



## Christchurch City Council

# CANTERBURY LANDFILL JOINT COMMITTEE AGENDA

MONDAY 10 JULY 2006

AT 9AM

IN THE NO 3 COMMITTEE ROOM, CIVIC OFFICES

**Subcommittee:** Councillor Sally Buck (Christchurch City Council) (Chairman)  
Councillor Robbie Brine (Waimakariri District Council)  
Mayor Garry Jackson (Hurunui District Council)  
Councillor Lindsay Philps (Selwyn District Council)  
Councillor Bev Tasker (Ashburton District Council)

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1. **APOLOGIES**2. **PRESENTATION BY COUNCIL APPOINTED DIRECTORS ON TRANSWASTE ON THEIR FINDINGS DURING THEIR RECENT TRIP TO THE UNITED STATES OF AMERICA**

(The presentation is estimated to take 45 minutes.)

3. **TRANSPORT COSTS FOR WASTE TO KATE VALLEY**

<b>General Manager responsible:</b>	General Manager City Environment
<b>Officer responsible:</b>	City Water and Waste Manager DDI 941 6231
<b>Author:</b>	Zefanja Potgieter

**PURPOSE OF REPORT**

1. The purpose of this report is to approve the implementation of the first shared transport cost arrangement for waste transported to Kate Valley landfill.

**BACKGROUND**

2. On 4 September 2004 the Canterbury Waste Subcommittee passed a resolution to implement a shared transport cost arrangement whereby Christchurch City Council, Banks Peninsula District Council (now part of Christchurch City) and Waimakariri District Council proportionally contribute towards the transports costs for residual waste sent to Kate Valley landfill by Ashburton and Selwyn District Councils, in terms of an agreed method of calculation. By agreement the Hurunui District Council, as host council to the landfill, is not part of this cost share arrangement. The purpose of the arrangement is to ensure that communities further away from the landfill are not disadvantaged through transport costs.
3. The landfill started operating on 8 July 2005 and the following table sets out the relevant information for the first year of operation ending 30 June 2006:

	<b>Total waste tonnes</b>	<b>Average cost per tonne</b>	<b>Cost based on average across all communities</b>	<b>Cost based on full loads</b>	<b>Difference</b>	<b>CCC Share 93.83%</b>	<b>WDC Share 6.17%</b>
<b>Ashburton</b>	7,605.98	\$20.83	\$158,428.45	\$302,942.22	\$145,513.77	\$136,535.57	\$8,978.20
<b>Selwyn</b>	2,447.32	\$20.83	\$50,976.43	\$54,545.78	\$3,569.35	\$3,349.12	\$220.23

At the time this report was prepared the actual transported waste volumes for the month of June 2006 were not yet available and estimates were therefore used. Once these actual tonnages are available officers will make the necessary adjustments to the above calculations. It is anticipated that such adjustments would be of a very minor degree.

4. The agreed mechanism for payments to Ashburton and Selwyn Councils is through a request by the Joint Committee to Transwaste Canterbury Ltd to adjust the company's dividend payments (to be declared) accordingly – i.e. to reduce the Christchurch and Waimakariri Councils' dividend payments by the amounts indicated above and to increase the Ashburton and Selwyn councils' dividend payment accordingly.

**STAFF RECOMMENDATIONS**

It is recommended that the Canterbury Landfill Joint Committee:

- (a) Approve the proposed transport cost payments to Ashburton and Selwyn District Councils as set out in the report, to be adjusted in terms of final tonnages for the period up to 30 June 2006.
- (b) Request Transwaste Canterbury Ltd to implement the finalised payments based on actual transported volumes up to 30 June 2006 by adjusting its dividend payments to the participating territorial authority shareholders.

#### 4. DIRECTORS ON TRANSWASTE BOARD

<b>General Manager responsible:</b>	General Manager City Environment
<b>Officer responsible:</b>	City Water and Waste Manager DDI 941-6231
<b>Author:</b>	Zefanja Potgieter

#### PURPOSE OF REPORT

1. The purpose of this report is to advise the Committee on the remaining terms for the four Committee appointed directors on the Transwaste Board and recommend extending the term of Mr Gerry Clemens.

#### BACKGROUND

2. In terms of Clause 9.1 of the Shareholders Agreement of Transwaste Canterbury Ltd the company has a board of eight directors, four appointed by Canterbury Waste Services Ltd (CWS) (Group A) and four appointed by the shareholding councils (Group B). All shareholder council rights in terms of Transwaste's Shareholders Agreement and Constitution are exercised through the Canterbury Landfill Joint Committee (CLJC), which as from 1 July 2006 is the successor to the Canterbury Waste Joint Committee and the Canterbury Waste Subcommittee.
3. Current CLJC directors and their terms are as follows:
 

Mr Denis O'Rourke to 17 September 2006  
 Mr Gerald Clemens to 17 September 2006  
 Mr Gil Cox to 18 March 2007  
 Councillor Robbie Brine 17 March 2008
4. The Committee's *Policy on Appointment and Remuneration of Directors Transwaste Canterbury Ltd* adopted 9 June 2003 is attached as Appendix A. Clause 5 provides for the appointment of two Councillor directors, one appointed from the three Christchurch City Council representatives, and one from the other remaining shareholder Council representative. In addition it also provides for the appointment of two external appointees with the emphasis being on the commercial skills that they will bring to represent the interests of the shareholder councils on the Transwaste board. Clause 5 also requires that CLJC as a whole will be responsible for the appointment of the one Councillor director representing the five shareholder Councils other than the CCC, while the Councillor director representing the CCC should be nominated by the three CCC representatives on the Committee.
5. With Mr O'Rourke's term terminating on 17 September 2006 the three CCC representatives are therefore to nominate the CCC's representative on the board in due course, and advise the Committee accordingly.
4. Mr Gerry Clemens' term as external director also expires on 17 September 2006, and it is recommended that his term be extended to 17 September 2009. He has indicated his availability.
5. Until June 2007 when Kate Valley landfill will have been operational for two years the chairmanship of the Transwaste board remains with one of the four directors appointed by the CLJC. By September 2006 the Committee will therefore need to appoint a new chairman for the period up to the June 2007. The position can be filled by either a councillor or external director. In terms of length of directorship and proven business skills it is recommended that consideration be given to appointing one of the external directors as chairman for the period up to when a Canterbury Waste Services Ltd director is appointed chairman of Transwaste.

#### STAFF RECOMMENDATION

It is recommended that Mr Gerry Clemens be reappointed as Transwaste director from 18 September 2006 to 17 September 2009.

**5. MERGER OF WASTE MANAGEMENT NEW ZEALAND LTD WITH TRANSPACIFIC INDUSTRIES GROUP LTD**

<b>General Manager responsible:</b>	General Manager City Environment
<b>Officer responsible:</b>	City Water and Waste Manager DDI 941 6231
<b>Author:</b>	Ian Thomson, Solicitor

**PURPOSE OF REPORT**

1. The purpose of this report is to advise the Committee on the request by Waste Management NZ to shareholder councils to consent to its proposed merger with Transpacific Industries Group Limited.

**BACKGROUND**

2. In March 2006 the directors of Waste Management NZ Limited and Transpacific Industries Group Limited announced that they had agreed to propose a merger of the two companies. Some weeks later, the merger was accepted by shareholders.
3. On 21 April 2006 the managing director of Waste Management NZ Limited wrote to the councils that have an interest in Transwaste Canterbury Limited the operator of the Kate Valley land fill. A copy of the letter is attached (Attachment A), together with a copy of a letter that Waste Management NZ Limited sent to Transwaste Canterbury Limited (Attachment B). As the Canterbury Landfill Joint Committee has delegated powers from its member councils for all landfill related matters the Committee, and not the individual member councils, it should reply to Waste Management NZ in this instance.
4. The essence of the matter, and the reason for Waste Management NZ Limited formally notifying the councils of the merger, is that the constitution of Transwaste Canterbury Limited provides for a situation where either Waste Management NZ Limited or Envirowaste Services Limited (ESL) decides to reduce its shareholding in the Company. Clause 12.19 of the constitution states:

*“Where WMNZ and/or ESL, without the prior approval of the Councils, cease to hold in aggregate at least 51% of the shares in Canterbury Waste Services Limited, the Councils may give written notice to Canterbury Waste Services Limited deeming Canterbury Waste Services Limited to have given a transfer notice pursuant to clause 12.1 and the provisions of clause 12 shall apply accordingly.”*

5. Canterbury Waste Services Limited is a 50% shareholder of Transwaste Canterbury Limited, with the other shares held by the participating councils. Waste Management NZ Limited and Envirowaste Services Limited jointly own Canterbury Waste Services Limited.
6. The issue to be addressed is that on the face of it, Waste Management NZ Limited no longer holds shares in Canterbury Waste Services Limited, thereby triggering clause 12.19 and the pre-emptive rights provisions on transfers of shares set out in clause 12 of the Transwaste Canterbury Limited constitution. This would mean that Waste Management NZ Limited would be required to offer its shares for sale to the participating councils before offering them to any other entity.
7. The point of Waste Management NZ Limited’s letter of 21 April 2006 was that the merger of that Company and Transpacific Industries Group Limited could be construed as a “deemed transfer” as that term is defined in clause 12.19 of Transwaste Canterbury Limited’s constitution. If this was the case, then Waste Management N Z Limited would be unable to retain its shares in Canterbury Waste Services Limited without offering these first to the other shareholders. Waste Management NZ Limited was of the view that the merger was an amalgamation under the Companies Act 1993, meaning that both entities remain in existence. There would be no “deemed transfer”.

**5 Cont'd**

8. The Legal Services Unit of the Christchurch City Council agreed with Waste Management NZ Limited's assessment of the effect of the merger and believed it did not trigger clause 12.19. The Council consulted its external legal advisor, Simpson Grierson, and that firm's view also is that no pre-emptive rights would be triggered as a consequence of the proposed amalgamation. The firm noted that the better view is that there is no change in the identity in the shareholder, given the "continuance" rules applicable to New Zealand amalgamations. A copy of Simpson Grierson's letter of 17 May 2006 is also attached (Attachment C).
9. The conclusion reached is that the merger of Waste Management NZ Limited and Transpacific Industries Group Limited is an amalgamation under the Companies Act and not a sale or transfer of shares triggering the pre-emptive rights provisions in the Transwaste Canterbury Limited constitution. Waste Management NZ Limited will continue to own its shares in Canterbury Waste Services Limited although the name of the company may be changed to reflect the merger.
10. Waste Management NZ Limited have asked the participating councils to agree that its amalgamation with Transpacific Industries Group Limited is not a "deemed transfer" caught by clause 12.19. The committee may decide that it is better for the councils to preserve their rights under the Transwaste Canterbury Limited constitution and rely on the "continuance" rules applicable to New Zealand amalgamations, rather than specifically endorse the position as stated by Waste Management NZ Limited.

**STAFF RECOMMENDATION**

It is recommended that the Committee advise Waste Management NZ Limited that whilst the Committee is of the view that the amalgamation does not trigger the pre-emptive rights provisions contained in Transwaste Canterbury Ltd's constitution, the Committee would prefer that the position remain subject to the operation of New Zealand law rather than possibly restrict its rights by formally agreeing that the pre-emptive rights provisions do not apply.

**6. TRANSWASTE APPLICATION TO THE HURUNUI DISTRICT COUNCIL  
TO CANCEL OR CHANGE KATE VALLEY HEAVY TRUCK CONSENT CONDITION -  
REPORT FROM MAYOR GARRY JACKSON**

1. As members are aware, Transwaste Canterbury Ltd have applied to Hurunui District Council to cancel or change consent condition xxxxxx limiting heavy truck movements to a maximum of 600 in any seven day period. The hearing took place 19-21 June, heard by independent commissioner Philip Milne. A decision is expected in August.
2. xxx submissions were received, yy in support of the application, and xxx in opposition. Supporting submissions by Ashburton District Council and Christchurch City Council were amongst those presented at the hearing.
3. This note is written independent of my involvement at the hearing as a submitter. (A copy of Mayor Jackson's submission is attached.) As the only member of this committee to have attended the full three days, I believe that there are aspects of the discussions that CWSC should be aware of.
4. In discussions regarding origins of the present heavy truck consent condition, Commissioner Milne indicated that the original panel was mindful of the amenity effects of heavy truck volumes on the local community, particularly those that could not be directly managed by other specific consent conditions such as noise and hours of operation.
5. Waste volumes going to landfill became a major discussion point, arising from the application's projection of 360000 tonnes per annum going forward, compared with the basis of 240000 tonnes in the original consent application, and the present levels of approximately 300000 tonnes per annum.
6. Discussion on waste volumes extended to the subject of the potential life of the landfill, prompted in part by comments by Transwaste that increased compaction densities being achieved would result in far greater capacity than originally proposed. At the end of the third day of the hearing, in response to questions from the Commissioner, Transwaste tabled a letter from their engineering consultants advising that the landfill now had a projected capacity nearing 15 million tonnes, or a landfill life of 47 years. The issue was raised with the Commissioner of whether or not such new data was significantly different to the AEE evidence at the time of the original application (9.7 tonnes/35 year design life) so as to bring into question the ongoing validity of the original consent. Transwaste's legal counsel was requested by the Commissioner to review the evidence to the Environment Court in this respect and to advise the Commissioner and public submitters.
7. Irrespective of the discussions regarding the potential life of the landfill, the CWSC should be mindful that Transwaste's suggestions that if heavy truck movements are excessively restricted, the only option will be a second landfill most likely in the Hurunui area or further north (reference the final two paragraphs of Mr James' Statement of Evidence) has not been well received by the Hurunui community.
8. At some stage in the future, it is believed that the Canterbury Waste Sub Committee will need to focus its attention on some or all of the following issues:
  - CWSC's role and responsibilities to monitor waste volume trends, including...
    - Waste to landfill by TLA versus targets in the respective Waste Management Plans
    - Waste to landfill by Canterbury region in total
    - Waste diversion volumes, by TLA versus targets in the respective Waste Management Plans
    - Waste diversion volumes by Canterbury region in total
  - depending on outcome of landfill capacity and consent discussions as noted above, the time may arise when CWSC may need to open serious discussion regarding alternative (non landfill) disposal strategies.

10. 7. 2006

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**7.   TRANSWASTE CANTERBURY LIMITED - FINALISED STATEMENT OF INTENT**

Attached.