

MINUTES/DECISION



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MEMBERSHIP: Pat Seymour, Josh Wharehinga and Larry Foster

MINUTES of the HEARINGS Committee

Held in Te Ruma Kaunihera (Council Chambers), Awarua, Fitzherbert Street, Gisborne on Monday 24 May 2021 at 9:00AM.

PRESENT:

Chair Pat Seymour, Councillors Foster and Wharehinga,

IN ATTENDANCE:

Director Lifelines David Wilson, Acting Chief of Science and Strategy Joanna Noble, Team Leader Wastewater Treatment, Principal Advisor Charlotte Knight, Legal Counsel Jacinta Bowe, Democracy & Support Services Manager Heather Kohn and Committee Secretary Coral Dunn.

The Chair welcomed those present to the Hearing at 9am and outlined the process for the day.

1. Apologies

There were no apologies.

2. Declarations of Interest

There were no interests declared.

3. Notices of Motion

There were no notices of motion.

4. Reports of the Chief Executive and Staff for DECISION

4.1 21-60 Hearings Report: Draft Trade Waste Bylaw 2021

Background

1. Council's Trade Waste Bylaw regulates the type, volume, concentration and characteristics of trade wastes that may be discharged into Council's wastewater system. It establishes the consent system through which higher risk trade premises discharges are managed to protect the wastewater system, the treatment plant and the receiving environment of Te Moana o Tūrangānui-a-Kiwa (the Bay).

2. Since 2014 Council staff, committees and advisory groups have been developing a system for the separate regulation and management of mortuary wastewater. Attachment 4 provides a timeline of the process and the relevant Committee and Council reports for further reading.

Consultation

3. The draft Bylaw and a Statement of Proposal were adopted for formal consultation at Council's 28 January 2021 meeting (Report 21-06). Consultation ran for 2 months from 2 February until 5 April 2021. This two-month consultation is required under section 148 of the Local Government Act 2002 which relates specifically to trade waste bylaws.
4. Emails and letters were sent to stakeholders including Tūrangānui-a-Kiwa tangata whenua/iwi/hapū, all current and recent trade waste consent holders, industry groups, community groups, Government agencies and the Minister of Health.
5. Section 148 of the Local Government Act 2002 requires that before making a trade waste bylaw Council must:
 - send a copy of the proposed bylaw to the Minister of Health for their comments
 - at least 2 months before the making of the bylaws, give public notice of its intention to make the bylaws
 - consult with any parties as directed by the Minister
 - consider any submissions received.
6. A letter from the Hon Dr Ayesha Verral, Associate Minister of Health (the Minister) was received after the close of submissions (12 May, 2021). The letter is considered under submission point 14.

Secretarial Note:

MOVED by Cr Wharehinga, seconded by Cr Foster

That the late submission received from Hon Dr Ayesha Verall, Associate Minister of Health, be accepted.

CARRIED

SUBMISSIONS RECEIVED

Council received 8 submissions on the draft Trade Waste Bylaw.

Submitters who appeared:

Ian Ruru spoke to the written submission on behalf of Te Aitanga a Mahiki, Rongowhakaata, Ngai Tamanahuri, the Kiwa Group, Ngati Oneone, Whanau a Kai and others who had mana whenua, mana moana and mana awa over this area.

He stated the bylaw was effectively a step towards restoring the mauri of Turanganui a Kiwa and was, in particular, giving effect to te mana o te wai and upholding the importance of mana over the water itself.

He also acknowledged the part Council had played in positive engagement and the genuine relationship that had been forged.

Response to questions.

- They were supportive of all the other aspects of the bylaw.
- Totally supportive and happy with wording of the revised definition of mortuary.

David Moger and Alan Pokipoki, Funeral Directors Association of NZ spoke to their written submission and responded to questions:

- Disbursement of mortuary waste was dealt with in other ways around the country.
- Not aware of the February 2021 consultation so had no opportunity to engage in consultation and share their experience.
- Once aware engaged strongly to show commitment to help in the process.
- The Wisconson Mound was one of a number of options, but no opportunity was given to working on the wider range of options available.
- Only .003% of highly diluted arterial blood and chemicals was put into the water.
- Uncomfortable with definition of mortuary in terms of what the bylaw was trying to achieve ie. protection of the moana, as it related to one building and one process which did not account for similar waste from the district's hospitals, rest homes, coronial facilities, etc.
- Did not know percentage of embalming that contributed to arterial blood and chemicals in the water but knew 50-60% of people were embalmed.
- 10 years ago, Wellington Council had considered what Gisborne was considering but decided it was not appropriate.
- Other Councils were mindful of the decision by Gisborne.
- Could not speak for central government that the Gisborne decision might speed up the process throughout the country.
- Opportunity existed for creating a model using a national lens would be beneficial.

Staff response to questions from the Panel:

- Staff worked with the local Funeral Director and a meter was installed to measure water used per body.
- Roughly 800 - 1000 litres of water was used per body, which in effect was a miniscule amount compared to the total amount of water that went through.
- The definition of mortuary waste was discussed with the District Health Board (DHB) and mana whenua.
- DHB had its own protocols and procedures for disposal and all parties involved agreed to exclude the hospital and focus on mortuary waste.

Secretarial Note: Meeting adjourned for morning tea at 9.58am and reconvened at 10.12am.

Alistair Bayliss and Albert Vanustrom Ovation's Trade Waste Advisor, spoke to the Ovation submission and responded to questions:

- Ovation would need to install biological treatment at the cost of \$3-5m in order to reduce red or green colour to a slight tea colour which would still technically be non-compliant.
- The matter of colour was very subjective and had not been aware of any colour breaches in the past.

Staff response to questions from the Panel:

- There had been issues with colour in the past.
- The reason for the bylaw wording was because the RMA consent for wastewater discharge into the ocean prohibited causing a plume in the bay.
- Industry and domestic lines were separated.
- Colour had turned up at the wastewater treatment plant from the industrial separated line and caused colour in the final discharge line even with the domestic discharge mixed in.
- Previously when colour was removed through a chemical process, it returned when mixed in sewers downstream.
- There was no further treatment of the industry separated line at the wastewater treatment plant therefore compliance was needed at the industry point to prevent problems downstream.
- Other industries removed colour through bleaching with chlorine (hypochlorite).
- Chlorine was removed through another chemical process so that it evaporated into the air thus the diluted waste was compliant when discharged.
- Limits in the ocean outfall consent were included in previous and successive bylaws.
- 10-20% below outfall consent limit allowed Council to remain compliant when industry non-compliance occurred.
- The investigation process was the same whether non-compliant with Council's limit or the 10-20% limit.
- The enterococci level, the only limit added to this draft bylaw, was consistent with the other conditions in the bylaw eg ocean outfall for suspended solids was 600 grams per cubic metre and the bylaw was 540grams.
- No matter what the limit, the final outcome would be to investigate non-compliance.
- Other councils' trade waste bylaws included limits lower than their discharge consent.
- Council was trying to mitigate inherited risk as it was difficult to know what was being discharged, and as the consent holder Council was the buffer for everyone else.
- There were occasions where industry was unable to comply with their conditions which in turn meant Council did not comply with its conditions.
- The buffer provided a mechanism to monitor mistakes downstream.

Carla McCulloch and Mr Hamill spoke to the Cedenco submission, Mr Hamill's statement of Evidence and responded to questions:

- Cedenco raised their issues in the planning stages of the bylaw.
- Flexibility and longer consent duration would be helpful in balancing the requirements of business and compliance.
- The trade waste consent was not dealing with the genuine issue of health risk.
- Enterococci was often a good indicator of health risk but not in this case.
- Using enterococci in the trade waste consent was underestimating the health risk from the wastewater plant and over estimating outputs massively.
- Consideration of the economic good of the region was needed when balancing Council requirements with those of businesses ie was trade waste compliance good for the region because it helped regional growth or was it just a pain in the neck?
- If compliance was genuinely good for the region it was worth making some hard long term decisions.
- Cedenco had done a lot of investigation in the last 12 months to get to required solid level.
- Had looked at biological treatment which would cost \$5-10m and another \$12m per year operating costs in order to achieve under 800g solid level.
- A five-year minimum consent would be good to prevent instances where a consent was not in place at the start of processing. Having a consent in place meant being able to grapple with the operations space through the management plan.
- Generally happy with the compliance monitoring regime but it has not always been easy, although this year had proven it could be done and with a lot of time and effort could continue to improve.
- A shared industrial treatment was discussed with Council and the industry group but decided at this stage it was not appropriate to join together.
- Did not understand the BOD guidelines and if had to meet these levels would have to go to biological treatment which was a huge cost for the business.
- Uncertainty about the timeline for the BOD implementation was also a concern.
- Supported Ovation's submission about colour because it had been an issue for Cedenco.

There were no further oral submissions however a written submission had been received from Z Energy.

Staff response to a question about Z Energy's submission was that there had been no change other than rewording for better understanding.

Staff responses to further questions from the Panel:

- The enterococci level was not a current consent condition but on completion of the wastewater treatment plant upgrade current discharges would not be compliant.
- The main issue with a shared industry treatment process was site size and where it could be placed at the Wastewater Treatment Plant. Other issues were the volume size, different types of discharge and volumes at different times of the year. The process would also need to be flexible to deal with large and small volumes.
- The BOD limit, also in previous bylaw, was 400gram per cubic metre per BOD. Following discussions with industry about the uncertainty of national timeframes, it was agreed there was no expectation to meet this criteria at this point in time, so it moved from permitted activity to discretionary activity unless gas, treatment or corrosion issues, etc occurred or if limits set by district or national plans had to be enforced.
- Council was in the same situation as industry regarding uncertainty of timeframes, however there would be some lead in time (12-24 month) after timeframes were announced.
- Rationale for the yearly consent was that smaller trade waste industries changed hands often, so it was a good way to monitor compliance, management plans, etc. It also ensured required changes were being done.
- A monitoring process could provide necessary consent checks, but business would be charged for each visit.
- The trade waste discharge excluded stormwater which was discharged to the environment under a RMA consent.

Staff summarised observations and points made:

- Transportation and deposit of mortuary waste could be part of a consent.
- There was a different process for discharging mortuary waste to land.
- Mortuary waste had to go to an approved point however this was not yet set in stone.
- Discussions about mortuary waste had been held with the community since the 1950s and had been raised with the local funeral director for a number of years since 2012.
- Email and telephone dialogue had occurred with the Funeral Directors Association since 2015.
- Approval of the bylaw might have implications for other parts of NZ however prohibiting mortuary waste going into the wastewater system was a Tairāwhiti solution.
- Providers were free to take mortuary waste where they wanted to and could come back to Council with an alternative solution and Council would work through the consent with them.
- The Funeral Directors Association had not yet provided an alternative, had only said open to talking about options.

- The bylaw did not prohibit the Funeral Directors Association talking about options.
- Mortuary waste could not be separated without having a collection system.
- Enterococci limits were not in force at present however the completion of Phase 2 of the Wastewater Treatment Plant would require new consent conditions.
- The BOD limit would be changed through the national direction for water.
- Following consultation and because of the financial indications for industry it was agreed to wait until BOD limits were set nationally.
- Happy to wait for the national decision as wanted to work with industry to set limits to manage the BOD impact on our infrastructure.
- As the consent holder Council had to be compliant with marine outfall, therefore wanted a buffer about colour going into the bay as did not want Council to be the solution by dilution for industry.
- Buffers provided Council with risk mitigation eg. industry machinery breakdowns and mistakes.
- Trade waste going into the wetlands would depend on how the wetlands was set up. Size and scale would be needed to deal with production and non-production seasons.
- There would also be issues with enterococci and colour going through the wetland and dumping large volumes of waste on to it would kill some of the good bacteria.
- Any buffer would be difficult to allocate to a certain user at a certain time.
- Guidance notes about the draft Trade Waste Bylaw were currently being prepared and would be available when changes implemented.

The Chair advised the bylaw needed to work for both the Wastewater Treatment Plant and our industries without being unduly punitive and therefore sought some flexibility in the bylaw.

Secretarial Note: The meeting adjourned at 11.27am to allow staff to provide information for the Panel regarding:

- change of ownership effect on consent
- level of buffer limit
- timeframe options for consent to give our industries certainty.

Secretarial Note: Meeting reconvened at 11.40am.

Staff responses to matters raised by the Panel:

Buffer Levels:

- Current permitted levels were 80/20 split.
- Buffers provided flexibility.
- More than happy to look at plants on a case-by-case basis.

Consent timeframe:

- There was no bylaw requirement for yearly consents.
- Consent timeframe sat in guidance notes and happy to look at timeframes on a case-by-case basis subject to conditions and work with industries to set parameters eg 1 year with right of renewal etc.
- Happy to look at extending consent timeframe so long as increased compliance and monitoring was part of process of a 5-year consent.

Transfer of Consent on Change of ownership:

- Clause (which provides clarity) will be put back into bylaw because Council could not unreasonably withhold transfer of consent on change of ownership.
- No reasonable reason to withhold so must transfer with change of ownership unless there was non-compliance.

Guidance material would be provided to the Council meeting on 30 June 2021.

MOVED by Cr Wharehinga, seconded by Cr Foster

That the Hearings Committee:

1. Notes the content of this report and considered the submissions on the draft Trade Waste Bylaw.
2. Recommends that Council:
 - a. Approves the revised Gisborne Trade Waste Bylaw 2021 with amendments (Attachment 3).

CARRIED

5. Matters Considered and Reasons for the Decision

- a. The panel considered the feedback on the amended definition of Mortuary and resolved to recommend that the definition at Option 3 on page 6 of the report to the meeting be accepted:

***mortuary** means a room regularly used or intended to be regularly used for the preparation of dead bodies for burial or for the embalming of dead bodies or the examination or treatment of dead bodies prior to burial; but does not include premises so used or intended to be so used primarily for hospital care within a hospital care institution (within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001). Mortuary means a room regularly used or intended to be regularly used for the preparation of dead bodies for burial or for the embalming of dead bodies or the examination or treatment of dead bodies prior to burial; but does not include premises so used or intended to be so used primarily for hospital care within a hospital care institution (within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001).*

- b. Other submission points from the Funeral Directors Assn of NZ were considered. The panel is of the view that there will be opportunity for consultation on separation, storage and transport of the mortuary waste as the project proceeds. Consultation needs to take place with Iwi, the Kiwa Group the FDANZ and Evans Funeral home.
- c. The panel considered the matters raised in the Ovation submission. The panel accepted the Council officer's explanation for the buffer levels set in the draft bylaw to ensure that Council remained compliant with their consent for discharge at the ocean outfall and note that Council will work with industry on a case-by-case basis to reach agreement where there can be variances.
- d. Council officers agreed with the submission by Ovation seeking assurance that a new owner would be able to pick up the existing consent for trade waste. The clause '*issue of a trade waste bylaw consent on change of ownership of premises shall not be unreasonably withheld if the characteristics of the sewage remain unchanged.*' will be reinserted in the bylaw. In practice it was agreed the written notice of change of ownership will be provided to Council.
- e. Cedenco raised issues with the potential annual requirement for renewal of a consent. There is no bylaw requirement for annual consents and Council officers indicated that longer consents, potentially 5 years, will be considered on a case-by-case basis along with suitable monitoring and adherence to conditions.
- f. Cedenco raised issues with the cBOD levels indicated in the draft bylaw. These remain the same as currently in the bylaw @ 400g per cubic metre BOD. Following uncertainty of national timeframes, it was agreed that the matter be left as in the current bylaw, and it was generally agreed there would be a 12-24 month lead-in time once some national guidelines were released.
- g. Officers advised in response to the Z Energy submission that there was no change other than re-wording for better understanding.
- h. Officers advised that guidance notes are being prepared to assist operators of trade waste consent and will be available when the bylaw becomes operative.

Close of Meeting

There being no further business, the meeting concluded at 11.49am.

Pat Seymour

CHAIR