

5. TRANSWASTE CANTERBURY LIMITED – APPOINTMENT OF DIRECTORS AND MONITORING

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The purpose of this report is to advise the Council on the appropriate process for appointment of directors and alternate directors to Transwaste Canterbury and to recommend a suitable monitoring regime.

BACKGROUND

Transwaste Canterbury Limited is a joint venture company in which the six local authority shareholders hold 50% of the shares with the other 50% of shares held by Canterbury Waste Services Limited a consortium of Waste Management NZ Limited and Envirowaste Services Limited. There is a shareholders agreement which provides that the local authorities will act jointly through the Canterbury Joint Standing Committee (whose powers have been delegated to the Canterbury Waste Subcommittee (CWSC)) and four of the eight directors are appointed by that Committee. The shareholders agreement states:

“10.1 All rights of the Councils under this Agreement and the Constitution shall be exercised through the Canterbury Joint Standing Committee on behalf of the participating Councils including without limitation rights to appoint and remove directors, rights to vote at shareholder meetings, sign shareholder resolutions and to pass any resolutions required under this agreement.”

ALTERNATE DIRECTOR APPOINTMENT

At the Council meeting on 22 April 2004 the Canterbury Waste Subcommittee reported as a Part C agenda item, that the Subcommittee had appointed Councillor Sally Buck as an alternate director to replace Councillor Wright as the alternate for Councillor O'Rourke on the board of Transwaste Canterbury Limited.

At the Council meeting I was asked to investigate and report on whether the Council's policy regarding the appointment of directors applied in this situation and, if so, whether such policy had been followed in this instance and whether the appointment should have been submitted for the Council's approval as a Part A item.

In common with many company constitutions there is provision in the constitution of Transwaste Canterbury Limited for any director of the company to appoint an alternate. The alternate director is entitled to attend and vote at board meetings when the principal director is unable to attend. It is not common for such a provision to be activated but where the balance on a board is important then there are times when such a provision may need to be activated to ensure that the intended voting strength is maintained.

Since the shareholders agreement provides for the CWSC to appoint the local authority appointed directors to Transwaste it is clear that any appointment of an alternate director was not an issue for Council decision and was appropriately reported as a Part C item to the Council last month.

Incidentally, it is noted that the Constitution of Transwaste provides for individual directors to appoint their own alternates and so in the case in point it would have been acceptable if Councillor O'Rourke, as the director on Transwaste, had appointed the alternate directly himself. Although this process was not strictly followed in this instance, as Councillor O'Rourke is also a member of CWSC he has clearly acquiesced in this matter and can be taken to have made the appointment. This is mentioned here because it reinforces the fact that this did not need to be a Council decision.

DIRECTOR APPOINTMENT POLICY

In 2003 the Council adopted a policy on the appointment of directors in accordance with the requirements of the Local Government Act 2002. This policy provides procedures for the selection of directors which include a process for evaluating prospective appointees for suitability and experience for the directors role against a set of agreed criteria.

Subsequently CWSC adopted its own policy which was based on the Council's and has many similarities with the Council's policy including the definition of the agreed criteria required of directors. It does however set in place what had been the previous practice of requiring two of the four directors to be Councillors (one from CCC and one from the five other participating Councils) who are also members of CWSC. In the Council policy this is not an overriding requirement except in the case of CCHL.

In view of the policy requirement that one of the Transwaste directors must a CCC Councillor and a member of CWSC it should be noted for future appointments that one of the Council's appointments to CWSC be capable of meeting the criteria as a director of Transwaste.

SERVICING OF CANTERBURY WASTE JOINT STANDING COMMITTEE

This report has outlined the role of CWSC and its right to act jointly on behalf of the six local authorities who are partners in the local authority share of Transwaste. This is appropriate as a practical way of acting in a joint capacity since there are six local authorities involved. It does, however, operate outside the standard model which the Council has adopted for monitoring and relating to its operating subsidiaries. In all other companies in which the Council has an interest CCHL provides an interface and has protocols in place for monitoring on behalf of the Council. This applies even in situations where CCHL does not hold the shares (eg Jade Stadium Limited and Christchurch City Facilities Limited).

There are many areas of work for CWSC which are technical areas relating to waste management in the region but there are three key areas relating to monitoring and accountability where the CCHL processes should be applied to Transwaste for the benefit and reassurance of CWSC and the participating Councils. These are:

- Review and reporting on the Statement of Intent and business plan.
- Regular review of half yearly/quarterly reports.
- Appointment of directors.

In each of these situations the reporting and decision-making would be by CWSC but the staff and board of CCHL would undertake the initial work to ensure that a level of accountability was applied which was consistent with other Council trading undertakings. I would envisage that the board of CCHL would oversee the work but instead of reporting directly to the Council (as it does for all other companies) on Transwaste it would report to CWSC which in this instance is the decision-making body.

As noted earlier in the report, CWSC has adopted its own policy for the appointment of directors. It is similar to the Council policy and it would be efficient for the appointment process to be run in conjunction with the CCHL process for other subsidiary companies, especially as the search for external directors takes place. The CCHL subcommittee which does the initial selection and interviewing could be supplemented by a member from CWSC, if necessary, and CCHL would recommend the appointments for Transwaste to CWSC for decision.

As this Council's interest in a share of Transwaste is exercised through CWSC it is appropriate that this servicing proposal be forwarded to CWSC with a recommendation from this Council offering these services with a strong recommendation that they be adopted.

CONCLUSIONS

1. The appointment of Councillor Sally Buck as an alternate director by CWSC was appropriate in light of the shareholders' agreement and other documentation.
2. It would be appropriate to institute a process where CCHL provided its expertise in a monitoring and advisory role to CWSC to ensure a consistent standard is applied to all the Council's trading companies.
3. There would be benefits in using the services of CCHL in applying the policy on appointment of the local authority appointed directors to Transwaste.

The Committee considered that, rather than CCHL providing its services to the Canterbury Waste Subcommittee, these services should be made available to the City Council for the purposes outlined in points 2 and 3 above.

- Recommendation:**
1. That the information be received.
 2. That CCHL provide its services to the City Council to assist with the review of the Statement of Corporate Intent, review of monitoring reports and such other matters as are necessary from time to time.
 3. That the Council appointee to the Canterbury Waste Subcommittee be selected in accordance with the Council's policy on the appointment of directors.