

**QLDC Council
3 May 2018****Report for Agenda Item: 6****Department: Property & Infrastructure****Trade Waste Bylaw 2014 Review****Purpose**

The purpose of this report is to confirm Council's intention to review the Trade Waste Bylaw 2014 and the proposed methodology for the review.

Recommendation

That Council:

1. **Note** the contents of this report;
2. **Confirm** its intention to review the Trade Waste Bylaw 2014;
3. **Note** the scope of the review will include confirming:
 - a. that the policy intent of the Bylaw was met and remains appropriate for managing trade waste matters;
 - b. if there are regulatory or non-regulatory alternatives to a Trade Waste Bylaw;
 - c. if there are new or future foreseeable Trade Waste issues that need to be considered; and
 - d. that the Council has the capacity capability to continue educating and enforcing compliance under different growth scenarios.

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11/04/2018

Background

- 1 The Queenstown Lakes District Council Trade Waste Bylaw 2014 (the Bylaw) applies to all premises that discharge trade waste as well as all tankered waste discharged to the wastewater network within the district.
- 2 The Bylaw is included as **Attachment A**.
- 3 The Bylaw was structured on the NZS 9201.23:2004 Model Trade Waste Bylaw with amendments. It was adopted by Council on 30 July 2015 and came into force on 1 August 2015.
- 4 Section 158(1) of the Local Government Act 2002 (LGA) requires bylaws to be reviewed within 5 years of being adopted.

Comment

Legislative Framework for the Current Bylaw

- 5 The Bylaw was made under Sections 145, 146 and 148 of the LGA. Section 145 enables councils to make Bylaws for the purposes of:
 - a. Protecting the public from nuisance.
 - b. Protecting, promoting and maintaining public health and safety.
 - c. Minimising the potential for offensive behaviour in public places.
- 6 Section 146 specifically provides for councils to make Bylaws in relation to:
 - a. regulating trade wastes.
 - b. managing, regulating against or protecting from damage, misuse, or loss or for preventing the use of infrastructure associated with wastewater.
- 7 Section 148 imposes special requirements for trade waste bylaws including providing proposed Bylaws to the Minister of Health for comment and an extended public consultation process.
- 8 Copies of proposed Bylaws must also be sent to owners/occupiers of identified trade premises.

Implementation of the Current Bylaw

- 9 In consulting on the current Bylaw in 2014/15, Council outlined an intention to stagger its implementation, first with a focus on education to enable businesses to amend current practices, with an outcome of self-regulation and compliance prior to the full implementation of the Bylaw.
- 10 Further, it was noted that there was no budget provision for the implementation of the Bylaw. As a result, although Council has a regulatory framework in place for trade waste, it has not been formally acted on.

- 11 Rather than proceed with implementation with a review pending in the next couple of years, it is recommended that the review be undertaken earlier than statutorily required to ensure any future regulatory activity is appropriate.
- 12 Through education engagement with trade customers over 2016/17, it has been identified that the trade waste customer types and management needs of the district have changed since the development of the Bylaw in 2014.
- 13 There has also been an increased focus from the Otago Regional Council requiring changes in the management of wastewater networks that further supports the need for an earlier review of the Bylaw.

Methodology for the Review

- 14 In accordance with the requirements of Section 155 of the LGA, the approach to the Bylaw review will seek to determine whether a Bylaw is the most appropriate way of addressing the perceived problem. To that end, the following questions will define the Bylaw review scope:
 - a. Was the policy intent of the Bylaw met when managing trade waste issues?
 - b. Are there regulatory or non-regulatory alternatives to the Bylaw?
 - c. Are there new issues that need to be considered?
 - d. Does Council have the capacity to continue educating and enforcing compliance under different growth scenarios?
- 15 The following matters are out-of-scope for the Bylaw review:
 - a. Wastewater treatment plant process changes.
 - b. Management and resource consent requirements of the Council's sewerage system.
 - c. Management of trade discharges into private sewerage systems.
- 16 The review will be evidence based and will hold fairness and transparency as overarching and guiding principles.
- 17 Council staff have begun the discovery phase of the review through interviews with internal and external stakeholders, preliminary data organisation and background research.
- 18 In accordance with the requirements of Section 155 of the LGA, Council staff propose the following methodological steps to the review for Council approval.
 - a. Cluster issues into the following groups to facilitate efficient and effective analysis:
 - i. Small trade waste customers

- ii. Large trade waste customers
 - iii. Tankered liquid waste
 - b. Proceed with following evidence gathering activities:
 - i. Analysis of Council complaints and Request for Service (RFS) data
 - ii. Analysis of wastewater network performance
 - iii. Analysis of wastewater treatment plant performance
 - iv. Focus group research
 - v. Modelling of issues under different scenarios and cost benefit analysis of enforcement costs under these scenarios
 - c. Consolidate research into an issue paper.
- 19 A determination report will be submitted to Council in July with recommendations either to confirm, amend or revoke the Bylaw.
- 20 Should Council resolve to amend or revoke the Bylaw after consideration of the Determination Report, a public consultation process that meets the requirements of both Section 148 and Section 156 of the LGA would be commenced.

Options

21 Option 1 Do not review the Bylaw

Advantages:

- 22 Resource assigned to the Bylaw review can be reallocated to other projects.
- 23 The existing Bylaw could be implemented should budget be allocated.

Disadvantages:

- 24 Implementing the existing Bylaw may result in inappropriate regulatory activities given the passage of time since the last determination and the rapid growth changes in the district.
- 25 Council will miss the opportunity to consider trade waste issues that may have arisen since the last Bylaw and potential regulatory and non-regulatory response to these.
- 26 Council will miss the opportunity to consider the opportunities available to extend the regulation of trade waste to the stormwater network.

27 Option 2 Review the Trade Waste Bylaw 2014

Advantages:

- 28 Council can consider the implementation of any new regulatory activities in light of current issues and recent and forecast growth of the district.
- 29 Council can consider trade waste issues that have arisen since the last Bylaw and potential regulatory and non-regulatory response to these.
- 30 Council can consider pending issues and potential regulatory and non-regulatory response to these.
- 31 Council can consider the opportunities available to extend the regulation of trade waste to include discharges the public stormwater network.

Disadvantages:

- 32 The existing Bylaw will not be implemented.
- 33 This report recommends **Option 2** for addressing the matter because:
 - a. Council will meet its statutory requirements for reviewing the Bylaw as set out in the LGA.
 - b. The Bylaw will continue to be in force during the review meaning Council may regulate trade waste if resource and budget was available.
 - c. Council can consider current and foreseeable future issues in the management and regulation of trade waste, and consider regulatory and non-regulatory responses to these matters in consultation with stakeholders and the public.

Significance and Engagement

- 34 This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy. Although the matter is of interest to some members of the community, this decision is to begin a review, whereas any subsequent decision to retain, amend or revoke the bylaw will have higher significance because of the impact of the decision.

Risk

- 35 This matter relates to the strategic risk SR3 - Management Practice - working within legislation, as documented in the Council's risk register. The risk is classed as moderate. This matter relates to this risk because the primary legislation which Council operates within requires reviews of Bylaws to be completed within set, fixed timeframes, and comply with community engagement and set consultative procedures, including confirmation that any Bylaw does not breach the New Zealand Bill of Rights Act 1990.
- 36 The recommended option considered above mitigates the risk by treating the risk - putting measures in place which directly impact the risk.

37 The recommended option will be implemented in such a way that all the requirements of the LGA and the Bill of Rights Act are identified, tracked and fulfilled to the satisfaction of Council's in-house legal counsel.

Financial Implications

38 The cost of the review will be met from existing budgets.

Council Policies, Strategies and Bylaws

39 The following Council policies, strategies and bylaws were considered:

- Draft 10-Year Plan 2018-2028 strategic framework contributing to efficient and effective infrastructure and a responsive organisation
- Trade Waste Bylaw 2014 as existing regulation
- Waste Minimisation Strategy supporting reducing the harmful effects of waste.

40 The recommended option is consistent with the principles set out in the named policy/policies.

41 There are three phases to a Bylaw review:

- a. Evaluation of the existing Bylaw and next steps (is a Bylaw appropriate)
- b. Further recommendations (investigate alternative approaches or significant changes)
- c. Statutory consultation.

Local Government Act 2002 Purpose Provisions

42 The recommended option:

- Will help meet the current and future foreseeable needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by developing an enabling and responsive regulatory framework for the management of traffic and parking issues in the district;
- Can be implemented through current funding under the 10-Year Plan and Annual Plan; and
- Is consistent with the Council's plans and policies.

Consultation: Community Views and Preferences

43 The persons who are affected by or interested in this matter are small and large businesses generating trade wastes, business associations, Otago Regional Council and Ministry of Health.

44 The Council has met with all of the trade waste customers throughout the district as part of its trade waste education roll out undertaken between 2016 and 2017.

- 45 The Council has made initial contact with the Otago Regional Council about the intention to review the Bylaw.
- 46 Other stakeholders will be invited for discussions on issues and opinions as part of the information gathering stage to inform the findings report and next steps recommendations.
- 47 Should Council endorse a new or amended Bylaw in July, a formal consultative process, open to all members of the community, will be undertaken in accordance with Sections 148 and 156 of the LGA.

Legal Considerations and Statutory Responsibilities

- 48 Staff will work with Council in-house legal team on the legislative options that the bylaw may be developed under and the appropriateness and legality of addressing issues through a bylaw.

Attachments

- A Trade Waste Bylaw 2014