

7. ASSIGNMENT OF ONYX CONTRACT TO WASTE MANAGEMENT LTD

General Manager responsible:	General Manager City Environment, DDI 941-8656
Officer responsible:	Cit Water & Waste Manager
Author:	Tim Joyce, Manager Contracts Management

PURPOSE OF REPORT

1. The purpose of this report is to obtain Council approval for the assignment of the kerbside refuse and recycling collection from Onyx to Waste Management.

EXECUTIVE SUMMARY

2. The Onyx Group in Paris has decided to withdraw from activities in New Zealand. Onyx NZ has, as a result, entered in to a conditional agreement whereby Waste Management will purchase the assets and operations of the Onyx Group in the South Island.
 - All existing staff will be offered positions with Waste Management
 - There will be no difference in levels of service provided to the city
 - There are no Commerce Commission issues with this assignment
 - Other South Island Councils have already consented to the assignment (Waimakariri and Selwyn District)

FINANCIAL AND LEGAL CONSIDERATIONS

3. Ian Thomson, Christchurch City Council Solicitor, has met with John Buchan of Buddle Findlay (Solicitors) and the following is the considered legal opinion.
4. By letter, dated 23 January 2006, Onyx Group Ltd sought the Council's consent to an assignment to Waste Management NZ Ltd of the contract for the collection of refuse and recyclable materials, that Onyx has with the Council. The letter was co-signed by Waste Management NZ Ltd.
5. The contract clearly states that Onyx cannot subcontract performance of the services it provides, nor can it assign the contract to a third party. Initial advice from the Legal Services Unit, later confirmed by the Council's external legal adviser Buddle Findlay, was that this provision entitled the Council to refuse its consent and to require Onyx Group Limited to continue to carry out its obligations under the contract until it expires in April 2008. In simple terms, Buddle Findlay's advice was that the Council is quite within its rights to refuse the request and is under no obligation to give any reasons whatsoever. It does not believe that any court would intervene and overturn the Council's decision to refuse consent.
6. Whilst as a matter of contract law, the Council would be entitled to take this position, there are other options referred to in this report that need to be considered. The preferred option of Council staff is that the Council consents to the assignment, but that the contract is varied to include such changes as the Council has deemed desirable. The Council is legally entitled to take this approach.
7. Advice was sought from Buddle Findlay, with regard to any issues relating to the lessening of competition, if Waste Management NZ Ltd takes over the refuse and recyclable materials collection in Christchurch. Waste Management operates a private wheelie bin collection service in Christchurch, and holds 50% of the shares in Canterbury Waste Services Ltd. Canterbury Waste Services has an operational transfer station for commercial waste adjacent to the Council's Parkhouse Road waste complex, transports waste collected in Christchurch to the Kate Valley landfill, operates that landfill and holds 50% of the shares in Trans Waste Canterbury Ltd, the company that owns the landfill.
8. Buddle Findlay's view is that whilst Waste Management NZ Ltd is heavily involved in the waste industry, it would not be in any position to set prices or deter competition in that market if it were to take up the Council's contract for the collection of refuse and recyclable materials. The company could not be said to hold sufficient power in the market to undermine competition.

9. The advice received by the Council is that at this stage there is no need for concern, although the matter should be looked at again in 2008 when the current contract expires and a new one is awarded.
10. In summary, the legal advice provided to the Council is that:
 - (a) The Council has the right to refuse to consent to the assignment from Onyx Group Limited to Waste Management NZ Ltd.
 - (b) Consent may be granted, subject to particular terms and conditions that the Council has been able to negotiate into the existing contract.
 - (c) There are no anti-competitive issues at this stage.

STAFF RECOMMENDATIONS

It is recommended that the Council proceed with this assignment, as long as Onyx and Waste Management agree to a contract variation which incorporates the following terms. The change of terms would be effective from the date of assignment.

- (a) The contract bond is increased from \$150,000 to a minimum value of \$600,000 for the remainder of the contract.
- (b) Waste Management Ltd confirms in writing to CCC that staff transferring to Waste Management, who were ex CCC staff, will be entitled to their full retirement gratuity on retiring from Waste Management Ltd.
- (c) The "Real Recycling" brand shall be the only recycling brand advertised on the kerbside collection vehicle fleet used by Waste Management Ltd for this contract and that Waste Management Ltd will contribute actively to this brand as required under the current contract.
- (d) That Waste Management Ltd commits to trialing co-mingled collection of recyclable material.
- (e) The contract wording is modified to specifically detail that CCC owns all recyclable and black bag waste collected through this contract and that such waste must be delivered to and processed by Meta NZ at the CCC owned transfer stations at Parkhouse Road, Styx Road and Metro Place.
- (f) That CCC has an exclusive right to extend the duration of the contract on the same terms and conditions by up to 24 months to allow integration of collection contracts with any other waste initiatives that are pre-formulated in the final Waste Management Plan.
- (g) That Waste Management's offer of a new fleet of fifteen trucks in exchange for an extension of the current contract to late 2011 be declined.
- (h) Staff conclude commercial negotiations to facilitate a contract variation incorporating items (a) to (g) above.

BACKGROUND ON ASSIGNMENT OF ONYX CONTRACT TO WASTE MANAGEMENT LTD

11. Christchurch City Council signed a contract with Onyx Group Limited in May 1998. The Contract was for an initial term of five years and was then renegotiated for a further five years in 2003. The current contract expires in April 2008 and will not be re-negotiated. Although, an extension of between 12-24 months may be required to align collection services with waste initiatives that are agreed in the final Waste Management Plan.
12. Late in 2005 City Water & Waste staff became aware that Onyx Group was planning a strategic withdrawal from the NZ market.
13. The city was formally advised by an Onyx director on the 20 January 2006 that Onyx wished to assign the contract to Waste Management Limited. He also commented that the move has been driven by the parent company in France streamlining international operations.
14. Waste Management NZ Limited is the largest waste operator in New Zealand and is listed on the NZ Stock Exchange. The Council was recently engaged in a legal dispute with Waste Management over waste minimisation levies. Waste Management is no longer collecting levies for the Christchurch City Council.
15. Waste Management NZ Limited is currently in negotiations with TransPacific Industries Group Ltd (TPI) of Australia to merge their Australian and New Zealand operations. The merger proposal will see Waste Management moving into a wholly owned New Zealand subsidiary of TPI. TPI is an Australian company listed on the Australian Stock Exchange and has a current market capitalisation of A\$1.26 billion. In the financial year 2005 TPI had revenue of A\$483 million and EBITDA of A\$70.9 million. TPI has approximately 2,300 employees and operates in 130 centres in Australia and New Zealand. Waste Management is currently predicting no change to local management structures or customer service delivery should the merger proceed. It is anticipated that the merger will be concluded by the end of June 2006.
16. Christchurch City Council obtained legal advice from Buddle Findlay on its requirements to approve an assignment under the terms of the current agreement and to comment on any Commerce Commission issues that may arise from assignment to Waste Management. Advice on both issues is covered under paragraphs 3 to 10.
17. It is important that waste collected from this contract is delivered to the Meta NZ operated and Council owned refuse transfer stations. Any alteration to this arrangement could trigger a variation to the Meta NZ contracts with flow-on cost implications. By reinforcing CCC ownership of the waste and an obligation to dispose of this collected waste at CCC owned refuse transfer stations, CCC is securing Meta NZ's rights under their contract to CCC.
18. Waste Management have observed the current co-mingling trial being conducted by Onyx/CCC/TerraNova and support the concept of a co-mingled kerbside collection. Waste Management have proposed that rather than alter the existing Onyx truck fleet for co-mingled collection they propose purchasing 15 new trucks and extending the current collection contract to late 2011. Until such time as the Council confirms the direction and detail of the Waste Management Plan, it is considered premature to consider the introduction of a new fleet of trucks, that may or may not meet future kerbside collection and processing needs.

ASSESSMENT OF OPTIONS

The Preferred Option

19. Assign the Onyx Contract

	Benefits (current and future)	Costs (current and future)
Social	Waste Management is a NZ company with strong focus on waste collection and minimisation.	Cost neutral. Co-mingling trial may lead to improved health & safety on collection vehicles.
Cultural	Nil cultural impact. Contract would be run by New Zealand owned contract.	Cost neutral.
Environmental	Nil environmental impact	Cost neutral. Co-mingling trial may produce a minor benefit.
Economic	Nil economic impact	Cost neutral. Co-mingling trial may produce a minor benefit.
<p>Extent to which community outcomes are achieved: No change to existing. Primary alignment with community outcome of a Healthy City. Also contributes to a Safe and Prosperous City.</p> <p>Impact on Council's capacity and responsibilities: No change to existing terms and conditions of black bag and recyclable collections.</p> <p>Effects on Maori: Nil</p> <p>Consistency with existing Council policies: Yes</p> <p>Views and preferences of persons affected or likely to have an interest: No change to current level of service being provided by Council. Meta NZ Ltd will need to be advised of assignment in accordance with their contract.</p> <p>Other relevant matters: Nil</p>		

Maintain The Status Quo (If Not Preferred Option)

20. Maintain the status quo (non assignment). The Onyx parent company in France has decided to withdraw from operating in New Zealand. There would be no benefit to Christchurch City Council in opposing the assignment. It is likely levels of service may decline should Onyx have to work on a contract they didn't want, and lacking corporate support to maintain levels of client satisfaction.

	Benefits (current and future)	Costs (current and future)
Social	Nil	Cost neutral. Unlikely Onyx would proceed with co-mingling trial.
Cultural	Nil	Cost neutral.
Environmental	Nil	Cost neutral.
Economic		Cost neutral. Contract monitoring may consume more time with less cooperative contractor.

Extent to which community outcomes are achieved:
Primary alignment with community outcome of a Health City.
Also contributes to a Safe and Prosperous City.

Impact on Council's capacity and responsibilities:
No change to existing terms and conditions. Bond will not be increased.

Effects on Maori:
Nil

Consistency with existing Council policies:
Yes

Views and preferences of persons affected or likely to have an interest:
Nil

Other relevant matters:
No effect on Meta NZ Limited although Onyx likely to be less cooperative with TerraNova and Meta NZ operations.

SUMMARY

21. The Onyx parent company is committed to leaving the New Zealand market. They have reached agreement with Waste Management NZ Ltd to sell their South Island operations.
22. Current terms and conditions (including costs) will be maintained subject to the variations proposed by Christchurch City Council detailed in the staff recommendation. Assignment of the contract on this basis will ensure that our contracts with Meta NZ and TerraNova are not jeopardised.