



PALMY[®]
PAPAIOEA
PALMERSTON
NORTH
CITY

Waste Management and Minimisation Bylaw Review 2021

S155 Determination Report

11/08/2021

Contents

Executive Summary	3
1 Purpose of the report	4
2 Legislative background	4
3 The perceived problem	4
4 Options analysis.....	6
5 The form of the bylaw.....	7
6 NZ Bill of Rights Act	8
7 Conclusion	9

Executive Summary

This report recommends that a bylaw is the most appropriate way of addressing the perceived problems related to waste management and minimisation activities. The Council is required by the Local Government Act 2002 to determine whether a bylaw is the most appropriate way of addressing these perceived problems. It makes that recommendation after identifying the perceived problems, and then considering the reasonable options for addressing those problems. In each case, a bylaw has been found to be the most appropriate way of addressing the problem.

This report also considers what form of bylaw is most appropriate and discusses the difference between standalone and combined bylaws. The report concludes that standalone bylaws are more appropriate, allowing for issues to be addressed independently when they are due for review, and allows for the workload of bylaw reviews to be more effectively staggered.

Finally, this report considers whether the Bylaw will give rise to any implications under the NZ Bill of Rights Act. While it is too early to determine this specifically, the rights and freedoms affirmed by that Act are unlikely to be impinged by a bylaw addressing waste management and minimisation activities.

1 Purpose of the Report

This report provides elected members with information about waste management and minimisation activities to enable them to make determinations in accordance with S155 of the Local Government Act 2002.

Before a bylaw is made, the Council must determine that a bylaw is the most appropriate way of addressing the perceived problem. Therefore, this report describes the perceived problems, identifies the reasonably practical options for addressing those perceived problems, and discusses the advantages and disadvantages of each option.

This report also provides information on the most appropriate form of bylaw, and whether the bylaw option is likely to give rise to any implications for the New Zealand Bill of Rights Act 1990. These considerations will also be revisited before any draft bylaw is approved for public consultation, as the nature and content of the bylaw option may have changed during the drafting process.

2 Legislative Background

The Local Government Act 2002 requires the Council, before making a bylaw, to consider whether a bylaw is the most appropriate way of addressing a perceived problem. To meet this requirement, the Council needs to identify the perceived problem and the options for addressing that problem, assess those options, and then determine formally (via a Council resolution) whether a bylaw is indeed the most appropriate way of addressing the perceived problem. The language used here is important – a bylaw must not only be appropriate in addressing the perceived problem; it must be the **most** appropriate way.

The Council is also required to consider the form of the bylaw, and whether the bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990.

3 The Perceived Problem

Council provides a kerbside collection service for general waste and recycling. It operates recycling centres to facilitate the collection and sorting of recycled materials, for on-selling to recycling companies. Council operates a waste transfer station at Ashhurst and works with other commercial operators that provide waste transfer stations at locations within the city. The Council does not operate an open landfill, but retains responsibility for the management of the closed landfills at Awapuni and Ashhurst.

While Council does not control the entire waste system within the city it is obliged under the Waste Minimisation Act 2008 to develop and regularly review its Waste Management and Minimisation Plan.

The waste management and minimisation activity relates to a number of perceived problems, including:

1. Maximising the diversion of waste to beneficial uses, and collecting data to validate waste diversion targets.
2. Regulating and managing the operation of kerbside collection activities (including private collection services), and the potential for contaminating recycling collections and damage to recycling containers.
3. Minimising the potential for waste to create a nuisance in public places.

The Council's Waste Management and Minimisation Plan sets out three goals:

- A community committed to minimising waste sent to landfill
- A community that considers, and where appropriate implements, new initiatives and innovative ways to assist in reducing, reusing and recycling wastes
- Minimise environmental harm and protect public health.

The Plan also includes a target of increasing the proportion of waste diverted from landfill from 38% to 48% by 2025. This target will be achieved by imposing material limits on waste collectors, introducing a kerbside food waste collection service (subject to investigation), introducing additional recycling services for non-residential customers, and establishing a construction and demolition facility to divert construction waste from landfill. Collectively, these actions will divert an estimated 6,800 tonnes of waste from landfill each year, once fully implemented.

Council provides several collection services, including the weekly kerbside waste collection, fortnightly recycling collection service (wheelie bin and glass crate), and a commercial food waste collection service. Some identified issues with the kerbside collection services include:

- contamination of recycling containers, which can pose health and safety risks for staff sorting recycling at the Materials Recovery Facility (MRF)
- misuse of the supplied recycling containers, which can increase costs to administer and manage the kerbside collection services.

Discarded waste in public places can create a health and safety nuisance. If waste is allowed to accumulate or is not disposed of properly, it can encourage vermin and can create unsanitary conditions. While Council has some powers under the Litter Act to deal with infringements, it is also necessary to have regard to other instances of waste in public places which are not covered by the Litter Act.

Since the adoption of the Waste Management and Minimisation Bylaw in 2016, a number of minor issues with the operation of the Bylaw have been identified, including:

- Refining the enforcement process for contamination of recycling containers (the "3 strikes" system) to ensure health and safety for staff implementing the system;
- Reviewing the scope of unsolicited mail provisions, and whether material from political parties or candidates should be included or excluded as unsolicited mail for the purposes of the Bylaw.

These aspects would be considered as part of any revised draft Bylaw that is prepared to replace the existing Bylaw.

4 Options Analysis

The Council is required by S155 of the Local Government Act 2002 to determine whether a bylaw is the most appropriate way of addressing the perceived problem. To comply with this requirement, it is necessary to analyse the reasonably practicable alternatives to a bylaw to address the perceived problem.

Perceived problems

1. Maximising the diversion of waste to beneficial uses, and collecting data to validate waste diversion targets.
2. Regulating and managing the operation of kerbside collection activities (including private collection services) and the potential for contaminating recycling collections and damage to recycling containers.
3. Minimising the potential for waste to create a nuisance in public places.

A bylaw is a viable approach to waste management and minimisation. S146(a) of the Local Government Act 2002 identifies a number of activities for which a Council may regulate via a bylaw, including solid wastes and waste management. Therefore, it is clearly envisaged by Parliament that such activities could be reasonably managed by a bylaw. This is further supported by the Waste Minimisation Act 2008, which also identifies specific functions that a waste management bylaw might cover such as prohibiting or regulating the collection and disposal of waste, and licensing collectors.

Achieving the key outcomes of maximising the diversion of waste to beneficial uses, and regulating the kerbside collection activities, could be managed either by a bylaw or by changing to a contract-based system such as is used by commercial waste collectors operating in the private sector. In those situations, an arrangement to collect waste is made directly with the customer, subject to terms and conditions imposed by the collector.

The bylaw approach has a number of advantages over the commercial contract system. Firstly, the kerbside recycling collection service is offered on a universal basis to all households within the service area, and costs are minimised through economies of scale with charges levied through a uniform annual charge on rateable properties. The need to manage service contracts with individual properties is avoided altogether. Secondly, the environmental imperatives of minimising waste and maximising diversion of waste from landfill fits better with a kerbside collection provided generally across the city. Without the need to operate on a wholly commercial basis emphasis can shift to improving the quality of recyclable materials collected, rather than maximising revenue through a simple waste collection service. Thirdly, while both the Bylaw and the commercial contract approach allow for restrictions to be imposed, the Bylaw requires any such restrictions to be included through the Administration Manual and subject to community consultation, which provides a more transparent and inclusive approach to managing waste and recycling collection issues.

Alternatively, the Council could forego a bylaw and abandon its kerbside collection service altogether, relying on commercial waste collectors to compete for customers. This would likely lead to worse outcomes for waste diversion and recycling, with few commercially-viable options to encourage private recycling collection services comparable to the existing kerbside service provided by Council. Waste volumes would likely increase, as would fly tipping, and Council would struggle to meet the targets set in the Waste Management and Minimisation Plan.

The ability to licence commercial waste collectors is only possible through a bylaw. The Commercial Waste Collector Licence was introduced in the Waste Management and Minimisation Bylaw in 2016, but has not been fully implemented. It remains a valuable tool with which Council is able to regulate the operations of commercial waste collectors, and ascertain their impact on Council's waste minimisation targets set in the Waste Management and Minimisation Plan. Without a bylaw the Council would have no way to implement such a licensing system, and this would make measuring the achievement of waste minimisation targets significantly more difficult.

Other approaches might address parts of the problem – for example, education, or use of existing legislation. Indeed, these are currently utilised alongside a bylaw to supplement and support the activity. Education is used to raise awareness of what items are permitted in recycling bins, and to encourage people to reduce, reuse and recycle materials. However, education alone is unlikely to be sufficient in managing the activity and addressing undesirable behaviours such as repeated contamination of rubbish or recycling bins. Similarly, existing legislation such as the Litter Act is useful for addressing some matters such as leaving rubbish in a public place, for which an infringement notice may be issued. However, it would not address other rubbish nuisances in public places such as accumulated refuse. Furthermore, there are difficulties with the practicality of issuing enforcement notices under the Litter Act which limit its usefulness on a widespread basis.

Recommendation

A bylaw for waste management and minimisation remains the most appropriate way of addressing the perceived problems. While some commercial waste collectors do provide alternatives for households seeking a different approach to the Council kerbside collection services, a commercially-focussed approach is unlikely to achieve the same environmental outcomes of maximising the diversion of waste to beneficial uses. Education and existing legislation, while useful, work most effectively as a complement to a bylaw. Foregoing a bylaw altogether would make enforcement of Council's requirements around the use of rubbish and recycling services impractical, with consequent difficulties for meeting waste diversion targets. Therefore, a bylaw remains the most appropriate way of addressing the perceived problems.

5 The Form of the Bylaw

Section 155(2) of the Local Government Act 2002 requires that the Council determine whether the proposed bylaw is the most appropriate form of bylaw.

There are principally two forms of bylaw – standalone, or combined. A combined bylaw brings together a range of different subjects and issues as a series of chapters within a single document. A standalone bylaw exists independently of other bylaws, and generally relates only to one subject or activity. Councils typically opt for one form or the other, though a few Councils do have both forms of bylaw. An example of a "combined" form of bylaw is Wellington City Council's Consolidated Bylaw 2008, which includes 10 chapters addressing such diverse subjects as animals, alcohol control, public places, and speed limits. Wellington City Council also have other standalone bylaws not included in their Consolidated Bylaw.

The key advantages of the combined bylaw are that it provides a single document for people to refer, and it aids consistency across different subjects for matters such as defined terms and administrative processes. The disadvantages are that it can create a large document which includes much that may not be relevant to people looking for information about a specific subject, and subsequent amendments and reviews can become difficult to manage for a combined bylaw. This last point in particular can cause difficulty. If many bylaw subjects were made into a single bylaw, then all those subjects would be required to be reviewed at the same time. If all Council's bylaws were incorporated into a single bylaw then whenever the Council is required to review its bylaws (five years initially, then every 10 years) it would effectively bring all bylaws under review.

Palmerston North City Council's current bylaws are all "standalone" bylaws. The key advantages of standalone bylaws are that they enable subjects to be treated with more detail than it might be given if the bylaws were incorporated into a single bylaw, and allows for a staggered review of bylaws when required. This last point can also help the community during consultation. A combined bylaw under review puts a large number of subjects before the community for consideration, whereas standalone bylaws reviewed in a staggered fashion allows for distinct issues to be considered separately, with appropriate time for each. Standalone bylaws also have the advantage of being subject-specific, making it simpler for a person to get the bylaw that relates specifically to the subject in which they are interested. The disadvantages of the standalone form of bylaw are that bylaws can potentially become inconsistent with each other, which can be exacerbated by the development of new bylaws several years after earlier bylaws.

Having regard for the advantages and disadvantages of both forms of bylaw, the recommended form of bylaw is the standalone form. The key disadvantage of consistency is addressed largely by comparing specific aspects across all existing and proposed bylaws during the review phase. For example, definitions can be compared across all bylaws, and where the subject permits, uniform definitions are used. The advantage of having all bylaws in a single document (the combined form of bylaw) is minimal, and is largely addressed by having all bylaws accessible from a single page on the Council's website.

6 New Zealand Bill of Rights Act

Section 155(2) of the Local Government Act 2002 also requires that the Council determine whether the proposed bylaw gives rise to any implications under the NZ Bill of Rights Act 1990 (NZBORA).

This aspect cannot be fully considered until bylaws have been drafted for consideration by Council. At that stage, a report will be made as to any concerns that the draft bylaws may create for the NZ Bill of Rights Act. However, a preliminary assessment can be made as to whether bylaws that regulate matters such as water and waste activities may give rise to implications under the NZ Bill of Rights Act. NZBORA sets out specific rights and freedoms which are protected by legislation.

These rights and freedoms include:

- Right not to be deprived of life
- Right not to be subjected to medical or scientific experimentation

- Right to refuse to undergo medical treatment
- Electoral rights
- Freedom of thought, conscience, and religion
- Freedom of expression
- Manifestation of religion and belief
- Freedom of peaceful assembly
- Freedom of association
- Freedom of movement
- Freedom from discrimination
- Rights of minorities
- Right to be secure against unreasonable search and seizure
- Liberty of the person
- Rights of persons arrested or detained
- Rights of persons charged
- Right to justice.

NZBORA states that the rights and freedoms covered by the Act “may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” This is what must be scrutinised when considering whether the bylaws give rise to any implications under the NZ Bill of Rights Act.

While a replacement bylaw has yet to be drafted, it is not expected that a bylaw addressing the perceived problems will give rise to any implications for the rights and freedoms affirmed by NZBORA. For instance, none of the bylaws are likely to impinge on freedom of association or movement, affect the rights of minorities, or affect electoral rights.

When a draft bylaw is presented to the Council for approval before public consultation, a further report on whether it gives rise to any implications under NZBORA will be provided. That report will be able to identify any specific issues that may arise.

7 Conclusion

This report concludes that a bylaw remains the most appropriate way of addressing the perceived problems for waste management and minimisation. While there is a place for education to support changes to behaviours, education alone is unlikely to be more effective than a bylaw. Other than the Litter Act, which empowers the Council to address littering and fly-tipping issues, there is little legislation which provides for enforcement of waste management and minimisation rules.

The form of the bylaw is a choice between a “standalone” style or a combined style of bylaw. This report recommends that the standalone form of bylaw is the most appropriate form, allowing for the issues to be addressed independently when required for review. It also allows for the workload of reviews to be more effectively staggered over a longer period, rather than reviewing all aspects of a combined bylaw at the same time.

At this early stage of the process, this report does not anticipate that a bylaw addressing the issues relating to waste management and minimisation are likely to give rise to implications under the NZ Bill of Rights Act. This assessment will be reviewed when the draft Bylaw is brought to the Council for approval for consultation.