

Dated (*Amended version 24 September 2002*)

2002

CONSTITUTING AGREEMENT

**ASHBURTON DISTRICT COUNCIL
BANKS PENINSULA DISTRICT COUNCIL
CHRISTCHURCH CITY COUNCIL
HURUNUI DISTRICT COUNCIL
KAIKOURA DISTRICT COUNCIL
MACKENZIE DISTRICT COUNCIL
SELWYN DISTRICT COUNCIL
TIMARU DISTRICT COUNCIL
WAIMAKARIRI DISTRICT COUNCIL
WAIMATE DISTRICT COUNCIL**

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CONSTITUTING AGREEMENT
CANTERBURY JOINT STANDING COMMITTEE

DATED:

PARTIES

The **ASHBURTON DISTRICT COUNCIL**, the **BANKS PENINSULA DISTRICT COUNCIL**, the **CHRISTCHURCH CITY COUNCIL**, the **HURUNUI DISTRICT COUNCIL**, the **KAIKOURA DISTRICT COUNCIL**, the **MACKENZIE DISTRICT COUNCIL**, the **SELWYN DISTRICT COUNCIL**, the **TIMARU DISTRICT COUNCIL**, the **WAIMAKARIRI DISTRICT COUNCIL**, and the **WAIMATE DISTRICT COUNCIL**, and their successors, all local authorities under the Local Government Act 1974 (collectively “the Councils” and individually “a Council”)

BACKGROUND

- A. Section 114S of the Local Government Act 1974 empowers the Councils to appoint a joint standing committee and sub-committee for any purpose in which the Councils are jointly interested.
- B. The Canterbury Joint Standing Committee (“the Committee”) was constituted to achieve regional co-ordination co-operation and commitment.
- C. 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 in Canterbury and have entered into a Regional Waste Management Agreement, a copy of which is attached as Appendix 1.
- D. 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.
- E. The Committee has joined with the Canterbury Regional Council to form the Canterbury Hazardous Waste Working Party, to investigate hazardous waste management issues on a regional basis.
- F. Some of the Councils, namely Ashburton, Banks Peninsula, Christchurch City, Hurunui, Selwyn and Waimakariri (collectively “the JV Councils” and individually a “JV Council”) own shares in Transwaste Canterbury Limited (“TCL”) which is a joint venture with Canterbury Waste Services Limited (“CWS”) concerned with the operation of a new Canterbury landfill and associated transport services (“the Landfill Joint Venture”). The JV Councils and CWS have entered into a Shareholders’ Agreement dated 31 March 1999 (“the Shareholders’ Agreement”) which sets out the principles under which the joint venture will operate. The JV

Councils are agreed that the Committee will represent the JV Councils' interests in the joint venture with CWS.

- G. This Constituting Agreement is in substitution for any earlier agreement between the same parties.

TERMS OF THIS AGREEMENT:

PART A – GENERAL

COMMITTEE

1. Pursuant to Section 114S of the Local Government Act 1974 the Councils shall appoint a joint standing committee which shall be known as the Canterbury Joint Standing Committee (“the Committee”).
2. The Committee shall consist of a maximum of twelve members as follow:
 - (a) three elected members of the Christchurch City Council;
 - (b) nine members made up of one elected member from each of the other Councils.

SUB-COMMITTEE

3. The Committee shall:
 - (a) appoint a sub-committee of the Committee (“the Sub-committee”) pursuant to section 114P(1) of the Local Government Act 1974;
 - (b) delegate to the Sub-committee all the functions, duties and powers delegated to the Committee by the Councils.
4. The Sub-committee shall report to the Councils at least annually on the exercise of the Sub-committee’s functions.
5. The members of the Sub-committee shall be appointed by the Committee and shall consist of a maximum of twelve members as follows:
 - (a) three elected members of the Christchurch City Council;
 - (b) nine members made up of one elected member from each of the other Councils.
6. The members of the Committee shall be, ex officio, members of the Sub-committee. If a Committee member declines to be on the Sub-committee, the Council that appointed that member shall appoint a replacement Sub-committee member.
7. Subject to clause 8, only elected members may be appointed to the Sub-committee.

8. Each Council may appoint up to two alternates for its Sub-committee member, one of whom may be an employee of that Council. The names of alternates must be notified in writing to the Sub-committee. No prior notice of attendance at a meeting by an alternate is required. An alternate shall be entitled to the same voting rights as the Sub-committee member for whom he or she is the alternate.

TERMS AND CONDITIONS OF ENTRY

9. The Councils may only allow other Councils to join the Committee (or Sub-committee) on such terms and conditions as are agreed unanimously by the Councils.

WITHDRAWAL OF COUNCIL

10. A Council may only withdraw from the Committee if that Council has complied with all of its obligations under this Constituting Agreement up to the date of withdrawal and agrees to satisfy its continuing obligations (if any) in a manner which is satisfactory to all of the remaining Councils.

REQUIREMENT TO RECONSTITUTE

11. Upon the members of the Committee and Sub-committee being discharged under section 114R(3) of the Local Government Act 1974 the Councils and the Committee shall forthwith take all steps and do all things that may be necessary to reconstitute the Sub-committee and to renew the delegations to the Committee and the Sub-committee.
12. For the avoidance of doubt the Councils declare their intention that the Committee and Sub-committee should continue to function after a triennial election with the same delegated functions, duties, powers and voting rights that existed prior to that election and notwithstanding any discharge under section 114R(3) of the Local Government Act 1974.

QUORUM

13. The quorum for a meeting of the Committee is all members present.
14. The quorum for a meeting of the Sub-committee is six members at least one of whom is a member appointed by the Christchurch City Council. An alternate shall be deemed to be a "member" for the purposes of achieving a quorum.

RESTRICTIONS ON COMMITTEE

15. The Committee shall not:
 - (a) appoint any sub-committee other than the Sub-committee;
 - (b) remove the delegations conferred on the Sub-committee by this Agreement;

- (c) cancel or vary any policy strategy or scheme agreed between all of the Councils, or any group within the Councils (including any financial incentive or disincentive, or any mechanism for the sharing of costs and revenues on an equitable basis either within the region as a whole or between parts of the region).
16. Nothing in clause 15(a) shall be construed as limiting the ability of the Committee (through the Sub-Committee) to enter into working party arrangements with any other body or local authority.

APPOINTMENT AND DISCHARGE OF MEMBERS

17. The power to discharge a member of the Committee or the Sub-committee and to appoint another in his or her stead, may only be exercised by the Council that made the appointment.

CHAIRPERSON AND DEPUTY

18. The Committee and the Sub-committee shall each appoint a chairperson (who must be an elected member appointed by the Christchurch City Council) and a deputy chairperson (who must be an elected member appointed by another Council other than Christchurch City Council).

MEETINGS/STANDING ORDERS

19. Meetings of the Committee, and the Sub-committee, shall be held at Christchurch (unless otherwise agreed) at such times as may be appointed and as are necessary for the performance of the functions, duties and powers delegated under this Agreement. The rules regulating the proceedings of the Committee and Sub-committee shall be those set out in NZS 9202:2001, "Model Standing Orders for Meetings of Territorial Authorities, Regional Councils and Community Boards" as varied in accordance with this Agreement. For the purposes of clause 25 of the NZS 9202:2001 the "principal administrative officer" means the City Manager of the Christchurch City Council or his delegate.
20. Any resolution requiring a decision on a matter of significance to be considered at a meeting of the Committee, or the Sub-committee, must be the subject of prior notice which ensures that each member is fully and fairly informed of the background and rationale for any proposal to be considered and the period of notice must be sufficient to enable every member to consult with his or her appointing Council.

VOTING

21. The Councils agree that clause 12.5 of Model Standing Orders NZS 9202:2001 is amended by adding the following clause.

"12.5(a) Notwithstanding clause 12.5 (which requires that the order paper and attachments be sent to all members) where the order paper details

business relating to the Landfill Joint Venture, and that business is for discussion in public excluded session, the order paper and its attachments for that part of the meeting shall be sent only to members representing the JV Councils only.”

22. Notwithstanding anything to the contrary in Model Standing Orders NZS 9202:2001 voting at meetings of the Committee or the Sub-committee shall be:
- (a) in respect any of matter where the decision relates to the setting of policy (excluding, for the avoidance of doubt, matters relating to the Landfill Joint Venture) and/or a commitment to expenditure:
 - (i) by the members appointed to represent the Christchurch City Council, three votes (which votes may only be cast as a block and may not be split);
 - (ii) by the members appointed to represent the other Councils, one vote each;
 - (b) in respect of any matter delegated by any one or more of the Councils on the basis that a specified voting regime will apply, in accordance with that specified regime;
 - (c) in respect of matters relating to the Landfill Joint Venture as follows:
 - (i) the members appointed to represent the Christchurch City Council shall be entitled to 50% of the votes able to be cast on any resolution (which votes may only be cast as a block and may not be split);
 - (ii) the members appointed to represent the other JV Councils, one vote each;
 - (d) in respect of all other matters, on the basis of one vote per member.
23. To the extent that it may be necessary all of the Councils shall procure an amendment to their standing orders to permit voting on the basis set out in clause 22.

CASTING VOTE

24. In all cases where there is an equality of votes the chairperson shall have a casting vote. Where a casting vote is to be exercised the following principles shall apply:
- (a) the casting vote is to be used in the best interests of the Canterbury community represented by the Councils considered together;
 - (b) the casting vote is to be used in the best interests of the Councils considered together;
 - (c) the Committee members shall use their best endeavours to avoid use of a casting vote, by obtaining consensus;
 - (d) the casting vote shall not to be used unreasonably in favour of any one Council.

DELEGATIONS

25. All delegations made by the Councils to the Committee shall record the functions, duties and powers that have been delegated in writing and may set out:
- (a) the extent to which the Council may be bound in respect of those delegated functions, duties and powers that are delegated;
 - (b) the limit (if any) to which the Council can be committed to expenditure of funds in pursuance of those delegated functions, duties and powers;
 - (c) the circumstances in which (if any) the Council can withdraw those delegated functions, duties and powers in whole or in part;
 - (d) the rules of voting to apply to the Sub-committee.
26. Subject to prior compliance with clause 25 in respect of any delegation proposed by this clause 26, the Councils agree to delegate to the Committee the requirement to develop a draft regional waste minimisation strategy, which it is agreed, will comprise part only of each Council's responsibilities under Part XXXI of the Local Government Act 1974. Once the Committee has completed the draft strategy plan and the strategy plan has been adopted by the Councils, it is anticipated (without imposing any binding obligation on the Councils) that further delegations from the Councils will be required in order to implement the strategy plan. If any such delegation of functions, duties or powers by a Council could potentially bind another Council in any way, the consent of that other Council must be sought prior to such delegation. If the consent of any of the Councils cannot be obtained prior to that delegation a Council which has not consented shall not be bound by any act performed by the Committee pursuant to that delegation. For the avoidance of doubt it is agreed that:
- (a) As a first step a regional waste minimisation strategy will be developed for approval by the Councils. Subsequent to the adoption by the Councils of the strategy developed by the Committee, it is contemplated (without imposing any binding obligation on the Councils) that the Councils will delegate further responsibilities to the Committee in order to implement the strategy. Matters to be considered by the Committee in the formulation of that strategy extend to include appropriate methods to fund the strategy, including the use of regional financial incentives and disincentives.
 - (b) Nothing in clause 26 shall have the effect of preventing any one or more of the Councils co-operating or acting jointly to resolve mutual solid waste management problems, or to implement solid waste management strategies, on a local (rather than regional) basis.
 - (c) The regional waste minimisation strategy contemplated by this clause 26 will be reviewed by the Councils on an annual basis.
27. In addition to the obligations under clause 26 and subject to prior compliance with clause 25 in respect of the delegations proposed by this clause 27, the JV Councils agree to delegate to the

Committee all matters relating to participation in the Landfill Joint Venture for the purposes of selecting, developing, owning and operating a Canterbury regional landfill and associated transport and collection systems (transfer stations to the landfill only), including without limitation:

- (a) performing the obligations of the JV Councils under the Shareholders Agreement;
 - (b) exercising the voting rights attached to TCL shares held by the JV Councils;
 - (c) appointing nominee directors to the board of TCL;
 - (d) considering the issues in relation to any scheme for the equalisation of transport costs between the JV Councils and if appropriate, developing such scheme;
 - (e) appointing the JV Councils' representatives at TCL shareholders' meetings.
28. Notwithstanding any statutory power to do so the JV Councils shall not revoke the delegations to the Committee and Sub-committee referred to under clause 27 until TCL is liquidated. By contrast, it is agreed that a Council will be entitled to revoke at will any delegation to the Committee referred to under clause 26, subject always to compliance by the Council concerned with all of its obligations in respect of such delegation up to the date of revocation.
29. Pursuant to Section 4 of the Public Bodies Act 1959 the Councils agree to delegate for the purposes of performing the functions, duties and powers set out in clauses 26 and 27 the power to enter into contracts to a maximum value for any one contract of \$300,000.00 for expenditure contemplated by a budget submitted under clause 33, as approved by the Councils.
30. The Councils waive the need to require a report in respect of the exercise of the right of delegation under clause 29 if the value of the contract does not exceed \$100,000.00 for expenditure contemplated by a budget submitted under clause 33, as approved by the Councils.
31. The values stated in clauses 29 and 30 are GST exclusive values.
32. All contracts for the commissioning of reports entered into by the Committee shall provide that ownership of copyright in those reports to vest in the Councils jointly.

FUNDING

33. No later than 31 October in each year the Committee will provide to the Councils, and as appropriate to the JV Councils, a budget of projected expenditure, based on the regional waste minimisation strategy developed by the Committee, for the financial year commencing on the next following 1 July in respect of those matters delegated by the Councils and the JV Councils and consistent with the funding allocations of each Council and, as appropriate, each JV Council in respect of such delegations, as declared to the Committee on or before 30 September in the year in question by each Council and, as appropriate, each JV Council.

34. Each Council shall ensure that:
- (a) it makes adequate provision for financial commitments entered into by the Committee or the Sub-committee in accordance with the budgets provided under clause 33, or powers and duties delegated under this Agreement;
 - (b) pays its due proportion of all such expenditure on the due date for payment, without deduction or set off.
35. The costs of funding the JV Councils' share of the Landfill Joint Venture shall be borne solely by the JV Councils in the proportions set out in the Shareholders' Agreement. In no circumstances shall a Council which is not a JV Council be liable to contribute such costs and the JV Councils shall indemnify and keep indemnified, the other Councils accordingly.
36. The costs of funding any other waste management initiative, unless otherwise expressly agreed at the time, shall be borne by the Councils in proportion to population, as adjusted by the five yearly census review. As at 2001 the proportions were:

Council	Population (2001 census)	%
Christchurch	316230	65.9
Waimakariri	36900	7.7
Hurunui	9880	2.1
Selwyn	27300	5.7
Ashburton	25450	5.3
Banks Peninsula	7500	1.6
Kaikoura	3480	0.7
Waimate	7100	1.5
Mackenzie	3720	0.8
Timaru	41970	8.8
TOTAL	479530	100

ADMINISTRATIVE COSTS

37. The Christchurch City Council agrees to provide such management, administrative, secretarial and accounting services as the Committee and Sub-committee shall reasonably require at no cost to the other Councils. Nothing in this clause shall prevent any Council agreeing to make a contribution towards those costs. For the avoidance of doubt, where the Christchurch City Council is directed to source any such services (ie other than from its own staff) the costs incurred shall be recoverable from the Councils under either clause 35 or 36, as appropriate.

GOOD FAITH NEGOTIATIONS

38. In the event of any circumstances arising that were unforeseen by the Councils at the time of entering into of this Agreement or in the event of a dispute in any way relating to this Agreement the Councils will negotiate in good faith to resolve that dispute or to add to or vary this Agreement in order to resolve the impact of those unforeseen circumstances in the best interests of:
- (a) the Councils represented on the Committee considered together; and
 - (b) the best interests of the Canterbury community represented by the Councils considered together.

ARBITRATION

39. Any dispute arising out of the interpretation of this Agreement, including any question regarding its existence, validity or termination, which cannot be resolved by good faith negotiations under clause 38 shall be referred to arbitration.
40. If the Councils are unable to agree upon the appointment of a single arbitrator within 10 working days of the receipt of written notification of the desire of a party to have a dispute arbitrated, or if any arbitrator agreed upon refuses or fails to act within 10 working days of his or her appointment, then any party may request the President for the time being of the Canterbury District Law Society to appoint an arbitrator and the arbitration shall be carried out in accordance with the Arbitration Act 1996. For the purposes of this clause "working day" has the meaning attributed to those words in Section 2 of the Resource Management Act 1991.
41. In this clause time shall be of the essence and the Councils agree to be bound by any arbitration decision, determination or award.

Service of Notices

42. Any notice required to be served under this Agreement may be served in the manner provided in Section 152 of the Property Law Act 1952 and in any event shall be deemed to be served if actually received.
43. A notice under clause 42 must be addressed:
- (a) In the case of the Christchurch City Council, the Committee or the Sub-committee, for the attention of the Legal Services Manager at the Civic Offices, 163 Tuam Street, Christchurch (PO Box 237);
 - (b) In the case of every Council other than the Christchurch City Council, for the attention of the Principal Administrative Officer of the Council to whom the notice is addressed, to that Council at its principal administrative office.

PART B – LANDFILL JOINT VENTURE ISSUES

HOLDING OF TCL SHARES

44. The JV Councils shall continue to hold 50% of the equity securities of TCL in the proportions in which they subscribed for those shares, being the proportions set out below:

Council	Population (1996 census)	%
Christchurch	314000	75.5
Waimakariri	32100	7.8
Hurunui	10000	2.4
Selwyn	25000	6.0
Ashburton	25000	6.0
Banks Peninsula	8700	2.1
TOTAL	414800	100

45. Each JV Council will fund the capital requirement of TCL from time to time as required by the Shareholders' Agreement, in proportion to their shareholding in TCL.
46. The JV Councils must appoint their representatives on the Sub-committee as their representative at TCL shareholders meetings in accordance with the Companies Act 1993 and TCL's constitution.

TRANSFER OF TCL SHARES

47. Subject to the terms of this Agreement, in the event that a JV Council for any reason wishes to transfer any equity securities of TCL, those equity securities shall be offered at fair value to and purchased by the remaining JV Councils in proportion to their existing shareholding in TCL at a fair value.
48. If the JV Councils cannot reach agreement on a fair value then the fair value shall be fixed by a single valuer (if the JV Councils can agree on a single valuer) or otherwise by two valuers (one appointed by the transferring JV Council and one appointed by the other JV Councils) and an umpire appointed by such valuers before entering into the determination of such fair value.
49. Such valuer (if one is agreed on) or such umpire shall certify the sum that is in his or her opinion the fair value of the equity securities and in giving such an opinion shall be considered to be acting as an expert and not as a valuer. The provisions of the Arbitration Act 1996 shall not apply and the value of the equity securities shall not be the subject of arbitration.

- 50. Immediately following the determination of the fair value the transferring JV Council shall be obligated to transfer, and the other JV Councils shall be obligated to purchase, the equity securities at the fair value, pro rata in accordance with their current shareholding.
- 51. Clauses 47-50 shall not apply to a transfer of equity securities of TCL held by a JV Council if the equity securities are transferred with the consent of at least 75% of the votes of the JV Councils to any one or more of the other JV Councils.

EFFECT OF COUNCIL AMALGAMATION

- 52. Subject to the effect of any statutory or regulatory provision that governs the re-organisation of local authorities, if a JV Council is to amalgamate, merge or join with a local authority that is not a party to this Agreement, and the local authority that is not a party to this Agreement is to be the continuing body:
 - (a) if the JV Councils unanimously agree, that local authority shall enter an agreement with the JV Councils on the same terms as this Agreement (except for adjustment of clause 36 to reflect amended population statistics) and the equity securities held by the JV Council so amalgamating, merging or joining shall be transferred to that local authority; or
 - (b) the equity securities held by the JV Council so amalgamating, merging or joining shall be offered to and purchased by the remaining JV Councils on the terms and conditions set out in clauses 47-51.

EXECUTED by the Councils on the date set out above

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

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COUNCIL)
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