

18. RECOVERED MATERIALS FOUNDATION BOARD STRUCTURE

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PURPOSE OF REPORT

1. The purpose of the report is to advise the Council of a proposal by the Recovered Materials Foundation (RMF) to modify its Board structure, and to seek the Council's view of this proposal

EXECUTIVE SUMMARY

2. Following the Council's recent decision to proceed with the RMF refuse stations proposal, the RMF has reviewed its Board structure, and has now written to the Council seeking feedback on a proposed change. Advice has been sought from Deloitte on this issue, and they have recommended a modification to the RMF proposed Board changes, that retains the Council's membership at two, as the primary stakeholder in the success of the RMF's future.

FINANCIAL AND LEGAL CONSIDERATIONS

3. There are no immediate financial considerations.
4. Advice obtained from the Council's external legal advisers is that the proposal for the Council to contract with the company to be formed by RMF is not considered to raise any competition law issues. The proposed contracting structure does not change any of the conclusions reached in earlier advice given on this matter.

STAFF RECOMMENDATIONS

It is recommended that the Council:

- (a) Advise the RMF that the Council's strong preference is for the Council to retain two RMF Board memberships, and that the number of RMF Board appointed members be reduced to three.
- (b) Advise the RMF that the Council would wish to have one of its current board representatives also sitting on the Board of RMF Canterbury Ltd.
- (c) Support the proposed management structure whereby management for the refuse stations operations report directly to the RMF CEO.
- (d) Note that a Board size of 10 may be somewhat unwieldy and that the Board should exercise its ability to appoint three members with caution.

BACKGROUND

5. In December, the Council confirmed that it wished to proceed with the RMF proposal to manage the Council's Refuse Stations, turn them into Resource Recovery Parks, and lease part of the Parkhouse Road Refuse Station site to Canterbury Waste Services on which they will construct a commercial waste handling facility. The Council considered that the proposal met its objectives for waste minimisation and disposal.
6. As part of the process leading up to that decision, a report was commissioned for Deloitte to consider, inter alia, the structure of the RMF, and the Council's relationship with it. In this context the Council report of 26 August (author Jane Parfitt) states:

"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 Council.

Deloitte does not suggest any changes to the current arrangement. The 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"... " It has no ability to change the structure of the RMF".

7. Deloitte further suggested that there would be potential benefits from the RMF forming a charitable company as follows:

The Trustees of RMF currently have a degree of protection from unlimited liability through the incorporation of RMF as a charitable trust board under the Charitable Trust Act 1957.

However this protection and the commercial operation of the RMF may be further improved by the formation of a charitable company, owned by the RMF, to operate the commercial businesses of RMF. A company structure could:

- *Increase the protection from unlimited liability of the Trustees, through the limited liability structure, and the fact that Trustees responsibilities are generally considered to be to a higher degree than company directors responsibilities.*
- *Increase access to funding (if required). Access to capital and debt funding is simpler in a company structure. In addition banks and other lenders are generally more comfortable dealing with a company structure.*
- *Provide a limitation on liability of the RMF should RMF enter any partnerships or joint ventures with other operators, through the RMF partnership share being held by a limited liability company.*

If properly structured a charitable company structure should not affect the charitable status of those operations, nor of the RMF. However charitable organisation legislation is currently under review by the Inland Revenue Department. Also there is specific tax legislation applying to charitable organisations which have local authority involvement. Specific taxation advice should be taken before proceeding.

8. The RMF has taken tax advice from specialist tax consultant KPMG, and advise that they are willing to provide a copy of the KPMG report to Council officers. This offer will be accepted, which will allow the Council's in-house tax specialists to be confident that the RMF is taking action appropriate to ensuring that tax risks are minimised.
9. Following this advice, the RMF is in agreement that the charitable company approach is beneficial and has now written to the Council (attached) with their proposal for both forming a charitable company, and a wider Board restructure. They are seeking the Council's response to that proposal. Note that the Board restructure is not a consequence of the charitable company proposal, but an independent proposal following RMF internal consideration of an appropriate structure to meet future demands.

OPTIONS

10. The table below shows the current and proposed Board structure

Proposed New Recovered Materials Foundation Board Structure				
Appointers	Appointees Currently	Council Control	Appointees Proposed	Council Control
Christchurch City Council	2	2	1	1
Canterbury Development Corp	1		1	
Canterbury Manufacturers Assn	2		1	
Canterbury Employers' Chamber of Commerce	2		1	
Canterbury Waste Subcommittee	1	1	1	some influence
Aoraki Wastebusters Charitable Trust	1		1	
Subtotal	9	3	6	2
Proposed RMF Board Appointees			4	
Total	9	3	10	2
Note: RMF Board appointees not to be able to vote on Board appointments				

11. The effect of this proposal would be to reduce Council representation from two in nine, to one in ten. An opinion has been sought from Deloitte on the proposal and their advice was that while the general thrust of the proposal was not detrimental to the Council's interests, (in terms of giving the RMF the ability to directly appoint additional Board members with appropriate commercial and other skills needed), the loss of representation was of concern. The fact is, that while the RMF is seeking to expand by providing services elsewhere in the country, its current business is almost entirely dependant on the contracts it has with the City Council. None of the other stakeholder organisations represented on the Board have any financial stake in the success of the RMF, which is far from the case for the Christchurch City Council.
12. Deloitte, also has reservations about the proposed size of the Board. They note that the NZ Directors Institute recommends an ideal Board size of between 6 and 8 in number, whereas the RMF proposal is moving away from that ideal.
13. Accordingly Deloitte has recommended an alternative arrangement, with Christchurch City Council representation remaining at two, but reducing the number of possible RMF Board appointees to three. Thus City Council representation is not diluted, and while the Board size is potentially increased, the RMF proposal does reference the 10 as a maximum.
14. With respect to the proposed formation of the limited liability company, Deloitte recommends that the CEO of the RMF is also appointed to the Board of the new company. This will ensure relevant co-ordination between the two arms of the RMF under the new structure. RMF advises that their own current proposal is that the CEO would become an executive director on the board of the company, with the stations manager as a direct report. This arrangement would satisfy the intent of the Deloitte suggestion.

PREFERRED OPTION

15. The RMF Board make up be as follows:

Appointed by	Number
Christchurch City Council	2
Canterbury Development Corp	1
Canterbury Manufacturers Assn	1
CECC	1
Canterbury Waste Subcommittee	1
AWCT	1
Recovered Materials Foundation	3
Total	10