6. CLEANFILL LICENSING BYLAW DELEGATIONS AND MINOR CORRECTIONS

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PURPOSE OF REPORT

1. The purpose of this report is to recommend that the Council delegate its powers under the new Cleanfill Licensing Bylaw 2008 to the Chief Executive, and make two minor corrections to the Bylaw.

EXECUTIVE SUMMARY

Delegation of Bylaw Powers

2. The Christchurch City Cleanfill Licensing Bylaw 2008 was adopted by the Council at its meeting on 25 September 2008. It came into force on 1 November 2008.

3. The Bylaw provides the Council with the power to grant licences (and suspend and cancel licences) to persons to allow them to use land for the disposal of cleanfill. To use land for this purpose without a licence is an offence under the Bylaw (subject to the exceptions for certain types of material). The terms and conditions pertaining to every licence are set out in the bylaw, and these include the power for the Council to "take all reasonable steps, including Cleanfill Site inspections … for the purposes of ensuring compliance with the Licence". A licence applicant must pay a licence fee but the bylaw does not provide for a power to set the fee. This must be done by the Council when it sets its schedule of fees and charges each year, using the special consultative procedure.

4. To enable the Council to exercise these new bylaw powers in an efficient manner it is desirable that the Council delegate them to its staff. The most effective way of ensuring that these powers are able to be exercised by the appropriate officers is for the Council to delegate the powers to the Chief Executive. The Chief Executive may then sub-delegate those powers from time to time as he sees fit to the appropriate officers of the Council.

5. As has been noted in previous reports[1] if the Council was to delegate directly to the specific officer who will be charged with exercising that power then every time it becomes necessary to have that power exercised by a different officer (for example, in the case of a resignation or change of job title) it is necessary to go back to Council to have a new delegation made. This is wasteful of the Council's time and can often result in considerable delays in the exercise of the administrative functions of the Council.

6. In addition, delegation of each specific power in a bylaw may mean that a routine administrative power may be overlooked. The approach which has previously been accepted by the Council is for it to delegate all its powers under each bylaw/statute by way of exception. In other words, the Council delegates to staff (or committees or community boards) all of its powers under those instruments *except* any that it wishes to reserve to itself. In the case of the Cleanfill Licensing Bylaw, any powers the Council would generally reserve for itself (eg powers to determine policy, set fees, hear and determine objections, and any other powers which properly fall within the realm of governance) are not contained in the bylaw.

7. The powers of the Council in the Cleanfill Licensing Bylaw that it is proposed be delegated are all routine administrative powers (granting, suspending and cancelling licences, carrying out inspections and taking enforcement steps), the exercise of which is properly a function of management. A delegation to the Chief Executive of such powers means it is his decision, in the interests of good management, as to who should exercise those powers, and he can sub-delegate accordingly.

[1] See the report to Council on 25 June 2008, regarding delegations under the new bylaws, and the report to Council on 27 May 2008, on miscellaneous delegations.

8. Provided the Council does not unduly restrict the sub-delegation of its powers, the Chief Executive will be free to sub-delegate the powers to whichever officers he sees fit, and in a timely manner as circumstances may demand. The Council will not then be burdened with having to make decisions of a management nature every time it becomes necessary to reassign a particular power to a different person.

Correction of errors

9. There are two minor matters which need to be corrected in the Cleanfill Licensing Bylaw 2008. The first is in clause 3.4(c) which currently states:

> "(c) The Council may from time to time by resolution remove from or add materials to Schedule A of the Bylaw. …"

10. The correction relates to clarifying that any resolution of the Council to remove or add materials to Schedule A of the Bylaw can only follow a special consultative procedure. The proposed correction is (corrected words in bold):

> "(c) The Council may from time to time by resolution **(following a special consultative procedure)** remove from or add materials to Schedule A of the Bylaw. The removal or addition will take effect from a date determined by the Council**,** with one month notice, or such longer period as the Chief Executive decides**,** being given to the public of the effective date."

11. The second correction proposed concerns clause 3.6 of the Bylaw. When the bylaw was drafted last year the Christchurch City General Bylaw 1990 was still in force, but by the date the Cleanfill Bylaw was adopted in September, the 1990 bylaw had been revoked and replaced by the Christchurch City Council General Bylaw 2008. The corrections needed are as follows (changes in bold):

> "3.6 The provisions of the Christchurch City **Council** General Bylaw **2008** (as amended from time to time) are implied into and form part of this Bylaw."

FINANCIAL IMPLICATIONS

12. There are no financial implications in making these delegations or the corrections. (The Council's Inspections and Enforcement Unit, and any other unit who will be sub-delegated any of these powers by the Chief Executive, are expected to carry out their functions within existing budgetary provisions.)

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

13. Yes.

LEGAL CONSIDERATIONS

14. Clause 32(1) of the Seventh Schedule of the Local Government Act 2002 authorises the Council to delegate all of the powers listed in the staff recommendation to any officer of the Council. This includes the Chief Executive. In doing so it may impose any conditions, limitations or prohibitions on any such delegation.

15. Clause 32(3) of the Seventh Schedule authorises the Chief Executive to sub-delegate any of the powers listed in the staff recommendation to any subcommittee or any person subject to any conditions, limitations or prohibitions that the Council may have imposed in making the original delegation to him.

16. Section 151(2) provides that the Council "may, by resolution publicly notified …make minor changes to or correct errors in, a bylaw, but only if the changes or corrections do not affect" any existing rights or duties of any person to whom the bylaw applies or any existing status or capacity of any such person. The corrections proposed to be made in this report are minor and do not affect anyone in the manner described in section 151(2).

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

17. Yes. See above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

18. As below.

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

19. Yes. They are intended to support and enhance the delivery of the Council's regulatory services.

ALIGNMENT WITH STRATEGIES

20. Yes.

Do the recommendations align with the Council's strategies?

21. Yes.

CONSULTATION FULFILMENT

22. The City Water and Waste and Inspections and Enforcement Unit have both been consulted on this report.

STAFF RECOMMENDATION

It is recommended that the Council:

(a) Delegate to its Chief Executive all of its powers under the Christchurch City Cleanfill Licensing Bylaw 2008.

(b) Resolve, pursuant to section 151(2) of the Local Government Act 2002 to make the following minor corrections to the Christchurch City Cleanfill Licensing Bylaw 2008:

(i) Clause 3.4(c):

"The Council may from time to time by resolution **(following a special consultative procedure)** remove from or add materials to Schedule A of the Bylaw. The removal or addition will take effect from a date determined by the Council**,** with one month notice, or such longer period as the Chief Executive decides**,** being given to the public of the effective date."

(ii) Clause 3.6

"3.6 The provisions of the Christchurch City **Council** General Bylaw **2008** (as amended from time to time) are implied into and form part of this Bylaw."

(c) Resolve that its resolution in B above be publicly notified.