

Dated

2004

TRANSPORT COSTS EQUALISATION DEED

Between

**ASHBURTON DISTRICT COUNCIL
BANKS PENINSULA DISTRICT COUNCIL
CHRISTCHURCH CITY COUNCIL
SELWYN DISTRICT COUNCIL
WAIMAKARIRI DISTRICT COUNCIL**

"The Councils"

CANTERBURY JOINT STANDING COMMITTEE

"The Committee"

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TRANSPORT COSTS EQUALISATION DEED**DATED****2004****PARTIES**

- (1) **ASHBURTON DISTRICT COUNCIL, BANKS PENINSULA DISTRICT COUNCIL, CHRISTCHURCH CITY COUNCIL, SELWYN DISTRICT COUNCIL and WAIMAKARIRI DISTRICT COUNCIL** and their successors, all local authorities under the Local Government Act 2002 (collectively “the Councils” and individually “a Council”);
- (2) **CANTERBURY JOINT STANDING COMMITTEE** comprising the Councils and Hurunui District Council, Kaikoura District Council, Mackenzie District Council, Timaru District Council and Waimate District Council (“the Committee”).

BACKGROUND

- A. Clause 30 of Schedule 7 of the Local Government Act 2002 empowers local authorities to appoint a joint standing committee and sub-committee for any purpose in which local authorities are jointly interested. By agreement dated 16 September 2003 (“the Constituting Agreement”) the Committee was constituted to achieve regional co-ordination co-operation and commitment.
- B. To date the Committee has been concerned with solid waste management. All of the Councils have agreed to work co-operatively in relation to the management of solid waste within the region which they administer. The Councils are committed to the investigation of solid waste management strategies generally, and waste minimisation in particular, not only as individual Councils but also on a wider regional basis. The Councils recognise that regional solutions may require the implementation of financial incentives and disincentives including, without limitation, mechanisms for the sharing of costs and revenues on a regional basis.
- C. The Councils together with the Hurunui District Council own shares in Transwaste Canterbury Limited (“Transwaste”) which is a joint venture with Canterbury Waste Services Limited (“CWS”) concerned with the operation of a new Canterbury regional landfill at Kate Valley and associated transport services (“the Kate Valley Landfill”). It is anticipated that Transwaste will pay dividends to the Councils, the Hurunui District Council and CWS.
- D. All the Councils and the Hurunui District Council will use the Kate Valley Landfill which is situated within the district of the Hurunui District Council. The Councils have agreed that, in consideration for the additional initial expense and ongoing issues associated with having the Kate Valley Landfill within its district, the Hurunui District Council shall not be required to contribute to the equalisation of transport costs for the Councils.

- E. The Councils have resolved to equalise the transport costs associated with the transport of waste to the Kate Valley Landfill to reflect their agreement that, notwithstanding its location in the north of the region, the burden of the cost of transporting waste to the Kate Valley Landfill should be spread equally throughout the districts administered by the Councils.

TERMS OF THIS DEED

1. DEFINITIONS

1.1 For the purposes of this Deed and in addition to the terms defined above the following definitions shall apply:

- (a) “**Committee**” includes the subcommittee of the Committee constituted by the Constituting Agreement;
- (b) “**Dividend**” means a dividend payable by Transwaste to a Council pursuant to that Council’s shareholding in Transwaste;
- (c) “**Equalisation Formula**” means the formula to be used by the Committee to determine the Equalisation Payment as set out in the Schedule and as amended in accordance with clause 5 from time to time;
- (d) “**Equalisation Payment**” means any payment to be made by all or any of the Councils to a Refuse Station Operator or Refuse Station Operators in accordance with the Equalisation Formula as determined by the Committee;
- (e) “**Refuse Transfer Station**” means a refuse transfer station in any of the districts administered by any of the Councils which complies with the requirements of all relevant legislation and by-laws and “**Refuse Transfer Station Operator**” has a corresponding meaning; and
- (f) “**Term**” means the period expiring on the date of expiry or earlier termination of the Memorandum of Understanding between Waste Management N.Z. Limited, Envirowaste Services Limited and the Committee dated 3 September 1998.

1.2 **Interpretation:** In this Deed, unless the context requires otherwise:

- (a) References to sections, clauses and schedules are to sections, clauses and schedules of this Deed;
- (b) The headings to clauses shall (unless otherwise specified) be ignored in construing this Deed;
- (c) A gender includes each other gender;
- (d) Any party to this Deed or any other agreement includes its successors and permitted assignees and transferees;

- (e) The plural includes the singular and vice versa;
- (f) Derivatives of any defined word or term have a corresponding meaning;
- (g) “including” and similar words do not imply any limitation; and
- (h) Reference to one party notifying another or giving notice to another, or agreeing, consenting or objecting to any matter or nominating or making any nomination, or giving any direction means that party notifying, giving notice, agreeing, consenting, objecting, nominating or directing (as the case may be) in writing.

2. PAYMENT OF DIVIDENDS

- 2.1 The Committee shall direct Transwaste to hold the Dividends upon trust for each of the Councils pending calculation of the Equalisation Payment.
- 2.2 After the appropriate Equalisation Payment (if any) for each of the Councils has been calculated the Committee shall direct Transwaste to deduct the Equalisation Payment due from each Council from the relevant Council's Dividend before paying the balance of the Dividend to that Council.
- 2.3 For the avoidance of doubt once Transwaste is holding a Dividend pursuant to clause 2.1 it shall be deemed to have completed a distribution to the relevant Council for the purposes of sections 51 to 53 (inclusive) of the Companies Act 1993 in respect of that Dividend and shall not be bound to do anything further in connection with the payment thereof other than hold the Dividend on the trusts set out in this clause.

3. EQUALISATION PAYMENT

- 3.1 The Councils agree that during the Term they shall each pay the appropriate Equalisation Payments to a Refuse Station Operator or Refuse Station Operators as directed by the Committee in accordance with the Equalisation Formula.
- 3.2 Wherever possible the payment of each Equalisation Payment pursuant to clause 3.1 shall be effected by Transwaste deducting the Equalisation Payment from the Dividend held on trust for the relevant Council and paying the Equalisation Payment directly to the Refuse Station Operator or Refuse Station Operators to which the Equalisation Payment is due.
- 3.3 Where a Council's Dividend is insufficient for Transwaste to pay the Equalisation Payment due from that Council for the relevant period that Council shall pay the balance of the Equalisation Payment to the Committee or to the Committee's order within 14 days of the date on which it receives written notice of the Equalisation Payment due from the Committee.

4. CALCULATION OF EQUALISATION PAYMENT

- 4.1 At such intervals as it deems appropriate, the Committee shall arrange for the calculation of:
 - (a) The Equalisation Payment due from each Council; and

- (b) The distribution of the Equalisation Payments to the Refuse Station Operators, for that period in accordance with the Equalisation Formula.

5. AMENDMENT OF EQUALISATION FORMULA

- 5.1 The Councils may amend the Equalisation Formula by unanimous agreement from time to time.

6. CONFIRMATION OF DELEGATION

- 6.1 The delegation of all the functions, duties and powers of Committee to the sub-committee pursuant to clause 3 of the Constituting Agreement is confirmed in respect of the all the Committee’s functions, duties and powers under this Deed.

EXECUTION

THE COMMON SEAL of)
 ASHBURTON DISTRICT COUNCIL)
 was affixed in the presence of)

THE COMMON SEAL of)
 BANKS PENINSULA DISTRICT)
 COUNCIL)
 was affixed in the presence of)

THE COMMON SEAL of)
 CHRISTCHURCH CITY COUNCIL)
 was affixed in the presence of)

THE COMMON SEAL of)
SELWYN DISTRICT COUNCIL)
was affixed in the presence of)

THE COMMON SEAL of)
WAIMAKARIRI DISTRICT COUNCIL)
was affixed in the presence of)

SCHEDULE – EQUALISATION FORMULA

On 9 August 2004 the Canterbury Waste Subcommittee resolved that it is appropriate to develop and implement a transport cost scheme as set out in 'Option 2' in the report.

On behalf of Canterbury Waste Subcommittee Transwaste Canterbury Ltd is to calculate the equalisation payment using the following formula:

1. The number of return trips that would have been required by each district if all loads had been full loads.
2. The annual transport costs for all councils combined, based on full load trips.
3. The average cost per tonne for all councils combined, based on full load trips.
4. The amounts that Ashburton and Selwyn would have paid if they had been charged at average, per tonne, all councils combined, rates (based on full load trips).
5. For Ashburton and Selwyn, the differences between individual annual transport costs (full loads) and average annual transport costs (full loads). This amount will be the transport cost amount to be shared between Banks Peninsula, Christchurch City and Waimakariri.
6. Contributions required from Banks Peninsula, Christchurch City and Waimakariri shall be proportioned on the basis of annual tonnages from these councils.