

8. TRANSWASTE CANTERBURY LIMITED - DIRECTORS

General Manager responsible:	General Manager City Environment, DDI 941-8656
Officer responsible:	Legal Services Unit Manager
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PURPOSE OF REPORT

1. The purpose of this report is to seek and obtain the approval of the Canterbury Regional Landfill Joint Committee to the appointment of a new director to the board of Transwaste Canterbury Limited, representing the Christchurch City Council.

BACKGROUND

2. The Shareholders' Agreement and the Constitution in respect of Transwaste Canterbury Limited provide for the appointment of eight directors to the board of the company. Four of these are appointed by Canterbury Waste Services Limited and four are appointed by the participating councils. All rights of the participating councils with regard to the Shareholders' Agreement and Constitution are exercised through the Canterbury Regional Landfill Joint Committee.
3. The constituting agreement in respect of the committee gives it the authority to appoint nominee directors to the board of Transwaste Canterbury Limited.
4. The Canterbury Waste Subcommittee adopted a policy of appointing two Councillor directors to the Transwaste Canterbury Limited board, one from the Christchurch City Council and one from one of the other participating councils. The committee has also appointed two external directors.
5. The director representing the Christchurch City Council, Denis O'Rourke, lost his seat on the Council as a result of the October 2004 local elections. The committee had earlier agreed, however, to extend his term of appointment to 17 September 2006. At the request of the Council, Mr O'Rourke has agreed to remain as a director, and board chairman, until such time as a number of procedural issues arising from the establishment of new regional committees were dealt with.
6. That process has almost been completed. The draft documentation circulated amongst the participating councils last year will now be prepared in its final form and executed by all parties.
7. The matter of the documentation and the reasons for it being necessary were discussed with Canterbury Waste Services Limited in December 2006. The documentation has been approved by that company's solicitors. No issue will be taken with the replacement of Denis O'Rourke prior to the making of the various resolutions adopting the matters contained in the documentation.
8. The members of the Canterbury Regional Landfill Joint Committee representing Christchurch City Council have nominated Councillor Sally Buck to be the Council's representative on the Transwaste Canterbury Limited board.
9. This decision was made in early December 2006. Since then, all participating councils have become aware of the application by Transpacific Industries Group NZ Limited to the Commerce Commission for clearance to acquire the South Island assets and businesses of Envirowaste Services Limited. Both companies are joint owners of Canterbury Waste Services Limited.
10. Christchurch City Council has lodged a submission with the Commerce Commission objecting to the proposed acquisition on the grounds that it would result in a substantial lessening of competition in the solid waste markets in Canterbury. The Canterbury Regional Landfill Joint Committee has also lodged a submission based on its concern at the loss of the constraining influence that Envirowaste Services Limited brings to the board of Canterbury Waste Services Limited and to Transwaste Canterbury Limited.
11. Denis O'Rourke has played a pivotal role in the establishment and administration of Transwaste Canterbury Limited. The interests of the participating councils may be best met by Mr O'Rourke remaining as a director and chairman of the company whilst the matter of the proposed acquisition by Transpacific Industries Group NZ Limited is dealt with.

12. This is a potentially difficult time for Transwaste Canterbury Limited. As well as the Commerce Commission's investigation of the proposed transaction and its effect on solid waste markets, the board may be faced with the replacement of two of the directors currently representing Canterbury Waste Services Limited. The time may not be right to also introduce a new chairman as well as another new director, to represent the Christchurch City Council on the board of Transwaste Canterbury Limited.
13. Mr O'Rourke has shown strong leadership as chairman, as well as being an effective advocate, along with the other council-appointed directors, for all participating councils. It may be for their benefit for him to remain in his current position until at least the Commerce Commission's decision is made and, if clearance of the acquisition is granted, the new structure for Canterbury Waste Services Limited is established.
14. With regard to Councillor Buck's appointment, it is stressed that this is a matter of timing only.

STAFF RECOMMENDATIONS

It is recommended that:

- (a) The Committee appoint Councillor Sally Buck as the Councillor director representing Christchurch City Council on the board of Transwaste Canterbury Limited.
- (b) That the committee resolve to defer Councillor Buck's appointment until the Commerce Commission makes its decision on the application by Transpacific Industries Group NZ Limited for clearance to acquire the South Island assets and businesses of Envirowaste Services Limited.
- (c) That should the application be unsuccessful and clearance is denied, Councillor Buck's appointment be effective from the date of the Commerce Commission's decision.
- (d) That should the application be successful and clearance is granted, Councillor Buck's appointment be deferred until such time as the acquisition is completed or 1 July 2007, whichever occurs first.
- (e) That the committee record its appreciation of the outstanding contribution made by Denis O'Rourke to the Canterbury Waste Subcommittee and to the board of Transwaste Canterbury Limited.