

Solid Waste Bylaw 2012 Review

2019 Options report

Introduction

This report analyses the options available to Auckland Council (council) in response to the review of the Auckland Council Solid Waste Bylaw 2012 (Bylaw).

The report draws on the “Auckland Council Solid Waste 2012: 2019 Findings Report” (findings). Staff presented the findings of the review to the Regulatory Committee on 14 February 2019. The Committee endorsed the following key findings (REG/2019/7):

- council has a responsibility to promote waste management and minimisation
- the Bylaw is identified in the Auckland Waste Management and Minimisation Plan 2018: Working Together for Zero Waste (Waste Plan) as one tool to help reduce harm from residual waste
- harm from residual waste remains a significant issue in Auckland and in the context of the Bylaw includes issues related to domestic waste, resource recovery sites, fill sites, hazardous waste, litter and illegal dumping
- the Bylaw is still necessary and effective (within the constraints of the resources available and current legislation) but could be improved.

The options considered in this report flow from these findings. The options focus on the whether a bylaw is required for each of the 12 topics contained in the current Bylaw. This approach was taken because each of the 12 topics are distinct areas of regulation. For example, kerbside waste collection is different to waste from events.

Options Report Executive Summary

To enable council to decide how to respond to the findings from the review of the Auckland Council Solid Waste Bylaw 2012 (Bylaw), staff prepared this options report.

Staff identified and assessed options for each of the 12 topics contained in the Bylaw using Waste Minimisation Act 2008 and Local Government Act 2002 criteria.

Staff recommend that a new waste bylaw is required to address 10 of the 12 topics contained in the current Bylaw:

- | | |
|--|----------------------|
| • Waste collection from a public place | • Events |
| • Waste facilities (data collection) | • Unaddressed mail |
| • Donation collection points | • Shopping trolleys |
| • Hazardous waste | • Waste nuisance |
| • Multi-unit developments | • Litter receptacles |

A new (as opposed to an amended) bylaw is required because the current Bylaw expires on 25 October 2019 under the Local Government Act 2002.

A new bylaw for the above topics would:

- help implement the Waste Plan goal to reduce harm from residual waste, for example encourage waste minimisation, prevent inappropriate waste disposal and collect data
- help manage the use of public places for the deposit, collection and transportation of waste and manage the appropriate use of public litter receptacles
- be easier to understand than the current Bylaw.

A new bylaw is not required for two topics in the current Bylaw:

- kerbside inorganic collection
- litter from the display of flags and similar items

Council's kerbside inorganic collection was replaced in 2015 with a new service that collects inorganic material from private property. This approach is identified in the Waste Plan.

The Bylaw to prevent the display of flags, balloons, posters and similar items from becoming litter has never been used. If any future issue arises, council can use existing powers under the Litter Act 1979, Signage Bylaw 2015 and Public Safety and Nuisance Bylaw 2013.

Current bylaw and problem definition

Current bylaw

The Bylaw (**which expires on 25 October 2019**) combines a framework and prescriptive approach which:

- provides a framework for the deposit, collection, transportation and disposal of waste
- establishes a licensing system for waste collectors, waste facility operators and operators of donation collection points
- enables the adoption of operational controls
- requires a waste management and minimisation plan for events and multi-unit developments
- addresses the risk of litter from unaddressed mail, donation bins and abandoned shopping trolleys
- manages litter receptacles and waste nuisance.

Original problem statement

When the Bylaw was made staff identified a range of issues related to limited data, litter and illegal dumping, misuse of kerbside waste collection services by residents, inconsistent requirements for kerbside waste collectors and poor waste diversion.¹

The Bylaw was introduced to respond to these issues by amalgamating all legacy bylaws to provide a single bylaw for the whole region.

Current and future problem

The current problem is that not all waste issues are covered by the Bylaw. In addition, some waste issues that are already covered by the Bylaw such as misuse of kerbside collection services, are still causing problems. In contrast other waste issues covered in the Bylaw, such as attaching flags and similar items to public litter bins, are no longer a problem.

Examples of waste issues not currently regulated by the Bylaw include:

- data from waste disposal outside of Auckland
- licensing of certain waste facilities
- privately-provided flexi bins
- disposal of hazardous waste (e.g. medical waste) in kerbside bins
- disposal of asbestos in fill sites
- noise and traffic issues
- collection limitations due to cycle lanes and kerbside parking
- inadequate storage space for kerbside bins.

¹ Statement of proposal, Review of solid waste bylaws, July 2012.

Examples of waste issues covered by the Bylaw which are still causing problems include:

- general misuse of kerbside waste collection services by residents
- inadequate waste storage in multi-unit developments
- contamination of waste at events
- disposal of commercial and domestic waste in public bins
- litter and illegal dumping at donation collection points and from unaddressed mail
- abandoned shopping trolleys.

Waste issues can increase harm from residual waste or hinder council's statutory obligation to collect data.² For example:

- contamination of recyclable or organic material or their deposit in refuse bins reduces effective resource recovery and prevents diversion from landfill
- waste spillage, litter and illegally dumped material disrupt ecological systems through land and waterway contamination and reduce effective recovery of material
- insufficient design of waste storage areas in multi-unit developments (MUDs) and inadequate bin provision at events hinder waste separation and landfill diversion
- without sufficient data, council is unable to define the volumes and types of waste to landfill and meet its statutory obligation under the Waste Minimisation Act 2008.

Increased harm from residual waste can lead to broader impacts such as:

- greater greenhouse gas emissions from increased waste deposited in landfills
- increased cost to ratepayers to maintain old landfills (currently \$5-8 million a year)
- decreased pride in the environment
- lost revenue from recyclable material sent to landfill.

Such waste issues are exacerbated by Auckland's rapid population growth (projected to exceed 2.3 million by 2043) and the building boom.

The current Bylaw restricts council's ability to address emerging problems through a lack of regulation and existing problems through poor structure and wording. The Bylaw also contains regulations that are no longer required.

Without intervention, harm from residual waste will increase because of the reduced incentive (requirement) to appropriately manage and minimise waste.

Scale and magnitude of the problem

There is limited data available on the scale and magnitude of waste issues. Available data and anecdotal evidence include:

- one complaint per week about privately-provided flexi-bins (1-3 per cent of illegal dumping complaints)
- anecdotal increase in domestic hazardous waste and asbestos deposited to landfill
- anecdotal increase in complaints about medical waste in domestic refuse in 2018
- anecdotal lack of kerbside bin storage space for retailers and residents in the CBD, particularly in Newmarket
- increase in noise complaints about rubbish collection vehicles by 84 per cent between 2017 and 2018³
- increased domestic recycling bin contamination from 5 to 12-14 per cent since 2011

² Sections 50 and 51 of the Waste Minimisation Act 2008.

³ Data limited accuracy pre-July 2017 due to older complaint systems.

- 50 per cent contamination rate in public place recycling bins
- traffic issues from multiple collections from MUDs (daily for refuse and up to three times per week for recycling)
- weekly complaints of inappropriate distribution of unaddressed mail
- 750 abandoned shopping trolleys found from 2015 to 2018
- 315 requests for public litter receptacles to be emptied annually
- anecdotally, frequent commercial and household waste in public litter receptacles.

Stakeholder view of problem

Stakeholders (including waste collectors, waste facility operators and District Health Boards (DHBs)) consider that waste issues continue to contribute to harm from residual waste, in particular misuse of kerbside waste collection services by residents.

Objectives

The objectives of any regulatory response to the problems are to:

1. help implement the Waste Plan by ensuring appropriate regulation to manage and minimise waste, protects public health and safety and manages litter and nuisance.
2. meet legislative requirements under the Waste Minimisation Act 2008 (WA2008) and the Local Government Act 2002 (LGA2002) including:
 - (i) giving effect to the identified priorities and desired outcomes in an efficient and effective manner (s14 LGA2002)
 - (ii) ensuring any bylaw is valid, including that it is authorised by statute, and is not repugnant or unreasonable
 - (iii) ensuring any bylaw is not inconsistent with the Waste Plan (s56 WA2008)
 - (iv) ensuring any bylaw does not give rise to any implications or is inconsistent with the New Zealand Bill of Rights Act 1990 (s155 LGA2002).

These objectives are aligned with the strategic directions in the Auckland Plan by implementing the the Te Mahere Whakahaere me te Whakaiti Tukunga Para I Tāmaki Makaurau 2018, Auckland Waste Management and Minimisation Plan 2018 (Waste Plan).

Outcomes

The key desired outcome is to reduce harm from residual waste as stated in the Waste Plan.

Options

The findings report concludes that the Bylaw is still necessary and effective (within the constraints of the resources available and current legislation) but could be improved.⁴

This report focuses on options to address each of the twelve topics in the findings report.

For each topic, the following options are identified to achieve the outcome sought:

- Option 1: No waste bylaw about topic
- Option 2: New waste bylaw about the topic

⁴ Auckland Council Solid Waste Bylaw 2012: 2019 Findings Report, pp. 10.

A more detailed description of the options is provided in each topic. In general:

- Option 1 (no waste bylaw) would rely on other existing regulations⁵ and where no regulations exist, it would rely on non-regulatory methods, such as education
- Option 2 (new waste bylaw) would address current and emerging waste issues that are not appropriately addressed by other existing regulations
- both options would commence on 25 October 2019 which is the date the current Bylaw expires under section 160A of the Local Government Act 2002
- implementation of both options would be within existing resources and budgets, and staff would use a graduated approach to compliance when responding to complaints.

Options assessment

Preliminary legal assessment

Bylaws must comply with certain legal requirements to be valid, including that they are authorised by statute, and are not repugnant or unreasonable. Staff consider that a bylaw for 10 of the 12 topics meet these requirements. A bylaw about kerbside inorganic collection and flags and similar things may be unreasonable because they are no longer issues.

A bylaw about unaddressed mail raises potential limitations to freedom of expression. However, these are justified limitations to support waste management and minimisation, protect health and safety, and manage litter and nuisance in public places. Therefore, there are no implications and the options for all 12 topics are not inconsistent with the New Zealand Bill of Rights Act 1990.

A bylaw about kerbside inorganic collections would be inconsistent with the Waste Plan. The Waste Plan identifies actions to provide inorganic collection from private property (actions 16 and 17) and potential for collection services through Community Recycling Centres (action 18).⁶ A bylaw about the remaining 11 topics are not inconsistent with the Waste Plan.

Assessment against criteria

Staff used a comparative assessment against criteria for each of the 12 topics. These criteria are aligned to the 'objectives of a regulatory response' identified above:

1. help implement the Waste Plan by ensuring appropriate regulation to manage and minimise waste, protects public health and safety and manages litter and nuisance.
2. meet legislative requirements under the Waste Minimisation Act 2008 (WA2008) and the Local Government Act 2002 (LGA2002) including:
 - (i) giving effect to the identified priorities and desired outcomes in an efficient and effective manner (s14 LGA2002)
 - (ii) ensuring any bylaw is valid, including that it is authorised by statute, and is not repugnant or unreasonable
 - (iii) ensuring any bylaw is not inconsistent with the Waste Plan (s56 WA2008)
 - (iv) ensuring any bylaw does not give rise to any implications or is inconsistent with the New Zealand Bill of Rights Act 1990 (s155 LGA2002).

A summary of the assessment is shown in Table 1. The full assessment is in Appendix 1.

⁵ Examples include the Auckland Council and Auckland Transport Trading and Events Bylaw 2015 (collections) and Public Safety and Nuisance Bylaw 2013 (nuisance), Health Act 1956 (nuisance), Litter Act 1979, Auckland Unitary Plan (MUDs, waste facilities), Summary Offences Act 1981 and Crimes Act 1961 (damage).

⁶ Auckland Council Waste Management and Minimisation Plan 2018, pp. 81.

Table 1: Summary of comparative assessment of options against stated objectives for all 12 waste topics

The “✓” and “x” reflect the impact of the option against each criterion relative to other options. For instance, the more “✓”, the better the option.

Topic	Effectiveness at managing and minimising waste	Efficiency at managing and minimising waste	Is a bylaw valid and consistent with Bill of Rights and Waste Plan?
1. Waste collection from a public place			
• Option 1 (no waste bylaw)	x	✓	n/a
• Option 2 (new waste bylaw) (recommended)	✓	✓	✓
2. Waste facilities (data collection)			
• Option 1 (no waste bylaw)	✓	✓	n/a
• Option 2 (new waste bylaw) (recommended)	✓✓	✓	✓
3. Donation collection points			
• Option 1 (no waste bylaw)	x	x	n/a
• Option 2 (new waste bylaw) (recommended)	✓	✓	✓
4. Inorganic kerbside collection			
• Option 1 (no waste bylaw) (recommended)	✓	✓	✓
• Option 2 (new waste bylaw)	x	x	x
5. Hazardous waste			
• Option 1 (no waste bylaw)	x	✓	n/a
• Option 2 (new waste bylaw) (recommend)	✓	✓	✓
6. Multi-unit developments			
• Option 1 (no waste bylaw)	x	✓✓	n/a
• Option 2 (new waste bylaw) (recommended)	✓	✓	✓

Topic	Effectiveness at managing and minimising waste	Efficiency at managing and minimising waste	Is a bylaw valid and consistent with Bill of Rights and Waste Plan?
7. Events			
• Option 1 (no waste bylaw)	✓	✓	n/a
• Option 2 (new waste bylaw) (recommended)	✓✓	✓	✓
8. Litter (from display of flags, balloons, posters and the like)			
• Option 1 (no waste bylaw) (recommended)	✓	✓	✓
• Option 2 (new waste bylaw)	✓	x	x
9. Unaddressed mail			
• Option 1 (no waste bylaw)	x	x	n/a
• Option 2 (new waste bylaw) (recommended)	✓	✓	✓
10. Abandoned shopping trolleys			
• Option 1 (no waste bylaw)	x	x	n/a
• Option 2 (new waste bylaw) (recommended)	✓	✓	✓
11. Waste nuisance			
• Option 1 (no waste bylaw)	x	✓	n/a
• Option 2 (new waste bylaw) recommended	✓	✓	✓
12. Litter receptacles			
• Option 1 (no waste bylaw)	x	✓	n/a
• Option 2 (new waste bylaw) (recommended)	✓	✓	✓

Analysis and recommendations

To enable council to decide how to respond to the findings from the review of the Auckland Council Solid Waste Bylaw 2012 (Bylaw), staff prepared this options report.

Staff identified and assessed options for each of the 12 topics contained in the Bylaw using Waste Minimisation Act 2008 and Local Government Act 2002 criteria.

Staff recommend that a new waste bylaw is required to address 10 of the 12 topics contained in the current Bylaw:

<ul style="list-style-type: none">• Waste collection from a public place• Waste facilities (data collection)• Donation collection points• Hazardous waste• Multi-unit developments	<ul style="list-style-type: none">• Events• Unaddressed mail• Shopping trolleys• Waste nuisance• Litter receptacles
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A new (as opposed to an amended) bylaw is required because the current Bylaw expires on 25 October 2019 under the Local Government Act 2002.

A new bylaw for the above topics would:

- help implement the Waste Plan goal to reduce harm from residual waste, for example by encouraging waste minimisation, preventing litter and inappropriate disposal of waste, and enabling data collection
- help manage the use of public places for the deposit, collection and transportation of waste and manage the appropriate use of public litter receptacles
- be easier to understand than the current Bylaw.

A new bylaw is not required for two topics in the current Bylaw:

- kerbside inorganic collection
- litter from the display of flags and similar items

Kerbside collection of inorganic material by council has been replaced with a new service that collects inorganic material from private property since 2015. This approach is identified in the Waste Plan.

The Bylaw to prevent the display of flags, balloons, posters and similar items from becoming litter has never been used. If any future issue arises, council can use existing powers under the Litter Act 1979, Signage Bylaw 2015 and Public Safety and Nuisance Bylaw 2013.

Appendix 1: Assessment of waste issues

This appendix contains a full assessment for each of all 12 topics including:

context

- what the current Bylaw requires
- how the current Bylaw is implemented
- the statutory authority under which a bylaw can be made
- the issues and outcomes the current Bylaw sought to address and achieve when it was first made in 2012
- the current and emerging issues to be addressed and outcomes sought in 2019.

analysis

- whether a bylaw can help address the current and emerging issues and outcomes
- the effectiveness and efficiency of the current Bylaw to address the current and emerging issues and outcomes
- whether the current Bylaw is clearly written
- options to address the current issues and outcomes
- pros, cons, risks and risk mitigation for each option
- the effectiveness and efficiency of each option.

advice

- recommendations.

TOPIC 1: WASTE COLLECTION FROM A PUBLIC PLACE⁷ (CLAUSES 8-14, 20)

EXISTING BYLAW

- Bylaw sets out obligations of council, waste collectors and transporters, occupiers and managers of premises, and the public relating to the collection, transportation and disposal of waste from public places. This includes separation of waste into separate containers, licensing of waste collectors and nuisance behaviours.

IMPLEMENTATION OF EXISTING BYLAW BY WASTE SOLUTIONS

- Proactive implementation includes daily auditing of over 2,000 recycling bins for contamination, and licensing of collectors. Council issued 112 licences in 2017/2018, up from 80 in 2014/2015.
- Graduated compliance response to service issues (for example letter drops, door knocks, audits, warnings, bin rejection and removal) and licence breaches (for example warnings).
- No prosecutions have been made under the Bylaw.

STATUTORY AUTHORITY

- Waste Minimisation Act 2008 (WA2008) and/or the Local Government Act 2002 (LGA2002)⁸ bylaws can address issues about public place waste collection. Relevant bylaw powers and penalties to issues include property inspection, obtaining information⁹ and maximum court fines of \$20,000.¹⁰ LGA2002 also provides for cost recovery for damage to bins.¹¹
- Health Act 1956 (s64(1)(a)) and Litter Act 1979 (s12) bylaws can address public health, nuisance and litter issues. Relevant bylaw powers and penalties are similar or less than the WA2008 and LGA2002, for example the maximum penalty under the Health Act is \$500.

ISSUES AND OUTCOMES SOUGHT IN 2012

- **Issues¹² concerning collectors** were waste not collected on time, fully, or not kept separate on collection, cost to remove uncollected waste, noise nuisance, litter and health and safety risks from bag use and spillage and lack of control over collectors not contracted to council.
- **Issues concerning use of approved bins by residents** were waste deposit in inappropriate bins, pedestrian and vehicle obstruction, litter, damage and reduced visual amenity from bins left on the kerbside outside collection times, and ratepayer cost of replacement if bins stolen. **A potential issue** was the deposit of waste into neighbouring household bins on implementation of the disposer-pays system.
- **Outcome sought** was standardised levels of service for kerbside collection services to ensure all waste and recycling collection services contributed to Waste Plan objectives, to protect public health and safety, and to retain amenity value of public areas.

ISSUES AND OUTCOME SOUGHT NOW

- **Issues** remaining from 2012 are noise nuisance exacerbated by frequent collections, litter and health and safety risks from use and spillage of bags, pedestrian and vehicle obstruction, and litter, damage and reduced visual amenity from bins on the kerbside outside of collection times.
- **Emerging issues** include flexi-bins left on the kerbside;¹³ contamination of recyclable waste; environmental harm, litter and health and safety risks from spillage and overflow of collection vehicles and bins; deposit or removal of materials from other household's bins; illegal dumping in and around bins; and theft of bins.

⁷ Relates to section 4.1 of findings report.

⁸ WA2008, section 56(a) and (b) and LGA2002, section 146.

⁹ WA2008, section 79 and LGA2002, section 178.

¹⁰ WA2008, section 66.

¹¹ LGA2002, section 175.

¹² Statement of Proposal, Review of solid waste bylaws, July 2012, pp.32, 35-36.

¹³ Large foldable bins provided by several companies, often kept on berms for long periods of time but must be collected from private property

- **The scale and magnitude** of issues are moderate. There is approximately one complaint per week about flexi-bins,¹⁴ contamination of recycling bins increased from 5 per cent in 2011 to 13 per cent in 2016 and council received 74 noise complaints in 2018 about collection vehicles. Anecdotally bin misuse is common.
- **Outcome sought** is to reduce harm from residual waste. Achieving this outcome would also address issues of health and safety, nuisance, obstruction, damage and visual amenity.

BYLAW EVALUATION

Still a problem requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can help address.
- ✓ There are **feasible alternatives** to a bylaw to address **licensing of collectors**:
 - **Trading and Events in Public Places Bylaw 2015 (cl6)** requires people trading in a public place to have council approval with conditions (cl11, 19).
- ✗ There are **feasible alternatives** to a bylaw to address **some kerbside collection issues**:
 - **Unitary Plan (E25)** under the Resource Management Act 1991 (s327) can address noise from collection vehicles affecting private property from a public place.
 - **Litter Act 1979 (s15)** can reactively address litter and illegal dumping on public places or private land without occupier consent, including flex-bins.¹⁵
 - **Health Act 1956 (s30)** prohibits permitting or causing nuisances,¹⁶ including any accumulation or deposit that is offensive or injurious to health (s29(b)).
 - **Public Safety and Nuisance Bylaw 2013** can address leaving objects in a public place likely to cause a safety risk, nuisance, damage or obstruction that impacts the enjoyment of the public place. This can address a range of issues including pedestrian and vehicle obstruction but not the misuse of containers or types of waste deposited to the kerbside.
 - **Crimes Act 1961 (s219)** can address theft of bins.
 - **Summary Offences Act** can address damage (s11) and vandalism (s11A). Penalties include up to three-months in prison, maximum \$2,000 fine or community-based sentence.¹⁷
 - **Local Government Act (s232)** can also address damage and recover cost of damage (s175) and penalties of a maximum \$20,000 fine, three years imprisonment or both.
- ✓ There are **no feasible alternatives** to a bylaw to address **some kerbside collection issues**:
 - Bin contamination, deposit or removal of materials from bins, inadequate bin storage space on the kerbside and litter from spillage or overflow of bins, bags or vehicles.¹⁸

Is the current Bylaw effective and efficient at managing and minimising waste?

- ✓ Bylaw useful to set out obligations of persons depositing waste for collection and collecting waste from a public place. The majority of licenced collectors comply with licence conditions.
- ✗ Low awareness and understanding of Bylaw.
- ✗ Enforcement of bin misuse, waste separation and licensing provisions is limited due to difficulties in identifying offenders and obtaining evidence.
- ✗ Licensing requirement for data collection may duplicate resource consent requirements under the Resource Management Act 1991 in some cases.

¹⁴ Number of complaints comprises a minor proportion of the number of bags in circulation at any one time.

¹⁵ Powers include requirement to remove and appropriately dispose of litter deposited from a public place onto private land without consent (s7(2)). Penalties include infringement fee not exceeding \$400 (s13-14), fine not exceeding \$5,000 (individual) or \$20,000 (body corporate) for litter (s15(1)), imprisonment not exceeding one month or fine not exceeding \$7,500 (individual), or \$30,000 (body corporate) for dangerous litter (s15(2)). On conviction offenders can be required to clear area of litter (s20) and pay cost of removing litter (s21)).

¹⁶ Powers include abatement of nuisance without notice and cost recovery for abatement (s34). Court may require premises owner and occupier to abate and/or prohibit recurrence of nuisance or specify abatement works (s33). Penalties include fine not exceeding \$500 and \$50 per day for a continuing offence (s136).

¹⁷ Community work, supervision, intensive supervision, or community detention (Sentencing Act 2002, s44).

¹⁸ Litter Act does not refer to accidental littering in definition of 'depositing' litter.

- × Licensing terms and conditions and process are unclear and time-consuming however these are operational matters.

Bylaw clearly written?

- No. Bylaw wording is unclear and difficult to understand.

OPTIONS

Option 1: no solid waste bylaw

- Use trading and events bylaw to licence collectors.
- Use Unitary Plan to address noise complaints.
- Use Litter Act, Health Act or industry relationships to address litter and illegal dumping including flexi-bins.
- Use public safety and nuisance bylaw to regulate obstruction of pedestrians and vehicles and behaviour of depositors.
- Use Crimes Act to address theft of bins.
- Use Summary Offences Act and Local Government Act to address damage and vandalism of bins.

Implementation

- Council licenses waste collectors.
- Council and Police address issues. Council uses a graduated compliance approach.

Option 2: new solid waste bylaw

- New bylaw to set out obligations of persons depositing waste for collection and collecting or transporting waste from a public place.
- Bylaw wording is easier to understand and updated for practicableness.
- Use Litter Act, Health Act, Unitary Plan provisions, Crimes Act, Summary Offences Act and Local Government Act to address litter and illegal dumping, noise, theft and damage.

Implementation

- Same as current implementation.

Pros

- No change to how some issues are addressed currently e.g. noise nuisance.
- Council retains ability to collect data to fulfil statutory duty under WA2008.
- Council retains ability to licence collectors.

Cons

- Bin contamination, deposit or removal of materials from bins, inadequate kerbside bin storage space and litter from spillage or overflow of bins or vehicles not addressed.
- Public safety and nuisance bylaw would not address all issues about the use of containers and does not stipulate types of waste able to be deposited to the kerbside.
- Bylaw enforcement limited due to difficulty in identifying offenders and gathering evidence.
- Police unlikely to prioritise bin theft.

Risks and risk mitigation

- High risk that council has no ability to address continuing issues.
- High risk that council does not fulfil duty to promote effective and efficient waste

Pros

- All issues are addressed and council retains ability to licence waste collection and transport operators.
- Provides clear framework to set expectations for waste deposit for collection and collection from a public place through one bylaw which is easier to understand.
- No change to how some issues are addressed currently e.g. noise nuisance.
- Council retains ability to collect data to fulfil statutory duty under WA2008.
- Achieves council duty to promote waste management and minimisation and collect data.

Cons

- Bylaw enforcement is limited due to difficulty in identifying offenders and gathering evidence.
- Police unlikely to prioritise stolen council bins.

<p>management and minimisation under WA2008. Mitigation through robustness of bylaw review.</p>	<p>Risks and risk mitigation</p> <ul style="list-style-type: none"> • High risk that industry feels wary of new changes to the Bylaw. Mitigation through future public consultation opportunities.
<p>Effectiveness at managing and minimising waste *</p> <ul style="list-style-type: none"> • Would be less effective than Option 2. Requirements for waste collection and transportation from a public place are less clear than Option 2 and would not set sufficient requirements for the deposit of waste or bin use to achieve the level of change sought in the Waste Plan. Enforcement would continue to be difficult. <p>Efficiency at managing and minimising waste ✓</p> <ul style="list-style-type: none"> • Would not require additional resources. 	<p>Effectiveness at managing and minimising waste ✓</p> <ul style="list-style-type: none"> • Option 2 would better manage and minimise waste. It would set clear and enforceable requirements for deposit of waste, bin use, waste collection and transportation from a public place and data provision. It would also avoid duplication by using other existing regulations to address other issues such as noise. Enforcement would continue to be difficult. <p>Efficiency at managing and minimising waste ✓</p> <ul style="list-style-type: none"> • Would not require additional resources.
<p>SECTION 155 LOCAL GOVERNMENT ACT 2002 RECOMMENDATIONS</p>	
<p>Based on the analysis against the criteria above and preliminary legal assessment a new waste bylaw (Option 2) is the most appropriate way to manage and minimise waste from the deposit of waste for collection and collection of waste from public places because it would:</p> <ul style="list-style-type: none"> • set clear and enforceable requirements for deposit of waste for collection, bin use and waste collection and transportation from a public place • enable council to fulfil its statutory duties to promote waste management and minimisation and to collect data • would be valid, not give rise to any implications and would not be inconsistent with the New Zealand Bill of Rights Act, nor be inconsistent with the Waste Plan • use the Litter Act, Health Act, Unitary Plan, Crimes Act, Summary Offences Act and Local Government Act can still be used to address litter, illegal dumping, noise, theft and damage. 	

TOPIC 2: WASTE FACILITIES¹⁹ (CLAUSES 16, 17, 18, 19, 20)

EXISTING BYLAW

- A licence is required to operate a resource recovery facility or fill site.²⁰ Exceptions apply to clean-fill sites. A key aspect of these licences is a requirement for operators to report waste data.

IMPLEMENTATION OF EXISTING BYLAW BY WASTE SOLUTIONS

- Proactively licences waste facility operators - 35 licences issued each year since 2012.
- Reactively responds to complaints using a graduated approach to compliance.
- No complaints data available. No prosecutions under the Bylaw.

STATUTORY AUTHORITY OF COUNCIL TO MAKE BYLAWS

- Waste Minimisation Act 2008 (WA2008) and/or the Local Government Act 2002 (LGA2002) bylaws can address waste issues.²¹ Relevant bylaw powers and penalties include power of entry and maximum court fines of \$20,000. LGA2002 also requires certain information.²²
- Health Act 1956 (s64(1)(a)) and Litter Act 1979 (s12) bylaws can address public health, nuisance and litter issues. Relevant bylaw powers and penalties are similar or less than WA2008 and LGA2002, for example Health Act penalty is \$500.

ISSUES AND OUTCOMES SOUGHT IN 2012

- **Issues** included limited information about the waste from generation to disposal, and the location of waste disposal facilities and the volumes and types of waste disposed of.²³
- **Outcomes** sought were to ensure that council has accurate, timely and complete information to plan effectively and meet statutory obligations; and information about the location of waste facilities, volumes and types of waste accepted at these facilities.

ISSUES AND OUTCOMES SOUGHT NOW

- **Issues** include limited information on the volumes and types of waste disposed due in part to transportation of waste across regional boundaries and exclusions to clean-fill licencing.
- **Other issues** include increased volumes of commercial waste to landfill, contamination at fill sites from construction material, asbestos, contaminated soil or mixing of volcanic soils and non-volcanic sites, illegal dumping, greenhouse gas emissions and noise issues.
- **Emerging issues** include increased construction activity and limited room for new clean-fill sites.
- The **scale or magnitude** of the issues is unknown. It is estimated that approximately 40 per cent of waste to landfills is currently trucked out of the region contributing to data limitations. This issue is addressed in Topic 1 (Waste Collection from a Public Place).
- **Outcomes** sought are to reduce harm from residual waste by having accurate data on the disposal of waste (total volumes and types of waste) to assist with waste planning and meet statutory requirements to collect data.

BYLAW EVALUATION

Is this still an issue that requires bylaw response?

- ✓ Yes. There are still issues that regulation can help address.
- ✓ Yes. There are no feasible alternatives to a bylaw for data collection to assist waste planning:
 - **Unitary Plan (E13)** requires resource consents to manage discharges of contaminants from clean-fills, managed fills and landfills to avoid or mitigate adverse effects on the environment and human health. While there may be a cross-over in reporting requirements for total volumes (not types) under some resource consent conditions and the Bylaw, not all consents

¹⁹ Relates to section 4.2 of the Findings Report.

²⁰ Means landfill site, clean-fill site, managed-fill site or mono-fill site.

²¹ WA2008, section 56(a)(d)(e) and LGA2002, section 146(a)(ii)(iv).

²² WA2008, section 66 and LGA2002, sections 178, 242.

²³ Statement of proposal, Review of solid waste bylaws, 2012, pp 12, 19, 24.

require reporting of waste²⁴ received. If waste reporting is required, it is to manage discharge of contaminants which does not assist waste planning.²⁵

- **Climate Change Response Act 2002 (s62)** requires that operators of waste disposal facilities must record the annual tonnage of waste entering their landfills as estimated emissions. This does not assist waste planning requirements under the WA2008.

× No. There are feasible alternatives to a bylaw for all other issues, for example:

- **Unitary Plan E13** addresses contaminants at fill sites.
- **Unitary Plan E25** Noise and vibration under the Resource Management Act 1991 (s327) can address noise from collection vehicles affecting private property from a public place.²⁶
- **Litter Act 1979** can address illegal dumping.²⁷
- **Waste Plan** identifies specific actions to address increased volumes of commercial waste actions (69-79).

Is the Bylaw effective and efficient in managing and minimising waste?

- ✓ Yes. Bylaw is useful to licence waste facility operators to gather data.²⁸
- ✓ Yes. Council reviews data submitted (including its composition) from waste facilities.
- ✓ Yes. Unlicensed but lawful waste facilities are investigated by Waste Solutions as a Bylaw breach.
- × No. Unlicensed and unlawful waste facilities are addressed as a breach of the Unitary Plan under the Resource Management Act 1991 due to potential effects on the environment and health.
- × No. Noise issues are addressed under the Unitary Plan while commercial waste is addressed by specific (Bylaw unrelated) actions in the Waste Plan.
- × No. Illegal dumping is investigated under the Litter Act.

Is the Bylaw clearly written?

- × No. Bylaw is lengthy, unstructured, repetitive, too technical and difficult to understand.

OPTIONS

Option 1: no waste bylaw

- Use Unitary Plan to manage discharges of contaminants from clean-fills, managed fills and landfills to avoid or mitigate adverse effects on the environment and human health.
- Use Unitary Plan to address noise.
- Use Waste Plan 2018 to address increased volumes of commercial waste
- Use Litter Act to reactively address illegal dumping where appropriate.

Implementation

- Same as currently except that council would not licence waste facility operators to obtain data.

Option 2: new waste bylaw

- New easy-to-understand bylaw to enable licencing of waste facilities, primarily to obtain data. Exemptions may apply.
- Unitary Plan used to manage discharges of contaminants from clean-fills, managed fills and landfills to avoid or mitigate adverse effects on the environment and human health.
- Litter Act used to address illegal dumping where appropriate.

Implementation

- Same as current implementation.

²⁴ Requirement for resource consents does not apply to clean-fills where discharges are less than 250m³, discharges from closed managed fills or landfills, and discharges from aftercare activities on closed managed fills and landfills.

²⁵ Penalties include imprisonment for a term not exceeding 2 years or a fine not exceeding \$300,000 or a fine not exceeding \$600,000. Resource Management Act 1991, section 339(1).

²⁶ Penalties include a fine not exceeding \$10,000 and a fine not exceeding \$1,000 for every day or part of a day during which the offence continues. Resource Management Act 1991, sections 327, 338(2)c and 339(2).

²⁷ Powers include removal and correct disposal of litter and request for details of offender. Penalties include a maximum \$400 infringement fine, for an individual \$7,500 court fine or one-month imprisonment, for a body corporate \$30,000 court fine and cost of removing litter. Litter Act 1979, sections 7(2), 7(5), 14, 15 and 21.

²⁸ Waste Minimisation Act 2008, sections 50, 51.

<p>Pros</p> <ul style="list-style-type: none"> • Environmental issues addressed. • Regulation streamlined, one less bylaw. • Reduced complexity or confusion around data requirements under both bylaw and Unitary Plan. <p>Cons</p> <ul style="list-style-type: none"> • Regulatory gap created. No ability to require data on the volumes and types of disposed waste by operators of waste facilities and limited ability to meet council statutory requirements to collect data. <p>Risks and risk mitigation</p> <ul style="list-style-type: none"> • High risk that waste management and minimisation requirements under WA2008 would not be met due to lack of data on the volumes and types of disposed waste. 	<p>Pros</p> <ul style="list-style-type: none"> • All issues addressed. • Prevents regulatory gap that requires data. • Bylaw content and structure more certain. • Council meets statutory requirements to collect data. <p>Cons</p> <ul style="list-style-type: none"> • There may be a cross-over in reporting requirements of data for total volumes of waste under some resourcing consent conditions and a new bylaw. <p>Risks and risk mitigation</p> <ul style="list-style-type: none"> • Some waste facility operators may continue to express concern about a cross-over in reporting requirements of data for total volumes of waste. Mitigation through internal systems, processes and public information.
<p>Effectiveness at managing and minimising waste ✓</p> <ul style="list-style-type: none"> • Less effective than Option 2 because there would be limited ability to collect data on the volumes and types of waste disposed of by waste facility operators to meet council statutory requirements to collect data. <p>Efficiency at managing and minimising waste ✓</p> <ul style="list-style-type: none"> • Would avoid complexity or confusion around requiring data provision under both a bylaw and the Unitary Plan, but would not achieve the purpose of managing and minimising waste. 	<p>Effectiveness at managing and minimising waste ✓✓</p> <ul style="list-style-type: none"> • Option 2 would be more effective because it would fill gaps in data provision under the Unitary Plan relating to the volumes and types of waste disposed of to meet council statutory requirements to collect data. <p>Efficiency at managing and minimising waste ✓</p> <ul style="list-style-type: none"> • Would retain complexity of data provision under both a bylaw and the Unitary Plan, but would achieve the purpose of managing and minimising waste.

SECTION 155 LOCAL GOVERNMENT ACT 2002 RECOMMENDATIONS

Based on the analysis against the criteria above and preliminary legal assessment, **a new waste bylaw (Option 2)** is the most appropriate way to obtain waste data because it would:

- enable council to require and obtain data on the volumes and types of waste disposed of at waste facilities to meet its statutory requirements to collect data
- be valid, not give rise to any implications and would not be inconsistent with the New Zealand Bill of Rights Act 1990 nor be inconsistent with the Waste Plan
- address issues about the discharges of contaminants from waste facilities in the Unitary Plan
- address issues about increasing volumes of commercial waste in the Waste Plan 2018
- leave issues about illegal dumping to the Litter Act 1979.

TOPIC 3: DONATION COLLECTION POINTS²⁹ (CLAUSE 29)

EXISTING BYLAW

- Licence is required for donation collection points (bins) on public places or private places where donations may litter public places. Licensees must prevent donations littering public places.

IMPLEMENTATION OF EXISTING BYLAW BY WASTE SOLUTIONS

- Processes licence applications for bin operators.³⁰ Five licences issued in 2018. Prior to 2018, three operators licensed as waste collectors (clause 12).
- Reactively responds to complaints by requesting operators to remove dumped items or uses the Litter Act 1979 to investigate ongoing litter and illegal dumping issues.
- No complaints data available. No prosecutions under the Bylaw.

STATUTORY AUTHORITY OF COUNCIL TO MAKE BYLAWS

- Waste Minimisation Act 2008 (WA2008) and/or the Local Government Act 2002 (LGA2002) bylaws can address waste issues.³¹ Relevant bylaw powers and penalties include maximum court fines of \$20,000. Under LGA2002 can also request offender details.³²
- Health Act 1956 (s64(1)(a)) and Litter Act 1979 (s12) bylaws can address public health, nuisance and litter issues. Relevant bylaw powers and penalties are similar or less than WA2008 and LGA2002, for example Health Act penalty is \$500.

ISSUES AND OUTCOMES SOUGHT IN 2012

- **Issues** included illegal dumping in public places, around bins or shop fronts.³³
- **Outcomes** sought were to prohibit illegal dumping of waste and to recover costs to council from removal and disposal of illegally dumped items.

ISSUES AND OUTCOMES SOUGHT NOW

- **Residual waste issues** include illegal dumping of household and commercial waste in and around bins and litter from bin overflow. **Other issues** include obstruction of footpaths and roads from litter and illegal dumping, reduced visual amenity from dumping of broken appliances and furniture, and health and safety risks from dirty, broken or unsafe items in and around bins.
- **Emerging issues** include illegal dumping of items around charity shops and high operation costs to bin operators and charity shop owners (waste disposal, installation of surveillance cameras).
- The **scale or magnitude** of the issues is unknown. Anecdotally, illegal dumping in and around donation bins and charity shops has increased, particularly over the summer months.
- **Outcome** sought is to reduce harm from residual waste from littering and illegal dumping. Achieving this outcome would also address health and safety, obstruction and visual amenity.

BYLAW EVALUATION

Is this still an issue that requires bylaw response?

- ✓ Yes. Issues about donation collection points (bins) remain that regulation can help address.
- ✓ Yes. There are no feasible alternatives to a bylaw, for example:
 - while the **Litter Act 1979 (s10, s15, s16)** and **Health Act 1956 (s34)** can address some issues (see Option 1 below), they target the person depositing goods or litter. They do not encourage bin operators to address litter or illegal dumping in or around bins they provide.³⁴

²⁹ Relates to section 4.3 of the Findings Report.

³⁰ Donation collection points are operated by private clothing recycling chains and charities.

³¹ WA2008, section 56(a)(f) and LGA2002, section 146(a)(ii)(iv).

³² WA2008, section 66 and LGA2002, sections 178, 242.

³³ Statement of proposal, Review of solid waste bylaws, 2012, pp 56.

³⁴ Powers can require removal and correct disposal of litter and to request details of offender. Penalties include a maximum \$400 infringement fine, \$7,500 court fine for an individual, one-month imprisonment, \$30,000 court fine for a body corporate and cost of removing litter (sections 7(2),7(5), 14, 15 and 21).

- while the **Trading and Events in Public Places Bylaw 2015 (cl6(1))** licenses trading activities in public places, this would not apply to bins on private places where donations may litter public places.

Is the current Bylaw effective and efficient in managing and minimising waste?

- ✓ Yes. Bylaw is useful to identify bin operators and prevent donated goods becoming litter.
- ✓ Complaints are addressed directly through operators using the Bylaw. No data available.
- ✗ No data available on whether all bin operators have a license. Anecdotal evidence suggests 95 per cent of bins are on public places, carparks and schools.
- ✗ Enforcement officers investigate litter and illegal dumping under the Litter Act 1979 (not Bylaw).

Is the Bylaw clearly written?

- ✗ No. Bylaw content lacks clarity, creates uncertainty and is difficult to understand.

OPTIONS

Option 1: no waste bylaw

- Use trading and events bylaw to licence bin operators on council controlled public places.
- Use Litter Act to reactively address people who litter and illegally dump in and around bins, wilful breaking of bottles or articles made of glass, obstruction of footpaths and roads from litter or illegal dumping and reduced visual amenity.
- Use Health Act to address nuisance, and health and safety risks from litter that is offensive or injurious.

Implementation

- Same as existing implementation except that council cannot require bin operators on private land to address litter issues on nearby public places from their bins.

Option 2: new waste bylaw

- New bylaw to enable licensing of bin operators (including those operators on private places where donations may litter public places) and to require bin operators to address litter issues near their bins.
- Amend trading and events bylaw to avoid duplication of licensing requirements.
- Bylaw structure and content updated and made easier to understand.
- Litter Act and Health Act used where appropriate (same as Option 1).

Implementation

- Same as existing implementation.

Pros

- Regulation streamlined (one less bylaw).

Cons

- Licensing gap for operators of donation bins on private places where donations may litter public places.
- No tool to encourage bin operators to address litter or illegal dumping near bins they provide.
- Waste management and minimisation focus less explicit as trading and events bylaw is made under LGA2002.

Risks and risk mitigation

- Moderate risk that waste requirements would be less explicit and licensing gap may contribute to higher clean-up costs to council. Mitigation through internal systems and processes, and public campaigns.

Pros

- Addresses all issues and applies licensing requirements to all bin operators.
- Bylaw content and structure improved with a clear focus on waste management and minimisation.
- New bylaw and trading and events bylaw aligned to avoid duplication of requirements.

Cons

- Licensing requirements in both the trading and events bylaw and a new bylaw may create uncertainty for the public and staff.

Risks and risk mitigation

- Licensing requirements in trading and events bylaw and a new bylaw may create uncertainty to the public and staff. Mitigation through amendment to trading and events bylaw to ensure alignment.

Effectiveness at managing and minimising waste *

- Less effective than Option 2. This is because it would not require bin operators on private places to address litter or illegal dumping in or around bins they provide. This would likely result in more litter and complaints to council.

Efficiency at managing and minimising waste *

- Less efficient than Option 2 because waste requirements in the trading and events bylaw are less explicit and licensing gap for bins on private property may contribute to higher complaints and clean-up costs to council.

Effectiveness at managing and minimising waste ✓

- Option 2 would better address litter and illegal dumping associated with donation bins in a way that is easier to understand. This is because bin operators would continue to be required to take responsibility for area near bins they provide.

Efficiency at managing and minimising waste ✓

- Would continue to reduce complaints and clean-up costs to council, provide clear mandate for waste management and minimisation, and be easier to understand by improving structure and wording.

SECTION 155 LOCAL GOVERNMENT ACT 2002 RECOMMENDATIONS

Based on the analysis against the criteria above and preliminary legal assessment, a **new bylaw (Option 2)** that also amends the trading and events bylaw is the most appropriate way to manage and minimise waste from donation collection points on public places and private places where donations may litter public places because it would:

- continue to enable council to license bin operators (including those operators on private places where donations may litter public places) and proactively encourage bin operators to address litter or illegal dumping in or around bins they provide
- be valid, not give rise to any implications and would not be inconsistent with the New Zealand Bill of Rights Act 1990 nor be inconsistent with the Waste Plan
- the Litter Act 1979 and Health Act 1956 can still be used to reactively address litter and illegal dumping in and around bins, wilful breaking of bottles or glass articles, obstruction of footpaths and roads from litter, reduced visual amenity, nuisance and health and safety risks.

TOPIC 4: KERBSIDE INORGANIC WASTE COLLECTION³⁵ (CLAUSES 24, 25)

EXISTING BYLAW

- Allows deposit of inorganic material in a public place (kerbside) for collection by or on behalf of the council. Bylaw specifies controls, for example types of waste and collection methods.

IMPLEMENTATION OF EXISTING BYLAW BY WASTE SOLUTIONS

- Bylaw not used since 2015 when the council service to collect inorganic material moved from kerbside deposit to collection from private property in accordance with the Waste Plan.³⁶
- Inorganic material left on public places is investigated as illegal dumping under the Litter Act 1979.
- No complaints data available. No prosecutions under the Bylaw.

STATUTORY AUTHORITY OF COUNCIL TO MAKE BYLAWS

- Waste Minimisation Act 2008 (WA2008) and/or the Local Government Act 2002 (LGA2002) bylaws can address waste issues.³⁷ Relevant bylaw powers and penalties include maximum court fines of \$20,000. LGA2002 also requires certain information.³⁸
- Health Act 1956 (s64(1)(a)) and Litter Act 1979 (s12) bylaws can address public health, nuisance and litter issues. Relevant bylaw powers and penalties are similar or less than WA2008 and LGA2002, for example Health Act penalty is \$500.

ISSUES AND OUTCOMES SOUGHT IN 2012

- **Issue** included scavenging inorganic waste and recyclables put out for council's collection,³⁹ damage to reusable items through scavenging and bad weather, illegal dumping of household and commercial waste, health and safety risks for collectors and public, high clean-up costs to council and reduced visual amenity.
- **Outcome** sought was to prevent scavenging of inorganic waste and recyclables.

ISSUES AND OUTCOMES SOUGHT NOW

- The **issues** from the kerbside collection of inorganic material no longer occur because services take place from private property. Illegal dumping issues still occur.
- **Outcome** sought is to reduce harm from residual waste from litter and illegal dumping.

BYLAW EVALUATION

Is this still an issue that requires bylaw response?

- × No. The new inorganic collection service replaced the need for a bylaw.

Is the current Bylaw effective and efficient in managing and minimising waste?

- × No. Bylaw has not been used since 2015 due to introduction of a new inorganic collection service.
- × No. **Litter Act (s15)** is used to investigate illegal dumping issues (not the Bylaw).⁴⁰

Is the Bylaw clearly written?

- × No. Bylaw wording is difficult to understand.

OPTIONS

Option 1: no waste Bylaw

- Uses terms and conditions for on-site inorganic collection and education to address inorganic collection from a private property.

Option 2: new waste bylaw

- **New bylaw** to allow kerbside inorganic collection.

³⁵ Relates to section 4.4 of the Findings Report.

³⁶ Waste Plan identifies actions to provide an annual inorganic collection service from private property (actions 16 and 17) and investigate partial or full delivery of service through Community Recycling Centres (action 18).

³⁷ WA2008, section 56(a)(b)(f) and LGA2002, section 146(a)(ii)(iv).

³⁸ WA2008, section 66 and LGA2002, sections 178, 242.

³⁹ Statement of proposal, Review of solid waste bylaws, 2012, pp 53.

⁴⁰ Powers can require removal and correct disposal of litter and to request details of offender. Penalties include a maximum \$400 infringement fine, for an individual \$7,500 court fine or one-month imprisonment, for a body corporate \$30,000 court fine and cost of removing litter (sections 7(2), 7(5), 14, 15 and 21).

<ul style="list-style-type: none"> • Uses Litter Act to address illegal dumping. <p>Implementation</p> <ul style="list-style-type: none"> • Same as current implementation. 	<p>Implementation</p> <ul style="list-style-type: none"> • Same as current implementation.
<p>Pros</p> <ul style="list-style-type: none"> • Addresses illegal dumping. • Reflects service provision, streamlines regulatory approach and is consistent with Waste Plan.⁴¹ <p>Cons</p> <ul style="list-style-type: none"> • None. <p>Risks and risk mitigation</p> <ul style="list-style-type: none"> • Risk that public is unclear whether inorganic material can be deposited on public places. Mitigation through information about illegal dumping and a new bylaw about what waste can be deposited on a public place (Topic 1). 	<p>Pros</p> <ul style="list-style-type: none"> • Addresses illegal dumping. • Bylaw easier to understand. <p>Cons</p> <ul style="list-style-type: none"> • Bylaw inconsistent with the Waste Plan. <p>Risks and risk mitigation</p> <ul style="list-style-type: none"> • High risk of public uncertainty because the bylaw refers to a service which is not intended to be provided. Mitigation through service provision and public information.
<p>Effectiveness at managing and minimising waste ✓</p> <ul style="list-style-type: none"> • Option 1 would reflect current service provision, be consistent with the Waste Plan and streamline council’s regulatory approach. <p>Efficiency at managing and minimising waste ✓</p> <ul style="list-style-type: none"> • Alignment with current service provision and the Waste Plan creates certainty and avoids confusion. 	<p>Effectiveness at managing and minimising waste ✗</p> <ul style="list-style-type: none"> • Option 2 would not reflect current service provision and any improvements to structure and content would create uncertainty to the public and staff, and be inconsistent with the Waste Plan. <p>Efficiency at managing and minimising waste ✗</p> <ul style="list-style-type: none"> • Option 2 would most likely increase complexity and uncertainty by retaining regulations for a service that no longer exists.

SECTION 155 LOCAL GOVERNMENT ACT 2002 RECOMMENDATIONS

Based on the analysis against the criteria above and preliminary legal assessment, **no bylaw (Option 1)** is the most appropriate way to manage and minimise waste from kerbside inorganic collection because it would:

- remove regulations about a service that no longer occurs
- use the Litter Act to address illegal dumping, including issue of infringement notices
- use a new waste bylaw about waste collection from a public place (refer Topic 1) to address any public uncertainty and clarify that inorganic material cannot be deposited on public places
- be consistent with directions in the Waste Plan to collect inorganic material from private (not public) places.

⁴¹ Waste Plan identifies actions to continue to provide an annual inorganic collection service from private property (actions 16 and 17) and potential review for inorganic collection services through Community Recycling Centers (action 18).

TOPIC 5: HAZARDOUS WASTE⁴² (CLAUSE 13(2))

EXISTING BYLAW

- Prohibits certain types of waste (including hazardous waste) in a public place for collection unless authorised by council. Controls under the Bylaw ban hazardous and/or prohibited waste in domestic recycling bins and disposal at clean-fills and managed fills.⁴³

IMPLEMENTATION OF EXISTING BYLAW BY WASTE SOLUTIONS

- Proactive approach includes approvals for collection of prohibited waste from a public place (none have been granted) and daily auditing of over 2000 recycling bins for contamination.
- Graduated compliance response includes leaving bins red-tagged and uncollected, warnings, removal of services and prosecution. There have been no prosecutions under the Bylaw.

STATUTORY AUTHORITY

- Waste Minimisation Act 2008 (WA2008) and/or the Local Government Act 2002 (LGA2002) bylaws can address hazardous waste collection from public places.⁴⁴ Relevant bylaw powers and penalties include seizure of property and maximum court fines of \$20000.⁴⁵
- Health Act 1956 and Litter Act 1979 bylaws can address public health, nuisance and litter issues.⁴⁶ Relevant bylaw powers and penalties are similar or less than the WA2008 and LGA2002, for example the maximum penalty under the Health Act is \$500.⁴⁷

ISSUES AND OUTCOMES SOUGHT IN 2012

- **Issues**⁴⁸ were health and safety risks and environmental harm from untreated hazardous waste deposited in domestic kerbside bins, which enters landfill and releases contaminants.
- **Outcome sought** was for kerbside collection services and terms and conditions to be met by all users to achieve operational efficiencies in kerbside collection services, retain amenity value of public areas and ensure public health and safety.

ISSUES AND OUTCOME SOUGHT NOW

- **Issues** in 2012 remain. **Emerging issues** include health and safety risks and environmental harm from deposit of medical waste, commercial hazardous waste in domestic refuse bins, fire caused by lithium batteries and pool cleaners in collection vehicles, transfer stations and landfills, asbestos at transfer stations⁴⁹ and illegal dumping of hazardous wastes.
- There is limited data on the **scale and magnitude** of issues. Anecdotally, hazardous waste including medical waste deposited in domestic kerbside bins has increased, alongside illegal dumping and concealment of asbestos in refuse at transfer stations.
- **Outcome sought** is to reduce harm from residual waste. Achieving this outcome would also address health and safety risks.

BYLAW EVALUATION

Still a problem requiring a bylaw response?

- ✓ Yes. There is still an issue relating to hazardous waste that regulation can help address.
- ✓ There are no feasible alternatives to address **deposit of hazardous waste for collection on a public place**:

⁴² Relates to section 4.5 of findings report.

⁴³ Separation of Domestic Waste Collected from a Public Place Control 2013 and Disposal of Waste to Land Control 2015.

⁴⁴ WA2008, sections 56(a) and (b). LGA2002, sections 145(a) and (b) and section 146(a)(iv).

⁴⁵ WA2008, sections 66, 81-85 and LGA2002, sections 164-168 and 242.

⁴⁶ HA1956, section s64(1)(a) and LA1979, section 12.

⁴⁷ HA1956, section 66.

⁴⁸ Statement of Proposal, Review of solid waste bylaws, July 2012, pp.46.

⁴⁹ Currently no Auckland transfer stations accept asbestos due to health and safety concerns.

- **Trading and Events in Public Places Bylaw 2015 (cl6)** requires people trading (offering commercial services for payment, reward or otherwise) in a public place to have council approval. Approval can be granted on conditions (cl11, 19) including in relation to time restrictions, location, and use of vehicles and equipment.⁵⁰ However, this would not address the owner/occupier of a premises who deposits the hazardous waste in the bin.
- **Public Safety and Nuisance Bylaw 2013** prohibits a person placing or leaving any object or material in a public place likely to cause a safety risk⁵¹ however this is not specific enough to communicate behaviours regarding hazardous waste to the public.
- **Litter Act 1979** does not apply to hazardous waste deposited in kerbside bins.
- × There are feasible alternatives to a bylaw to address **illegal dumping of hazardous wastes**:
 - **Litter Act 1979 (s15)** prohibits littering (including of dangerous litter) on public places.⁵²
 - **Litter Act (s15(1)(b) or s15(2))** can address material (such as asbestos) deposited at a transfer station⁵³ if the transfer station did not consent to that material's deposit.⁵⁴
 - **Health Act 1956 (s30)** prohibits any accumulation or deposit that is offensive or injurious to health (s29(b)).⁵⁵

Is the current Bylaw effective and efficient at managing and minimising waste?

- ✓ Bylaw is useful to set expectations for the types of waste able to be collected from a public place and provides helpful guidance to the industry and residents.
- × Enforcement is limited because hazardous waste is often concealed.

Bylaw clearly written?

- × No. Bylaw wording is unclear, unstructured and difficult to understand. Definitions could be clarified, and hazardous waste better signposted in Bylaw.

OPTIONS

Option 1: allow Bylaw to expire

- Use information and education to communicate behaviour around hazardous waste.
- Use trading and events in public places bylaw to license collectors and prohibit collection of hazardous waste from a public place.
- Use public safety and nuisance bylaw to prohibit placing hazardous waste on the kerbside for collection.
- Use Litter Act and Health Act to address illegal dumping of hazardous wastes and deposit of asbestos at a transfer station.

Option 2: adopt a new solid waste bylaw

- New easy-to-understand bylaw to prohibit deposit of hazardous waste for collection on a public place.
- Use Litter Act and Health Act to address illegal dumping of hazardous waste and deposit of asbestos at a transfer station.

Implementation

- Council uses graduated compliance approach.

⁵⁰ Compliance may include written warning and review of licence (clause 25). Penalties include maximum \$20000 fine (LGA2002, s242), \$500 fine (HA1956, s66) or \$1000 fine (Land Transport Act 1998, s22AB(b)).

⁵¹ Powers include ability to request name and address (LGA2002, s178). Penalties include maximum \$500 fine (HA1956, s66) or \$20000 fine (LGA2002, s242).

⁵² Penalties include \$400 infringement fee (s13-14) for hazardous litter, maximum \$5,000 fine (individual) or \$20,000 (body corporate) for litter (s15(1)), maximum imprisonment of one month or \$7,500 fine (individual) or \$30,000 (body corporate) for dangerous litter (s15(2)). On conviction offenders can be required to clear area of litter (s20) and pay cost of removing litter (s21)).

⁵³ Including privately-owned, council-owned but privately-operated, and council-owned and operated. Transfer stations are considered "private land" under the Litter Act as the definition of "public place" excludes "any site for the disposal of litter" and "private land" is defined as "every place other than a public place".

⁵⁴ Penalties include \$400 infringement, maximum court fine of \$7,500 (individual) and \$30,000 (body corporate).

⁵⁵ Powers include abatement of nuisance and cost recovery (s34), court required abatement, cease and desist or works (s33). Penalties include maximum \$500 fine and \$50 fine per day for a continuing offence (s136).

<p>Implementation</p> <ul style="list-style-type: none"> • Council uses graduated compliance approach. 	
<p>Pros</p> <ul style="list-style-type: none"> • Best practice can still be communicated. • Avoids duplicating existing regulation to address illegal dumping and asbestos deposited at transfer stations. <p>Cons</p> <ul style="list-style-type: none"> • Trading and events in public places bylaw would not address the owner/occupier of a premises who deposits the hazardous waste in the bin, only the collector who cannot control this. • Public safety and nuisance bylaw is not specific enough to communicate behaviour change around hazardous waste collection. <p>Risks and risk mitigation</p> <ul style="list-style-type: none"> • High risk of insufficient measures to address issues. Mitigation through use of education. • Low risk that council perceived as not fulfilling statutory obligations to protect public health and promote waste management and minimisation. Mitigation through robustness of bylaw review. 	<p>Pros</p> <ul style="list-style-type: none"> • All issues are specifically addressed. • Hazardous waste must be collected from private property or deposited at a collection facility. • Avoids duplicating existing regulation to address illegal dumping and asbestos deposited at transfer stations. • Stipulates clear behavioural expectations. • Health and safety risks and environmental harm could be reduced. • Maintains council role to promote waste management and minimisation and protect public health. <p>Cons</p> <ul style="list-style-type: none"> • Bylaw enforcement is limited regardless of bylaw content due to difficulty in identifying offenders. <p>Risks and risk mitigation</p> <ul style="list-style-type: none"> • N/A.
<p>Effectiveness at managing and minimising waste x</p> <ul style="list-style-type: none"> • Option 1 would not set clear, enforceable and sufficient behavioural expectations about the deposit of hazardous waste in a public place for collection and does not fulfil council's duty to protect public health and promote waste management and minimisation. <p>Efficiency at managing and minimising waste ✓</p> <ul style="list-style-type: none"> • Would not require additional resources. 	<p>Effectiveness at managing and minimising waste ✓</p> <ul style="list-style-type: none"> • Option 2 specifically addresses all issues and set clear and easy-to-understand obligations about deposit of hazardous waste in a public place for collection, although enforcement remains challenging. <p>Efficiency at managing and minimising waste ✓</p> <ul style="list-style-type: none"> • Option 1 would not require additional resources.

SECTION 155 LOCAL GOVERNMENT ACT 2002 RECOMMENDATIONS

Based on the analysis against the criteria above and preliminary legal assessment, **a new bylaw (Option 2)** is the most appropriate way to manage and minimise waste from the deposit of hazardous waste in a public place for collection because it would:

- set clear and easy-to-understand obligations about deposit of hazardous waste in a public place for collection
- be valid and not give rise to any implications and would not be inconsistent with the New Zealand Bill of Rights Act 1990, nor be inconsistent with the Waste Plan
- avoid duplicating existing regulations by using the Litter Act and Health Act to address illegal dumping and deposit of asbestos at a transfer station.

TOPIC 6: COLLECTION OF WASTE FROM MULTI-UNIT DEVELOPMENTS⁵⁶ (CLAUSES 21, 22)

EXISTING BYLAW

- Owners or managers of multi-unit developments (MUDs) consisting of 10 or more units must obtain and comply with a council approved waste plan. The Bylaw specifies matters council may require in a waste plan. Council may set controls for collection and transportation of waste.

IMPLEMENTATION OF EXISTING BYLAW BY WASTE SOLUTIONS

- Proactively provides advice and technical feedback on the waste plans for new multi-unit developments as part of the resource consent process under the Unitary Plan. In 2018, council issued 94 resource consents (2,868 units) and processed 69 waste plans.
- Reactively responds to complaints using a graduated compliance model by following up with the resource consents team on new developments or where possible, providing advice on alternative collection methods to mitigate waste issues related to existing developments.
- No complaints data available. No prosecutions under the Bylaw.

STATUTORY AUTHORITY OF COUNCIL TO MAKE BYLAWS

- Waste Minimisation Act 2008 (WA2008) and/or the Local Government Act 2002 (LGA2002) bylaws can address waste issues.⁵⁷ Relevant bylaw powers and penalties include power of entry and maximum court fines of \$20,000. LGA2002 also requires certain information.⁵⁸
- Health Act 1956 (s64(1)(a)) and Litter Act 1979 (s12) bylaws can address public health, nuisance and litter issues. Relevant bylaw powers and penalties are similar or less than WA2008 and LGA2002, for example Health Act penalty is \$500.

ISSUES AND OUTCOMES SOUGHT IN 2012

- **Issues** included storage of waste and recyclables in and collection from MUDs.⁵⁹
- **Outcomes** sought were to ensure that developers consider waste management requirements when designing buildings and that waste management includes sufficient space provision, vehicle accessibility and effective systems to minimise waste.

ISSUES AND OUTCOMES SOUGHT NOW

- **Residual waste issues** include waste contamination, illegal dumping due to insufficient waste storage and limited opportunities to minimise waste such as on-site composting of organic waste.
- **Other issues** include odour and vermin from insufficient waste storage, poor access to waste storage areas for collection vehicles, restricted pedestrian flow, road obstruction and misuse of public places from bin storage, increased traffic and noise from frequent waste collections, health and safety risks, and additional maintenance and bespoke service costs for residents.
- There is limited data available on the **scale and magnitude** of the issues. Anecdotally there are instances of multiple collections (daily for refuse and up to three times per week for recycling) from MUDs that contribute to increased traffic and noise. The **scale** of the issues is assumed to be increasing due to rapid population growth, housing supply and concentration of people in specialised and high-density developments.
- **Outcome** sought is to reduce harm from residual waste by ensuring that MUDs provide adequate waste storage, vehicle access and effective systems to minimise waste at the design stage.

⁵⁶ Relates to section 4.6 of the Findings Report.

⁵⁷ WA2008, section 56(a)(b) and LGA2002, section 146(a)(ii)(iv).

⁵⁸ WA2008, section 66 and LGA2002, sections 178, 242.

⁵⁹ Statement of proposal, Review of solid waste bylaws, 2012, pp 51.

BYLAW EVALUATION

Is this still an issue that requires bylaw response?

- ✓ Yes. There are still issues that regulation can help address. These include waste contamination, inadequate waste storage, poor access to waste areas leading to illegal dumping, health and safety risks, misuse of public places and limited waste minimisation.
- ✓ Yes. There are currently no feasible alternatives to a bylaw in some circumstances:
 - **Unitary Plan in the Residential Terraced Housing and Apartment Buildings (RTHB) zone (H6)** currently provides no effective requirements for waste storage, separation and collection. Council is currently proposing amendments to the RTHB zone with a hearing likely to be held in April/May 2019 to enable consideration of waste storage for all dwellings. A **bylaw is necessary to fill this regulatory gap** until proposed changes to the RHAB zone become operative beyond the appeal.
 - **Building Code (Building Regulations 1992) (G15)** safeguards residents from injury and illness caused by infection or contamination from solid waste. While buildings are required to provide facilities for waste collection and holding, these requirements are outdated, inconsistently applied⁶⁰ and do not effectively address vehicle access issues, space size or use, and waste minimisation.
- × No. There are feasible alternatives for some issues:
 - **Unitary Plan in the Mixed Housing Suburban (H4) and Mixed Housing Urban (H5) zones** require decision makers to consider waste collection and recycling facilities that are accessible and screened from streets and public open spaces in developments of four or more dwellings as part of the resource consent process.
 - **Litter Act 1979 (s15)** can address illegal dumping.⁶¹
 - **Health Act 1956 (s34)** can abate a nuisance related to offensive or injurious waste, address odour and vermin and address health risks from insufficient provision of waste storage.⁶²
 - **Unitary Plan E25 Noise and vibration under the Resource Management Act 1991 (s327)** can address noise from collection vehicles affecting private property from a public place.⁶³

Is the Bylaw effective and efficient in managing and minimising waste?

- ✓ Yes. Bylaw has filled a regulatory gap in the Unitary Plan (RTHB zone) to require MUDs to provide adequate waste management and minimisation practices.
- ✓ Yes. Bylaw has enabled provision of technical feedback on waste plans as part of the resource consent process to ensure waste management requirements are considered at the design stage.
- × No. Bylaw only implemented for new MUDs due to delay in a rollout of consistent refuse, recycling and food scrap services across the region.

Is the Bylaw clearly written?

- × No. Bylaw is difficult to understand, and its structure and content provide uncertainty.

OPTIONS

⁶⁰ Requirement G15.2 does not apply to detached dwellings, household units of multi-unit dwellings, outbuildings or ancillary buildings if there is independent access or private open space at ground level.

⁶¹ Powers include removal and correct disposal of litter and request for details of offender. Penalties include a maximum \$400 infringement fine, for an individual \$7,500 court fine or one-month imprisonment, for a body corporate \$30,000 court fine and cost of removing litter. Litter Act 1979, sections 7(2), 7(5), 14, 15 and 21.

⁶² Powers include entry without notice and recovery of expenses incurred in the abatement of a nuisance. Penalties include a fine not exceeding \$500. Health Act 1959, sections 30 and 136.

⁶³ Penalties include a fine not exceeding \$10,000 and a fine not exceeding \$1,000 for every day or part of a day during which the offence continues. Resource Management Act 1991, sections 327, 338(2)c and 339(2).

<p>Option 1: allow Bylaw to expire</p> <ul style="list-style-type: none"> • Use Unitary Plan to address waste requirements (space provision, vehicle access and systems to manage waste). • Use Litter Act, Health Act, Building Code of the Building Regulations and Unitary Plan provisions to address illegal dumping, nuisances, noise, and injury and illness. • Use service provision and public information to address waste contamination issues. <p>Implementation</p> <ul style="list-style-type: none"> • Enforcement officers respond to complaints using a graduated compliance model. • Operational improvements at discretion of council staff. 	<p>Option 2: adopt a new solid waste bylaw</p> <ul style="list-style-type: none"> • New easier to understand bylaw that continues to require waste plans for all MUDs. • Exceptions to be evaluated during bylaw development. For example, whether MUDs assessed as part of the resource consent process should be exempt. Consideration also given to whether different criteria is required for existing and new MUDs. • Use other regulations in Option 1 to address illegal dumping, nuisances, noise, and injury and illness caused by waste contamination. • Use service provision and public information to address waste contamination issues. <p>Implementation</p> <ul style="list-style-type: none"> • Same as current implementation but waste plans for existing (built) MUDs with no waste plan will be processed on a priority basis within existing budgets.
<p>Pros</p> <ul style="list-style-type: none"> • Streamlines regulatory approach. <p>Cons</p> <ul style="list-style-type: none"> • Regulatory gap for MUDs in RTHB zone. No requirement for waste storage, separation and collection until plan change completed. A public hearing will be held in April/May 2019. <p>Risks and risk mitigation:</p> <ul style="list-style-type: none"> • High risk from insufficient provision of space storage, vehicle access and effective waste systems when designing MUDs. Mitigation is RTHB plan change and interim bylaw. • Moderate risk from council not fulfilling its statutory role to promote waste management and minimisation. Mitigation from actions identified in the Waste Plan. 	<p>Pros</p> <ul style="list-style-type: none"> • Proactively address waste issues for MUDs. • Bylaw easier to understand. • Exemptions avoid Unitary Plan duplication. <p>Cons</p> <ul style="list-style-type: none"> • Regulation under the Unitary Plan and a bylaw is more complex and may cause confusion. <p>Risks and risk mitigation</p> <ul style="list-style-type: none"> • Low reputational risk that council perceived to not enforce waste plans for all existing MUDs. Mitigation to clearly communicate implementation approach. • Low risk that planning process results in regulations perceived to not address all waste issues. Mitigation through bylaw amendment. • Moderate risk that alignment between Unitary Plan and bylaw regulations may cause confusion. Mitigation through clear drafting of a new bylaw.
<p>Effectiveness at managing and minimising waste ✖</p> <ul style="list-style-type: none"> • Option 1 would not be effective for MUDs in the RTHB zone or existing MUDs built prior to planning requirements to address waste issues. There are no requirements to address waste issues for these developments. 	<p>Effectiveness at managing and minimising waste ✓</p> <ul style="list-style-type: none"> • Option 2 would be more effective than Option 1 because it requires a waste plan for MUDs in RTHB zone and existing MUDs built prior to waste requirements in the Unitary Plan. <p>Efficiency at managing and minimising waste ✓</p>

Efficiency at managing and minimising waste ✓✓

- Would be efficient because no additional resources required, and all regulations contained in the Unitary Plan.

- Would not require additional resources but regulation under the Unitary Plan and a bylaw is more complex and may cause confusion.

RECOMMENDATIONS

Based on the analysis against the criteria above and preliminary legal assessment, **a new bylaw (Option 2)** is the most appropriate way to manage and minimise waste from multi-unit developments because it would:

- continue to enable council to proactively address waste issues for MUDs built prior to adequate requirements for waste in the Unitary Plan by requiring a waste plan
- be valid, not give rise to any implications and would not be inconsistent with the New Zealand Bill of Rights Act 1990, nor be inconsistent with the Waste Plan
- streamline council's regulatory approach by using the Litter Act, Health Act, Building Code and Unitary Plan to address illegal dumping, nuisances, noise, injury and illness.

TOPIC 7: WASTE MANAGEMENT AT EVENTS (CLAUSE 23)⁶⁴

EXISTING BYLAW

- Event organisers must obtain and comply with a council approved event waste plan. Bylaw specifies matters council may require in an event waste plan, for example waste estimates. Bylaw applies to events on both public and private places.

IMPLEMENTATION OF EXISTING BYLAW BY WASTE SOLUTIONS

- Event waste plans are processed for events in council controlled public places as part of the event permit process, under the trading and events bylaw. No data available on event waste plans, 1435 event permits were however issued in the year to 30 June 2018.
- Waste plans are required for events on council controlled public places that generate a lot of waste, are on environmentally or culturally sensitive sites, or attract more than 500 people.
- Large events in 2014/2015 and 2015/2016 were audited for compliance and logistics.
- For events with an approved event waste plan, complaints are followed up with organiser. As a condition of approval, if council removes any litter the organiser is charged. No data available.

STATUTORY AUTHORITY OF COUNCIL TO MAKE BYLAWS

- Waste Minimisation Act 2008 (WA2008) and/or Local Government Act 2002 (LGA2002) bylaws can address waste issues. Relevant powers and penalties are similar, including powers of entry and court fines on prosecution not exceeding \$20,000.
- Health Act 1956 and Litter Act 1979 bylaws scope limited to public health, nuisance and litter (not waste minimisation for example) and powers and penalties are similar or less than the WA2008 and LGA2002.

ISSUES AND OUTCOMES SOUGHT IN 2012

- **Issues** included the need to reduce residual waste, litter as people come and go from large public events on private land, litter from waste overflowing or escaping from litter bins at the event or surrounding public places and cost to council of removing litter from public places.
- **Outcome sought** was to reduce residual waste (increase recycling) and ensure event organisers remove and dispose of any litter from their event on public places.

ISSUES AND OUTCOMES SOUGHT NOW

- **Issues** about the need to reduce residual waste, litter and cost to remove litter remain. Examples include excessive packaging by vendors, recycling bin contamination, litter from smaller events due to fiscal constraints and litter from corporate giveaways (flyers, balloons).
- **Emerging issues** identified by stakeholders include nuisance from litter and safety risks for unaccompanied children from insufficient and poorly-located bin stations, a need to focus more on waste minimisation and application of Bylaw to trading in public places.
- No data on the **scale or magnitude of the issues**. Stakeholders highlight that waste contamination is a significant issue and increasing operational costs are a barrier to effective waste minimisation. Alongside this is growing awareness of waste issues and initiatives to reduce waste, for example compostable packaging.
- **Outcome sought** is to reduce harm from residual waste. Achieving this outcome would also address issues of nuisance and safety risks.

BYLAW EVALUATION

⁶⁴ Relates to section 4.7.4 of findings report.

Still a problem requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can help address.
- ✓ For waste issues with events and trading on council controlled public places, there are no feasible alternatives to a bylaw. The Unitary Plan specifically refers to bylaws to manage and minimise waste.⁶⁵ These provisions could however be included in the trading and events bylaw.
- ✗ For large public events on private places, there are feasible alternatives to address the issue of litter on public places. Section 9(3) of the Litter Act 1979 allows council to require event venues to provide appropriate litter receptacles. This would not however promote waste minimisation. The Unitary Plan addresses waste management and minimisation to varying degrees in 20 major recreational facilities.⁶⁶

Is the current Bylaw effective and efficient at managing and minimising waste?

- ✓ Bylaw is useful for events in council controlled public places.
- ✗ Bylaw about large public events on private places not currently applied or used.

Bylaw clearly written?

- ✓ No. Bylaw structure and wording difficult to understand. Hard to know when an event waste plan is required. Interrelationship with trading and events bylaw is unclear.

OPTIONS

Option 1: no waste bylaw

- Waste plan can be required for events and trading on council controlled public places under trading and events bylaw.⁶⁷
- No requirement for an event waste plan for public events on private places. However, waste in public places can be addressed using section 9(3) of the Litter Act.

Implementation

- For events on council controlled public places the same as now. The definition of event in the trading and events bylaw is however broader, and the bylaw provides discretion for when an event waste plan is required and what it must contain.
- Statutory powers and penalties in Litter Act can still be used to address litter (bylaw not needed to allow their use).

Option 2: new waste bylaw

- **New bylaw** to require waste plan for events and trading on council controlled public places.
- Waste in public places from large public events on private places addressed using section 9(3) of the Litter Act and Unitary Plan the same as now.

Trading and events bylaw amended to more clearly align with new bylaw.

- Bylaw structure and wording made easier to understand. Exemptions to be evaluated during bylaw development. For example, where waste issues addressed in a resource consent.
- Where appropriate, matters in waste plan to be proportionate to scale of event or trading.

Implementation

- For events and trading on council controlled public places the same as now.
- Statutory powers and penalties in Health Act and Litter Act can still be used to address health, nuisance and litter (bylaw not needed to allow their use).

Pros

- Issues addressed.
- Regulations streamlined, one less bylaw.

Cons

Pros

- Issues addressed.
- Regulations streamlined, reference to large public events on private property removed.

⁶⁵ Refer E40 Temporary Activities of the Auckland Unitary Plan, specifically policy E40.3(1)(d).

⁶⁶ Refer H26 Special Purpose – Major Recreation Facility Zone

⁶⁷ Clause 6(1), 9, 10 (in particular 10(3)(c)), 11 (in particular 11(1)(f) of the Auckland Council Trading and Events Bylaw 2015.

<ul style="list-style-type: none"> • Mandate to promote waste minimisation less explicit because trading and events bylaw made under Local Government Act 2002 rather than the Waste Minimisation Act 2008 • References in trading and events bylaw to waste not easy to understand. <p>Risks and risk mitigation</p> <ul style="list-style-type: none"> • Moderate risk that waste requirements are unclear. Mitigation through information and education to increase awareness. 	<ul style="list-style-type: none"> • Maintains clear mandate to promote waste minimisation. • Bylaw structure and words easier to understand. <p>Cons</p> <ul style="list-style-type: none"> • Regulation of events under two bylaws. <p>Risks and risk mitigation</p> <ul style="list-style-type: none"> • Low risk of confusion between requirements of new bylaw and trading and events bylaw. Mitigation through clear wording.
<p>Effectiveness at managing and minimising waste ✓</p> <ul style="list-style-type: none"> • While this option would address waste issues, the mandate to promote waste minimisation in trading and events bylaw and Litter Act is unclear. <p>Efficiency at managing and minimising waste ✓</p> <ul style="list-style-type: none"> • Would not require additional resources, but unclear mandate, structure and wording may result in uncertainty in both public understanding and staff administration about waste requirements. 	<p>Effectiveness at managing and minimising waste ✓✓</p> <ul style="list-style-type: none"> • Option 2 would provide a clearer mandate to promote waste minimisation and address waste issues. <p>Efficiency at managing and minimising waste ✓</p> <ul style="list-style-type: none"> • Would not require additional resources. Would provide more certainty for both public and council staff about waste requirements.
<p>SECTION 155 LOCAL GOVERNMENT ACT 2002 RECOMMENDATIONS</p>	
<p>Based on the analysis against criteria above and preliminary legal assessment, a new bylaw (Option 2) is the most appropriate way to manage and minimise waste from events and trading on council controlled public places, but not large public events on private places because it would:</p> <ul style="list-style-type: none"> • provide a clear mandate to require events and trading in council controlled public places to address waste issues and minimise waste • be valid, not give rise to any implications and would not be inconsistent with the New Zealand Bill of Rights Act 1990, nor inconsistent with the Waste Plan • align requirements contained in the new bylaw and trading and events bylaw about waste • enable waste from large public events on private property entering public places to be addressed using the Litter Act 1979 and Auckland Unitary Plan. 	

TOPIC 8: LITTER FROM FLAGS AND SIMILAR THINGS (CLAUSE 27(2))⁶⁸

EXISTING BYLAW

- The owner, occupier or manager of a premises where any flag, banner, bunting, balloon, sign, poster, leaflet or similar thing is displayed that is likely to become litter must take steps to prevent it becoming litter and clean up resulting litter.

IMPLEMENTATION OF EXISTING BYLAW BY WASTE SOLUTIONS

- The bylaw has not been used however a graduated compliance response is likely.

STATUTORY AUTHORITY

- Waste Minimisation Act 2008 (WA2008) and/or the Local Government Act 2002 (LGA2002) bylaws can address waste issues.⁶⁹ Relevant bylaw powers and penalties include seizure, return and disposal of property and maximum court fines of \$20,000.⁷⁰ The LGA2002 also empowers officers to require certain information.⁷¹
- Health Act 1956 (s64(1)(a)) and Litter Act 1979 (s12) bylaws can address public health, nuisances and litter. Relevant bylaw powers and penalties are similar or less than the WA2008 and LGA2002, for example the maximum penalty under the Health Act (s66) is \$500.

ISSUES AND OUTCOMES SOUGHT IN 2012

- **Issues**⁷² included the need to reduce obstruction of stormwater drains and gutters, and poor visual amenity caused by flags and similar things.
- **Outcomes sought** were appropriate disposal of litter, litter-free public places and for people to make conscious decisions about purchases, minimisation of rubbish and responsible disposal.

ISSUES AND OUTCOMES SOUGHT NOW

- **Issues** relating to the display of flags or similar things were not raised with council in 2019.
- There is no data available on the **scale or magnitude** of the issue.
- **Outcome sought** is to reduce harm from residual waste.

BYLAW EVALUATION

Still a problem requiring a bylaw response?

- × No. No issues have been raised regarding the display of flags or similar things on premises.
- × There are feasible alternatives to a bylaw that are proportionate to the issue under the:
 - **Litter Act 1979 (s9(2))** allows council to require occupiers of premises to take reasonable steps to prevent litter escaping from the premises onto a public place.
 - **Signage Bylaw 2015 (cl8(2))** requires the owner, occupier, or manager of any premises displaying publicly visible things deemed to be signage⁷³ to ensure they do not become a nuisance or create a risk to public health and safety.⁷⁴
 - **Public Safety and Nuisance Bylaw 2013** prohibits a person from placing, leaving or abandoning any object, material or structure in a public place likely to cause a safety risk,

⁶⁸ Relates to section 4.8 of findings report.

⁶⁹ WA2008, section 56(a) and (b). LGA2002, section 146.

⁷⁰ WA2008, sections 66, 81-85 and LGA2002, sections 164-168 and 242.

⁷¹ Sections 164 via 239, 176, 178 and 242 LGA2002.

⁷² Statement of Proposal, Review of solid waste bylaws, July 2012, pp.64.

⁷³ Include an advertisement, message or notice advertising a product, business, service, event or acts to inform or warn any person, including banners, flags, posters and balloons.

⁷⁴ Powers include signage removal or alternation and cost recovery, and penalties include fine not exceeding \$1,000 (Land Transport Act 1998, s22AB(b)) or \$20,000 (Signage Bylaw 2015, s33-34, LGA2002, s242(4)).

nuisance⁷⁵, damage, obstruction, disturbance or interference to any person in their use or enjoyment of that public place.⁷⁶

Is the current Bylaw effective / efficient at managing and minimising waste?

- × Bylaw has not been used and council has not received any complaints.

Bylaw clearly written?

- × No. Bylaw wording is difficult to understand.

OPTIONS

Option 1: no waste bylaw

- Use Litter Act, signage bylaw and public safety and nuisance bylaw to address litter from the display of flags or similar things on premises should issues arise in the future.

Implementation

- Council uses a graduated compliance approach.

Pros

- Removes unused bylaw about display of flags or similar things on premises which are no longer an issue.
- Streamlines council’s regulatory approach.

Cons

- Approach is reactive (when issues occur).
- Enforcement is limited by difficulties in obtaining evidence and identifying offenders.

Risks and risk mitigation

- Low reputational risk that council is perceived as not fulfilling statutory obligation to promote waste management and minimisation. Mitigation through robust bylaw review process and identification of alternate approaches.

Effectiveness at managing and minimising waste ✓

- Option 1 would address any issues of litter from premises from the display of flags or similar things (should they arise).

Efficiency at managing and minimising waste ✓

- Option 1 would not require additional resources to implement and streamline

Option 2: new waste bylaw

- New easy-to-understand bylaw to prevent litter from the display of flags or similar things on premises.
- Litter Act and bylaws in Option 1 can also be used where appropriate.

Implementation

- Same as Option 1.

Pros

- Behavioural expectations stated in a way that are proactive, positive, easy to understand and more clearly promote waste management and minimisation.

Cons

- Issues do not occur.
- Current Bylaw has not been used.
- Other regulation available to address issues.
- Enforcement is limited by difficulties in obtaining evidence and identifying offenders.
- Bylaw clause is very specific. Other Bylaws can address wider range of issues.

Risks and risk mitigation

- Medium reputational risk that council perceived to make unnecessary regulation. Mitigation through robust bylaw review.

Effectiveness at managing and minimising waste ✓

- Same as Option 1.

Efficiency at managing and minimising waste ×

- No requirement for additional resources to implement but duplicates other existing regulations.

⁷⁵ Note: “nuisance” includes a thing or circumstance causing unreasonable interference with the peace, comfort or convenience of another person, and for these purposes can include nuisance from litter at a certain threshold, for example high quantity or offensive litter.

⁷⁶ Bylaw powers include seizure, return and disposal of property, cost recovery for damage and power to request name and address (LGA2002, s164-168, 175-176 and 178). Penalties include a maximum \$20,000 fine (LGA2002, s242(4)) or maximum \$500 fine and \$50 per day for a continuing offence (HA1956, s66).

council's regulatory approach by removing an unused clause.

SECTION 155 LOCAL GOVERNMENT ACT 2002 RECOMMENDATIONS

Based on the analysis against the criteria above and preliminary legal assessment, **no bylaw (Option 1)** is the most appropriate way to manage and minimise waste from the display of flags or similar things on premises because it would:

- remove an unused bylaw about matters which are no longer an issue
- leave any future issues to the Litter Act and signage and public safety and nuisance bylaws.

TOPIC 9: UNADDRESSED MAIL⁷⁷ (CLAUSE 28)

EXISTING BYLAW

- No person may deposit unaddressed mail on vehicles and in letterboxes that are unsecured or marked “addressed mail only”, “no junk mail” or similar words. Exceptions apply to industry accords (Code), election material, government notices, community newspapers or charities.

IMPLEMENTATION OF EXISTING BYLAW BY WASTE SOLUTIONS

- Proactively addresses issues through the industry accord with the Marketing Association.⁷⁸
- Members of the Marketing Association (95 per cent of the distribution industry) respond directly to complaints and only reactively involve council if complex or unresolved issues arise.⁷⁹
- Reactively responds to complaints from non-members of the Marketing Association using a graduated compliance model such as education and warnings.
- Since 2013 council received 40 complaints about unaddressed mail and no complaints about car window advertising. Anecdotally, marketing flyers are left on car windows at events and in public carparks. No prosecutions under the Bylaw.

STATUTORY AUTHORITY OF COUNCIL TO MAKE BYLAWS

- Waste Minimisation Act 2008 (WA2008) and/or the Local Government Act 2002 (LGA2002) bylaws can address waste issues.⁸⁰ Relevant bylaw powers and penalties include maximum court fines of \$20,000. LGA2002 also requires certain information.⁸¹
- Health Act 1956 (s64(1)(a)) and Litter Act 1979 (s12) bylaws can address public health, nuisance and litter issues. Relevant bylaw powers and penalties are similar or less than WA2008 and LGA2002, for example Health Act penalty is \$500.

ISSUES AND OUTCOMES SOUGHT IN 2012

- **Issues** included littering caused by the delivery of unaddressed mail.⁸²
- **Outcome** sought was to ensure appropriate disposal of unaddressed mail.

ISSUES AND OUTCOMES SOUGHT NOW

- **Residual waste issues** include litter from unaddressed mail falling out of letterboxes or off car windows and illegal dumping of surplus items in private and public bins, local parks and streams.
- **Other issues** include nuisance from not wanting to receive unaddressed mail.
- **Emerging issues** include sample material such as pet food, location of stickers on letterboxes, increased (weekly) complaints to Marketing Association about unaddressed mail by local sport clubs, charities and increased complaints about real estate agents (not signatories to the Code).
- According to the Marketing Association, the **scale or magnitude** of the issues decreased by approximately 50 per cent since 2012 due to increased use of cheaper digital options.
- **Outcome** sought is to reduce harm from residual waste from litter and illegal dumping. Achieving this outcome would also address nuisance related issues.

BYLAW EVALUATION

Is this still an issue that requires bylaw response?

- ✓ Yes. Issues related to unaddressed mail remain and regulation can help to address them.
- ✓ There are no other feasible alternatives to a bylaw:
 - a bylaw is the only regulatory tool that enables prosecution of the person who ordered the delivery (unlike the Litter Act 1979 that focusses on those who physically deliver mail).

⁷⁷ Relates to section 4.9 of the Findings Report.

⁷⁸ National Code of Practice for the Distribution of Unaddressed Mail.

⁷⁹ The Helpline (0800 111 081) is financed by Reachmedia and PMP Distribution.

⁸⁰ WA2008, section 56(a)(b)(f) and LGA2002, section 146(a)(ii)(iv).

⁸¹ WA2008, section 66 and LGA2002, sections 178, 242.

⁸² Statement of proposal, Review of solid waste bylaws, 2012, pp 59.

- a bylaw is the only regulatory tool that can address nuisance to people not wanting to receive unaddressed mail, junk mail or similar (s145(a) LGA2002), otherwise it is a civil matter.
- powers to address nuisance in the Health Act (s29(b) and s34) are limited to deposit or accumulation of unaddressed mail in a way that is offensive or injurious to health.⁸³

Is the Bylaw effective and efficient in managing and minimising waste?

- ✓ Yes. Bylaw is useful to encourage self-regulation (industry accord) and to set expectations for delivery of unaddressed mail to letterboxes marked “addressed mail only” or “no junk mail”.
- ✓ A 2006 study found that “no-junk” stickers decreased the amount of unaddressed mail received in residential areas by 67 per cent.
- ✗ The same study found that real estate agents were the most likely to deliver promotional material, even when “no-junk” signage was present (not signatories to the Code).
- ✗ Resolving complaints is costly and time-consuming (no data available).

Is the bylaw clearly written?

- ✗ No. Bylaw is wordy, repetitive, inconsistent with the Code and difficult to understand.

OPTIONS

Option 1: no waste bylaw

- Litter Act used to address litter and illegal dumping but only by the person who physically delivers unaddressed mail (not the company or person who ordered delivery).
- Use LGA2002 and Health Act to address nuisance.

Implementation

- Council uses a graduated compliance approach to complaints.

Pros

- Less compliance costs to industry from council regulation (no bylaw).
- Litter and illegal dumping by physical deliverer still addressed.

Cons

- No ability to prosecute a company or a person who ordered the delivery under the Litter Act.
- Members of the Marketing Association may not choose to continue to be signatories to the voluntary Code of Practice after the Bylaw expires.

Risks and risk mitigation

- Enforcement against a delivery person under the Litter Act presents a reputational risk to the council because they are likely to be a minor, a recent migrant or vulnerable

Option 2: new waste bylaw

- New easy-to-understand bylaw to prohibit deposit of unaddressed mail on vehicles and unsecured or marked letterboxes (with exemptions).
- Exceptions for industry accord remain.
- Litter Act, Health Act and LGA2002 used to address litter, illegal dumping and nuisance.

Implementation

- Same as current implementation.

Pros

- Bylaw enables industry self-regulation which reduces complaint resolution by council.
- Provides council with ability to prosecute companies or persons who order delivery and set expectation for no delivery to marked or unsecured letterboxes.
- Bylaw structure and content improved.

Cons

- Enforcement is limited.
- Resolution of complaints is time-consuming.

Risks and risk mitigation

- Enforcement against delivery person can pose reputational risk to council as delivery persons are likely to be minors, recent migrants or vulnerable community members.

⁸³ Powers include abatement of nuisance and cost recovery (s34). The Court may require the owner and occupier of a premises to abate and/or prohibit the recurrence of the nuisance or specify works to be done to do so (s33). Penalties include fine not exceeding \$500 and \$50 per day for a continuing offence (s136).

<p>community member. There is no effective mitigation to this risk other than a new bylaw.</p>	
<p>Effectiveness at managing and minimising waste ✘</p> <ul style="list-style-type: none"> Limiting enforcement options to litter and illegal dumping by delivery persons is ineffective and presents a reputational risk to council. <p>Efficiency at managing and minimising waste ✘</p> <ul style="list-style-type: none"> Limiting enforcement options to the delivery person is inefficient. It may result in withdrawal of industry from accords and increase complaints to council which are time-consuming to address and difficult to enforce. 	<p>Effectiveness at managing and minimising waste ✓</p> <ul style="list-style-type: none"> Current approach is shown to be effective based on 2006 study and industry accords have reduced the number of complaints to council. <p>Efficiency at managing and minimising waste ✓</p> <ul style="list-style-type: none"> Option 2 would continue to reduce operational costs by encouraging industry responsibility and provide a clearer mandate for waste management and minimisation.

SECTION 155 LOCAL GOVERNMENT ACT 2002 RECOMMENDATIONS

Based on the analysis against the criteria above and preliminary legal assessment, **a new bylaw (Option 2)** is the most appropriate way to manage and minimise waste issues from unaddressed mail because it would:

- fill a regulatory gap by enabling prosecution of the person who ordered the delivery (unlike the Litter Act that focusses on those who physically deliver mail), support self-regulation through exemptions for industry accords and set expectation for no delivery of unaddressed mail to marked or unsecured letterboxes (with exceptions)
- provide clearer wording that is easier to understand
- be valid and not give rise to any implications and would not be inconsistent with the New Zealand Bill of Rights Act 1990, nor be inconsistent with the Waste Plan
- still allow the use of LGA2002, Litter Act, Health Act where appropriate.

TOPIC 10: ABANDONED SHOPPING TROLLEYS (CLAUSE 30)⁸⁴

EXISTING BYLAW

- Shopping trolleys must not be abandoned on a public place outside of the business premises that provided them. Businesses must not allow trolleys to be abandoned outside of premises, must take measures to prevent removal (for example signage) and include the business contact details on their trolleys. Exemptions apply to signatories to council-approved industry accords.

IMPLEMENTATION OF EXISTING BYLAW BY WASTE SOLUTIONS

- Where an individual or business is identifiable, a graduated compliance response is used. This may include education, warnings, cost of retrieval and prosecution.
- The Retail New Zealand⁸⁵ (RNZ) industry accord for the management of shopping trolleys (Code) was adopted in 2014 to address shopping trolley abandonment in public places. Complaints are firstly directed to the retailer who then retrieves the trolley or secondly to RNZ if there is a continuing issue. RNZ works with retailers to improve retrieval rates.
- Council requests identifiable retailers who are not Code signatories⁸⁶ to retrieve their trolleys.
- Council may retrieve trolley where the owner is unidentifiable
- There is no data available on complaints to or trolleys retrieved by council.

STATUTORY AUTHORITY

- Waste Minimisation Act 2008 (WA2008) and/or the Local Government Act 2002 (LGA2002) bylaws can address waste issues related to abandoned shopping trolleys.⁸⁷ Relevant bylaw powers and penalties include seizure, return and disposal of property and maximum court fines of \$20,000.⁸⁸ The LGA2002 also enables officers to require certain information.⁸⁹
- Health Act 1956 (s64(1)(a)) and Litter Act 1979 (s12) bylaws can address public health, nuisance and litter issues. Relevant bylaw powers and penalties are similar or less than the WA2008 and LGA2002, for example the maximum penalty under the Health Act (s66) is \$500.

ISSUES AND OUTCOMES SOUGHT IN 2012

- **Issues**⁹⁰ were illegal dumping, environmental harm, nuisance, reduced visual amenity, obstructed waterways and retrieval costs from trolleys and baskets in public places.
- **Outcome sought** was to prohibit illegal dumping of waste and recover costs to council of removal and disposal of illegal dumping from the disposer.

ISSUES AND OUTCOMES SOUGHT NOW

- **Issues** from 2012 remain however abandoned shopping baskets are no longer a problem.
- **Emerging issues** include obstruction of public places and ease of movement, health and safety risks to pedestrians and others, nuisance to drivers and possible damage to vehicles.
- **The scale and magnitude** of the issue is considered to be under-reported. There were 87 complaints to council in 2018. RNZ reported 750 abandoned trolleys between 2015 and 2018, with incidents per year remaining stable. Locations where found included a public street (54 per cent), private residence (30 percent, business (10 per cent) and park or reserve (five per cent).
- **Outcome sought** is to reduce harm from residual waste. Outcome would also address issues of obstruction, health, safety, nuisance, reduced visual amenity, damage and costs.

BYLAW EVALUATION

⁸⁴ Relates to section 4.10 of findings report.

⁸⁵ Representative body of the retail industry.

⁸⁶ Mainly small retailers.

⁸⁷ WA2008, sections 56(a) and (b). LGA2002, section 146.

⁸⁸ WA2008, sections 66, 81-85 and LGA2002, sections 164-168 and 242.

⁸⁹ Sections 164 via 239, 176, 178 and 242 LGA2002.

⁹⁰ Statement of Proposal, Review of solid waste bylaws, July 2012, pp.55.

Still a problem requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can help address.
- ✓ There are no feasible proactive regulatory alternatives available to require business to label trolleys, prevent removal from premises or to encourage a council-approved industry accord.
- ✗ There are feasible alternatives to a bylaw to address **some** instances of abandonment, but they are reactive and target the individual who abandons the trolley:
 - **Litter Act 1979 (s15)** prohibits depositing of litter on a public place or on private land without consent.⁹¹ Application to abandonment is limited to where trolleys become litter, such as being left in a hindered location such as down a cliff or in a waterway.
 - **Public Safety and Nuisance Bylaw 2013** prohibits placing, leaving or abandoning any object in a public place likely to cause a safety risk, nuisance, damage, obstruction, disturbance or interference.⁹² There is a high threshold for nuisance – the trolley must unreasonably interfere with the peace, comfort or convenience of another person.

Is the current Bylaw effective and efficient at managing and minimising waste?

- ✓ Bylaw encourages voluntary compliance through the Code. Many larger retailers such as supermarkets are Code signatories. Generally, retailers collect trolleys although sometimes council involvement is necessary. Code requires retailers to label and retrieve trolleys, submit data, and reimburse council for any retrieval costs.
- ✗ Retailer failure to label their trolleys (mainly smaller retailers) prevents cost recovery of retrieval.
- ✗ Bylaw enforcement is difficult. There are challenges identifying offenders, obtaining evidence, time, cost and reputational issues when offender is a vulnerable society member.

Bylaw clearly written?

- ✗ No. Wording unclear (for example meaning of “reasonable measures”), lengthy and outdated.
- ✗ The Bylaw is less stringent than the Code making its purpose and value unclear.

OPTIONS

<p>Option 1: no waste bylaw</p> <ul style="list-style-type: none"> • Use Litter Act to address situations where abandoned trolleys are litter. • Use Public Safety and Nuisance Bylaw to address where abandoned trolleys are a safety risk, nuisance, damage, obstruction, disturbance or interference to any person in their use or enjoyment of that place. <p>Implementation</p> <ul style="list-style-type: none"> • Council Litter Control Officers and enforcement officers use a graduated approach to compliance. <p>Pros</p> <ul style="list-style-type: none"> • Most issues are still addressed. 	<p>Option 2: new waste bylaw</p> <ul style="list-style-type: none"> • New easier to understand bylaw to address abandonment of trolleys. This may include prohibiting removal of trolleys from business premises onto a public place, requiring retailers to prohibit removal, taking measures to prevent removal, retrieving abandoned trolleys, labelling trolleys and other matters contained in the Code. • Exemption for industry Code to remain. • Litter Act and Public Safety and Nuisance Bylaw used where appropriate. <p>Implementation</p> <ul style="list-style-type: none"> • Same as current implementation.
Cons	Pros

⁹¹ Power to require removal and correct disposal of litter and to request offender details. Penalties include a maximum \$400 infringement fine, \$5,000 court fine for individuals and litter removal costs (s7(2),7(5),14,15,21).

⁹² Powers include seizure, return and disposal of property, cost recovery for damage and power to request name and address (LGA2002, s164-168, 175-176 and 178). Penalties include a maximum \$20,000 fine (LGA2002, s242(4)) or maximum \$500 fine and \$50 per day for a continuing offence (HA1956, s66).

<ul style="list-style-type: none"> Abandoned trolleys that are not litter, a safety risk, nuisance, cause damage, obstruction, disturbance, or interfere with any person in their use or enjoyment of that place are not addressed, although regardless there is a low likelihood of identifying offenders. Regulatory gap to address retailer accountability. Code may dissolve as no regulatory incentive to be a party to it. <p>Risks and risk mitigation</p> <ul style="list-style-type: none"> High risk that Code is dissolved. Mitigation through current relationship with Retail NZ. Moderate risk that no measures are available to address situations not covered by Litter Act and Public Safety and Nuisance Bylaw. Mitigation through education. Low risk that council is perceived as not fulfilling statutory obligations to promote waste management and minimisation. Mitigation through robustness. 	<ul style="list-style-type: none"> All issues are still addressed. Bylaw requires proactive measures by retailers which reduces complaint resolution by council. Current Bylaw and Code are useful to set expectations for use and ownership of shopping trolleys. Improvements could increase effectiveness. <p>Cons</p> <ul style="list-style-type: none"> Bylaw enforcement is limited due to difficulty in identifying offenders. <p>Risks and risk mitigation</p> <ul style="list-style-type: none"> N/A.
<p>Effectiveness at managing and minimising waste ✘</p> <ul style="list-style-type: none"> Council would not be able to address all issues or ensure retailer accountability. The Litter Act and Public Safety and Nuisance Bylaw do not address all issues and focus on abandonment by individuals, not retailer accountability, and the Code would likely dissolve without a regulatory incentive. <p>Efficiency at managing and minimising waste ✘</p> <ul style="list-style-type: none"> Likely increase in complaints and associated costs to council (and ratepayer). 	<p>Effectiveness at managing and minimising waste ✓</p> <ul style="list-style-type: none"> Option 2 would address all waste issues and require retailer accountability which reduces the need for complaint response by council. The Bylaw provides clearer wording that is easier to understand, fills a regulatory gap for trolley retrieval by retailers, and supports continuance of the Code⁹³. <p>Efficiency at managing and minimising waste ✓</p> <ul style="list-style-type: none"> Would not require additional resources.

SECTION 155 LOCAL GOVERNMENT ACT 2002 RECOMMENDATIONS

Based on the analysis against the criteria above and preliminary legal assessment, **a new bylaw (Option 2)** is the most appropriate way to manage and minimise waste issues from abandoned shopping trolleys on public places because it would:

- fill a regulatory gap by requiring retailers to prevent and to retrieve abandoned trolleys in a way that also supports self-regulation through exemptions for industry accords
- provide clearer wording that is easier to understand
- be valid and not give rise to any implications and would not be inconsistent with the New Zealand Bill of Rights Act 1990, nor be inconsistent with the Waste Plan
- still allow the use of the Litter Act and Public Safety and Nuisance Bylaw where appropriate.

⁹³ Cost and reputational concerns are not sufficient incentive to encourage industry-wide trolley retrieval.

TOPIC 11: WASTE NUISANCE⁹⁴ (CLAUSE 15, 26)

EXISTING BYLAW

- No person may allow accumulation of waste on private property or use an approved container (bin) in a way that is offensive, a nuisance or is injurious to health.
- A person may only dispose of waste (including by burying or burning) where allowed on the kerbside or at fill sites.⁹⁵ Exceptions apply to cleanfill, home composting, and burning or burial on private property of organic matter in rural areas, dead farm and companion animals and pests.

IMPLEMENTATION OF EXISTING BYLAW BY WASTE SOLUTIONS

- Graduated compliance response to waste accumulation and bin misuse includes education, signage, stickering of illegally dumped items,⁹⁶ warnings, temporary bin removal, prosecution and encouraging private property fencing, larger bin use⁹⁷ or private waste collection services.⁹⁸
- No implementation for burning or burying of waste.
- No data available on implementation. No prosecutions made under the Bylaw.

STATUTORY AUTHORITY

- Waste Minimisation Act 2008 (WA2008) and/or the Local Government Act 2002 (LGA2002) bylaws can address waste nuisance.⁹⁹ Relevant bylaw powers and penalties include seizure of property¹⁰⁰, power to inspect property and obtain information,¹⁰¹ require certain information,¹⁰² power of entry, cost recovery for damage and maximum court fines of \$20000.¹⁰³
- Health Act 1956 (s64(1)(a)) bylaws can address public health and nuisance issues. Relevant bylaw powers and penalties are similar or less than the WA2008 and LGA2002.

ISSUES AND OUTCOMES SOUGHT IN 2012

- **Issues**¹⁰⁴ were nuisance and health and safety risks from accumulation of waste on private property leading to odour, reduced visual amenity and vermin.
- **Outcome sought** was to reduce harm to visual amenity, health and safety risks and vermin due to waste accumulation on private property.

ISSUES AND OUTCOMES SOUGHT NOW

- **Issues remain from 2012.** **Emerging issues** include nuisance from misuse of approved containers and environmental harm and health and safety risks from burning and burying of waste. Although, not identified as issues in 2012, the Bylaw does address burning and burying.
- Limited data on **scale and magnitude** of issues. Anecdotally, illegal dumping of household waste and commercial materials (e.g. tyres) is common on private property. Illegal dumping volumes increased by 32 per cent and requests for service by 44 per cent since 2013. The proportion of incidents occurring on private property is however unknown. No complaints received about waste burning, burying or disposal. Anecdotally burning issues are common.
- **Outcome sought** is to reduce harm from residual waste. Achieving this outcome would also address nuisance and health and safety risks.

BYLAW EVALUATION

⁹⁴ Relates to section 4.11 of findings report.

⁹⁵ Landfill, clean-fill, managed-fill and mono fill sites.

⁹⁶ To notify residents that items should be removed.

⁹⁷ Council offers refuse bins up to 240 litres and recycling bins up to 360 litres.

⁹⁸ In particular, larger households or commercial properties.

⁹⁹ WA2008, section 56(a) and (b) and LGA2002, section 146.

¹⁰⁰ WA2008, sections 81-85 and LGA2002, sections 164-168.

¹⁰¹ WA2008, section 79.

¹⁰² LGA2002, sections 172, 176 and 178.

¹⁰³ WA2008, section 66 and LGA2002, section 242.

¹⁰⁴ Statement of Proposal, Review of solid waste bylaws, July 2012, pp.44.

Still a problem requiring a bylaw response?

- ✓ Yes. There are still issues that regulation can help address.
- ✓ There are no feasible alternatives to a bylaw to address **bin misuse**:
 - Public Safety and Nuisance Bylaw 2013 is limited to address bin use that is a nuisance or injurious to health in a public place and cannot address offensive bin use.
- × There are feasible alternatives to address **burning of waste, excluding food scraps**:
 - The Auckland Unitary Plan (E14 Air quality) prohibits outdoor **burning of waste** (including domestic and commercial waste) in all zones (A123) to manage discharge of contaminants into the air, with exceptions.¹⁰⁵
 - Outdoor burning is allowed in all rural zones of green waste generated on the same premises, or on property under the same ownership or operation, excluding (A131) the:
 - Rural - Countryside Living Zone in an Urban Fire District on properties less than 1ha or greater than 1ha if a council fire permit is not obtained
 - Rural - Rural Conservation Zone in an Urban Fire District.
 - Outdoor burning of green waste not generated on the same premises, or property under the same ownership or operation in Auckland is allowed by resource consent (A132).
 - The Unitary Plan and the bylaw have a common purpose to minimise environmental harm. Harm from waste burning is the release of contaminants affecting air quality. The Unitary Plan is a feasible alternative as it addresses air quality and specific land uses and needs.
- ✓ There are no feasible alternatives to a bylaw to address **burning of food scraps**:
 - The Auckland Unitary Plan does not address outdoor burning of food scraps. Food scraps could be included as “domestic waste” under E14, A123. However, this would contradict the approach to other organic wastes (green and dead farm animals) in the plan. A bylaw would fill a regulatory gap for the burning of food scraps.
- ✓ There are no feasible alternatives to a bylaw about **burial of waste** (clause 26(2)(c)) **or waste disposal** (clause 15 and 26(2)(c)). These clauses are a fundamental part of the bylaw framework which stipulates where waste can be disposed of.
- × There are feasible bylaw alternatives to address **accumulation of waste** on private property:
 - **Litter Act 1979 (s15)** prohibits litter on private land without occupier consent and s10 allows council to require removal or concealment of litter which grossly defaces or defiles area.¹⁰⁶
 - **Property Maintenance Bylaw 2015 (cl6(1)(a))** prevents a person from allowing items to be accumulated on property under their control in a way that causes a nuisance.¹⁰⁷
 - **Health Act 1956 (s30)** prohibits permitting or causing nuisances,¹⁰⁸ including any accumulation or deposit that is offensive or injurious to health (s29(b)).

Bylaw effective and efficient at managing and minimising waste?

¹⁰⁵ Powers under the Resource Management Act 1991 address the discharge of contaminants into the environment (s15). Powers include enforcement orders, abatement notices, powers of entry (s314, 322, 332). Penalties include imprisonment not exceeding 2 years or fine not exceeding \$300,000 (s339).

¹⁰⁶ Powers include requirement to remove and appropriately dispose of litter deposited from a public place onto private land without consent (s7(2)). Penalties include infringement fee not exceeding \$400 (s13-14), fine not exceeding \$5000 (individual) or \$20,000 (body corporate) for litter (s15(1)), imprisonment not exceeding one month or fine not exceeding \$7,500 (individual), or \$30,000 (body corporate) for dangerous litter (s15(2)). On conviction offenders can be required to clear area of litter (s20) and pay cost of removing litter (s21).

¹⁰⁷ Council can remove materials found on the property in breach of the bylaw and recover costs of removal (cl9). Powers include seizure, return and disposal of property (LGA2002 s165-168) and power of entry (LGA2002, s172). Penalties include maximum fine of \$20,000 (LGA2002, s242) or \$500 (HA1956, s66).

¹⁰⁸ Powers include abatement of nuisance and cost recovery (s34). The Court may require the owner and occupier of a premises to abate and/or prohibit the recurrence of the nuisance or specify works to be done to do so (s33). Penalties include fine not exceeding \$500 and \$50 per day for a continuing offence (s136).

- ✓ Bylaw useful to set expectations for waste disposal and use of bins.
- ✓ Home composting exemptions can promote waste minimisation.
- ✗ Enforcement is limited due to difficulties in identifying the offender and gaining evidence. There have been no prosecutions under the bylaw.
- ✗ Council officers more likely to use Litter Act to address accumulation of waste on private property as it provides ability to issue infringement notices and require litter removal.¹⁰⁹

Bylaw clearly written?

- ✗ No. Bylaw structure, wording and definitions unclear, lengthy and difficult to understand.

OPTIONS

Option 1: No waste bylaw

- Use information and education to address bin misuse, burning of food scraps, and waste burial and disposal.
- Use the Unitary Plan to address burning of waste (excluding food scraps).
- Use Litter Act, Property Maintenance Bylaw and Health Act to address accumulation of waste on private property.

Implementation

- Prosecution under Resource Management Act 1991 for waste burning issues.
- Same as current implementation for accumulation issues.

Option 2: new waste bylaw

- New easy-to-understand bylaw to address bin misuse, burning of food scraps, and waste burial and disposal.
- Use Unitary Plan, Litter Act, Property Maintenance Bylaw and Health Act to address burning of waste (excluding food scraps) and accumulation of waste on private property.

Implementation

- Same as current implementation.
- Prosecution under Resource Management Act 1991 for waste burning issues.

Pros

- Best practice can still be communicated.
- Burning of waste excluding food scraps and waste accumulation can still be addressed.
- Removes regulatory duplication as Litter Act used to address accumulation issues.

Cons

- Bin misuse issues continue to occur but there would be no regulatory measures to address this.
- Creates a regulatory gap. No regulatory measures to set expectations for burning of food scraps and waste burial and disposal. This could increase harm from residual waste as contaminants are released due to inappropriate disposal.

Risks and risk mitigation

- High risk of insufficient measures to address issues. Mitigation through education.
- High reputational risk that council perceived as not fulfilling statutory obligations to protect public health and promote waste

Pros

- Fills regulatory gap by addressing bin misuse, burning of food scraps and waste burial and disposal.
- Sets bylaw framework that waste can only be disposed to the kerbside or fill sites with limited exceptions, to reduce harm from residual waste.
- Does not duplicate existing regulation for burning of waste (excluding food scraps) and waste accumulation on private property.

Cons

- Bylaw enforcement is limited regardless of bylaw content due to limited resources.

Risks and risk mitigation

- N/A

¹⁰⁹ Council cannot remove waste from private property unless there is a health risk.

<p>management and minimisation. Mitigation through robust bylaw review.</p>	
<p>Effectiveness at managing and minimising waste ✖</p> <ul style="list-style-type: none"> Option 1 creates regulatory gaps, would not set clear and enforceable behavioural expectations about use of bins, burning of food scraps, and waste burial and disposal, and does not fulfil council's duty to protect public health and promote waste management and minimisation. However, it would remove duplication of existing regulation. Enforcement likely to remain limited due to the difficulty in identifying offenders. <p>Efficiency at managing and minimising waste ✓</p> <ul style="list-style-type: none"> Would not require additional resources. 	<p>Effectiveness at managing and minimising waste ✓</p> <ul style="list-style-type: none"> Option 2 would fill regulatory gaps by setting clear and enforceable behavioural expectations about use of bins and burning of food scraps and enable a bylaw framework stipulating that waste can only be disposed to the kerbside or fill sites (with exceptions) that are easier to understand. Option 2 would remove duplicated regulation. Enforcement likely to remain limited due to the difficulty in identifying offenders. <p>Efficiency at managing and minimising waste ✓</p> <ul style="list-style-type: none"> Would not require additional resources.
<p>SECTION 155 LOCAL GOVERNMENT ACT 2002 RECOMMENDATIONS</p>	
<p>Based on the analysis against the criteria above and preliminary legal assessment, a new bylaw (Option 2) is the most appropriate way to manage and minimise waste issues from bin misuse, burning of food scraps and waste burial and disposal because it would:</p> <ul style="list-style-type: none"> set clear and enforceable behavioural expectations about bin use and burning of food scraps maintain a bylaw framework that restricts depositing of waste to the kerbside or fill sites (with exceptions) be easier to understand fill regulatory gaps about the use of bins, burning of food scraps and disposal of waste be valid, not give rise to any implications and would not be inconsistent with the New Zealand Bill of Rights Act 1990, nor be inconsistent with the Waste Plan avoid duplicating existing regulations by using the Unitary Plan, Litter Act, Property Maintenance Bylaw and Health Act to address burning (excluding food scraps) and accumulation of waste. 	

TOPIC 12: COUNCIL LITTER AND RECYCLING BINS IN PUBLIC PLACES¹¹⁰ (CLAUSE 27(1))

EXISTING BYLAW

- No person can deposit household or business waste in a bin, remove waste where this results in litter outside the bin, put waste in a full bin or in a way that is likely to escape (waste overflow), fix or attach a flag or similar thing to a bin or damage a bin.

IMPLEMENTATION OF EXISTING BYLAW

- Council uses a graduated compliance response to issues, including neighbourhood letter drops, signage, written warnings, temporary removal of bins, increased bin-emptying frequency, collaboration with retailers to provide additional or larger bins¹¹¹, and prosecution.

STATUTORY AUTHORITY OF COUNCIL TO MAKE BYLAWS

- Waste Minimisation Act 2008 (WA2008) and/or the Local Government Act 2002 (LGA2002) bylaws can address waste issues.¹¹² Relevant bylaw powers and penalties include seizure of things attached to bins and maximum court fines of \$20,000. LGA2002 also enables cost recovery for damage and requiring information.¹¹³
- Health Act 1956 and Litter Act 1979 bylaws can address public health, nuisance and litter issues.¹¹⁴ Relevant bylaw powers and penalties similar or less than WA2008 and LGA2002, for example the maximum penalty under the Health Act is \$500.¹¹⁵

ISSUES AND OUTCOMES SOUGHT IN 2012

- **Issues**¹¹⁶ were misuse of bins for household and business waste, litter, illegal dumping and risks to health and safety from waste overflow in and around full bins, visual amenity concerns from flags or similar things attached to bins, cost to ratepayer for removal and disposal of additional waste and contamination of public recycling bins from non-recyclables.
- **Outcome sought** was the appropriate use of public litter bins.

ISSUES AND OUTCOMES SOUGHT NOW

- **Issues** in 2012 remain with exception of visual amenity concerns from flags or similar things which was not identified as an issue.
- **Emerging issues** include nuisance and damage (including vandalism) of bins. Although not identified as an issue in 2012, damage was included in the bylaw.
- **Scale and magnitude** are high. Council receives 315 requests to empty over-flowing bins on average each year. On average there is a 50 per cent contamination rate in recycling bins. Anecdotally waste overflow is common during summer months and outside premises that produce large volumes of waste (for example takeaway food outlets), misuse of bins for household and business waste is common and vandalism is frequent in South Auckland.
- **Outcome sought** is to reduce harm from residual waste. Achieving this outcome would also address issues of health and safety, visual amenity, nuisance, damage and removal costs.

BYLAW EVALUATION

¹¹⁰ Relates to section 4.12 of findings report.

¹¹¹ Litter Act 1979, section 9(3).

¹¹² WA2008, sections 56(a) and (b). LGA2002, sections 145(a),(b) and section 146(a)(iv).

¹¹³ Sections 81 via 66 WA2008 and sections 164 via 239, 176, 178 and 242 LGA2002 respectively.

¹¹⁴ HA1956, section s64(1)(a) and LA1979, section 12.

¹¹⁵ HA1956, section 66.

¹¹⁶ Statement of Proposal, Review of solid waste bylaws, July 2012, pp.46.

Still a problem requiring a bylaw response?

- ✓ Yes. There is still an issue that regulation can help address.
- ✓ Yes. A bylaw is the only feasible alternative to:
 - prevent deposit of household and business waste in a bin or bin contamination as the Litter Act (s15) does not distinguish types of litter placed in a bin.
 - prevent waste overflow around bins as the Litter Act (s15) does not address leaving waste in a bin in a way that it is likely to escape as this is the risk, not the act, of littering.¹¹⁷
- × No. There are feasible alternatives to a bylaw under the:
 - **Litter Act (s15)** to reactively address litter and illegal dumping in and around bins.¹¹⁸
 - **Health Act (s34)** to abate or remove nuisances including an offensive or injurious to health accumulation or deposit.¹¹⁹
 - **Signage Bylaw 2015 (cl7(2))** to address signage attached to bins.¹²⁰
 - **Public Safety and Nuisance Bylaw 2013** to address things attached to bins that are a safety risk, nuisance, damage, obstruction, disturbance or interference.¹²¹
 - **Summary Offences Act** can address damage (s11) and vandalism (s11A).¹²²
 - **Local Government Act (s232)** can also address damage.¹²³
 - **Litter Act (s7(1)(c))** also allows officers to intervene to prevent damage.

Is the current Bylaw effective and efficient at managing and minimising waste?

- ✓ Bylaw useful to address household or commercial waste in bins, encourage voluntary compliance and respond to complaints.
- × While issues occur, clauses about waste overflow, contamination, and damage not used.
- × Clause about flags or similar things not used and council has received no complaints.
- × Difficult to identify offenders and obtain evidence. No prosecutions under the Bylaw.

Bylaw clearly written?

- × No. Bylaw wording is unclear, repetitive and has insufficient detail to address contamination.

OPTIONS

Option 1: no waste bylaw

Option 2: new waste bylaw

¹¹⁷ Litter Act does not refer to accidental littering in definition of 'depositing' litter.

¹¹⁸ Powers include requirement to remove and appropriately dispose of litter deposited in a public place. Penalties include a maximum \$400 infringement fine, \$7,500 court fine for an individual, one-month imprisonment, \$30,000 court fine for a body corporate and cost of removing litter (LA1979, s7(2), 7(5), 14, 15, and 21)

¹¹⁹ Powers include cost recovery for abatement (HA1956, section 34). The District Court may require the owner and occupier of a premises to abate and/or prohibit the recurrence of the nuisance or specify works to be done to do so (HA1956, section 33). Penalties include fine not exceeding \$500 and \$50 per day for a continuing offence (HA1956, section 136).

¹²⁰ Signage on bins requires Auckland Transport or Auckland Council approval. Powers include removal and cost recovery (Signage Bylaw 2015, clause 33). Penalties include maximum fine of \$1,000 (s22AB(b) Land Transport Act 1998) or \$20,000 (LGA2002, section 242).

¹²¹ Powers include seizure, return and disposal of property, cost recovery for damage and power to request name and address (s164-168, 175-176, and 178 LGA2002). Penalties include a maximum \$20,000 fine (LGA2002, section 242(4)) or maximum \$500 fine and \$50 per day for a continuing offence (HA1956, s66).

¹²² Penalties include up to three-months in prison, maximum \$2,000 fine or community-based sentence (Community work, supervision, intensive supervision, or community detention (Sentencing Act 2002, s44)).

¹²³ Powers include recovery of cost of damage and penalties include a maximum \$20,000 fine, three years imprisonment or both (LGA2002, s175 and 242).

<ul style="list-style-type: none"> • Use information and education to address household or business waste in bins, waste overflow and contamination of recycling bins. • Use signage and public safety and nuisance bylaws for things attached to bins. • Use Litter Act to reactively address litter and illegal dumping in and around bins. • Use Health Act to address nuisance. • Use Summary Offences Act, Local Government Act and Litter Act for damage. <p>Implementation</p> <ul style="list-style-type: none"> • Council officers and Police respond to complaints using a graduated approach. • Operational improvements at discretion of council staff. 	<ul style="list-style-type: none"> • New easy to understand bylaw to prohibit household or business waste in bins, waste overflow and contamination of recycling bins. • Use other bylaws and legislation in Option 1 for things attached to bins, litter and illegal dumping, nuisance and damage. <p>Implementation</p> <ul style="list-style-type: none"> • Same as Option 1.
<p>Pros</p> <ul style="list-style-type: none"> • Addresses litter, illegal dumping and damage. • Removes unnecessary bylaw about flags or similar things that are no longer an issue. • Does not duplicate legislation (streamlines council's regulatory approach). <p>Cons</p> <ul style="list-style-type: none"> • Does not address deposit of household or business waste, waste overflow and contamination which remain issues. • Enforcement is difficult in terms of identifying offenders and obtaining evidence. • Police unlikely to prioritise response to damage or vandalism. <p>Risks and risk mitigation</p> <ul style="list-style-type: none"> • Moderate risk that issues about deposit of waste increase. Mitigation through education. • Low risk that council perceived as not fulfilling statutory obligations to promote waste management and minimisation in relation to deposit of waste in bins. Mitigation through robustness of bylaw review. 	<p>Pros</p> <ul style="list-style-type: none"> • Addresses all current issues, in particular deposit of household or business waste, waste overflow and contamination in a new bylaw. • New bylaw can be easier to understand. • Removes unnecessary bylaw about flags or similar things that are no longer an issue. • Does not duplicate legislation. • Better promotes waste management and minimisation. <p>Cons</p> <ul style="list-style-type: none"> • Enforcement is difficult in terms of identifying offenders and obtaining evidence. • Police unlikely to prioritise response to damage or vandalism. <p>Risks and risk mitigation</p> <ul style="list-style-type: none"> • Low operational risks from current operational issues. Mitigation through improving operational process.
<p>Effectiveness at managing and minimising waste ✘</p> <ul style="list-style-type: none"> • Council would no longer be able to address all the current issues, particularly the misuse of bins (household or business waste, waste overflow, and contamination). The Litter Act 	<p>Effectiveness at managing and minimising waste ✔</p> <ul style="list-style-type: none"> • Option 2 would continue to enable council to address all the current issues, in particular the misuse of bins in a way that is easy to understand (for example what is

does not distinguish between litter sources or address litter risk. Council would not be able to address complaints about these issues which continue to occur (although difficult to enforce) and does not promote waste management and minimisation.

Efficiency at managing and minimising waste ✓

- Option 1 would not require additional resources (the approach to implementation remains unchanged) and removes bylaws that duplicate existing legislation or are unnecessary.

contamination). The bylaw fills a regulatory gap for issues which continue to occur (although difficult to enforce) and helps promote waste management and minimisation.

Efficiency at managing and minimising waste ✓

- Same as Option 1.

SECTION 155 LOCAL GOVERNMENT ACT 2002 RECOMMENDATIONS

Based on the analysis against the criteria above and preliminary legal assessment, a **new bylaw (Option 2)** is the most appropriate way to manage and minimise waste from the misuse of council litter and recycling bins in public places because it would:

- continue to enable council to address the misuse of bins in a way that is easy to understand (for example what is contamination)
- fill a regulatory gap for issues which continue to occur (although difficult to enforce) and helps promote waste management and minimisation
- be valid and not give rise to any implications and would not be inconsistent with the New Zealand Bill of Rights Act 1990, nor be inconsistent with the Waste Plan.