

15. **HEARINGS PANEL REPORT ON THE PROPOSED CHRISTCHURCH CITY COUNCIL WASTE MANAGEMENT BYLAW 2009 AND FOR THE REVOCATION OF THE CHRISTCHURCH CITY REFUSE BYLAW 1995 AND THE BANKS PENINSULA DISTRICT REFUSE BYLAW 2002**

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Officer responsible:	Senior Resource Planner, Asset and Network Planning Unit
Author:	Waste Management Bylaw Hearings Panel

PURPOSE OF REPORT

1. This is a report of the Waste Management Bylaw Hearings Panel. It addresses the 24 submissions received during the special consultative procedure and contains recommendations from the Panel altering the proposed Bylaw in certain respects. The proposed bylaw (with the recommended changes highlighted) is attached to this report as **Attachment A** and the bylaw recommended for adoption is attached as **Attachment B**.

EXECUTIVE SUMMARY

2. The Christchurch City Council Refuse Bylaw 1995 and the Banks Peninsula District Refuse Bylaw 2002 are being reviewed in terms of the provisions of the Local Government Act 2002 and the Waste Minimisation Act 2008.
3. On 24 July 2008 the Council made the following resolutions:
 - (a) *Resolve that a bylaw is the most appropriate way to manage and regulate the management of municipal solid waste.*
 - (b) *Resolve that there are no inconsistencies between the draft Christchurch City Council Waste Management Bylaw 2009 and the New Zealand Bill of Rights Act 1990, and that the draft bylaw is in the most appropriate form (including that it will revoke the Christchurch City Council Refuse Bylaw 1995 and Banks Peninsula District Refuse Bylaw 2002).*
 - (c) *Note that the Terms and Conditions for the Operation of the kerbside collection service and the Council waste collection points are not part of the bylaw and will be reviewed by the Zero Waste Working Party and reported to Council.*
 - (d) *Resolve that the attached Statement of Proposal (which includes the draft bylaw) and the Summary of Information be adopted for consultation and made available for public inspection at all Council Service Centres, Council libraries and on the Council's website, and that the Summary of Information be published in a newspaper having a wide circulation in the Council's district.*
 - (e) *Appoint a hearings panel comprising Councillors Broughton, Buck, Reid, Shearing and Wells to consider submissions on the draft bylaw and to make recommendations to the Council.*
4. A special consultative procedure took place between 6 August 2008 and 10 September 2008 and 24 submissions were received – included in the table in **Attachment C**.
5. The Hearing Panel convened on 15 October 2008, with Councillors Wells (Chair), Broughton and Shearing forming the panel on the day with apologies from Councillors Reid and Buck. Four submitters had requested to be heard.
6. This report on the bylaw should be read together with the report on the terms and conditions for the new kerbside collection service (refer clause 16).

ISSUES RAISED IN SUBMISSIONS

8. Attachment C contains the submissions as well as detailed staff comments. Noteworthy points flowing from submissions include the following:
9. The majority of submissions related to issues such as wheelie bins sizes and anticipated problems with the management of wheelie bins on steep sites, or sites with long driveways. These submissions occurred in spite of the fact that the statement of proposal indicated that the bylaw itself does not address such operational issues, and that the separate terms and conditions of use will clarify operational issues. Staff comments included in Attachment C respond to the bylaw and non-bylaw related issues. Note that a separate report on the proposed terms and conditions, as reviewed by the Zero Waste Working Party, will be considered by the Council on 27 November 2008 after consideration of this report.
10. Clarification that use of the kerbside collection service is not mandatory, but customers should note that rates based contributions towards the service remains unaffected by non-use.
11. Any proposals for changes to existing levels of service would need to be part of the special consultative procedure for the review of the Council's Waste Management Plan 2006 – due for review in 2010 once the new collection systems have been bedded in.

RECOMMENDED CHANGES TO THE CONSULTATION COPY OF THE BYLAW

12. The hearings panel deliberated on the issues raised by the submitters and as a result recommends making the following changes:
 - (a) The panel recommends that clause 10(1) of the consultation bylaw be deleted as the control over the waste stream to waste handling facilities (refuse stations) is adequately addressed in the provisions of clause 6 of the Christchurch City Licensed Waste Handling Facilities Bylaw 2007. The Panel recommends that the following explanatory note be added to clause 10 of the bylaw: *"The Christchurch City Licensed Waste Handling Facilities Bylaw 2007 provides additional relevant provisions to regulate flows of waste and recyclables to licensed waste handling facilities in the city"*.
 - (b) The panel recommends that the definition of "licensed refuse station" also be deleted as the term is used only in clause 10 (1) which is recommended for deletion.
 - (c) The panel recommends that the following definition be added to the bylaw: *"Terms and conditions means the terms and conditions relating to the kerbside collection service as determined by the Council by resolution"*.
 - (d) The panel does not support the staff proposal for the addition of a new clause 4(1) which was made in response to a submission, but that the proposed wording instead be used as an explanatory note be added to clause 4.

LEGAL CONSIDERATIONS

13. 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 special consultative procedure held from 6 August 2008 to 10 September 2008.
14. 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.
15. It is appropriate to resolve that the Bylaw will come into effect on 1 February 2009, which is the date by which the existing two bylaws will be revoked by the new Bylaw.

16. A bylaw hearings panel has no decision-making powers, but can make recommendations to Council, in accordance with its delegation for that purpose, after considering written and oral submissions.² 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”.³ 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. It can, however, make minor editorial changes.
17. A minor change is required in relation to the legislative powers under which the bylaw is being made. Since the bylaw was put out for consultation the Waste Minimisation Act 2008 (WMA) has been adopted and has come into force. This revokes part 31, including section 542, of the Local Government Act 1974. The bylaw-making powers that were contained in section 542 are now found in section 56 of the WMA, and the Bylaw has been amended to reflect the power under which it is now made (in addition to the powers in the Local Government Act 2002).
18. The WMA also includes an enforcement provision at section 66 which provides that “every person commits an offence who breaches a bylaw made under section 56 and is liable on summary conviction to a fine not exceeding \$20,000”. This is the same penalty as in the Local Government Act 2002, so adding a reference to the WMA in clauses 5 and 7 of the Bylaw does not have a material affect on the potential maximum penalty someone is subject to if a prosecution is brought but a reference to this Act should be added to both clauses 5 and 7.

ALIGNMENT WITH STRATEGIES

19. The Council Waste Management Plan 2006 is the relevant strategy that relates to the new bylaw, and is treated as a waste management and minimisation plan under the Waste Minimisation Act 2008. The bylaw is required to be consistent with this plan (see section 56 of the Waste Minimisation Act 2008), and staff have advised that it is consistent

HEARINGS PANEL RECOMMENDATIONS

The Hearings Panel recommends that the Council:

- (a) Resolve to adopt the new Christchurch City Council Waste Management Bylaw 2009 to come into effect on 1 February 2009.
- (b) Give public notice as soon as practicable, that the Christchurch City Council Waste Management Bylaw 2009 has been made by the Council, that it comes into effect on 1 February 2009 and that copies of the bylaw may be inspected and obtained at the Council's offices or on its website, without payment.

² Clause 32 of Schedule 7 of the Local Government Act 2002 expressly prohibits the power to make a bylaw from being delegated.

³ 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”.