

Review of the Christchurch City Council Waste Management Bylaw 2009 & Cleanfill and Waste Handling Operations Bylaw 2015 and assessment of the proposed Christchurch City Council Waste Management and Minimisation Bylaw

Section 155 Report

Introduction

1. Currently the Council's Waste Management Bylaw 2009 and Cleanfill and Waste Handling Operations Bylaw 2015 regulate solid waste services in Christchurch.
2. Under the Local Government Act 2002 (the Act), the Council is required to review its bylaws within five years of first being made (section 158), and then at least once every 10 years (section 159). These bylaws were last reviewed in 2015 and are due to be reviewed in 2025. The Council has brought forward this review now as part of its scheduled bylaw review programme.
3. When the Council reviews a bylaw, section 160 of the Act requires the Council to review the bylaw by making the determinations required by section 155.

Bylaw review requirements – section 155 determinations

4. When the Council reviews a bylaw, the process is set by section 160 of the Act. Part of this process requires the Council to review the bylaw by making the determinations required by section 155 of the Act.
5. Under section 155 of the Act, the three determinations are:
 - Whether or not a bylaw is the most appropriate way of addressing a perceived problem or issue; and
 - If the Council decides that a bylaw is (still) appropriate, whether the bylaw is the most appropriate form of bylaw; and
 - Whether or not the bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (NZBORA).
6. The following analysis has been undertaken for the purposes of reviewing the Waste Management Bylaw 2009 and Cleanfill and Waste Handling Operations Bylaw 2015 and in respect of the proposed Christchurch City Council Waste Management and Minimisation Bylaw

What are the perceived problems?

7. Prior to making the Christchurch City Council Waste Management Bylaw 2009 and Cleanfill and Waste Handling Operations Bylaw 2015, the Council undertook a review of the three waste related bylaws that were in force in the city at that time. During the course of that review, the Council identified various problems / issues that needed to be addressed. These are reflected in the purposes of the 2009 and 2015 Bylaws.

8. For this current review, the Council has considered whether those problems still exist and whether there are any new issues that need to be addressed.
9. The assessment is that the problems that existed in 2009 and 2015 are still present and the bylaw provisions which relate need to be retained.
10. There are a number of new problems that need to be addressed by the bylaw. The new issues and problems that have been identified include, the need to take into account:
 - recent changes to regulations under the Waste Minimisation Act 2008;
 - relevant strategic planning documents such as the Christchurch Waste Management and Minimisation Plan 2020 and the Climate Resilience Strategy;
 - already foreshadowed changes to the national waste management framework e.g. introduction of a Container Return Scheme;
 - the need for better integration in all aspects of waste management; and
 - Some of the provisions of the 2009 and 2015 bylaws have been assessed as uncertain as to their effect.
11. The staff analysis identifies the following specific problems and issues with the current bylaws which need to be addressed (in a replacement bylaw) :
 - a. The need for a straightforward process (e.g. no requirement for a decision of the full Council) to make minor changes to terms and conditions.
 - b. Provisions which allow residents to opt out of and not pay for Council's kerbside collection services in certain circumstances e.g. where Council's contractor cannot easily access an area.
 - c. More flexible rules for Council kerbside collection service, e.g. to allow for a wider range of bin options.
 - d. New requirements for waste management plans in some circumstances so that waste is managed more effectively:
 - for multi-unit residential developments,
 - demolition and construction activities, and
 - large scale events.
 - e. Provisions to address problems caused by unaddressed mail and advertising material and to deal with nuisance from litter, including litter around donation boxes for clothing and household goods.
 - f. Enabling the Council to set standards for the collection points for recycling and diverted materials, given the likely introduction of container return schemes.
 - g. Revised provisions for waste handling and disposal facilities to support the diversion of materials from landfill and to ensure that all waste materials are disposed of appropriately.
 - h. Amendments to the licensing requirements for waste operators including for the collection of data, to enable more effective monitoring of the effectiveness of the Council's Waste Management and Minimisation Plan.

Is a bylaw the most appropriate way of addressing the perceived problems?

12. The Council is required by legislation to determine (what are) the best options for addressing perceived problems. This requires consideration as to whether, or not, a bylaw is the most appropriate way of addressing the perceived problems. The options considered are:
 - *Revoke the current bylaws and not replace them:* This is not a preferred option.
 - *Status quo – retain the current bylaws:* This is not preferred as the current bylaws do not address adequately some existing and new problems.
 - *Amend the current bylaws:* An amendment bylaw is not the preferred option given the number and significance of the recommended changes identified as required.
 - *Replace the current bylaws with a new bylaw:* this is the preferred option.
13. The analysis suggests that the best approach is for the Council to replace the current bylaws with a new bylaw, i.e. the proposed Christchurch City Council Waste Management and Minimisation Bylaw 2023.
14. Having identified that a new bylaw is the appropriate option, staff identified the most appropriate form of bylaw as one that:
 - Helps achieve the Council's Community Outcomes,
 - Is not inconsistent with other Christchurch City Council bylaws;
 - Allows for exceptions and special circumstances;
 - Is within the legal power of the Council to make bylaws under s145 and s146 of the Local Government Act 2002 and Section 56 of the Waste Minimisation Act 2008.
 - Is not inconsistent with the NZBORA.
15. As the preparation of a new bylaw is considered to be the most appropriate approach, staff have prepared a clause by clause analysis of the proposed provisions for the Waste Management and Minimisation Bylaw (see attachment C).
16. In undertaking this analysis, two main options were identified with respect to most bylaw clauses: retaining the current provision, or making a new provision. In considering which of the options is the most appropriate, the following questions were asked:
 - Does the clause address an identified problem or is it necessary for the efficient management of waste related services?
 - Does it provide an appropriate level of control?
 - is it consistent with other Council bylaws?
 - Is it specific and easy to interpret for the public and Council' officers?
 - Is this provision enforceable?
13. The following is a summary of the proposed changes to the current bylaws. While many of the clauses of the draft replacement bylaw are to the same or very similar effect as those of the current bylaws the replacement bylaw introduces significant changes including:
 - Enabling staff (the Chief Executive) to make changes to the detailed terms and

conditions under the bylaw. Under the current Waste Management Bylaw 2009 even minor changes to the terms and conditions require a Council resolution.

- Provision for residents to opt out of (and not to pay the targeted rate for) the Council's kerbside collection services where they have access to an equivalent service.
 - Amending the standards for the use of the Council's kerbside waste collection services and community collection points including allowing for a wider range of bin options in the Council kerbside collection service.
 - A requirement for some new multi-unit residential developments with more than 10 units to have waste management plans.
 - Requirements for waste management plans for certain construction and demolition activities and for large public events.
 - Provisions to address problems caused by unaddressed mail and advertising material and to deal with nuisance from litter, including litter around donation boxes for clothing and household goods.
 - Enabling the Council to set standards for the collection points for recycling and diverted materials.
 - Revised provisions for waste handling and disposal facilities to support the diversion of materials from landfill and to ensure that all waste materials are disposed of appropriately.
 - Amendments to the licensing requirements for waste operators including for the collection of data, to enable more effective monitoring of the effectiveness of the Council's Waste Management and Minimisation Plan.
- 14 In addition to the recommended clauses outlined in the draft bylaw Clause by Clause Analysis consideration was given to other possible bylaw provisions including a clause to address the nuisance caused by shopping trolleys being left in public places. Having carefully considered the likely effectiveness of a bylaw clause, which would require the owner of a shopping trolley to collect their trolley from a public place within a specified time, staff decided not to recommend such a clause. The conclusion was that a bylaw clause is likely to be no more effective than current non-regulatory approaches and may be perceived as heavy handed. Staff consider that non-regulatory approaches are preferable to a bylaw.
15. Staff conclude that a new bylaw that incorporates the changes identified in the Clause by Clause Analysis and subject to consideration of any submissions that may be received during the consultation process is the most appropriate form of bylaw.

Are there any NZBORA implications?

16. In reviewing the current bylaw and proposing a new replacement bylaw, the Council is required to consider whether or not the bylaw gives rise to any implications under the New NZBORA. Section 155(3) of the Act states that no bylaw may be made which is inconsistent with the NZBORA.
17. The NZBORA specifically identifies four types of rights, these are:
- Life and security of the person;
 - democratic and civil rights;
 - non-discrimination and minority rights;
 - search, arrest, and detention.

The proposed Waste Management and Minimisation Bylaw does not give rise to any implications under the NZBORA.

Conclusion

18. Having carried out the review of the Waste Management Bylaw 2009 and Cleanfill and Waste Handling Operations Bylaw 2015 and an assessment of the proposed Waste Management and Minimisation Bylaw in terms of section 155 of the Act:
 - The proposed Waste Management and Minimisation Bylaw 2023 is the most appropriate way of addressing the perceived problems; and
 - The proposed Waste Management and Minimisation Bylaw 2023 is the most appropriate form of bylaw; and
 - The proposed Waste Management and Minimisation Bylaw 2023 does not give rise to implications under the NZBORA and is not considered to be inconsistent with the NZBORA.