

3. SOLID WASTE RMF PROPOSAL

Officer responsible General Manager City Environment	Author Jane Parfitt, DDI 941 8656
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INTRODUCTION AND KEY POINTS

1. Introduction

The purpose of this report is to describe in detail the revised proposal from the Recovered Materials Foundation (RMF) which the Council received in response to its Request for Information in August 2003.

After describing the proposal in detail, the report addresses risks and mitigating strategies, comments on structural issues around the RMF and Transwaste, and implications for City Care.

Finally the report describes the process under the Local Government Act 2002 which we are required to go through to identify and evaluate options. The need to go through a Special Consultative Procedure is noted and an outline of "what happens if this proposal is not agreed" is included.

The Deloitte Report, the proposal document from the Recovered Materials Foundation, and the bylaw report are attached as appendices.

The following are some key points:

2. Key Points

- The formation of Transwaste in 1998 to identify the site for, develop, operate and own a new regional landfill was the commencement of major changes to waste management in Canterbury. The new landfill will be at Kate Valley and is due to open in May 2005 when the resource consent for the operation of the Burwood landfill expires.
- To meet a range of Solid Waste services and objectives, in August 2003 Council sought proposals based on three community outcomes:
 - Improved efficiencies in the management of the waste supply chain.
 - Improved waste minimisation outcomes.
 - Involvement of the commercial waste operators in a partnership approach.
- As a number of proposals were received and investigated thoroughly. At the end of this process the preferred proposal was that from the RMF based on:
 - A commercial waste sorting and consolidation facility being developed by Canterbury Waste Services (CWS) on land at Parkhouse, adjoining, and utilising the current waste pit building. This will provide for commercial operators who wish to pay to use this facility.
 - A public resource recovery facility at Parkhouse operated by the RMF utilising the balance of the site.
 - The RMF will partner with Onyx to operate a similar model at Metro and Styx.
- If this proposal is accepted, City Care would exit from its current waste contracts.
- There are some risks with this proposal; these together with mitigating strategies are covered in detail in section 4 of this report.
- The Local Government Act 2002 requires that we identify all options for the achievement of decisions and in doing this we consider, costs, community outcomes, capacity issues and any other relevant matters. A comparison of the two options available to us (the revised RMF proposal or "do nothing") clearly shows that the RMF proposal is the best option and meets Council's objectives for waste minimisation and disposal.
- If adopted, this proposal must then go through the Special Consultative Procedure. Given the timing of the opening of the new landfill (and the closure of Burwood) this exercise must be completed by December.

- Change is inevitable. New opportunities, created by the high disposal and transport costs at Kate Valley mean that if the Council does nothing, CWS will go ahead and set up their own operation. This will provide the opportunity for commercial operators to divert from CCC to other facilities and Council influence will reduce. At the same time there will be less incentive for a waste recovery model operating together with commercial operators. In addition, City Council refuse stations will become less efficient.
- The recommendations reflect the conclusion that the RMF proposal should be put out for public consultation and that Council must make a final decision by December.

BACKGROUND

1. Kate Valley Regional Landfill

Transwaste was formed in 1998 as a joint venture between local councils and a private operator to identify the site for, develop, operate and own a new regional landfill. The new Kate Valley landfill is due to open in May 2005 when the resource consent for the operation of the Burwood Landfill expires. In preparation for the changes which the higher charges from the new landfill will trigger and consistent with Council's waste minimisation strategy, Council gave approval for proposals to be sought from the market place to meet Council's solid waste stream services and objectives.

2. RFI for Solid Waste - August 2003

In August 2003 the Council put out a request for information (RFI) to meet a range of Christchurch City Council solid waste stream services and objectives.

The key drivers (community outcomes) for seeking requests for information were:

- Improved efficiencies in the management of the waste supply chain (collection, recycling, processing, refuse station management, compost plant management) and therefore lowered costs.
- Improved waste minimisation outcomes particularly from greater opportunities for waste sorting at the refuse stations through involvement of commercial partners interested in carrying out this activity.
- Involvement of the commercial waste operators in a partnership approach to management of waste services, thereby reducing the risk to the Council of the easily sorted commercial waste stream being diverted from its refuse stations. This would be likely to result in a considerable loss of the efficiency of the Council's own stations.

3. Responses to the RFI - February 2004

Seven responses were received to the RFI process. The Council considered these responses in February 2004.

Three of those submissions (Global Renewables, Living Earth, and R5 Solutions) related either to partial processes, or new technologies, and the Council resolved that these were "not preferred suppliers for this RFI".

Two of the responses (Onyx and Canterbury Waste Services) had some similarity and compatibility with the proposal received from the Recovered Materials Foundation, and these became considered as part of a modified RMF proposal.

City Care proposed a solution which maintained the waste collection and management functions as a "controlled natural monopoly", delivered by a single supplier (City Care). The Council resolved to "*commence discussions with City Care on the detail of their model*". The Council also resolved to explore the implications of terminating the current City Care Refuse Station contracts"

The Recovered Materials Foundation (RMF) proposed a solution which involved separate commercial waste operators running each of the transfer stations, under a contract to the RMF, who in turn would have a lead contract with the Council. The proposal also included the RMF managing the Onyx kerbside collection contracts. The Council resolved to;

"work through the detail and implications of the proposed structure with the RMF (including costs and legal issues). RMF would concurrently be working with Onyx, IBOC and CWS, and will be required to provide details of how they intend to resource and implement their proposal"

4. Consideration Of RMF And City Care Proposals – April 2004

In April 2004 the Council considered a report on the further exploration of RMF and City Care proposals.

RMF, together with Canterbury Waste Services (CWS), submitted a modified proposal, which in summary had the Parkhouse and Metro transfer stations being divided into two independent but mutually supporting operations.

One would be a commercial sorting and consolidation operation providing services to commercial waste operators. That operation would be established and run by CWS at Parkhouse and at Metro, on land leased from the Council.

The other would be a domestic sorting operation providing services to domestic and casual users. This would be run by the RMF, with land and facilities leased from the Council.

It was also proposed that Onyx would run the transfer station at Styx, in conjunction with the RMF.

The Council, at a seminar and a Sustainable Transport and Utilities Committee, received a presentation and a report, which described the proposal in some more detail (although it was at an early stage in its development), and some advantages and disadvantages.

City Care also submitted a modified (new) proposal. This suggested a joint venture between City Care and RMF for the operation of what is essentially described as the domestic sorting operation in the RMF proposal. To be achievable, however, this proposal required both City Care and the RMF to agree to the joint venture, and agreement between the two organisations was not possible. CWS also expressed opposition to such a proposal.

5. Council Resolutions - April 2004

At the April Council meeting, the Council passed the following resolutions;

- “1. *That the Council acknowledge that the Recovered Materials proposal appears to be the best solution from the ‘request for information’ process to meet the Council’s waste management objectives.*
2. *That the Council note that there is a considerable amount of work still to be done on this proposal.*
3. *That Council staff work through the details of this proposal with the Recovered Materials Foundation and its partners, with the aim of a developed proposal being considered by the Sustainable Transport and Utilities Committee and the Council in July 2004.*
4. *That it be noted that the development proposal, if adopted by the Council, will need to be the subject of a special consultative procedure.*
5. *That staff include an assessment of any risks associated with the Recovered Materials Foundation proposal and recommend mitigating strategies to address these.*
6. *That as part of that detail, Council staff begin discussions with City Care on the consequences of cancelling the current City Care Refuse Station and green waste contracts, should that be necessary.*
7. *That in the meantime the Council agree to the negotiation of a lease of the Wilder yard site to Canterbury Waste Services.*
8. *That staff explore whether it is appropriate to develop a bylaw to license refuse stations and waste sorting facilities.”*

REVISED RMF PROPOSAL

1. Overview

Since the April meeting, RMF and CWS and their advisers, together with Council officers, have been working on the details of a revised RMF proposal. Onyx has also been involved in discussions. This has included developing a financial model to understand the impacts of the proposal, and its robustness to changes in assumptions. The revised proposal is set out in the proposal from the RMF, which is attached as an appendix.

The Council employed Deloitte to do a peer review of the RMF revised proposal, and particularly to comment on the financial sustainability of the proposal, and the conditions that the Council would need to include in a contract with RMF. The brief to Deloitte also sought input on the structure of RMF and the Council's relationship with it, the impact of the removal of City Care from its transfer station roles, any issues around the Transwaste structure, and a risk management review. The Deloitte report is also attached.

The revised proposal now being presented to the Council has gone through a number of iterations and options. What is now being presented has the support of RMF, CWS and Onyx. In summary the proposal now involves

- A commercial waste sorting and consolidation facility being developed by CWS on land at Parkhouse, adjoining, and utilising, the current waste pit building. This will provide for the loads collected by both Waste Management and Envirowaste, and other commercial waste operators who wish to pay to use this facility.
- A public resource recovery facility at Parkhouse operated by the RMF, utilising the balance of the Parkhouse (and Wilder) site, with public residual waste being deposited into part of the commercial waste sorting and consolidation pit, under an agreement between CWS and the RMF.

Under this arrangement, the public would enter the Parkhouse site at the same entrance as they have previously, and proceed to the recycling area, which would be reconfigured to enable higher rates of waste diversion than currently occurs. (See RMF proposal, for more detail) Customers would then proceed to the north east side of the old pit to tip residual waste. Greenwaste would also be tipped into the pit on the same side, but into a separately designated area. Exit from the site would be via the ex Wilders yard, and Kilonan Place. Council's Traffic engineers do not think this new exit route would present any problems.

Commercial operators would both enter and leave the site on separate lanes located at the current "out" gate. They would deposit their waste in the new CWS facility immediately adjacent to the south western side of the old pit. The CWS facility would also contain bins for depositing recyclables, sorted out from the refuse dumped on the tipping floor.

2. Viability Of RMF Domestic Operation

The principal issue with the RMF proposal is whether the domestic part of the operation run by the RMF is financially viable while retaining fees and charges generally at the current levels (\$100 a tonne for unsorted rubbish). It is assumed that the total tonnage going through the domestic operations will reduce significantly, to as much as one half of current tonnages.

The financial modelling shows that at those levels it is still a viable operation. The main reasons for that are:

1. RMF is expecting some reductions in costs of operating the transfer stations, because of the way it will run them, and because of the need not to make any profit on this part of the operation.
2. There will be greater levels of diversion of material for recovery. Every tonne not sent to Kate Valley saves the transport and dumping costs, and the waste minimisation levy (total \$81.50 per tonne).
3. There will be extra income from sale of recovered goods.

These conclusions are based on a number of assumptions, and the actual situation could be worse than predicted. The Council may well have to consider in the future whether the current level of service to the domestic user can be maintained into the future (hours of operation, number of transfer stations, level of charges) without some future subsidy from the ratepayer.

The viability of these operations are peer reviewed in the Deloitte report.

3. Operations at Metro & Styx

The proposal is for the RMF to partner with Onyx to operate at Metro and Styx. As a consequence of the proposal, City Care would exit from its current waste contracts; this is discussed in Section 6 below.

4. Black Bags

The RMF proposal assumes that, at least to start with, the kerbside collected black bags would continue to be processed through the domestic part of the refuse stations, ie, the part managed by the RMF. This is something that Council can choose to do, without having to go to tender on. In terms of adding to the potential viability of the RMF's proposal, and therefore reducing Council's risks, a decision to commit the bags to the domestic part of the operation should be made.

RISKS AND MITIGATING STRATEGIES

1. Contract with RMF

As stated in 4.5 below, one of our major risks is to maintain appropriate Council control and influence. Therefore one of our most important mitigating strategies is how we structure our contract with the RMF. The Deloitte report recommends the following:

“Should the Council proceed with the RMF proposal (in its current or a modified form), it will be necessary for the Council and RMF to enter into a contract for the provision for services. A contract between Council and RMF, apart from the property lease agreements, will give Council more control over this arrangement. The contract could include the following terms:

- *Note that Council is contracting RMF to operate public transfer stations, with a high focus on recycling, diversion and reuse.*
- *Set minimum standards relating to:*
 - *Opening hours*
 - *Target levels of recycling*
 - *Resource concession requirements*
- *Include some form of influence or consultation on the setting of public pricing. Though pricing needs to be a factor under the control of the operator, the price for dumping refuse is a factor that the public of Christchurch would expect Council to have some influence on. A possible arrangement is:*
 - *RMF is a not for profit organisation, but needs to operate prudently and target a small level of surplus to provide for security of RMF operations. Therefore RMF should be required to operate the transfer stations efficiently with a targeted, but not excess, level of surplus.*
 - *If RMF believes it needs to increase the gate prices at the transfer stations, it will advise and consult with Council.*
 - *Council may choose to use some of the Waste Minimisation or other levy or rate funding to subsidise public prices if it believes it is appropriate or required.*
- *Include a level of reporting to Council on levels of achievement in financial and waste minimisation terms, and whether this is in line with plan. RMF's annual reports are publicly available, so RMF should have not issue with this requirement.*
- *Include some form of gain sharing so the Council can benefit from surpluses generated from the increased recycling.*
- *The contract and lease should not be transferable without Council agreement, such agreement to be absolutely at Council's discretion. This is to give Council some control over who delivers this service over what is expected to be a long contract period (Ten years plus a ten year right of renewal).*

- *RMF is likely to require that the current Council domestic collection waste (black bags) continued to be processed through the public transfer station facilities. The loss of this volume to the commercial facility has a significant impact on expected viability.*

A key to the contract is that it focuses on Council's objectives of waste minimisation. Therefore the arrangement needs to incentivise maximum recycling and minimise the transfer of residual waste to landfill for all parties.

The RMF charter is consistent with these objectives. In addition the proposed arrangement with RMF does encourage maximum recycling and minimisation of transfers to landfill, as revenue increases with increased recycling, costs reduce with the minimisation of transfers to landfill, and therefore operational viability improves."

2. Council Bylaw

Council resolved in April 2004 (refer clause 2.4 this report): *That staff explore whether it is appropriate to develop a bylaw to license refuse stations and waste sorting facilities.*

Staff have considered this issue and concluded that whatever decision the Council makes arising from this report, it is necessary for the Council to consider preparing a bylaw in relation to the operation of transfer stations/waste sorting facilities. The bylaw would have two main purposes. The first relates to the collection of the waste minimisation levy, and the second relates to encouraging waste minimisation.

The preparation of a bylaw is the subject of a separate report to the Sustainable Transport and Utilities Committee in August, and a further report containing the draft bylaw will be put to the committee in September. It is repeated that this bylaw is needed whatever decision the Council makes on this report.

3. Leasing of Sites and Assets

The current proposal (see attached plan) is that at the Parkhouse site, CWS will have a lease of the area of land that they require, with the balance of the site leased to RMF. The majority of the Council's assets are in the area to be leased by RMF; however the asset with the highest value, being the 'pit' would be within the CWS lease area.

Whichever methodology was applied to the Parkhouse Rd assets would need to be applied to the Metro and Styx sites.

Any lease entered into will be based on a normal commercial leasing basis, at a market rate as determined by independent Property Valuers. The market rent on assets for the type of assets that are on this site are generally based on a return on capital.

4. Fees and Charges

It will be important that the RMF has the right to ultimately set the fees and charges for use of the domestic transfer stations. To do otherwise would limit the ability of the RMF to actively manage the operation in the most efficient and effective manner. However, the Council will want to have some ability to have an input into those fees and charges, so that the interests of the domestic users of the transfer stations are considered. This will need to be developed as part of the contract arrangements with RMF, and it is expected that it will involve agreements re level of service, fair level of surplus, and open book arrangements. Note that there is in any case only limited scope for setting the fee. With Kate Valley charges at about \$71.50 per tonne, and the Waste Minimisation levy at \$10 per tonne, the portion that the RMF would actually control would be their own operational costs which they currently assess as being between \$15 and \$18 per tonne (all figures excl GST).

5. Council Control and Influence

Leaving aside hardfill disposal at cleanfills, home composting etc, and commercial recycling, Council's traditional control of the City's waste stream has been over the approximately 240,000 tonnes per annum of general refuse passing through the Council's refuse stations to Burwood landfill. To date no commercial operators have attempted entering the refuse station market in competition with Council. We believe that this is because Council has had control of Burwood landfill, and actual landfill costs have been low. Any competitor in the refuse station field would

therefore have felt vulnerable to Council adjusting its own refuse station fees downward, which it could have done since its costs were considerably lower than its revenue.

However, with the new landfill and transport fees already set at levels that will not be less than \$70 per tonne, the risks for competitors entering the market are much less. Not only can operational savings be made by sorting reusable material and not sending it to Kate Valley, but also there is no risk of the Council (or any other refuse station operator) paying a lower disposal fee at the landfill.

Therefore, whatever Council decides as a result of this report, it must be understood that Council's influence over the 240,000 tonnes of waste it used to control, has already considerably reduced. Whether or not Council accepts the proposals from the Solid Waste RFI, Council will only retain control over the non-commercial portion of that 240,000 tonnes. With respect to influence over the commercial portion, Council will have no control over the gate fee, but if this proposal is accepted it can retain, through the RMF, some influence over waste diversion outcomes.

6. Vertical Integration

There is a risk that CWS will capture more and more of the market, because of their vertical integration and size. This is a risk whatever happens, and a partnership with RMF at least keeps the RMF in a stronger position to receive diverted refuse material. The presence of Onyx at the other two stations also helps mitigate this risk.

7. Cost Control at Domestic Transfer Stations

There is a risk that RMF will not be able to run the three domestic transfer stations at reasonable cost. This is a real risk if the volume through these transfer stations drops to uneconomic levels. The mitigation measures may need to include agreeing reduced hours (during the week for example), closing of one or more of the facilities, or Council subsidising the cost to domestic users. Keeping the black bags going through these facilities (paid for by the Council) will help keep up the volumes.

8. "Cherry Picking"

There is a risk that CWS will "cherry pick" the easily and financially viable divertible material, and leave the less useful to the RMF. The degree to which this will happen will be influenced by the relationship between RMF and CWS. This can be strengthened by the requirements of the proposed bylaw (see section 4.2 above). Preventing "cherry picking" would allow the RMF to subsidise diversion of less economic materials with revenue from higher value materials, and therefore achieve higher waste diversion rates. The licensee (in this case CWS) would still gain the benefit of not sending material to Kate Valley (\$81.50 per tonne) for all material which they removed from the waste stream.

The ability of the RMF to be innovative in finding markets and products for materials that would otherwise be disposed of, will remain important.

STRUCTURE OF RMF AND TRANSWASTE AND RELATIONSHIPS WITH CHRISTCHURCH CITY COUNCIL

1. RMF

Section 4 in the Deloitte report covers the RMF. The RMF is a charitable trust. The Christchurch City Council, along with others, was involved in setting up the Trust to which the Council appoints two of the seven trustees and also provides funding to the Trust. The Trust is not a Council controlled organisation, because fewer than half of the trustees are appointed by the Council.

Deloitte does not suggest any changes to the current arrangement. Council's influence is in the two trustees that it appoints, the funding that it provides, and any contracts that it enters into with the trust (such as is contemplated in this proposal). It has no ability to change the structure of the RMF. Deloitte does make some suggestions about the RMF forming a charitable company for some of its operations (such as the proposed domestic transfer station). The RMF is considering that option.

2. Transwaste

Deloitte was also asked to consider the Transwaste structure, governance documents, and arrangements, and comment on any consequences of those on this proposal. This can be found in Section 6 of their report. Its comments are set out in their report. The main comment is the level of current, and now potential, integration (ref 4.6 above) in the solid waste stream. This is the most significant issue and risk with the implementation of this proposal. However, with CWS only operating from the Parkhouse site, and with other opportunities at the other two sites, those concerns have been reduced.

CITY CARE ISSUES

If Council proceeds with the RMF proposal it will be necessary to negotiate an exit from the current contract with City Care for the operation of the three transfer stations. This contract currently runs to 2008, with a right of renewal (on new terms suitable to the situation in 2008) for another 5 years.

It should be noted that Council officers have explored all possible options for retaining City Care's involvement. All parties including City Care now accept that the best course of action if the proposal proceeds is for City Care to exit its current contracts. This means that a compensation package will have to be negotiated with City Care.

The RMF have agreed to take any City Care staff that want to transfer to the RMF run operation on their current terms and conditions.

THE OPTIONS AVAILABLE TO THE COUNCIL

Section 77 of the Local Government Act 2002 requires the Council to identify all reasonably practicable options for the achievement of the objectives of this decision, and to assess those options by considering:

- i. the benefits and costs of each option in terms of the present and future social, economic, environmental, and cultural well-being of the district or region; and*
- ii. the extent to which community outcomes would be promoted or achieved in an integrated and efficient manner by each option; and*
- iii. the impact of each option on the local authority's capacity to meet present and future needs in relation to any statutory responsibility of the local authority; and*
- iv. any other matters that, in the opinion of the local authority are relevant*

Having considered all of the proposals put before the Council through the RFI process and as a result of the investigations carried out by Council officers it is believed that the following are the options now available to the Council.

1. Proceed with the revised RMF proposal, which will result in agreed arrangements between RMF and CWS at the Parkhouse site, and agreed arrangements between RMF and Onyx at Metro and Styx; City Care will exit its current contracts.
2. Not proceed with the revised RMF proposal, leave CWS to set up its waste sorting facility elsewhere, and retain the current transfer stations operated by City Care.

The following table compares the two options. An expanded version of the text is included as an Appendix.

Comparison Of Two Options

	Revised RMF Proposal	Do Nothing
Benefits	<ul style="list-style-type: none"> ▪ an inclusive, partnering approach ▪ potential efficiencies for commercial operators ▪ waste minimisation focus ▪ Onyx at Metro and CWS at Parkhouse encourages competition ▪ Recovery operation at all three sites ▪ redesigned stations leading to efficiencies and waste minimisation gains ▪ separation of commercial operation (at Parkhouse) means greater access, improved traffic flows and levels of service 	<ul style="list-style-type: none"> ▪ leaves the market to decide future of transfer station and waste sorting facilities ▪ Council retains control of its three transfer stations ▪ no change to City Care arrangements (therefore no compensation <u>now</u>) ▪ reduces CWS potential for vertical integration
Costs	<ul style="list-style-type: none"> ▪ separation of commercial operators means reduction in waste and therefore income. Risk of financial viability of running three stations ▪ vertical integration (waste collection and disposal) of CWS may undermine viability of other waste collection operators ▪ council loss of control of waste stream through transfer stations (note - Kate Valley would have this effect anyway) ▪ "Cherry Picking" possible but partnership should address 	<ul style="list-style-type: none"> ▪ waste through three CCC stations will reduce by up to half – therefore less revenue ▪ no significant cost reduction ▪ RMF waste diversion philosophy won't apply to other stations ▪ Less incentive to divert material from CWS commercial operation
Community Outcomes	<p>All three met ie</p> <ul style="list-style-type: none"> ▪ improved efficiencies ▪ improved waste minimisation ▪ partnership approach 	<p>Unlikely to meet any of the three outcomes</p> <ul style="list-style-type: none"> ▪ may be improved efficiencies in commercial collection market but ▪ inefficiencies and increased costs in domestic collection ▪ less incentive for waste minimisation ▪ not a partnership approach
Capacity Issues	<ul style="list-style-type: none"> ▪ creates potential to increase waste minimisation and therefore overall efficiencies ▪ retains three transfer stations and therefore keeps options open 	<ul style="list-style-type: none"> ▪ CCC will retain infrastructure and operation of transfer stations and their ability, at a cost, to provide for the domestic market
Other	<ul style="list-style-type: none"> ▪ in line with and flows from the Council's "Solid & Hazardous Waste Management Plan" 	

LEGAL ISSUES

1. Special Consultative Procedure

If the Council decides to proceed with Option 1, the nature and importance of that decision and the implications that flow from it are such that the Council will be required to consult with the public through the Special Consultative Procedure set out in the Local Government Act 2002.

In the normal course of events the Council could also be required by the Act to consult for the purpose of including the RMF proposal in its LTCCP. Advice from the Legal Services Unit and the Council's external solicitors is that the Council could use the same Special Consultative Procedure for both. Whilst facilities for the collection and disposal of solid waste are not included as strategic assets in the LTCCP, the Council's equity in City Care Limited, which currently manages those facilities, is. Further, waste minimisation and disposal is a significant activity in terms of the Council's policy on significance set out in the Plan. Use of the special

consultative procedure means that the council will not have to deal with these matters separately in order to comply with its obligations under the Act.

By following this advice, the Council will be ensuring that ultimately its decision will withstand scrutiny without adding to the administrative cost of the process.

The matters to be put out for public consultation should include:

- (a) The change in operation of the Council's refuse stations from a Council controlled organisation (City Care Limited) to other organisations (CWS, RMF and Onyx).
- (b) The negotiation of a compensation package with City Care Limited for the early termination of that company's contract with the Council.
- (c) The proposed arrangements to be entered into with CWS, RMF and Onyx for the collection, sorting and diversion of the solid waste stream through the Council's transfer stations.
- (d) If the Council decides to proceed with Option 1, its belief that this option best meets the Council's objectives for waste minimisation and disposal.
- (e) Any other consequential matters to reflect the above.

2. Commerce Act

Simpson Grierson, the Council's external legal advisors on this matter were asked whether or not the RMF proposal was likely to have any Commerce Act implications. The firm's response was that the proposal as defined to date does not breach the terms of the Act. The point has been made, however, that there are a number of aspects of the arrangements between the organisations involved in the proposal that may have the potential to be anti-competitive and that the Council needs to be cautious to ensure that such arrangements are structured to ensure that this does not happen. It is suggested that further legal advice is obtained once the arrangements are completed, if it is the Council's decision to proceed with Option 1.

WHAT HAPPENS IF THIS PROPOSAL IS NOT AGREED

The Council may decide now, before any consultative procedure, not to proceed with this proposal. Similarly, CWS or RMF may decide not to proceed with it depending on what conditions or modifications the Council seeks. The Special Consultative Procedure may result in a decision not to proceed. It is therefore necessary to consider what the consequences of those decisions would be.

In any of those scenarios, it is expected that CWS will set up their own waste sorting and consolidation facility (or facilities). The opening of Kate Valley, and the cost of transporting and depositing refuse there, means that there is financial advantage in diverting waste and not paying those costs. While the Council provided the transfer stations, transport, and landfill, those incentives were not there. Now that CWS will operate the landfill, and run the transport, it is practical, and beneficial, for them to set up their own waste sorting and consolidation facility. This will give them significant vertical integration to enable them to make commercial decisions whether to divert material, or transport it to the landfill. While this is an opportunity for CWS, if they went ahead independently, it would present a higher level of risk to the Council transfer station operations, than if the proposed combined approach is adopted.

If CWS, (or other operators) go and set up their own facility, it is expected that all or most of the refuse collected by commercial operators will divert to that facility, for cost and operational reasons. Such a facility would be set up with longer hours of operation, designed specifically around efficient servicing of commercial loads, and without the interaction with large numbers of cars and trailers from domestic users.

Clearly, there are future revenue opportunities from diversion and recycling of materials, and this presents a commercial opportunity for companies like those in CWS. Materials that are easily extracted and for which there is a ready market will be particularly attractive. Set up on their own site, there will be less incentive for joint arrangements with the RMF.

COUNCIL'S BUDGET

As already noted, Council is facing a change in the City's waste chain management, as a consequence of the new landfill disposal and transport fees. The \$81.50 per tonne charge (versus Burwood's costs of \$15.50 per tonne) creates new business opportunities for operators in the waste sector, and provides a strong incentive for increased waste minimisation. The effect of reducing tonnages through the Council's Refuse Stations has already been illustrated by the end of year net cost for the three Refuse Stations, for the last two years:

2002/03 (Actual): \$258,000

2003/04 (Actual): \$1,081,000

This increase in net cost has resulted from permitting large loads of waste (20 tonnes or more) to be transported direct to Burwood, bypassing the refuse stations. Since most of the refuse station costs are fixed, net costs rise with loss of refuse station tonnage (and consequent loss of revenue).

Looking forward, the consequence of the "do nothing" option would be that Council would face an ongoing high level of net cost for operating its refuse stations. The Deloitte report concludes that this would be a minimum of \$470,000 per annum, and could be considerably more. Council would not be in a position to readily increase fees to cover the deficit, because of the existence of a competitive alternative private refuse station run by CWS. Even though the public may not have access to that station, Council could not credibly have a fee structure that was significantly higher.

The alternative, and recommended option, of going forward with the RMF proposal, would mean a one off cost for cancelling the City Care contract. The quantum of this is still to be negotiated, but the indications are that the payback period would be five years or less.

Deputy Chairperson's

Recommendation: That the Sustainable Transport and Utilities Committee recommends:

1. That Council resolves that the Recovered Materials Foundation (RMF) proposal in response to the CCC Request for Information (RFI) number 03/04-58 best meets the Council's objectives for waste minimisation and disposal and that the proposal be put out for public consultation pursuant to the LGA 2002 S.83.
2. That Council adopts the following timetable:
 - Public Notification - Saturday 28/08/04 and Wednesday 01/09/04
 - Submissions Close - Friday 15/10/04
 - Hearings Panel Appointed - inaugural Council meeting
 - Submissions Heard - November
 - Final Council decision - by 10 December 2004
3. That to meet this timetable, the new Council therefore must appoint a Hearings Panel to consider submissions on the proposal at its inaugural meeting.
4. That Council notes that special Council meetings should be convened if necessary to ensure that a final decision is made by 10th December 2004.
5. That Council approve the Statement of Proposal and Summary of Information.
6. That staff be instructed to negotiate an appropriate compensation package with City Care, should its contract be terminated before expiry, for inclusion in the Statement of Proposal.
7. That staff be authorised to commence negotiating a contract with RMF for the provision of services including the recommendations in S 3.4 of the Deloitte report, July 2004. This contract is to reflect Council's wish to maintain appropriate control consistent with Council's objectives with regard to waste minimisation and public access to transfer stations.

8. That staff be authorised to obtain further legal advice with regard to any Commerce Act implications that might arise once the proposed contractual arrangements with RMF, CWS and Onyx are more clearly defined.
9. That Council commits to the disposal of black bag refuse at the RMF managed facilities.
10. That staff be instructed to commence negotiating market based lease agreements with the parties named in the proposal and that these ensure that Council retains appropriate controls.

3 Cont'd

11. That Council notes that the concurrent process of establishing a bylaw to licence refuse stations and waste sorting facilities is also a means of ensuring that waste diversion occurs at all refuse stations.
12. That Council acknowledges the time, effort, co-operation, and financial commitment from those involved in arriving at a proposal that meets Council's required community outcomes.

(Note: A statement of proposal and summary of information document will be tabled at the meeting.)