

Whakatane District Council – Draft Waste Minimisation and Management Bylaw 2018

Statement of Proposal

The Whakatāne District Council (Council) has reviewed Part 5 (Solid Waste) of the Whakatāne District Council's Consolidated Bylaw that is due to expire in 2018.

The Council seeks your views on the new Waste Management and Minimisation Bylaw (proposed Bylaw).

The proposed bylaw has been developed as part of collaborative work with the other territorial authorities of the Bay of Plenty and Waikato regions. Council's proposed Bylaw uses these standard bylaw clauses, amended to reflect Whakatane's needs.

The Proposal

The Council is proposing to revoke Part 5 of the Consolidated Bylaw and, following public consultation and consideration of the feedback proposed, adopt a new Waste Management and Minimisation Bylaw 2018.

The draft proposed bylaw is being released for public consultation using the Special Consultative Procedure as outlined in section 86 of the Local Government Act (the Act).

In accordance with section 86(2) of the Act, the Council is required to include the following in a statement of proposal:

- A draft of the proposed bylaw
- The reasons for the proposal; and
- A report of any relevant determinations by Council under section 155 of the Act.

The attached copy of the proposed Whakatāne District Council Waste Management and Minimisation Bylaw 2018 forms part of this statement of proposal.

Reasons for the Proposal

Under sections 158-160 of the LGA, Council is required to review all bylaws within five years of their adoption and every ten years thereafter. Council has taken advantage of the cross-regional collaboration to review the solid waste Part (5) of its Consolidated Bylaw.

This proposal is to adopt a new Waste Management and Minimisation Bylaw, replacing Part 5 of the existing Consolidated Bylaw. Many of the existing provisions are included in the proposed Bylaw; often with more detail to provide greater transparency and clarity. The proposed Bylaw will be supported by administrative procedures.

Council's most recent Waste Management and Minimisation Plan (WMMP) was adopted in 2015 and included a specific action to "Review the existing solid waste bylaw to enable closer monitoring of wastes in the District", intended to be carried out once the procurement process for kerbside services was concluded.

The Waste Minimisation Act (2008) (the WMA) requires bylaws relating to waste management and minimisation, and adopted under the LGA, to be reviewed not later than 1 July 2012 (section 58). Section 56 (2) of the WMA also requires that bylaws must not be inconsistent with Council's WMMP. As the most recent piece of legislation relating specifically to waste management, the WMA is considered to take precedence over the requirements of the LGA where the two Acts address similar issues.

Council's first WMMP, adopted in 2010, included an action to "Review the existing by-law and identify any need for changes/additions to support other actions – e.g. compulsory recycling, source-separation of non-household waste, operator licensing". The bylaw was subsequently reviewed and the conclusion was that changes and additions were not required at that stage to support the actions planned for completion during the course of the WMMP.

Besides these legal review requirements, there are several other reasons why Council is carrying out a review at this point.

The Waikato and Bay of Plenty Template Bylaw

The new parts of the proposed Bylaw are largely taken from the standard template bylaw that was developed in partnership between the Waikato and Bay of Plenty regional councils, and all the territorial authorities of the two regions. The aim of the template bylaw was to:

- have a more consistent approach to regulation across the two regions;
- reduce associated paperwork and duplication of effort;
- develop a comprehensive template with reliable definitions;
- be consistent with the National Waste Data Framework; and
- access cost-effective legal review.

The proposed bylaw continues to regulate issues relating to accumulation and storage of household refuse, control of potentially dangerous materials, trade refuse, facilities, and recycling.

Kerbside Collection Services

Council introduced a new kerbside collection system in 2016. The current bylaw provisions do not fully support and reflect this system.

The new kerbside collection system entails the separate collection of glass from other recyclables. There are also the usual guidelines for customers regarding what time receptacles need to be placed, etc.; which can be regulated through the proposed bylaw if necessary.

National Waste Data Framework

The first stage of the National Waste Data Framework (NWDF) project, led by WasteMINZ, was funded by a grant from the Waste Minimisation Fund. The development of the NWDF took the following form:

- A staged development approach, focusing initially on the most important elements while also setting out a clear 'upgrade' path to include other elements.
- The first stage of the NWDF (which has been completed) includes data on waste disposed of at levied disposal sites (Class 1 landfills) and information on waste services and infrastructure as well as other areas where practicable.
- Subsequent stages of the NWDF will include more detailed data on diverted materials and waste disposed of at non-levied disposal sites.

The first stage of the NWDF is complete. WasteMINZ is now working on the implementation phase. The NWDF will only be successful if it is widely adopted and correctly applied. The implementation report clearly sets out a range of options to move the NWDF forwards.

The Council intends to be a part of the implementation of the NWDF by being consistent with the categories and terminology of the NWDF in the proposed bylaw; and through a licensing system, when and if this is introduced.

Waste Operator Licensing

The template waste bylaw developed for the Waikato and Bay of Plenty regions includes clauses relating to waste operator licensing.

At this stage, Council does not intend to implement a waste operator licensing system. However Council may do this in future if considered necessary to:

- ensure private sector services are delivered in a way that is consistent with the WMMP;
- enable Council to require basic service standards from waste operators;
- access data from waste operators to include in future waste assessments, making these more complete and therefore informative in reviewing and developing new WMMPs; and
- meet Council's obligations under the WMA with respect to carrying out waste assessments and considering available data.

Therefore the proposed bylaw includes a provision for Council to adopt a waste operator licensing scheme at some stage in the future, if necessary, and sets out the process by which this would occur. To ensure that the community and the waste sector have an opportunity to comment on the scope and specifics of a waste operator licensing system, Council intends to consult on these in accordance with the special consultative procedure outlined in the LGA.

Scope of the Proposed Bylaw

The proposed Bylaw has a wide scope and is the same as that used in the preparation of the Council's WMMP. This includes all waste and diverted material in the Whakatane District, with the exceptions of some liquid and gas wastes that are already managed through other policies. Council believes this is necessary to ensure we manage our waste in the most effective and efficient way possible, as required by the WMA.

Options Considered by Council

A bylaw review has been undertaken in accordance with section 160 (2) of the LGA. Now that the review is completed, Council has three options to consider in accordance with section 160 (3) of the LGA. These options also provide a link to the decision-making requirements of section 77 of the LGA, including the identification of reasonably practicable options.

- A. Revoke and replace Part 5 of the Consolidated Bylaw;
- B. Retain the existing wording of Part 5 of the Consolidated Bylaw; or
- C. Revoke Part 5 of the Consolidated Bylaw.

Council is required to consult with the community and has chosen to do so using the special consultation procedure of the Act. The table below outlines Council's options, and briefly highlights the advantages and disadvantages for each option:

Option	Description	Advantages	Disadvantages
Option A: revoke and replace	Undertake public consultation, consider submissions on the proposed bylaw, adopted with minor changes if necessary	<ul style="list-style-type: none"> • Council’s bylaw will be cross-regionally consistent and follow best practice • Bylaw will reflect and support current WMMP, legislation and guidance • Roles and responsibilities will be clarified for council, community, and industry • Ensures Council are compliant with section 58 of the Waste Minimisation Act 	Implementing the changes fully (over time) will involve time and effort on behalf of council, community and industry
Option B: retain existing bylaw	Undertake public consultation to retain the existing wording of Part 5 of the Consolidated Bylaw and confirm this as a new standalone Waste Management and Minimisation Bylaw	No change to current situation – no new rules for council, community, or industry	<ul style="list-style-type: none"> • Does not consistently reflect the current WMMP and therefore likely to contravene the Waste Minimisation Act 2008 part 56 (2). • Does not align with national strategies and guidance, or reflect best practice. • Does not reflect the new kerbside collection systems • Will not be consistent with the cross-regional standard bylaw wording • Does not include necessary and updated definitions • Narrow scope compared to proposed Bylaw
Option C: Revoke the existing Part 5	Undertake public consultation to revoke the existing Part 5 of the Consolidated Bylaw without replacing it	Reduces Council’s regulatory role and enforcement activity burden	<ul style="list-style-type: none"> • Does not meet the needs of the community or provide a regulatory tool to manage waste issues • Not considered a reasonably practicable option in accordance with s77 (1)(a) of the LGA.

Council is proposing to follow Option A. The proposed Bylaw is attached.

Summary of the different sections of the Proposed Bylaw

Section Number	Description	Purpose
Part 1: INTRODUCTION		
2	Title and Commencement	Title and the date when the Proposed Bylaw is adopted and comes into effect.
3	Revocation	Confirms that this Proposed Bylaw will replace in full, Part 5 of the Consolidated Bylaw.
4	Purpose	Explains why the Bylaw has been adopted and what outcomes the Bylaw seeks to achieve. This section also explains the relevant legislation and context.
5	Compliance with Bylaw	For clarity
6	Interpretation	<p>This section defines the various terms used in the Bylaw. Where possible, definitions from existing legislation, Council Plans, or national strategies and guidelines have been used.</p> <p>These definitions are very important in setting the scope of the Bylaw, and in guiding the implementation and enforcement of various provisions.</p>
7	Controls	<p>This section gives assurance to any person/agency that might be affected by controls associated with this bylaw as to the process that will be undertaken, and particularly what opportunity there would be for consultation and feedback on a proposed control.</p> <p>This confirms that Council is complying with their own significance and engagement policy.</p>
Part 2: COLLECTION, TRANSPORTATION, PROCESSING and DISPOSAL of WASTE		
8	General Responsibilities	This section outlines the roles and responsibilities of a number of parties related to solid waste management, and provides clarity as to who is responsible for what.
9	Licensing Waste Collection and Waste Management Facility Operators	<p>Confirms that the Council may adopt a licensing system at some stage in the near future.</p> <p>If a licensing system is adopted, the details of this system will be set out as a Control appended to this Bylaw, and will be publicly notified and consulted upon in accordance with the special consultative procedure in the LGA 2002.</p>
10	General Controls on the Collection, Transportation and Disposal of Waste –	<p>These controls apply to all collections.</p> <p>This section also enables Council to introduce ‘material bans’ in the future if necessary. Setting maximum levels for certain material types in residual waste streams is a tool to reduce the amount of certain material</p>

	Collections from a Public Space	that is disposed of to landfill. This could be used to control things like medical or hazardous waste in household waste, contamination in recycling, set limits for the amount of organic waste in household waste etc if an organic waste collection waste introduced. This will be particularly useful if Council introduces a new service at some stage in the future and needs to ensure/encourage that this is followed.
10	General Controls on the Collection, Transportation and Disposal of Waste – Council Collection Points	For clarity.
10	Multi-Unit Developments	Multi-unit dwellings, such as apartments, retirement villages, and gated communities can be problematic in terms of waste management and minimisation. These clauses encourage consistency and support of WMMP objectives. The clauses also clarify roles and responsibilities during planning, construction, and occupation.
10	Events	This clause enables Council to set standards for event waste management and minimisation in order to improve event outcomes and ensure consistency in the use of available support and tools.
10	Inorganic Material	To prevent issues like scavenging for any collections involving inorganic matter.
10	Nuisance and Litter	To support Council in taking action on issues such as responsibility for waste accumulations, use of approved containers, burning/burying waste, disposal, scavenging etc.
PART 3: OTHER MATTERS		
11	General Offences and Penalties	In some cases enforcement is easier and more effective through other mechanisms such as the Litter Act; but in other cases specific provision needs to be made through this bylaw.
12	Other Enforcement Powers – Inorganic Material	Providing for additional enforcement action where the specific provisions of a sub-section enable other actions, besides prosecution, to be taken.
13	Exceptions and Saving Provisions	For clarity.

Determination under the LGA

Council is required under section 155 of the LGA to determine whether a bylaw is the most appropriate way to address perceived problems.

The process for review required by section 155 of the LGA consists of the following two stages:

1. Section 155 (1) requires Council to determine whether a bylaw is the most appropriate way of addressing the perceived problem; and
2. Sections 155 (2) and (3) require Council to consider whether the format of the bylaw is appropriate, and whether any aspect is in conflict with the New Zealand Bill of Rights Act 1990.

Council has resolved that the proposed Bylaw is the most appropriate method to address the various issues relating to waste management and minimisation, and that it does not give rise to any implications under, and is not inconsistent with, the New Zealand Bill of Rights Act 1990.

It is not a legal requirement to have a bylaw. However various waste management issues are most appropriately addressed through a bylaw, such as:

- Managing and regulating Council's collection services;
- Regulating private collection services to ensure they are aligned with Council's WMMP, and to access data on privately-controlled waste streams;
- Minimising the potential for waste to create a public nuisance; and
- Protecting waste management assets.

Council is authorised to make the proposed bylaw under the LGA (sections 145-156), the WMA (section 56), the Health Act 1956 and the Litter Act 1979. The LGA notes that solid waste is a core function of Council (section 11a).

The proposed Bylaw is the most appropriate form to address some waste management and minimisation issues because it meets the following tests:

- It is authorised by statutory authority under the LGA;
- It is not repugnant to the general laws of New Zealand;
- The proposed Bylaw is certain and provides clear direction;
- The bylaw is reasonable; and
- The bylaw is not overly restrictive, onerous on any person, or impractical.

Adopting the Proposed Bylaw

Council invites the community to give us feedback on the proposed Bylaw to assist it in the decision-making process.

Consultation and Submissions

The formal consultation process will take place between 8 November and 8 December 2017. Council will hold a hearing be held in early February 2018.

Any person or organisation is welcome to make a submission on the Draft Waste Minimisation and Management Bylaw 2018. The Council take into account all submissions when it decided on the final content of the bylaw.

Copies of the Statement of Proposal are available on Whakatane District Council's website <http://www.whakatane.govt.nz>

Hard copies are available from:

- Whakatane District Council 14 Commerce Street, Whakatane
- Whakatane Library 49 Kahahoroa Drive, Whakatane
- Edgumbe Library 38 College Road, Edgumbe
- Ohope Library 4 Harbour Road, Ohope
- Murupara Library / Service Centre Civic Square, 48 Pine Drive, Murupara

Consultation will take place during the period from 8 November to 8 December 2017.

Formal submissions may be made:

Online: <http://www.whakatane.govt.nz>

Post to: Waste Minimisation and Management Bylaw, Private Bag 1002,
Whakatane 3158.

Deliver to: Waste Minimisation and Management Bylaw, Whakatane District Council,
14 Commerce Street, Whakatane.

Email to: submission@whakatane.govt.nz Attention Bylaw Review

Informal submissions can be made by commenting on our Facebook page at <http://www.facebook.com/WhakataneDistrictCouncil>

Submissions close at 5pm on Friday 8th December 2017.

Submitters should not that their submission will be copied and made available to the public after the submission period closes.

Submission should include your name, address, telephone number and email address and should state if you wish to speak to Council in support of your submission. The Council will contact in writing, all submitters who wish to be heard to advise the confirmed time, date and venue of the hearing.