

# **A legal issue for the Waiheke Waste Resource Trust:**

## **Rubbish and recycling – How to enforce local body bylaws**

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**July 2004**

## **A LEGAL ISSUE FOR THE WASTE RESOURCE TRUST – COMPLIANCE AND ENFORCEMENT OF REFUSE BYLAWS**

Waiheke Island is part of the Auckland City local government area. The services from the Auckland City Council that are part of what we expect as ratepayers are often unique to reflect the circumstances we have because we are an island community. An example of this is how we deal with our recycling and rubbish - because all the waste that is collected on our island has to be sent off to Auckland to either landfill or to recycling operators.

In December last year the Waste Resource Trust effectively took over the compliance role from the Auckland City Council in an attempt to make householders on Waiheke Island get their rubbish – and recycling – right.

The law that deals with what the Council calls ‘refuse’ – and the collection of refuse - is Section 22 of the Auckland City Council Consolidated Bylaw (1998.) Section 1.4 deals with “Offences and Breaches” of the bylaw and within this section reference is made to Section 106(3) of the Local Government Act of 2002 for penalties that result from a breach of the Act.

On Waiheke that collection is contracted out to Clean Stream Waiheke Ltd – a not-for-profit company that is half-owned by the Waste Resource Trust (and half owned by another not-for-profit from Kaitaia called CBEC.) The contract between Clean Stream Waiheke Ltd and the Council includes the maintenance of public litter bins and the weekly kerbside collection of rubbish and recycling. The contract started in July 2001 and lasts for seven years. It includes targets attached to the reduction of waste that goes to landfill with Clean Stream undertaking the attempt to reduce the tonnage of waste going off the island by 10% each year of it’s contract.

The targets are more or less being met – but an increasing population and a boom in the building industry is having a negative impact on the amount of waste coming through to the transfer station that Clean Stream manages. To achieve the targets our Waiheke community need to be recycling as much as they can or otherwise diverting rubbish from the waste stream.

It became early on that to do so we needed an enormous amount of goodwill from our community to encourage everyone to reduce, re-use or recycle their waste. Consequently the Waste Resource Trust has been spear heading an awareness campaign for the last 2 years or so that is aimed at businesses, the schools, householders and the visitor population. It has focussed on encouraging and educating the community - **as there are no laws whatsoever that can force anyone to recycle their waste.**

Since July 2001 there has been a 300% increase in recycling and the community is currently diverting around 40% of all waste from landfill. The goodwill is there and it’s having an impact.

For the Waste Resource Trust taking over - what Council staff call the 'compliance strategy' and which we call 'the encouragement strategy' - was a logical extension of the education work. We didn't want our people to be discouraged if they are not getting their rubbish and or recycling right.

These are the rules around rubbish – as per the bylaw but paraphrased into normal language:

- In June of each year the Council provides each ratepayer with 52 official red plastic bags. If households need more then they have to buy them at the cost \$2.50 each.
- Only the official red bags are collected by the collection agency – In this case Clean Stream Waiheke Ltd.
- Household rubbish that is contained in other types of bags are deemed to be 'non-compliant' or if they are put out for collection the person doing so has been engaging in 'illegal dumping.'
- Red rubbish bags must weigh no more than 15 kilos.
- Red rubbish bags must not contain sharp material that can cause injury to the collection staff.

Recycling is a separate issue and the while the rules concerning how we do our household recycling on the island are not contained in the bylaw if these rules aren't followed then the recyclable material cannot be collected and may be seen as rubbish – and dealt with under the refuse bylaws. The recycling rules are:

- Recycling must be separate from the red rubbish bags and contained in see-through supermarket bags.
- If the supermarket bag contains non-recyclable material the collection staff will not pick it up and it is deemed to be rubbish in a non-compliant bag.
- Recyclable material must be reasonably clean. If tins, for example, still have food in them they will not be collected and deemed to be rubbish.

If these rubbish or recycling rules are not met the collection staff leave the bags behind and put either a yellow sticker on them that says that the rubbish is non-compliant and will not be collected or that their recycling was not done properly. (Copy attached – appendix one)

Collection staff would note the address of where the rubbish/recycling was left and pass it on to Council staff in a weekly report. Compliancy was left to the Council staff to deal with.

It soon became apparent however that the Council staff were not enforcing the refuse bylaws and the contractor Clean Stream Waiheke Ltd was having to deal with repeat offenders every week. It was for this reason – and to continue to build goodwill towards recycling – that the Waste Resource Trust suggested that we take over dealing with non-compliant householders.

Consequently in December last year we set up a database for addresses of households where non-compliant rubbish/recycling was left at the gate. Every week the Trust gets the addresses of non-compliant households and if it is a first offence we send them a nicely worded friendly letter – and a free fridge magnet – and suggest they call us if they want more help. (Copy attached. – Appendix 2)

If the same household offends again we send another letter – this time worded more strongly – which refers to the bylaw and has a more enforcement (or threatening) tone. Although what we are aiming for is for the householder to call the staff at the Waste Resource Trust to talk about the problem. (Copy attached. – Appendix 3)

If there is a third offence from the same household the Trust staff will usually visit. A letter detailing what the offences were and when they occurred is constructed before the visit and if the householder is not home we leave the letter. Again the aim is to get the householder to make contact – but again the language has an enforcement tone. (Copy attached – Appendix 4)

In six months the Trust has sent 877 first letters and 124 second letters and there have been 30 households that have been repeat offenders. In response we have had a total of 45 telephone conversations - mainly from households that have received a second letter. Most of the responses have been to advise us that the offending rubbish or recycling left outside their gate was not put there by them.

Where personal contact is made the householders name and telephone number is noted on the database and if further offences occur the Trust staff contact them immediately to see if we can help sort out the problem.

## **Results and Risks**

The Encouragement Strategy is working. There is a low rate of re-offending after the first letter and after a visit or third letter there has been only one case of a further issue of non-compliance at that address. Most importantly for the Trust the goodwill factor continues – and even after a second letter or a visit the anecdotal evidence from their staff is that people appreciate the personal contact and the fact that the Trust is attempting to help people get their recycling and rubbish right.

Compliance or enforcement under the Auckland City Council Consolidated Bylaw (1998) or to seek penalties under the Local Government Act (1974) is nearly impossible. Council staff at both the Auckland City Council's city office and on Waiheke report that **no** cases have taken under either of these laws. The reason for this is that they have been unable to prove that the rubbish outside some-one's home was put there by the householder.

The other barrier to legal action is that essentially the Council has a duty under the bylaw to collect refuse from rate-payers – and also to collect dumped rubbish. On the one hand they can refuse to collect non-compliant rubbish but under a separate section of the bylaw they are required to collect rubbish because of hygiene/public health regulations.

According to council officer Lindsey Britten, who works on resource recovery issues for the Auckland City Council central business district, over 1000 letters were sent in that area alone during the last two years to rate payers who were not complying with the refuse bylaws and getting their recycling wrong as well. Those letters demanded payment of costs associated with collecting the non-compliant rubbish - mostly a bill for about \$70. The payment rate is very low though and Lindsey says that none of these cases have resulted in legal action.

For the Waste Resource Trust there are no legal risks associated with our Encouragement Strategy. Having said that though the letters we send to people who repeatedly get the recycling and rubbish rules wrong imply that the Council can and will take action against them and so, at the very least, this is an empty threat and at the worst, deliberately misleading. Re-writing the letters so that they are more honest about the lack of enforcement would however probably have poorer results.

## Appendix 2

### Sample of the first letter: (On Waste Resource Trust letterhead)

27th May 2004

Occupier  
«streetno» «street»  
Waiheke Island

#### TO THE OCCUPIER

Whilst picking up your rubbish earlier this week we noted that the rubbish/recycling outside your gate did not meet the standards for collection required by Auckland City Council waste bylaws as your rubbish contained ;

«offence»

We are trying to avoid contamination of rubbish/recycling and minimise the risk of injuries to sorting and collection staff whilst also protecting our environment.

It is important that every one in our community understands the guidelines concerning the kerbside rubbish and recycling collection on Waiheke and the Waste Resource Trust's role is to encourage, educate and support people in our community to recycle and reduce the amount of waste we send to Auckland landfills.

Please find enclosed the local refuse and recycling guide – which we hope will assist you.

Should you require more information please feel free to contact us on 372-2915 or call in to the Waste Resource Trust's office in Studio 2 at Artworks at Oneroa – we are more than happy to assist you.

Waiheke is such a beautiful island. - Let's keep it that way.

Yours faithfully,

Waste Resource Trust

## Appendix 3

### Sample of the second letter: (On Waste Resource Trust letterhead)

20th<sup>th</sup> May 2004

Occupier  
«streetno» «street»  
Waiheke Island

TO THE OCCUPIER

RE: Non-Compliance with Rubbish and Recycling Bylaws

Previously we wrote to advise that there was a problem with the rubbish/recycling left outside your gate. Again this week there was a similar problem with rubbish/recycling left outside your gate as it did not meet the standards required by Auckland City waste bylaws in the following way as it contained

«offence»

As mentioned in our previous letter, the role of the Waste Resource Trust is to encourage, educate and support people in our community to recycle and reduce the amount of waste we send to landfills.

In order to avoid any further action from Council and to help you better understand what is required, we would be more than happy to visit you to assist with resolving any problems you may have.

Should you require any further information please feel free to contact us on 372-2915 or call in to the Waste Resource Trust's office within the Artworks complex at Oneroa as we would be only too pleased to answer any questions you may have.

WASTE RESOURCE TRUST

## Appendix 4

Sample of the visiting letter:

(On Waste Resource Trust letterhead. Usually leave a business card as well.)

The Occupier  
ADDRESS

6<sup>th</sup> April 2004

Dear Sir/Madam,

### RE: PROBLEMS WITH YOUR KERBSIDE RECYCLING AND/OR RUBBISH

Our waste educators wrote to you on 17th February to say that the rubbish left outside your house for collection did not comply with Auckland City Council bylaws because there was refuse in your recyclables. The Trust sent you another letter on the 10th March over the same problem. Last week the transfer station collection staff noted that you put out 4 non-compliant rubbish bags for collection.

The Trust's role is to work with householders in our community so that we all understand how to deal with our recycling and rubbish. We visited your house today at (time).....to discuss these issues in an effort to resolve the on-going collection problems but unfortunately you were not at home.

To avoid this matter being referred to the Council's compliancy staff please contact the Waste Resource Trust office on 372-2915, within one week of today's date, so that we can make an appointment with you.

Yours faithfully,

**Waste Educators**

## **Bibliography/Sources**

### **People:**

Faye Storer – Auckland City Councillor, representing the Hauraki Gulf area  
Marty Forsman – Auckland City Council, Parks and Services, Waiheke  
Lindsey Britten, Auckland City Council, Resource Recovery

### **Websites:**

Auckland City Council website: [www.akcity.govt.nz](http://www.akcity.govt.nz)

### **Correspondence at Auckland City Council:**

*Legal Opinion on Section 106(3) of the Local Government Act 2002 (18<sup>th</sup> March 2002)*  
R E Butcher/J L Land – Solicitors KPMG

*Legal Opinion on Litter Act 1979 – Offences and penalties (18<sup>th</sup> March 2002)*  
R E Butcher/J L Land – Solicitors KPMG

### **Acts and Bylaws:**

Auckland City Council Consolidated Bylaw (1998)  
The Local Government Act (1974 – Repealed)  
The Local Government Act 2002  
The Litter Act 1979

### **Other documents:**

*Waste Management Plan – Hauraki Gulf Islands Section*  
Auckland City Council – City Planning (2000)

*Play Your Part - and get our rubbish sorted. Your guide to changes to your rubbish and recycling collection from July 2001 (June 2001)*  
Auckland City Council pamphlet