

1. CLEANFILL LICENSING BYLAW - DELEGATIONS AND APPOINTMENT OF ENFORCEMENT OFFICERS

Officer responsible City Water and Waste Manager	Author David Rolls, Solicitor, DDI 941-8892
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The purpose of this report is to recommend that the Council:

- (a) Delegate a number of its powers under the Christchurch City Cleanfill Licensing Bylaw 2003; and
- (b) Appoint and warrant enforcement officers under the Local Government Act 2002 to enforce the provisions of that bylaw and the Christchurch City Refuse Bylaw 1995.

DELEGATIONS

At its meeting on 20 November 2003, the Council made the Christchurch City Cleanfill Licensing Bylaw 2003 ('the Cleanfill Bylaw'). The bylaw will come into force on 1 March 2004.

In order that the Council is able to exercise its powers under the bylaw in an effective and efficient manner, it is essential that it delegate a number of those powers. It is recommended that the Council delegate to the Solid Waste Manager all of its powers relating to the issuing of cleanfill site licences (clause 3.1) and its powers to impose conditions on those licences (clause 3.3).

It is also recommended that the Council delegate to the Solid Waste Manager its powers in relation to the enforcement of the provisions of the Cleanfill Bylaw. These are the powers to institute prosecutions for offences against that bylaw, to apply to the District Court for injunctions restraining any person from committing any such offence, to take enforcement action for the breach of such injunctions, and to issue a notice under clause 12 of the Christchurch City General Bylaw 1990 (the General Bylaw) calling upon any licence holder to appear before the Council Hearings Panel to show cause why that person's licence should not be revoked or suspended.

Lastly it is recommended that the Council delegate all of its powers in relation to the revocation and suspension of such licences under clause 3.5(b) of the Cleanfill Bylaw and under clause 12 of the General Bylaw to a Sustainable Transport and Utilities Committee hearings panel consisting of the Chairperson, Deputy Chairperson and one other member.

APPOINTMENT OF ENFORCEMENT OFFICERS

The City Water and Waste Manager wishes to have two persons appointed to enforce the Cleanfill Bylaw. They are Richard Purdon and Suzanne Winter. Mr Purdon is employed by Environment Canterbury. Ms Winter is a Christchurch City Council employee. The City Water and Waste Manager also wishes to have Ms Winter appointed to enforce the Christchurch City Refuse Bylaw 1995 ("the Refuse Bylaw").

Section 177(1) of the Local Government Act 2002 authorises the Council to appoint persons as enforcement officers in relation to any offences against bylaws made under that Act. The bylaw is made under that Act. The Refuse Bylaw is deemed by that Act to be a bylaw made under that Act. Section 177(2) requires the Council to issue written warrants to persons it appoints as enforcement officers under Section 177(1).

The Act confers upon enforcement officers powers to seize and impound property which is involved in the commission of an offence (Sections 164 and 165), powers to enter upon land for enforcement purposes (Section 172) and the power to require any person that the officer believes is committing or has committed an offence to provide certain information (Section 178).

Section 163 of the Local Government Act 2002 provides that if it is authorised by a bylaw a local authority may remove or alter a work or thing that is, or has been constructed, in breach of any bylaw.

Clause 14 of the General Bylaw empowers the Council to remove or alter a work or thing that is, or has been constructed, in breach of any of the Council's bylaws. Clause 14(a) provides that where the work or thing is situated upon private land, the Council may serve, on the owner or occupier of that land, a notice requiring its removal. If the notice is not complied with, then the Council may itself effect the removal at the expense of the owner or occupier. Clause 14(b) provides that where the work or thing is on, over, or above a road, public place, or reserve the Council may remove it without notice and at the cost of the person who placed it there.

To facilitate the effective and efficient administration of the bylaw, it is recommended that the Council delegate its powers under clause 14(a) and 14(b) of the General Bylaw to each of the persons it appoints as enforcement officers in respect of the bylaw.

COMPLIANCE WITH DECISION-MAKING REQUIREMENTS OF THE LOCAL GOVERNMENT ACT 2002

It is considered that the decisions sought from the Council in relation to this report concern matters of a minor administrative nature only. Consequently it is suggested that no specific action need be taken in respect of the requirements of Section 77 and 78 of the Local Government Act 2002.

Recommendation: That the Council resolve:

1. To delegate:
 - (a) To the Solid Waste Manager:
 - (i) All of its powers under Clauses 3.1 and 3.3 of the Christchurch City Cleanfill Licensing Bylaw 2003; and
 - (ii) The power to issue and serve upon the holder of any licence issued under Clause 3.1 of the Christchurch City Cleanfill Licensing Bylaw 2003 a notice, pursuant to Clause 12(1) of the Christchurch City General Bylaw 1990, calling on that person to show cause why that person's licence should not be revoked or suspended; and
 - (iii) The power to initiate any prosecution for any offence against the Christchurch City Cleanfill Licensing Bylaw 2003, together with the power to make any decision on any matter relating to such prosecution; and
 - (iv) The power to apply to the District Court for an injunction restraining any person from committing a breach of any provision of the Christchurch City Cleanfill Licensing Bylaw 2003; and
 - (v) The power to take enforcement action against any person who breaches any such injunction and to make any decision in any matter relating to such action.
 - (b) To a Sustainable Transport and Utilities Committee hearings panel consisting of the Chairperson (or alternate), the Deputy Chairperson (or alternate) and one other member, the powers under clause 3.5(b) of the Christchurch City Cleanfill Licensing Bylaw 2003 and under clause 12 of the Christchurch City General Bylaw 1990 to determine whether or not any licence issued under the Christchurch City Cleanfill Licensing Bylaw 2003 should be revoked or suspended.

2. To appoint and warrant as enforcement officers pursuant to Section 177 of the Local Government Act 2002:
 - (a) Richard George Purdon for the purpose of detecting offences against the Christchurch City Cleanfill Licensing Bylaw 2003; and
 - (b) Suzanne Mary Winter for the purpose of detecting offences against the Christchurch City Cleanfill Licensing Bylaw 2003 and the Christchurch City Refuse Bylaw 1995

and for these purposes to authorise them to exercise all of the powers of enforcement officers under that Act.

3. To delegate to each of the persons named in recommendation (2) (severally), the Council's powers under clause 14(a) and 14(b) of the Christchurch City General Bylaw 1990 for the purpose of enforcing the bylaws in respect of which they are appointed as enforcement officers.