

## 7. HEARINGS PANEL REPORT ON THE PROPOSED CLEANFILL LICENSING BYLAW 2008

<b>General Manager Responsible:</b>	General Manager City Environment, DDI 941-8608
<b>Officer responsible:</b>	Senior Resource Planner, Asset and Network Planning Unit
<b>Author:</b>	Cleanfill Licensing Bylaw Hearings Panel

### PURPOSE OF REPORT

1. This is a report of the Cleanfill Licensing Bylaw Hearings Panel. It addresses the single submission received on the proposed bylaw and contains recommendations from the Panel altering the proposed Bylaw in certain respects. The bylaw recommended for adoption is attached as **Attachment B**.

### EXECUTIVE SUMMARY

2. The Christchurch City Council Cleanfill Licensing Bylaw 2003 came into effect in 1 March 2004 and is being reviewed in terms of the provisions of the Local Government Act 2002.
3. On 27 October 2007 the Council resolved:
  - (a) *It has determined that, as is required in terms of Section 155 of the Local Government Act 2002, a bylaw is the most appropriate way to manage cleanfill sites and regulate disposal at all cleanfill sites and the collection of specified waste data.*
  - (b) *There are no inconsistencies between the draft Christchurch City Cleanfill Licensing Bylaw 2007 and the New Zealand Bill of Rights Act 1990, and the draft Bylaw is in the most appropriate form.*
  - (c) *The attached Statement of Proposal and Summary of Information for the draft Christchurch City Cleanfill Licensing Bylaw 2007 be publicly notified, and be distributed to cleanfill site operators and relevant construction and waste industry organisations for the Local Government Act 2002 special consultative procedure.*
4. A special consultative procedure took place between 17 October to 21 November 2007 and no submissions were received.
5. At the time of the special consultative procedure when cleanfill site operators received individual notifications of the review process, there were three sites in the Banks Peninsula area that were not known to staff, and therefore the special consultative procedure needed to be repeated to afford those sites an opportunity to participate.
6. Therefore on 24 April 2008 the Council resolved:
  - (a) *That the Statement of Proposal and Summary of Information for the draft Christchurch City Cleanfill Licensing Bylaw 2008 be consulted on further, using the special consultative procedure, during the period 14 May to 18 June 2008 and that they be made available for public inspection at the Council's principal offices at 163-173 Tuam Street, Christchurch, on the Council's website, or by emailing [zp@ccc.govt.nz](mailto:zp@ccc.govt.nz) or telephoning the Council on 941 8999, for a copy.*
  - (b) *That the Statement of Proposal be publicly notified on or before 14 May 2008 and that it be distributed to the same cleanfill site operators and organisations as it was distributed to in the previous consultation period, as well as to the cleanfill site operators on Banks Peninsula, with an explanatory note regarding the need for the further period of consultation.*
7. During the second special consultative procedure only one submission was received, and on 24 July 2008 the Council appointed a Hearings Panel consisting of Councillors Wells, Buck and Corbett which met on 30 July 2008 to consider the submission that was received.

8. Having considered the Fulton Hogan submission (**Attachment A**) the Hearings Panel resolved to recommend to Council that the draft bylaw as publicly notified be amended as set out in paragraph 9. Incorporating the proposed changes, the proposed new Christchurch City Council Cleanfill Licensing Bylaw 2008 (**Attachment B**) is recommended for approval, to come into effect on 1 November 2008.

#### **CHANGES TO THE BYLAW**

9. The hearings panel deliberated on the issues raised by the submitter and as a result made a change to the percentage permitted vegetative content in Schedule A to the bylaw, reduced from 2.5 per cent to 2 per cent, is now being recommended to Council. An editing change (as recommended by staff) has also been included. Paragraphs 15–21 below provide full information.

#### **LEGAL CONSIDERATIONS**

10. The Council has complied with the requirements of section 83 of the Local Government Act 2002 in relation to the hearing of submissions in relation to the two special consultative procedure periods held from 17 October to 21 November 2007 and 14 May to 18 June 2008.
11. Section 157 requires that the Council, as soon as practicable after a bylaw is made, give public notice of the making of the bylaw. The public notice must state the date on which the bylaw will come into operation and that copies of the bylaw may be inspected and obtained at the office of the local authority on payment of a specified amount.
12. It is appropriate to resolve that the Bylaw will come into effect on 1 November 2008, which is the date by which the existing bylaw will be revoked by the new Bylaw.
13. A bylaw hearing panel has no decision-making powers, but can make recommendations to the Council, in accordance with its delegation for that purpose, after considering written and oral submissions.<sup>1</sup> The Council can then accept or reject those recommendations, as it sees fit, bearing in mind that the Local Government Act requires views presented during consultation to be given “due consideration in decision-making”.<sup>2</sup> The Council, as final decision-maker, must be in as good a position as the hearing panel in terms of being fully aware of the content of the written submission. As the special consultative procedure is used for this consultation, the Council cannot introduce anything new into the bylaw that has not arisen out of a submission made during consultation.

#### **ALIGNMENT WITH STRATEGIES**

14. No existing strategies apply.

#### **HEARINGS PANEL RECOMMENDATIONS**

The Hearings Panel recommends that the Council:

- (a) Adopt the new Christchurch City Council Cleanfill Licensing Bylaw 2008 (**Attachment B**), which will come into effect on 1 November 2008.
- (b) Give public notice as soon as practicable, that the Christchurch City Council Cleanfill Licensing Bylaw 2008 has been made by the Council, that it comes into effect on 1 November 2008 and that copies of the bylaw may be inspected and obtained at the Council's offices or on its website, without payment.

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<sup>1</sup> Clause 32 of Schedule 7 of the Local Government Act 2002 expressly prohibits the power to make a bylaw from being delegated.

<sup>2</sup> Section 82(1)(e). This is also supported by the Council's Consultation Policy, which states: “we will receive presented views with an open mind and will give those views due consideration when making a decision”.

#### DELIBERATIONS OF THE HEARINGS PANEL

15. The only submission received was from Fulton Hogan Limited and is attached as **Attachment A** which contains both the original one page submission plus the additional handout made available at the hearing on 30 July 2008. The submitter motivates support for the retention of the current provision in Schedule A of the bylaw for a 2.5 per cent permitted vegetative content per load of cleanfill deposited at a cleanfill site. The consultation copy of the bylaw proposes that the 2.5 per cent level be reduced to 1 per cent - therefore that less vegetative matter be allowed per load of cleanfill deposited at cleanfill sites. The reason for excluding as much vegetative matter as possible from cleanfills is that vegetative matter over time breaks down and with added moisture through precipitation could leach into the gravels below, seeing that cleanfill sites do not have an impermeable liner at the bottom of the site.
16. The proposal put forward for public consultation to reduce the permitted level of vegetative matter from 2.5 per cent to 1 per cent is based on monitoring records indicating good compliance by all cleanfill site operators, including the submitter, with the 2.5 per cent limit, to the extent that the proposed 1 per cent level would in most cases be achieved already.
17. As can be seen from the submission the submitter essentially motivates for the retention of the 2.5 per cent limit as a realistic margin to allow for error and therefore that it be retained.
18. The editing change to Schedule A of the bylaw (as proposed by staff) relates to an improved description of one of the permitted materials, being reinforced concrete, where the proposed shorter description ("*Reinforced concrete including exposed reinforcing rods of less than 1 metre in length*") results in improved clarity relating to the nature of such acceptable material, as contained in **Attachment B**.

#### CHANGES RECOMMENDED BY THE PANEL

19. Having considered the various points of view the Hearings Panel recommends that the vegetative content level be changed from 2.5 per cent to 2 per cent. The Panel indicated that a reduction down to 1 per cent is possible the next time the bylaw is reviewed.
20. The Panel also accepted the editing change set out in paragraph 18.
21. The Panel further set the date for the bylaw to come into effect to be 1 November 2008.