

8. STRUCTURE OF THE RECOVERED MATERIALS FOUNDATION BOARD

Officer responsible City Water and Waste Manager	Author Zefanja Potgieter, DDI 941-8271
--	--

The purpose of this report is to inform members of a decision of the Recovered Materials Foundation Board relating to the structure of its Board.

BACKGROUND

The following is a copy of a report considered at the Recovered Materials Foundation Board meeting on 24 July. The Board resolved that stakeholders be consulted on this proposal, including the members of the Subcommittee.

“Recovered Materials Foundation Board Report

The purpose of this report is to recommend changes to the structure of the RMF Board in light of the changing role and function of the RMF and its service delivery to various councils.

The RMF operates as a charitable trust under the Charitable Trusts Act under a constitution, which provides for governance by a board of trustees. The relevant parts of the constitution, for the purposes of this report, provide:

- “7.1 (a) *The trust shall be administered by a board of not more than eight and not less than four trustees to be known as 'trustees' and may not act in the event the number of trustees for the time being shall be less than four except as referred to in clause (f) hereof but otherwise may act notwithstanding the number of trustees for the time being shall be less than eight.*
- 7.1 (f) *In the event of there being any vacancy in the number of trustees of the full board then (notwithstanding there shall be less than four trustees but not limited to there being less than four trustees) the board may appoint a suitable person to fill such vacancy and for the sake of clarity it is hereby confirmed that a 'suitable person' for the purposes of this clause may include a person representing the New Zealand recycling industry.”*
- 7.2 (a) *Notwithstanding anything contained in clause 7.1 hereof the Christchurch City Council shall have the right to appoint two trustees and Canterbury Development Corporation, Canterbury Manufacturers Association, Canterbury Employers Chamber of Commerce, The Sustainable Cities Trust, and the Clean Washington Centre (or their successor organisations) shall each have the right to appoint one trustee. The foregoing organisations are referred to herein as 'The Founders'.*
- 10.1 *The board may appoint such persons as it sees fit to be advisory trustees to the board on such matters as the board may require advice. Advisory trustees may (if called upon to do so by the board) attend meetings of the board and speak at such meetings but shall not be entitled to vote thereat.*
- 14.1 *[this clause indemnifies trustees and advisory trustees by the Trust out of the trust finds, except for "wilful default or wilful breach of trust"]*
- 14.2 *No trustee shall be liable for any loss not attributable to his or her own dishonesty or to the wilful omission by him or her of any act known by him or her to be a breach of trust.*

There are currently six trustees:

- 2 city councillors (Councillors Denis O'Rourke and Sally Buck)
- 1 from CDC (Chris Pickrill, CEO)
- 1 from CMA (Dr Robin Mann)
- 1 from CECC (Phil Falloon)
- 1 from the recycling industry (Dixon Mclvor)

Following the resignation of Jonathon Elworthy, Sustainable Cities Trust has not formally appointed a trustee. Clean Washington Centre no longer exists and has no successor. There are three advisory trustees: David Dougherty (previously Clean Washington Centre, now Enviro UK), Mike Stockwell (CCC Water and Waste Manager), and Mark Prain.

Waimakariri District, like the CCC, has a contract to supply recyclables to RMF for processing, but Waimakariri is not able to make an appointment to the board. The other eight district councils in

2. 9. 2002

- 2 -

Canterbury may also contract for materials supply/processing/marketing etc in the future. In addition, those councils collectively via the joint committee of councils known as the Canterbury Waste Subcommittee, may also contract in the future for services such as Waste Exchange, on a regional basis. It would be appropriate for them to have the right to appoint at least one trustee to the board (perhaps two - one for the southern councils and one for the northern ones).

It is not desirable for the board to become too big, and eight (with the addition of advisory trustees) seems right.

Sustainable Cities appears to have had some difficulty in appointing a trustee in recent times, and currently has made no formal appointment (although Arthur Williamson, as Chair of Sustainable Cities, has been attending board meetings informally). The previous two appointments by Sustainable Cities have not been enduring. Sustainable Cities did have a role to play originally in assisting the formation of the RMF, but no longer seem to have such a clear role. More particularly, Sustainable Cities appears to have changed its outlook and approach, and rather than acting as an adviser/consultant, now seems to have adopted a more aggressively 'ginger group' sort of role. This does not sit comfortably with the position of the RMF as a contractor to councils and a supplier to commerce.

I believe that the time has come to restructure the RMF Board to take account of changed and changing circumstances. I also believe that the Board should have the right to be consulted on appointments nominated to it before those nominations take effect, so as to ensure as far as possible that an appropriate mix of skills is retained amongst board members.

It seems to me that the current six board members do represent an appropriate mix, and that two 'rural' appointees by the other district councils should be provided for, and that the constitution not in the future provide for appointments by Clean Washington or Sustainable Cities.

The time required to be committed to RMF work by board members, and the degree of responsibility for a growing business, and one expanding in scope of activities, as well as the degree of personal liability for the success of the RMF (notwithstanding the trustee indemnity and exoneration from liability for loss set out above), indicates that realistic remuneration for trustees should also now be provided for. Such remuneration should, I think, be by way of an honorarium to be fixed by the board following independent professional advice.

There is provision in the constitution for amendments, but not of the nature required to achieve the changes suggested in this report. This needs to be confirmed by legal opinion which should also specify the best way to proceed. It may be that it will be necessary to wind up the existing trust, declare a new one with a new constitution, and transfer all assets etc to the new trust.

Another issue which should now be considered, is the name of the organisation. It has been suggested that the name 'Recovered Materials Foundation' should be used for the existing materials processing business, and a new name (or names) be selected for the business development operation, and for the proposed 'consultancy' operation.

Board members may have other changes to suggest.

- Recommendation:**
1. That the changes to board structure outlined above be adopted in principle.
 2. That stakeholders be consulted, including the 'rural' councils via the Canterbury Waste Subcommittee.
 3. That the necessary legal advice be obtained as a first step.
 4. That professional advice on appropriate trustee remuneration/honoraria be obtained.
 5. That consideration be given to new names for some operations of the organisation.

2. 9. 2002

- 3 -

SUMMARY

As potential changes to the structure of the Recovered Materials Foundation board are being discussed at present, the comments of those members of the Subcommittee who do not have representation on the Recovered Materials Foundation board are invited.

Staff

Recommendation: That this report be forwarded to Subcommittee member councils that do not currently have representation on the Recovered Materials Foundation Board for comment.

Chairman's

Recommendation: That the above recommendation be adopted.