

SUB REGIONAL APPROACH TO WASTE BYLAWS, LICENSING AND LEVIES IN THE AUCKLAND REGION

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ABSTRACT

Three councils in the Auckland Region, Waitakere City, North Shore City and Rodney District, have collectively reviewed their waste bylaws and introduced a sub regional licensing system, operative since 1st August 2005, with provision, following public consultation, for the introduction of waste levies in early 2006.

This paper provides an overview of the background behind this initiative and the issues that had to be dealt with along the way.

The project has involved the development of a number of initiatives that are leading edge in New Zealand and as a consequence have met with some resistance. Amongst these are the regulation of unsolicited advertising and a sub regional licensing system. The councils have had to develop an approach that provides accurate reporting of materials where there are significant cross boundary movements of waste and set up a sub regional bylaw enforcement team to administer and manage the bylaw and licensing requirements.

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1. INTRODUCTION

1.1 How it all came about

Three councils in the north and west of the Auckland region, Waitakere City, North Shore City and Rodney District Councils had signed a Memorandum of Understanding to pursue a cooperative approach to waste policy work, specifically in relation to waste management plans and regulatory functions.

As part of this collaborative approach the Councils in 2005 collectively reviewed and updated their respective waste bylaws, and associated licensing and levy requirements.

1.2 Legislative Background

Central Government and local authorities have, for some time, been attempting to reduce the amount of waste committed to landfill.

The Local Government Act states that local authorities have a duty to promote effective and efficient waste management in their districts, having regard for environmental and economic costs and benefits, including the allocation of costs. It provides for the use of waste management plans.

The New Zealand Waste Strategy (NZWS) which has been adopted by all three councils has core objectives involving the provision of a sound legislative basis for waste minimisation and management, efficient pricing, high environmental standards, adequate and accessible information, and the efficient use of materials.

2. IDENTIFICATION OF THE KEY PROBLEMS

2.1 Council's Waste Management Plans

Waitakere City, North Shore City and Rodney District Councils have had Waste Management Plans in place for the last 3-5 years. All three councils have reviewed their waste management plans and waste minimisation targets.

An assessment of each of the councils' waste management plans and waste minimisation strategies demonstrates whether the targets set are being met by current mechanisms. Although specific targets for waste minimisation are not set for each council, each identifies a goal of zero waste to landfill and a number of initiatives to achieve this.

- Waitakere City Council is achieving some of its targets but is not meeting key targets of diverting waste entering the Transfer Station, reduction in domestic waste per person, or recovery of waste;
- North Shore City Council is unable to determine whether the target is being met as it does not have sufficient and reliable information; and
- Rodney District Council is not achieving the level of reduction in each waste stream anticipated as not all initiatives proposed in their Zero Waste Plan have been successfully implemented.

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In conclusion, each council is unable to achieve the goal of zero waste to landfill and report the need for additional mechanisms to provide information, funding and incentives to reduce waste.

2.2 Limited amount and quality of waste stream information

Councils cannot properly target waste reduction initiatives and monitor progress towards their waste minimisation goals without complete waste stream data.

Some information is available on council contracted collection services but this provides information on only a limited part of the overall waste stream. The existence of private waste collection, transportation and disposal services across the three local authorities means that information on these waste streams is unaccounted for. Both Waitakere City and Rodney District Councils had existing bylaws which included provisions for reporting information on collections from public property i.e. kerbside collections. Historically information has been difficult to obtain from licensed contractors and some licensed operators have refused to supply information.

NZWS (section 4.8) highlights the issue in stating that *“If councils are to fully measure the waste flows within their territory and therefore assess the effectiveness of waste policies and progress towards waste targets, they will require access to information obtained by the private sector.”*

Some contractors have indicated that they would be willing to provide the councils with the data on other waste streams if requested. However, based on past experience it is the councils' belief that this is unlikely to happen in practice due either to the commercially sensitive nature of this data, or because the contractors themselves do not collect sufficient data to meet councils needs.

2.3 Lack of funding for implementation of Waste Minimisation Strategies

The councils have identified that there is a shortfall in the funding available for the implementation of their waste minimisation strategies. The current process where funding is from rates does not align with the 'user pays' approach and is subject to budgetary constraints which limit the effectiveness of, and the coordination of waste strategies.

Specific targets are included in the NZWS which can only be implemented through improved service provision which, in turn, requires additional resources. The NZWS also refers to efficient pricing to ensure that, as far as practicable, pricing reflects the full costs of waste disposal.

Each of the three councils' range of waste management services and waste minimisation programmes are funded by a combination of rates (general and/or targeted such as a Uniform Annual Charge) and user charges.

As those that work in councils will be well aware there is a limited 'pot of money' available to spend in any given year. While the budgets required to fund waste minimisation initiatives may be clearly identified there is always a distinct risk that only a portion of those budgets will be approved especially as they are from general rates and are in competition with projects such as roads that often have a higher local profile and are deemed 'more important'. These

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reduced budgets can compromise the strategic approach to waste minimisation and the ability to achieve stated waste reduction objectives.

By having a waste levy there is the ability to secure funds for waste minimisation initiatives.

2.4 Lack of progress in achieving zero waste to landfill

While the councils have made progress over recent years in reducing waste to landfill they are struggling to meet their zero waste to landfill goals. There is a need to change behaviour away from disposing waste to landfill.

Creating the right and equitable incentives for waste generators to review and, as necessary, change existing practices is a key element of the waste minimisation strategies. So-called “blunt instruments”, such as general rates, are not considered economically efficient means of achieving such ends so appropriately targeted mechanisms are required.

Each council still aims to continue providing a pre-paid refuse service. However, if local and national reduction targets are to be achieved, consideration must be given to better targeted funding for waste diversion services and the creation of economic incentives/disincentives such as a levy to change behaviour relating to disposal of materials to landfill.

2.5 Summary

As a consequence the three Councils moved to address these problems by collectively using the available bylaw mechanism under the LGA to provide both for a licensing regime to regulate waste collection and disposal and collect associated data, and potentially a waste levy to fund waste minimisation activities on the basis of targeted behaviour change.

3. METHODOLOGY

3.1 Overview

The process that the three councils followed involved the following:

- Informal Waste Industry consultation – end of 2004
- Public consultation – March / April 2005
- Submissions / Hearings – May / June 2005
- Bylaw operative – 1 August 2005
- Licensing commenced – 1 August 2005
- Levy introduction – separate Special Consultative Process scheduled for early 2006

The objectives of the bylaw are:

- To monitor and regulate collection, transportation, disposal and management of waste to encourage waste minimisation
- To promote the councils’ waste minimisation and waste reduction initiatives
- To assist in the implementation of councils’ Waste Management Plans and the NZWS core policies
- To ensure effective and efficient waste management

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- To ensure specific performance standards and requirements for waste collection, transportation, disposal and treatment services for the benefit of the public.

3.2 Bylaw

The waste bylaw has been purposefully kept as broad as possible to capture the entire waste stream. The waste definition is “any solid, material or thing that is discarded, discharged or selected for disposal ...”. Waste types are broken down into categories of household, recyclable, green, paper, inorganic, commercial, prohibited and hazardous.

The bylaw deals with a range of areas including key provisions for:

- Depositing waste, trolleys and receptacles on public land
- Unsolicited advertising
- Special events
- Multi unit developments
- Licensing of waste collectors and waste operators of waste management facilities, and a
- Waste levy.

3.3 Industry Consultation

Initial informal consultation on the concept of a licensing and levy regime was carried out with key industry waste groups. This took the form of two workshops in late 2004 facilitated by the Ministry for the Environment. Industry comments were considered by Council officers in the drafting of the Waste Bylaw prior to its release for public consultation.

The workshop attendees agreed that the main requirements of a licensing and levy regime were practicality, fit for purpose, provision of useful information, need for consistency of any system, fair allocation of funds raised for waste minimisation projects; and common opportunity. There were also a number of issues of concern including enforcement, the necessity of a waste levy; and the implications for industry of implementing a licensing system and a waste levy.

Following the adoption of the Waste Bylaw, informal consultation meetings continued with waste industry representatives leading up to the implementation of the licensing system.

3.4 Licensing

The key requirements of the licensing system, where the term of the licence is up to five years, are:

- Provision of a bond and licence fee
- Compliance with council / environmental standards – receptacles, collection, offences etc
- A requirement to supply monthly information, and
- Payment of the waste levy (details subject to a further SCP).

A licence is required from any person involved in the removal, collection, transportation or disposal of waste within the councils’ districts exceeding an annual 20 tonnes. Only licensed operators are authorised to undertake collection of refuse and recyclables from any commercial or residential property whether it be from the berm or private property. A licence is required for all waste types.

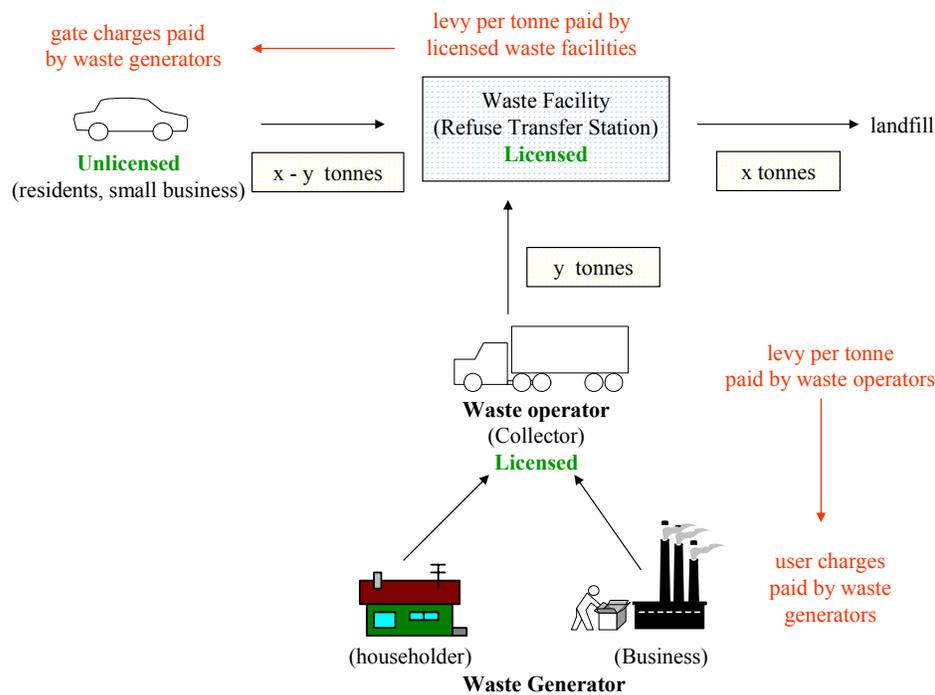
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A licence is also required from any person involved in the operation of a waste management facility within the councils' districts.

The Auckland region is problematic with respect to the implementation of any licensing system as councils do not own the disposal facilities and waste flight is a significant issue. Therefore the licensing system has been designed to collect data at source both for the collectors and facilities.

There are a number of practical difficulties with this type of system. The most critical of these is the non exclusive collectors that operate across the council boundaries and outside the sub-region. To address this problem log books in trucks are required.

Figure 1 below details the licensing system.



A key requirement of the licensee is the provision of information. This is provided to Council on a monthly basis, and includes information on material collected, carried, disposed or treated. This is identified by quantity, type/composition, source and destination.

3.5 Management

To administer the bylaw and licensing a regional approach has been developed where there is a joint licensing administration and bylaw enforcement team. This is resourced by each council but controlled by a regional team and comprises of 3 full time staff with management and administrative back up.

The functions of this team are the management and administration of the licensing system, the enforcement including auditing / spot checks, and reporting collection and collation.

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The advantage of this regional approach is that there are standardised licensing and reporting requirements, consistency between councils and one point of contact. This system creates efficiencies both in terms of resources and cost.

As with any council system where both regulatory and operational functions are undertaken there is a clear need for separation as highlighted in S39 (c) LGA 2002. This was also an industry concern and significant effort was made to ensure that the management system provides a clear separation between the regulatory and operational functions.

Further industry concerns relating to confidentiality have been addressed by ensuring that information provided by industry is at a relatively high level, and that any information collected is distributed in collated form only.

4. LEVY

4.1 Overview

The waste levy information contained within this paper is indicative only. It is subject to further detailed assessment by the councils, waste industry input and the inclusion of any relevant information obtained through the statutory consultation process.

There are three main objectives for implementing a waste levy:

- To support the implementation of legislative and national waste strategy aims,
- Fund waste minimisation initiatives, and
- Change behaviour

A levy is deemed to be a fairer and more equitable system for funding waste management activities due to the fact that it aligns to the objectives of the NZWS, conforms to the polluter pays principle and is more closely associated with waste management activities than funding from general revenue.

The design of a levy needs to be 'fit for purpose'. The purpose indicated above has two elements, which may or may not be compatible. If the purpose is weighted towards generating funds, the levy would need to be designed accordingly. In this case, it would need to incorporate features such as being spread thinly across a wide base of contributors such that it is noticed as little as possible, is incapable of being avoided, and incorporates a least-cost manner of collection.

If the purpose of a levy is weighted towards encouraging behaviour change, the levy would need to be large enough to be noticed by the contributor, and clearly and directly related to the behaviour to be modified. The contributor must also be aware of legitimate alternatives or options they can utilise to avoid paying the levy. This purpose therefore relies heavily on connecting the payment of the levy with the action to be modified, which assumes the levy would be applied as close to the time and act of discarding the waste as possible. A declining revenue stream over time can be an indicator of the success or extent of the behaviour change achieved.

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Note that applying a levy will generate funds even if the purpose is based solely on behavioural change. Hence a levy could be designed to support both purposes, with the two complementing each other.

The councils in this case consider it more efficient to levy all waste operators undertaking waste management activities (within the three council areas) on each tonne of waste, which they collect for disposal to landfill. This includes council contractors, private household contractors, business and commercial waste contractors, demolition contractors, skip operators and any other body or organisation involved in the collection of materials to be sent to landfill.

4.2 Regional versus National Levy

During consultation on the licensing and levy system there has been significant discussion about a national versus regional approach.

The implementation of any national levy is a political decision and at this stage councils are unclear of its status. Prior to the elections indications were that a levy was not on the political agenda and even if it was given the go ahead it may take between five and ten years before it could be put in place.

One of the major problems with a national levy is that the funds raised could go into a Central Government fund which would be unlikely to be used for waste minimisation initiatives let alone make its way back to the regions where the levy was generated. It could act as an economic disincentive but would not have the ability to fund waste minimisation initiatives.

A regional bylaw while more problematic to administer in the Auckland region due to issues of waste flight has a number of advantages including:

- Any levy funds would be retained in the local economy
- While acting as an economic disincentive any money raised would be channelled back into funding individual Council waste minimisation initiatives
- The ability to fund regional initiatives.

Councils and regions have their own distinct waste issues and are all at different stages in their waste reduction efforts. Councils want to have control of their own destiny and this is what makes a regional based approach rather than a national approach more appropriate.

4.3 Funding

The levy funds the recovery of costs incurred by Council in relation to licensed activities. These primarily are the monitoring and enforcement costs. Additionally it has been determined that there are other associated costs that Council currently has to pay for. A study undertaken in Waitakere City indicated that in the order of 32% or \$232K per annum was spent on litter related costs that directly related to domestic waste operators in the city. It is anticipated that the entire waste collection and transport industry are responsible for more than this.

Any future levy will also fund the councils' waste minimisation initiatives contained within their Solid Waste Management Plans. This component of the levy will specifically be

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targeted at waste to landfill. The levy may also be introduced in a staged manner over a number of years and the monies collected from the levy will not be used to fund other council services nor subsidise any council provided waste collection and disposal services.

5. IMPLEMENTATION ISSUES

5.1 Key outcomes to date

The bylaw process has been the catalyst for discussion and change. A prime example of this is unsolicited mail where a voluntary national code of practice is now being implemented by the marketing industry.

It has also assisted in raising the profile of licensing and levies and encouraged Auckland councils to actively look at a regional approach for implementing and administering these.

5.2 Licensing

The licensing of waste collectors and facilities has been ongoing since the bylaws were passed in July 2005. An implementation programme was put in place and to date more than 200 potential licensees have been contacted. One of the big problems, and this illustrates the need for licensing, was that the councils did not know who was required to be licensed.

Industry have been keen to be involved and a number of contractors have requested the list of licensees so that they can identify any companies that should also be included to ensure a level playing field.

5.3 Legal Challenge

Currently Waste Management NZ Ltd and Carter Holt Harvey Ltd are seeking a judicial review of the councils' decision to adopt waste bylaws containing provision for the introduction of a waste levy and the licensing of collectors and facility operators.

These revolve around the councils' ability to licence private collections and in particular regulating the collection, transportation and disposal of waste and recyclable paper provided through private commercial arrangements.

Additionally there are challenges to councils ability to impose a levy to recover more than the cost to council of any licensed activity under section 544 of the LGA.

It is anticipated that the case will not be heard before the Auckland High Court until mid February 2006. Ultimately the outcome of the judicial review is likely to determine whether or not the councils can achieve the objectives of the New Zealand Waste Strategy and the Local Government Act provisions.

5.4 Regional Approach

Discussions have commenced with a number of parties including Auckland Councils, MfE and representatives from the waste industry on a regional waste levy approach for Auckland

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This would ensure that issues of waste flight would be minimised and there would be consistency across the region, something that councils, industry and MfE are all in favour of.

Key issues to be addressed are ensuring that the funding that individual Councils are seeking is consistent and equitable across the region, ensuring that funding is spent appropriately and recognising that councils are at different stages of waste minimisation.

6. CONCLUSION

In conclusion, the councils were unable to achieve their goal of zero waste to landfill and reported the need for additional mechanisms to provide information, funding and incentives to reduce waste. There was a shortfall in the funding available for the implementation of their waste minimisation strategies.

As a consequence they addressed these problems by collectively using the available bylaw mechanism under the LGA to provide both for a licensing regime to regulate waste collection and disposal and collect associated data, and potentially a waste levy to fund waste minimisation activities on the basis of targeted behaviour change. The bylaw process has been the catalyst for discussion and change e.g. a voluntary national code of practice for unsolicited mail is being implemented by the marketing industry. It has also assisted in raising the profile of licensing and levies and encouraged councils to actively look at a regional approach for implementing and administering these.

Ultimately the outcome of the judicial review will determine whether or not councils can achieve the objectives of the New Zealand Waste Strategy and the Local Government Act provisions.

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