose of this report is to present to the Council for consideration and adoption the terms and conditions for the new kerbside collection services and waste collection points as referred to in the Waste Management Bylaw 2009.

SUMMARY

2. On 27 November 2008 the Council adopted the Waste Management Bylaw 2009. The operation of the kerbside collection service and Council waste collection points, set up under the bylaw, requires the Council to adopt detailed operational terms and conditions as presented in **Attachment A** to this report (see clauses 4 and 6 of the Bylaw). In addition there are certain operational delegations, as set out in this report, that need to be considered.

BACKGROUND

3. The new kerbside collection service will commence in early 2009 and the new Waste Management Bylaw 2009 will replace the existing Refuse Bylaws of both the former City and Banks Peninsula areas. The new bylaw has been drafted so it does not include detailed operational matters like those contained in the existing two bylaws. Operational matters might need to be altered more frequently than a bylaw and a separate but parallel terms and conditions document provides opportunity to separate the legal basis of the bylaw from the operational detail (although some of the operational matters still have “legal” content, as noted below).
4. Different contracts have been entered into with Transpacific Industries Ltd (collection services), META NZ (materials recovery facility) and Living Earth Ltd (composting facility). These contracts contain certain fixed operational requirements which have been incorporated into the terms and conditions, and are flagged as contract issues in **Attachment A**. The rest of the terms and conditions are not fixed in the contract.
5. The Council on 27 November 2008 asked for this report to be resubmitted to the 19 December meeting with a number of the terms clarified and further information as to the necessity of some of the terms and conditions. The terms and conditions largely deal with the practicalities of operating an efficient collection service in an urban area, the quality of the waste being diverted from landfill and also provide the Council with the means for managing public nuisance associated with the bins and the contents.
6. To enable the contractor to plan his collection routes to visit streets when the collection will have the least effect on traffic, be least affected by on street parking, able to avoid passing schools during drop off and pick up times, and generally operate an efficient and safe service the standard collection hours have been set at 6am to 6pm. The timing of the collection is reflected in the clauses stating when bins should be placed for collection and retrieval.
7. Provision has been included within the contract for assistance to be provided to households unable to take and return bins to the kerbside due to illness, frailty or disability. Assistance will be in the form of a fortnightly back door collection of the rubbish wheelie bin. City Water and Waste will be working with Council's Community Support Group to set criteria for receiving assistance which ensures that all households which need this service receive it.

LEGAL CONSIDERATIONS

Terms and conditions

8. The Waste Management Bylaw 2009 provides that “any person using a [kerbside collection service/council waste collection point] must comply with the terms and conditions for that service as determined by the council by resolution including, but not limited to, the following operational matters...” (see clauses 4 and 6 of the Bylaw). This means the Council must adopt a set of terms and conditions to allow the bylaw to be operational and effective. The detail of the terms and conditions are matters that do not need to be included in the bylaw. Under section 151 of the Local Government Act 2002 (and section 13 of the Bylaws Act 1910) they are a matter that can properly be left to the discretion of the Council to determine, applying the decision-making requirements in sections 77-82 of the Local Government Act 2002.
9. It is a reasonable discretion which is left to the Council to determine because the terms and conditions must also come within the scope of the “operational matters” detailed in the bylaw. As well as covering such matters as geographical areas, the need for separation of waste, etc both clauses 4 and 6 of the Bylaw provide that the terms and conditions may include any “additional rules ... required for the efficient operation of” the respective collection systems or facilities. This means that everything included in the proposed terms and conditions, which all relates to the efficient operation of the collection services and waste collection points, comes within the scope of the bylaw, and the discretion left to the Council.

Delegations

10. Clause 5 of the Waste Management Bylaw 2009 set out what options the Council has in relation to any non-compliance with the conditions of the Kerbside Collection Service (clause 7 also sets out enforcement options for the use of Council Waste Collection points). The first two options in clause 5 are:
 - “(1) *The rejection (non-collection) of the contents of any approved container left out for kerbside collection, if the contents or placement of the container is non-compliant;*
 - (2) *The withdrawal or suspension of the kerbside collection service being provided to that person;..*”
8. These are matters which it is appropriate to delegate, to and/or involve the contractors in, who will be performing the collection services for the Council. Detail on the process for rejecting bins and taking steps leading to the withdrawal or suspension of the service are set out in the terms and conditions (clause 11). The conditions include that if three non-compliance notices in a 12 month period have been given by the contractor, the Council may remove the collection service to that property. Reinstatement of the service is at Council discretion in consultation with the contractor.
9. The Council’s recent practice has been to delegate all its powers under a bylaw that are of a management or administrative nature to the Chief Executive. The Council has already delegated to the Chief Executive (on 26 June 2008) the power “*to institute any enforcement action, including a prosecution for an offence against any of the Council’s bylaws, together with the power to make any decision pertaining to any such enforcement or prosecution*”.
10. This means no other delegation is required to be made by the Council under the Waste Management Bylaw in relation to the enforcement of that bylaw. The Chief Executive can sub-delegate the powers of enforcement in clauses 5(1), and for any appropriate actions, in line with the terms and conditions under clause 5(2) to the appropriate contractors. Clause 32(3) of the Seventh Schedule of the Local Government Act 2002 authorises the Chief Executive to sub-delegate any powers delegated to him to any subcommittee or person subject to any conditions, limitations or prohibitions that the Council imposed in making the original delegation (in this case there are no limitations).

11. The only other power in the bylaw that Council can exercise, that does not relate to enforcement of the bylaw, is the power to, by resolution, "*prohibit certain materials from being deposited in an approved container or at a Council waste collection point or in a recyclable materials bin or a litter bin provided by the council in a public place.*" This power is one that can be left with the Council or could be delegated to a subcommittee or committee, such as the Zero Waste Working Party. However, at this stage there seems to be no need to provide for such a delegation.

FINANCIAL IMPLICATIONS

12. The financial implications of the new wheelie bin collection service were signed off by the Council in the 2008/09 Annual Plan.

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

13. See above.

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

14. Yes.

ALIGNMENT WITH STRATEGIES

15. The Waste Management Bylaw 2009 and these terms and conditions are supportive of the waste minimisation goals and targets of the Council's Waste Management Plan 2006 which aligns with the New Zealand Waste Strategy 2002.

CONSULTATION FULFILMENT

16. The Council undertook extensive public consultation when it developed the preferred option for a new kerbside collection service. This included consultation on the Draft Waste Management Plan in 2005, consultation on the Waste Minimisation Plan as part of the Draft Annual Plan 2008/09, and consultation on the Proposed Waste Management Bylaw 2009.
17. Following discussions with a range of stakeholders, a number of features that reflect community views have been considered in formulating the terms and conditions for this service. The terms and conditions largely deal with the practicalities of operating an efficient collection service in an urban area, the quality of the waste being diverted from landfill and also provide the Council with the means for managing public nuisance associated with the bins and the contents.
18. The three bin system selected by the Council went through a Special Consultative Process (SCP) as part of the 2008/09 Annual Plan consultation. Since the three bin collection was confirmed as the system to be used, Council officers and elected members have presented to a wide range of groups and through the question and answer sessions have obtained extensive feedback as to the concerns which residents have on the introduction of the service.
19. Groups which Council officers and Councillors have met include: Grey Power, Aged Concern, various ratepayers associations, seminars with the combined community boards, Lions and other community organisations.
20. The Zero Waste Working Party continued to meet monthly throughout 2008 and have been continually briefed on aspects of the collection contract documentation and tender process which would have impacts on the community, and which now make up a large number of the terms and conditions.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Adopt the **attached** terms and conditions.
- (b) Note that the Chief Executive will make appropriate sub-delegations to the Council's contractors to enable them to enforce clauses 5(1) and 5(2) of the Waste Management Bylaw 2008, as may be required.