

**AGENDA FOR A MEETING OF THE PLANNING AND REGULATORY COMMITTEE
TO BE HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN,
WAITAKERE CITY, ON THURSDAY, 19 MAY 2005
COMMENCING AT 9.30 AM**

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1 APOLOGIES



2 URGENT BUSINESS

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 provides that where an item of business is not on the agenda, it may only be dealt with at the meeting if:

- (i) the Committee by resolution so decides; and
- (ii) the Chairperson has explained at the beginning of the meeting (when open to the public) that the item will be raised for discussion and decision, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting.

The Committee may make a decision on a matter determined to be urgent.

NOTE: Urgent Business need not be dealt with now and may be delayed until later in the meeting.



3 HEARING OF SUBMISSION ON THE DRAFT WASTE BYLAW AND LICENCE FEE

PURPOSE OF THE REPORT

The purpose of this report is to provide information to the Planning and Regulatory Committee on the submissions received on the Statement of Proposal for Council's draft Waste Bylaw and Licence Fee, which has been notified using the Special Consultative Procedure under the Local Government Act 2002.

The Hearing provides an opportunity for submitters to present their case and for the Committee to seek clarification from both submitters and officers before making recommendations to the Council on the draft bylaw.

BACKGROUND

Waitakere City Council, in partnership with Rodney District Council and North Shore City Council developed the Waste Bylaw pursuant to section 145 of the Local Government Act 2002, section 542 of the Local Government Act 1974, section 12 of the Litter Act 1979, and sections 64 and 65 of the Health Act 1956. The purpose of the bylaw is to regulate Waste Management Facilities and the collection, transport and disposal of waste. In addition, from the commencement date all collectors, transporters, and disposers of waste in excess of 20 tonnes per annum and operators of Waste Management Facilities are to subject to a licensing system and may be required to pay a levy on the waste collected, transported and disposed of in accordance with that licence. The levy is intended to introduce a system of financial incentives and disincentives consistent with the Council's waste reduction objectives and statutory responsibilities.

In preparing the draft bylaw, discussions were held with Ministry for the Environment. Also, two workshops were held in November and December 2004 with representatives from the waste industry to discuss the issues for the waste sector around the licensing and levy provisions.

The Council has followed the bylaw making process as set out within the Local Government Act 2002. Hill Young Cooper provided the policy analysis and justification for the bylaw as a mechanism for achieving the Council's objectives and for the form of the bylaw as drafted.

The Statement of Proposal was approved for public notification by the Council at its meeting of 16 February 2005 (182/2005) and the public consultation process presented at the meeting has been followed. The draft bylaw has attracted considerable media attention.

A1-A10

There were forty-five submissions received and a summary of these submissions is attached at pages A1 to A10. A complete copy of the submissions has been circulated to Councillors and also made available to the public at the Civic Centre and Libraries.

Of the forty-five submissions received, twenty-six opposed Part 5 of the draft bylaw which deals with unsolicited advertising. The particular parts of the bylaw and the submissions on them are discussed below.

STRATEGIC CONTEXT

Zero waste to landfill by 2020 is one of the Council's nine strategic platforms. The Long Term Council Community Plan 2003 vision for solid waste is that by 2020, Waitakere will be a clean and attractive city that turns all its waste into resources. The city has made good progress on waste minimisation with kerbside recycling, composting of green waste, establishment of a re-use centre, education and cleaner production programmes. However, further initiatives will be required to achieve this goal by 2020.

The draft Waste Bylaw is the mechanism to introduce licensing by which the Council will be able to gather all waste information throughout the city, and to impose a waste levy in order to further fund waste minimisation initiatives and provide an incentive for waste generating behavioural change.

ISSUES

The submitters have been allocated ten minutes to speak to their submission, and five minutes is allocated between speakers for the Committee to ask questions of submitters or officers. The last half day allocated for the Hearing has been set aside with no presentations in order for the Committee to deliberate on the material presented.

General

Submitter 28 (Zero Waste NZ Trust):

Supports the bylaw.

A11-A16

Submitter 15 (Council):

Has tendered some wording and formatting amendments at pages A11 to A16.

Submitter 8 (Malcolm Hahn):

Considers the bylaw too oppressive, restrictive and excessively punitive and seeks withdrawal of the entire draft bylaw.

Submitter 5 (Peter Gillon):

Opposes the bylaw and seeks that the bylaw is deferred until full public consultation and debate on the subject has taken place.

Submitter 42 (Michael Freeth):

Supports the need for such a bylaw but opposes the draft in its present form.

Officer's discussion

The draft bylaw is very similar to the Council existing Bylaw 30 and Chapter 6 of its general bylaws, which also provide for licensing of the Council's waste contractors and also a levy to cover the costs of administering the bylaw. The new provisions will enable the Council to licence all contractors operating within the City (and North Shore City and Rodney District).

Specific issues

Part 4, Offence to Deposit Waste, Trolleys and Receptacles on Public Land (page 77)

Submitters 23 (Foodstuffs, Auckland Limited), 39 (Foodstuffs NZ Limited) and 45 (Progressive Enterprises Limited):

Seek amendments to Part 4. Submitter 23 supports the principle that it should be an offence to abandon shopping trolleys in a public place and seeks a co-operative approach between the Council and retailers to address the issue. The submitters have raised matters of unreasonableness in the bylaw as drafted and seek the following decisions:

Decision sought by submitters

- Clause 91 to be amended by deleting sub-clause (3) and altering sub-clause (2) to read after the first line: "place or leave any waste, or abandon any trolley or receptacle into, on or upon any public place, waterway channel or river".
- The submitters would like to co-operate with Council in rewording Clause 92.
- Clause 93 to be amended by deleting reference to location and name of owner of trolleys as this is an unreasonable and costly exercise.
- Submitters offer to meet with Council officers in a spirit of co-operation with the intention of arriving at a regulatory regime that will fairly address the issues experienced by Council and retailers in respect of the abandonment of shopping trolleys.

Officer's discussion

There is an existing Memorandum of Understanding between the Council and a number of retailers including Foodstuffs Ltd. The Memorandum states the responsibilities of each party and outlines procedures to be followed to retrieve abandoned trolleys. Unfortunately the Memorandum has not operated without difficulties arising and the Council now has to fall back on regulation by way of a bylaw to ensure that the issue of abandoned trolleys can be resolved. The Memorandum does anticipate regulation being drafted in the event of the Memorandum failing. Article 11 states:

"In the event that the Council introduces a regulation or bylaw relating to the regulation or management of trolleys then each Operator may exit this Memorandum of Understanding and end that Operator's obligations under the Memorandum of Understanding by giving one month's notice in writing to the other parties."

It is mutually acknowledged that the abandonment of trolleys and other receptacles is a significant problem but it has not been evident that supermarkets have taken adequate steps to address this ongoing problem.

Clause 91(3):

The purpose of Part 4 and this provision in particular, is to require the owner of any trolley or receptacle to take steps to prevent the escape of the trolley or receptacle causing a nuisance through its removal and abandonment in a public place. It is accepted that there may be lawful reasons for the trolley or receptacle being removed in which case it will not amount to an "escape".

Clause 92:

This clause only provides the Council with the option of removing abandoned shopping trolleys or receptacles if found. It does not prohibit Council from contacting owners and providing them the opportunity to remove the trolley or receptacle. It is anticipated that the Council will make contact in the circumstances where immediate removal will be required and the bylaw provisions must facilitate this.

Clause 93:

In order for notification to be made where reasonable to the owner, the Council will need to know the name of the owner and their location. Often trolleys and other receptacles are located some distance from their originating branch. This becomes more problematic in the instance of multiple breaches. One of the failures of the Memorandum of Understanding was the inability to identify the correct branch of the owner for the purpose of retrieval. Accordingly as a minimum, each trolley and receptacle must include the owner's name and its geographic branch location.

Part 5, Offence to Deposit Unsolicited Advertising (page 78).

Submitters 4 (Direct Selling Association NZ), 6 (Marketing Association), 7 (MHC Limited and MHP Limited), 9 (Gemtime NZ Limited), 10, (Alphabet Soup), 14 (Times Media Group Limited), 16 (Circular A1 Distribution NZ Limited), 17 (Young & Rubicam), 18 (Ogilvy Advertising Works), 19 (Noel Leeming Group Limited), 22 (NZ Retailers Association), 25 (APN NZ National Publishing), 26 (Fairfax NZ Limited), 29 (PMP Distribution Limited), 31 (Pumpt Advertising), 32 (Progressive Enterprises), 33 (The Tool Shed), 34 (Association of NZ Advertisers Incorporated), 35 (Deltarg Distribution Systems), 36 (Communication Agencies Association NZ), 37 (Briscoe Group Limited), 38 (James Pascoe Limited), 39 Foodstuffs, NZ Limited, 40 (Motor Trade Association), 41 (Greg Morgan) and 44 (Brian Pulham):

These submitters all oppose Part 5, Offence to Deposit Unsolicited Advertising.

Submitter 12 (Employers and Manufacturers Association):

Congratulates Waitakere, North Shore City, and Rodney on their co-operative approach to waste policy and regulatory functions. The submitter supports the bylaw provision relating to depositing unsolicited advertising on parked cars in public places but considers that as the definition of unsolicited advertising is unclear the bylaw is not enforceable.

Decisions sought by submitters

In general the decisions sought by the submitters are:

That Part 5 of the bylaw is not adopted and that industry groups work with councils across the country to introduce a voluntary National Code of Practice for the distribution of unsolicited letterbox material. Some submitters seek a clearer definition of unsolicited advertising or that community newspapers containing advertising or advertising inserts and free magazines be excluded from the definition of unsolicited advertising. Some considered that councils should not be funding or promoting "no junk mail" stickers.

Officer's discussion

The Council confirms that it is not the intention of the bylaw to prohibit community newspapers or charity flyers as Council does not believe that these examples constitute advertising mail.

4 The definition of unsolicited advertising could be further defined by amending Clauses 95 and 96 as follows:

"95 No person shall deposit, cause, permit or authorise the deposit of any unaddressed unsolicited advertising material:

(3) For the purposes of clause 95 advertising material is any material which predominantly contains communication:

- (a) offering to supply goods or services; or*
- (b) advertising or promoting goods or services; or*
- (c) advertising or promoting a supplier, or prospective supplier, of goods or services; or*
- (d) offering to supply land or an interest in land; or*
- (e) advertising or promoting land or an interest in land; or*
- (f) advertising or promoting a supplier, or prospective supplier, of land or an interest in land; or*
- (g) advertising or promoting a business opportunity or investment opportunity; or*
- (h) advertising or promoting a provider, or prospective provider, of a business opportunity or investment opportunity.*

but does not include:

- (i) any newspaper, community newsletter or community newsletter;*
- (ii) material from government bodies or territorial authorities;*
- (iii) material from registered political parties, charities or charitable institutions.*

The Council has been issuing letter box stickers since 2000 as a waste minimisation initiative endorsed within the Annual Plan. To further clarify the proposed definitions we are proposing a three tiered letter box signage system as follows:

- **"Addressed Mail Only"** = nothing other than addressed mail (including newspapers, circulars, flyers, public & community notices etc)
- **"Addressed Mail and Newspapers only"** = addressed mail and newspapers
- **"No Circulars", "No Advertising Material" & "No Junk Mail"** = this accepts addressed mail, newspapers, community and public notices and everything else with the exception of any unsolicited material that is advertising a product or a service.

Many of the submitters, 95% of industry as members of the Direct Marketing Association with whom we have been negotiating, are offering to demonstrate to the Council their ability to work to an agreed national voluntary code of practice basis.

The Council could consider the following options available:

- Adopt the bylaw, including part 5, so that it becomes operative from the 1 August 2005. This would be opposed by submitters to this part of the bylaw who propose a voluntary code of practice rather than regulation.

- Adopt the Part 5 provisions in conjunction with the entire bylaw on 1 August 2005, but amend the draft bylaw so that Part 5 does not become operative until 1 July 2006. This would allow time for a voluntary code of practice to be tested.
- Do not adopt Part 5 at this stage. This is the option that submitters in opposition to Part 5 of the bylaw are seeking. However, if Part 5 was to be adopted at a later stage or if further amendments were to be undertaken, a further Special Consultative Procedure on Part 5 provisions would be required.

It is noted that as voluntary codes of practice have not been entirely successful in the past that Part 5 of the bylaw is necessary as a fallback position. If the Council selects option (b) and a code of practice is implemented by the industry, Council officers will be able to assess the success or not of the voluntary measure and report back to the by May 2006 on the way forward.

Part 9 Licensing of Waste Collectors and Waste Operators of Waste Management Facilities (page 81)

Submitters from the waste industry 20 (Waste Management NZ Limited) and 30 (Envirowaste):

Seek withdrawal of the draft bylaw and indicate that a voluntary Code of Practice could be a means of collecting information on waste in the City.

Officer's discussion

The "Hill Young Cooper" Determination report dated November 2004 at section 6 identified a number of options for the gathering of waste information from industry of which a voluntary code of practice was one.

There are a number of reasons why this option was not the preferred option including:

- Commercially sensitive nature of information.
- Not all contractors currently collect sufficient data to meet the Council's needs.
- No guarantee the Council will get the information that they require.

The Council has sought to work with the waste industry in addressing waste minimisation in the past. The Council has been in discussions with the waste industry over a period of approximately two years regarding the bylaw.

Over the later part of 2004, informal consultation was undertaken with key waste industry representatives to discuss the bylaw and associated licensing system prior to the introduction of the proposed waste bylaw by way of the Special Consultative Procedure.

During those meetings the Council sought the waste industry's comments on how to practically implement a new licensing regime along the lines proposed in the draft bylaw. Included in this discussion was the need to obtain further information on waste collected and the best means to achieve better reporting of waste volumes and waste types.

While industry has identified the option for voluntary code of practice, little progress was made on this. As a result, officers do not believe the waste industry will actively work to provide the information required by the Council unless it becomes a regulatory obligation under a bylaw. Current voluntary codes of practice have had limited success.

This licensing aspect of the bylaw is recognised as critical in terms of providing the Council with the information necessary to properly direct its waste management plans and associated zero waste initiatives.

Licence fee (page 83)

Submitter 2 (Chemwaste Industries Limited):

Seeks that waste operators who are certified compliant to the Liquid and Hazardous Waste Code of Practice are exempt from the \$300 licence fee. Other matters raised by submitters include automatic licence fee existing operators with good track record, the term of the licence, transferability of licences, and likely conditions that may be imposed.

Submitter 43 (J Florence):

Opposes the licence fee and penalty for scavenging from inorganic rubbish piles as they are recycling useable material. However, the submitter acknowledges that those who scatter rubbish should be prosecuted.

Officer's discussion

An approach which requires that existing operators automatically be granted a licence pursuant to the waste bylaw prefers existing operators over new operators and could be considered to be anti competitive. Nevertheless, track record will be an important matter to taken into account when determining the grant of licences.

Officers consider that a one year term to be the most appropriate period for the range of licensees anticipated. It will also ensure that Council records are kept updated. It is envisaged that any renewal of the licence on an annual basis will be relatively straightforward so that it will not be onerous for licensees, nor should there be any issues relating to contractors undertaking capital investment.

It is standard practice to make licences non-transferable on the basis that the licence has been granted to the applicant because they are a suitable licensee and the transferee may not be. The Council accepts that any application for transfer should not be unreasonably withheld.

Clause 111 of the bylaw is intended to be a guide as to the likely terms and conditions of any licence. Each licence will be granted on its own merits and circumstances peculiar to it and accordingly cannot be provided for in the waste bylaw. Other bylaws provide for licensing but do not set out the exact condition of each licence as this is impractical and unnecessary. It is sufficient that the legislation and the bylaw provide for licensing.

It is currently illegal to scavenge the kerbside collections and the draft bylaw will enable scavenging under a licence.

Provision of information (page 83)

Submitter 1 (B Smith):

Seeks some form of reimbursement for the costs of operators providing waste information to the Council.

Submitter 3 (Chemwaste Industries Limited):

Have indicated that the NZ Water and Wastes Association together with the Ministry for the Environment are currently developing a waste tracking and reporting system, and suggests the Council could wait until this system had been trialled.

Officer's discussion

There is no reason why a national system could not be adopted at any stage. However, the Council does know what information it wants to collect now and has set itself ready to be able to collate and use waste information to reach further towards zero waste initiatives within the short term.

It is anticipated that waste operators themselves would be collecting and holding this information presently for their own records.

Levy (page 83)

Submitters 11 (Pauline Freeth), 13 (Metropolitan Waste and Mason Bins Limited), 20 (Waste Management NZ Limited), 21 (Carter Holt Harvey), 27 (Peter Freeth) and 30 (Envirowaste):

Raised issues regarding the proposal for a waste levy.

Decisions sought by submitters

Submitters indicated that if a waste levy was to be imposed that it should be a nationally imposed levy, and that this should be targeted at waste producers and on waste to landfill only and not on recyclables.

Officer's discussion

The Council also advocates the adoption of a nationally applied waste levy. However, the Government has chosen not to pursue this further. The Ministry for the Environment has indicated that it is not prepared to implement any national levy in the short to medium term and, furthermore, that such action should be taken at local government level as there is legislative means to do so.

The quantum amount of the new levy under this bylaw has not yet been considered and will be dealt with at the next stage, and consulted on through the Special Consultative Procedure. The details of the levy, what types of waste the levy will apply to, what the levy will fund and the levy charge will all be consulted on. This will take into consideration market conditions and the impact upon waste collectors and waste management facility operators, and on the producers of waste. It is simply not possible at this stage to consult on the levy when the Council does not have the requisite waste information to make an informed decision. The necessary waste information from collectors and operators of waste management facilities will be provided under the licensing regime.

Bonds (page 83)

Submitters 11 (Pauline Freeth) and 27 (Peter Freeth):

Comment that bonds of up to \$150,000 may be financially limiting to small and medium waste businesses and seeks that the bond is set lower.

Officer's discussion

The maximum bond payable is \$150,000 and is based on an analysis by the Council of risk if a major commercial collector or operator ceases to operate. The Council agrees that an applicant's bond will be assessed on the potential risk of each applicant and in some circumstances only a nominal bond will be required. Each licensee's bond will be determined on an individual case by case basis.

\$20,000 Fine (page 83)

Many submitters raised opposition to the \$20,000 fine indicated in the draft bylaw. However, the Local Government Act 2002 provides for a maximum penalty of \$20,000 for breach of any bylaw made under Part 8 of the Local Government Act 2002 (excluding trade waste). It is mandatory for all bylaws to state the maximum penalty available for breach. Further, the imposition of any penalty is entirely at the discretion of the Court and as such the Court will take into account a range of factors including the nature of the offence, the seriousness of the alleged offending and whether it is a repeat offence when determining a penalty for breach of bylaw. There is no indication as to whether the Courts would award the maximum penalty available for breach of the proposed waste bylaw.

RESOURCES

If adopted by the Council by 1 July 2005, the bylaw will become operative on 1 August 2005. The implementation of the new Waste Bylaw will be shared amongst the three Councils which are parties to the joint bylaw. Provided a levy at the level that is currently required under the Council's Bylaw 30 is carried over according to the officers' submission, the costs of implementing the new bylaw can be met within the budget sought for the 2005/2006 Annual Plan. Once a new levy is set for the three Councils, implementation of the bylaw will become cost neutral.

CONCLUSION

The draft bylaw, which is founded on the existing Bylaw 30 and Chapter 6 of the general bylaws, has been drafted in consultation with the waste industry, Ministry for the Environment, Kensington Swan and Council's own Legal Services. The Council must consider the submissions received and the implications of amending the bylaw before making its final decisions.

RECOMMENDATIONS

- 1 That the Hearing of Submission on the Draft Waste Bylaw and Licence Fee Report be received.
- 2 That the Planning and Regulatory Committee receive submissions on the draft Waste Bylaw.
- 3 That the Planning and Regulatory Committee consider the submissions at the conclusion of this Hearing and makes appropriate recommendations on the draft Waste Bylaw to the Council Meeting in June 2005.

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