

SUBMISSION

by the



PACKAGING COUNCIL
OF NEW ZEALAND (INC)
(PAC.NZ)

to the

Auckland Council

on the

**AUCKLAND COUNCIL PROPOSED SOLID WASTE BYLAW
2012**

3RD September 2012

1.0 Introduction

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- 1.1 The Packaging Council of New Zealand's role is to assist its members minimise the environmental impact of packaging by championing cost effective, sustainable solutions and product stewardship.
- 1.2 The Packaging Council represents the whole packaging supply chain, including raw material suppliers, packaging manufacturers, brand owners, retailers and recycling operators.
- 1.3 We represent more than 80% of the packaging manufacturing industry and 75% of New Zealand's top 100 food and grocery brands. Packaging Council members contribute approximately NZ\$20 billion to the New Zealand economy.
- 1.4 The Packaging Council has been intimately involved in the development of environmental policy affecting packaging since at least 1996 when it signed the first New Zealand Packaging Accord. The organisation was involved in developing the 2002 New Zealand Waste Strategy, provided data for the 2006 review of targets and assisted with the research behind the Parliamentary Commissioner for the Environment's 2006 report '*Changing behaviour: Economic instruments in the*

management of waste'. The Packaging Council was a principle signatory to the second New Zealand Packaging Accord (2004 – 2009).

- 1.5 The Packaging Council launched its Packaging Product Stewardship Scheme in 2010, with a goal to have the scheme accredited by the Minister for the Environment under the Waste Minimisation Act 2008. The Packaging Council has also developed a *Code of Practice for Packaging Design, Education and Procurement*. The objective of the Code is to assist stakeholders in the design, manufacture and end-of-life management of packaging to minimise its environmental impacts.
- 1.6 **The Packaging Council would welcome the opportunity to make an oral submission.**

2.0 General Comments

- 2.1 The Packaging Council welcomes the opportunity to comment on this draft bylaw and to participate in the implementation of Auckland Council's Waste Management and Minimisation Plan (WMMP).
- 2.2 However, we are concerned that the proposed solid waste bylaw goes beyond the intent of the WMMP by establishing Council regulatory procedures over the commercial waste stream and is not limited to the strategic objectives and action plan in the WMMP.
- 2.3 Specific concerns, detailed further in this submission, are based on our interpretation of definitions read together with the clauses. We strongly believe the bylaw should be clearly understood by any party, it should be reasonable, practical and enforceable and it should enable a reader to know what the law requires. In its current form this draft bylaw is not precise enough in its drafting to clarify the scope of the bylaw's intended application. It is for that reason we feel compelled to enter this submission.
- 2.4 By way of example, if the definitions of 'commercial-domestic waste' and 'premises' are read together with the **Clause 8 (2)** "*Use of approved containers for waste collection*" it could mean every company would be forced to source separate their waste into refuse, recyclable and organics components. If this is the case, then from a packaging point of view, Auckland Council would be responsible for making

decisions as to whether products such as blood contaminated plastic packaging from a food processing plant is recyclable or not and the type of container they should be placed in. It would also be responsible for enforcing those decisions.

- 2.5 We would be very concerned if this would be the case because all companies are different and have different wastes and different requirements. What is recyclable is often determined by the infrastructure and markets available to process the material and these change over time. The mass balance data which has been collected by the Packaging Council since 1994 shows that there has been a steady decline in packaging waste to landfill over that time, demonstrating the ability of the private waste sector to increase recycling services despite all the individual complexities of each of their commercial clients. We would question what additional benefits could be gained by Council intervention when clearly the expertise and innovation offered by the private sector is already showing a strong trend in waste minimisation.
- 2.6 Similarly, **clause 26** talks about events, but the definition of events does not restrict the bylaw to enforcing conditions around big public events, where we would agree that there should be waste controls. The clause would also cover private functions, held on privately owned land. Again, as written, if Auckland Council chooses to enforce the bylaw then, as absurd as it might sound, a serviette escaping from a morning tea onto a public footpath could be in contravention of the bylaw.
- 2.7 **The Packaging Council recommends that the draft bylaw is changed to state clearly that the bylaw only applies to the sections of the waste stream under the control of Auckland Council. The apparent controls over commercial waste are inconsistent with the focus of the WMMP which is the 17% of the waste stream the Council currently influences.**
- 2.8 The Packaging Council reiterates the points made in our submission to the WMMP: *“The Packaging Council would much rather work in a collaborative environment with the Auckland Council whereby the council supports the Packaging Council’s Packaging Product Stewardship Scheme and works with industry to develop new policies which support the goals of waste management and minimisation in the context of existing infrastructure and cost-effective new infrastructure.”* Unfortunately, this draft bylaw has the ability to impose very significant costs on Auckland businesses by going beyond the scope of the WMMP.

- 2.9 The Packaging Council would like to understand why the Council feels it is necessary to introduce a bylaw where other pieces of existing legislation, such as the Litter Act, would already seem to cover the issues adequately. We believe that this has resulted in a bylaw which is much longer than necessary and contains conditions which are practically unenforceable.
- 2.10 The Packaging Council would also like to register its support for the submission made by the Resource Efficiency Business Council (“REBC”). It should be noted that this support recognises that not all concerns are applicable, and indeed in specific cases there may be some difference of opinion, however there are enough areas of common concern to give weight to a supporting position.

3.0 Specific Comments by Clause

In this section the Packaging Council addresses concerns which are directly related to packaging and also general concerns which relate to the ability of its member companies to operate on premises in the Auckland region

- 3.1 **Clause 3: Application.** We recommend it is clearly stated that the bylaw applies to the 17% of the waste stream the Council currently influences in keeping with the adopted WMMP.
- 3.2 **Clause 5: Interpretation.** The Packaging Council does not understand some of the definitions in clause **5 (1)** and suggests that the following definitions be made more explicit or be deleted entirely:

‘Approved container’. The definition as currently worded would give Council unlimited discretion in specifying the type, size and construction of container used for the depositing, collection and transportation of all types of waste including commercial waste. We suggest that the definition be changed to “any container approved by the council for council collected waste” to avoid any doubt as to the scope of the bylaw’s intended application which is limited to applying to the 17% of the waste stream the Council currently influences, in keeping with the WMMP.

‘Commercial waste and commercial-domestic waste’. These definitions appear contradictory and confusing. We question if there is actually a need for the inclusion of ‘commercial-domestic’ at all since individually ‘commercial waste’ and ‘domestic

waste' should be sufficient for the purposes of this bylaw. We suggest that 'commercial-domestic waste' is deleted entirely.

'Event'. We are concerned that the definition of this is far too wide. For example it could put controls around work functions or children's parties. It would leave the Council with powers to control waste deposit and collection at such events which is surely well beyond the intention of the Waste Minimisation Act and well beyond the resources of Council to enforce? We suggest that 'events' are defined as "an event to be held in or on a public place for which Council permission is required".

'Prohibited waste'. We are concerned that the definition is far too wide and not practically enforceable. For example as written it covers "*any material capable of causing injury to a person or animal unless the material is sufficiently contained to prevent injury*" – we would contest that this could conceivably include just about any packaging material that may 'escape' confinement through no fault of the person disposing of that waste, which questions the practicality of this definition. We suggest using a clearly defined, practical definition such as that offered by the Tauranga solid waste bylaw.

3.3 **Clause 6: Controls specified under the bylaw.** The Packaging Council strongly recommends that this clause is deleted entirely since it is unreasonable to broaden the scope of '*Any control specified by the Council...*' under the bylaw in such a way.

3.4 **Clause 8: Use of approved containers for waste collection.** The Packaging Council has several significant concerns arising from our interpretation of this particular clause, when read in conjunction with the definitions. The definition of 'commercial-domestic' waste is contradictory and confusing and the definition of 'premises' would include commercial premises, leading us to believe that the potential outcome of the clause could be a situation whereby Council could enforce source separation on commercial premises. Below are some examples of the perverse outcomes and questions we would have should the Council intervene in the type, size and construction of bins on commercial premises:

1. In any commercial environment a balance needs to be struck between putting the systems in place to separate the majority of recyclables versus putting systems in place to separate all recyclables/compostables. This clause, as it is currently written could require all businesses to separate out all recyclable and/or

compostable material without any regard to the commercial consequences of doing so. We believe that Auckland Council would have a more productive outcome if it worked collaboratively with industry to address the challenges of waste minimisation in a commercially sensible way. The Packaging Council manages the New Zealand Packaging Product Stewardship Scheme which is focused on reducing overall waste to landfill and increasing separation systems to divert more materials into recycling or composting streams. We can confidently report that all members of the Packaging Product Stewardship Scheme have separation systems in place and have an on-going focus on reducing overall waste to landfill. Indeed the Packaging Council has been collecting packaging mass balance data since 1994 and can demonstrate a steady reduction in packaging waste to landfill (see www.packaging.org.nz). The current national packaging and paper combined recycling rate is 56% which is comparable with Australia and Europe.

2. Many businesses have containers which are unique to their own particular operating environment. These customised containers are integrated into the effective operation of a business site. The design, number and placement is determined not only by efficiency requirements but also determined by Health & Safety considerations.
3. What circumstances are anticipated under which Council officers could challenge the suitability of existing containers, particularly when such action has the potential to seriously impact on the operations and safety of site and staff?
4. Have the financial implications been considered since many businesses have significant monies tied up in waste receptacles?
5. Through Love NZ, the Government is in dialogue with industry regarding its participation in improving infrastructure for public place recycling. **Clause 8 (2)** *“The occupier and the manager of a premises must ensure that the domestic and commercial-domestic waste from the premises is separated into refuse, recyclable material and organic matter...”* Imposing such controls over the contents of bins could lead to a perverse outcome of industry only investing in recycling infrastructure where it has some measure of control and be a deterrent to investing in bins for general public use on privately owned premises such as shopping malls.

We reiterate our recommendation that the definition ‘commercial-domestic’ be deleted and ‘approved container’ be changed to mean “any container approved by the council for council collected waste” to avoid any doubt as to the scope of the bylaw’s intended

application which is limited to applying to the 17% of the waste stream the Council currently influences in keeping with the adopted WMMP.

- 3.5 **Clause 8 (3):** *“No person may deposit or collect:...”* The Packaging Council would like to understand why collectors should be responsible for the deposit of waste by householders. We suggest that *“or collect”* is deleted so there is no ambiguity as to the responsibility of households for deposit of their waste/recyclables and organics in the correct bin. This aligns with the Packaging Council’s position on product stewardship which includes the consumer sharing responsibility for the end of life of a package.
- 3.6 **Clause 12 (1) (2) (3)(a): Licensing of the collection or transportation of waste.** In accordance with the WMMP it should be clear that these clauses relate to the 17% of the waste stream Council currently influences.
- 3.7 **Clause 13. Recovery of recyclable material and organic matter.** In accordance with the WMMP it should be clear that this clause relates to the 17% of the waste stream Council currently influences.
- 3.8 **Clause 22: Condition of licences.** The Packaging Council is very concerned with the list of conditions Auckland Council may impose on licensees, which in turn could have a significant impact on business in the Auckland region. Of particular concern are **22 (1) (g)** *“the provision of reports setting out quantity, composition and destination of any category of waste...”* and **(h)** *“the provision of reports setting out quantity, composition and source of any category of waste...”* Any commercial enterprise would regard detailed information about the quantity, composition, destination and source of its waste material to be commercially sensitive information. We would like to understand why Auckland Council would require licensees to provide such detailed information about their clients over and above the aggregated tonnages which are already reported through the waste levy requirement of the Waste Minimisation Act.

Should such information be collected, the Packaging Council would like clarity on how this information is intended to be used, and what provisions are in place to guarantee absolute commercial confidence.

Again we reiterate our recommendation that any conditions on licensees be limited to the 17% of the waste stream Council currently influences in keeping with the adopted WMMP.

3.9 Clause 23: Controls for the collection, transportation and disposal of waste.

23 (1) (a) The Packaging Council has addressed the issue of approved containers earlier in this submission.

23 (1) (b) Should be limited by clarifying that it applies to the 17% of the waste stream the Council currently influences in keeping with the adopted WMMP.

23 (1) (c) The Packaging Council would like to understand what criteria and/or methodology will be used to determine "*maximum allowable limits of recyclable or organic material that may be collected or transported from a premises as refuse and that may be disposed of at a disposal facility*". We would suggest that Council's discretion to set limits on what privately owned waste management companies may collect from commercial enterprises and receive at their privately owned facilities would have a significant impact on the ability of businesses to negotiate competitive waste management contracts. We would also point out that this is clearly beyond the 17% of the waste stream currently influenced by Council and therefore inconsistent with Auckland's WMMP.

3.10 Clause 26: Waste Minimisation plans for events. As stated earlier in this submission we suggest that the definition of 'event' be limited to "be held in or on a public place for which Council permission is required". The Packaging Council is very supportive of the requirement for a waste minimisation plan for events held in or on public places where Council permission is required. We have developed our own templates for waste management and minimisation at events which we actively encourage our members to use.

However as it is currently written we have concerns on a number of fronts:

1. This clause could include a "private function" listed in the definition of 'events' and in **26 (1) (b)** applies on privately owned land. Would this include a morning tea function for a staff member or 'Friday drinks' where it is not inconceivable that a serviette or snack food packet may escape the premises onto a public

footpath – particularly if the function were being held outside for example on a balcony? We contend it is impractical to require a waste minimisation plan for all private functions on privately owned land, notwithstanding the practicality of actually enforcing the plans.

2. The Packaging Council suggests that any depositing of litter before or after such events is more appropriately addressed under the Litter Act and should not be included in this bylaw.
3. **26 (3)** As per our comments made above in relation to **26 (1) (b)** we regard this clause “*Any person “... who attends an event must comply with the approved waste minimisation plan”*” to be completely impractical to enforce and again think that if the intention is to prevent litter it is more appropriately dealt with under the Litter Act than in a bylaw.
4. **26 (4)** The Packaging Council suggests this clause would be largely unenforceable since it would require each and every event to be notified in writing to the Council who then would have the mandate:
 - a. “*The Council may provide written exemption...*” is this an arbitrary decision – they may or may not?
 - b. “*if in the opinion of Council...*” what is the measure of the Council’s opinion?
 - c. “*... the costs of full compliance would be disproportionate to any resulting waste management and minimisation benefits.*” Costs of compliance to whom?

3.11 **Clause 27: Controls for events.** The Packaging Council regards clause **27 (2)** “*Any person who manages an event or who attends an event must comply with any controls ... made by the Council*” as too vague, conferring on Council arbitrary powers, which would lead to significant uncertainty on the part of the event organiser as to the liabilities which could be potentially incurred. We recommend that this clause is either re-written to provide limits and clarity or be deleted altogether.

3.12 **Clause 30: Nuisance parts (1) and (2).** The Packaging Council questions why some of these requirements have been included in this bylaw as it would seem that they are (appropriately) dealt with under other legislation for example the burning of waste is already provided for under the Resource Management Act. The Packaging Council would not support the introduction of bylaws which by any reasonable standard are impractical such as **(2) (e)** which would require any person hiring a skip to require Council permission.

- 3.13 **Clause 31: Litter.** *“The owner occupier or manager of any premises on which any flag, banner, bunting, balloon, sign (our emphasis), poster, leaflet or similar device is displayed that is likely to become litter must take all steps to the satisfaction of the Council to prevent it becoming litter...”* Does this mean each time a business erects new signage on its premises, or changes its signage, or perhaps engages in some form of promotional activity which involves additional signage it must first get Council approval? The Packaging Council would regard this outcome as impractical and unnecessary since it is covered by the Litter Act 1979 and recommends it be deleted.
- 3.14 **Clause 40: Exemptions for Accredited Product Stewardship Schemes.** We question the rationale of clause **40 (2)** which as written provides for vague promises of exemption to ‘accredited (our emphasis) product stewardship schemes’ only:
“The Council may provide written exemption...” is this an arbitrary decision – they may or may not?
“if in the opinion of Council...” what is the measure of the Council’s opinion?
“... the costs of compliance would be disproportionate to any resulting waste management and minimisation benefits.” Costs of compliance to whom?
- 3.15 The Packaging Council is strongly supportive of product stewardship schemes and manages its Packaging Product Stewardship Scheme. We are pleased to see the Council giving recognition and credence to product stewardship schemes. However the Packaging Council’s position on voluntary versus mandatory product stewardship is very clear in that we support industry to self-manage, in a collaborative way, which acknowledges all stakeholders have a part to play in product stewardship. We would strongly suggest that a robustly managed product stewardship scheme, which chooses either to delay or not to apply for accreditation under the Waste Minimisation Act, for reasons specific to that particular scheme, could be no less worthy than an accredited scheme. In exempting only accredited schemes we believe that there is the potential for a perverse outcome of establishing a scheme for the purposes of exemptions rather than the purposes of product stewardship.