

Dated July 2006

**CONSTITUTING AGREEMENT
CANTERBURY REGIONAL LANDFILL JOINT COMMITTEE**

**ASHBURTON DISTRICT COUNCIL
CHRISTCHURCH CITY COUNCIL
HURUNUI DISTRICT COUNCIL
SELWYN DISTRICT COUNCIL
WAIMAKARIRI DISTRICT COUNCIL**

CONTENTS

PARTIES	1
BACKGROUND	1
TERMS OF THIS AGREEMENT:.....	2
EFFECTIVE DATE	2
COMMITTEE	2
TERMS AND CONDITIONS OF ENTRY.....	2
WITHDRAWAL OF COUNCIL	2
AVOIDANCE OF DISCHARGE.....	2
QUORUM	2
ALTERNATES	2
APPOINTMENT AND DISCHARGE OF MEMBERS	3
CHAIRPERSON AND DEPUTY	3
MEETINGS/STANDING ORDERS.....	3
VOTING.....	3
CASTING VOTE.....	3
DELEGATIONS	4
ADMINISTRATIVE COSTS.....	4
GOOD FAITH NEGOTIATIONS.....	5
ARBITRATION	5
SERVICE OF NOTICES	5
HOLDING OF TCL SHARES	6
TRANSFER OF TCL SHARES	6
EFFECT OF COUNCIL AMALGAMATION.....	7

CONSTITUTING AGREEMENT

CANTERBURY REGIONAL LANDFILL JOINT COMMITTEE

DATED:

2014

PARTIES

ASHBURTON DISTRICT COUNCIL, CHRISTCHURCH CITY COUNCIL, HURUNUI DISTRICT COUNCIL, SELWYN DISTRICT COUNCIL and WAIMAKARIRI DISTRICT COUNCIL and their successors, all local authorities under the Local Government Act 2002 (collectively “the Councils” and individually “a Council”)

BACKGROUND

- A. The Councils (together with Kaikoura District Council, Mackenzie District Council, Timaru District Council and Waimate District Council) had previously constituted the Canterbury Joint Standing Committee (“the CJSC”) to achieve regional co-ordination, co-operation and commitment as most recently recorded in the Constituting Agreement dated 16 September 2003 (“the 2003 Agreement”). To address operational issues, the CJSC had appointed the Canterbury Waste Subcommittee (“the Subcommittee”).
- B. The CJSC and the Subcommittee were discharged as a consequence of the 2004 triennial general election of members.
- C. In December 2004 the Territorial Authorities reconstituted the CJSC and had the CJSC reappoint the Subcommittee relying on the 2003 Agreement.
- D. The Councils own shares in Transwaste Canterbury Limited (“TCL”) which is a joint venture with Canterbury Waste Services Limited (“CWS”) concerned with the operation of the Canterbury landfill at Kate Valley and associated transport services (“the Landfill Joint Venture”). The 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.
- E. The Councils had previously delegated their involvement in the Landfill Joint Venture to CJSC and the Subcommittee. CJSC and the Subcommittee are by separate Constituting Agreement being reconstituted as the Canterbury Waste Joint Committee which is to have no role or responsibility in relation to the Landfill Joint Venture. Accordingly, the Councils now wish to appoint and constitute a new joint committee to be known as the Canterbury Regional Landfill Joint Committee.

TERMS OF THIS AGREEMENT:

EFFECTIVE DATE

1. This Agreement shall come into effect on 1 July 2006.

COMMITTEE

2. Pursuant to clause 30(1) of Schedule 7 to the Local Government Act 2002 the Councils shall appoint and constitute a joint committee which shall be known as the Canterbury Regional Landfill Joint Committee ("the Committee").
3. The Committee shall consist of a maximum of seven members as follow:
 - (a) three elected members of the Christchurch City Council;
 - (b) four members made up of one elected member from each of the other Councils.
4. The Committee shall report to the Councils at least annually on the exercise of the Committee's functions.

TERMS AND CONDITIONS OF ENTRY

5. The Councils may only allow other Councils to join the Committee on such terms and conditions as are agreed unanimously by the Councils.

WITHDRAWAL OF COUNCIL

6. 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.

AVOIDANCE OF DISCHARGE

7. The Councils declare that they have each resolved that the Committee shall continue to function after a triennial election with the same delegated functions, duties, powers and voting rights that existed prior to that election and accordingly the Committee shall not be discharged under clause 30(7) of Schedule 7 to the Local Government Act 2002.

QUORUM

8. The quorum for a meeting of the Committee is four members at least one of whom is a member appointed by Christchurch City Council. An alternate shall be deemed to be a "member" for the purposes of achieving a quorum.

ALTERNATES

9. Each Council may appoint up to two alternates for its Committee member/s. The names of alternates are to be notified in writing to the Committee as appropriate. 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 Committee member for whom he or she is an alternate.

APPOINTMENT AND DISCHARGE OF MEMBERS

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

CHAIRPERSON AND DEPUTY

11. The Committee shall appoint a chairperson (who must be an elected member appointed by 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

12. Meetings of the 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 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.
13. Any resolution requiring a decision on a matter of significance to be considered at a meeting of the 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

14. Notwithstanding anything to the contrary in Model Standing Orders NZS 9202:2001 voting at meetings of the Committee shall be:
 - (a) 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);
 - (b) the members appointed to represent the other Councils, one vote each.

For the avoidance of doubt, this means for example that if all 4 other Council members are present then the members appointed by the Christchurch City Council will have 4 votes to be cast as a block.

15. 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 14.

CASTING VOTE

16. 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

17. 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.
18. Subject to prior compliance with clause 17 in respect of the delegations proposed by this clause 18, the Councils agree to delegate to the Committee all matters relating to participation in the Landfill Joint Venture for the purposes of owning and operating the Canterbury regional landfill at Kate Valley and associated transport and collection systems (transfer stations to the landfill only), including without limitation:
- (a) performing the obligations of the Councils under the Shareholders Agreement;
 - (b) exercising the voting rights attached to TCL shares held by the 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 Councils and if appropriate, developing such scheme;
 - (e) appointing the Councils' representatives at TCL shareholders' meetings.
19. Notwithstanding any statutory power to do so the Councils shall not revoke the delegations to the Committee referred to under clause 18 until TCL is liquidated. By contrast, it is agreed that a Council will be entitled to revoke any other delegation to the Committee referred to under clause 17 as may be provided for by that delegation and subject always to compliance by the Council concerned with all of its obligations in respect of such delegation up to the date of revocation.

ADMINISTRATIVE COSTS

20. Christchurch City Council agrees to provide such management, administrative, secretarial and accounting services as the 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 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 in the percentages given in the table forming part of clause 27.

GOOD FAITH NEGOTIATIONS

21. 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 Canterbury community represented by the Councils considered together.

ARBITRATION

22. 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 21 shall be referred to arbitration.
23. 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.
24. 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

25. 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.
26. A notice under clause 25 must be addressed:
- (a) in the case of Christchurch City Council or the Committee for the attention of the Legal Services Manager at the Civic Offices, 163 Tuam Street, Christchurch (P O Box 237, Christchurch); and
 - (b) in the case of every Council other than 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.

HOLDING OF TCL SHARES

27. The 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	322,700	77.8
Waimakariri	32,100	7.8
Hurunui	10,000	2.4
Selwyn	25,000	6.0
Ashburton	25,000	6.0
TOTAL	414,800	100

28. Each 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.
29. The Councils must appoint their representatives on the Committee as their representative at TCL shareholders meetings in accordance with the Companies Act 1993 and TCL's constitution.

TRANSFER OF TCL SHARES

30. Subject to the terms of this Agreement, in the event that a 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 Councils in proportion to their existing shareholding in TCL at a fair value.
31. If the Councils cannot reach agreement on a fair value then the fair value shall be fixed by a single valuer (if the Councils can agree on a single valuer) or otherwise by two valuers (one appointed by the transferring Council and one appointed by the other Councils) and an umpire appointed by such valuers before entering into the determination of such fair value.
32. 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.
33. Immediately following the determination of the fair value the transferring Council shall be obligated to transfer, and the other Councils shall be obligated to purchase, the equity securities at the fair value, pro rata in accordance with their current shareholding.

34. Clauses 30 - 33 shall not apply to a transfer of equity securities of TCL held by a Council if the equity securities are transferred with the consent of at least 75% of the votes of the Councils to any one or more of the other Councils.

EFFECT OF COUNCIL AMALGAMATION

35. Subject to the effect of any statutory or regulatory provision that governs the re-organisation of local authorities, if a 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 Councils unanimously agree, that local authority shall enter an agreement with the Councils on the same terms as this Agreement (except for adjustment of clause 27 to reflect amended population statistics) and the equity securities held by the Council so amalgamating, merging or joining shall be transferred to that local authority; or
 - (b) the equity securities held by the Council so amalgamating, merging or joining shall be offered to and purchased by the remaining Councils on the terms and conditions set out in clauses 30 - 34.

EXECUTED by the Councils on the date set out above

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

THE COMMON SEAL of)
CHRISTCHURCH CITY COUNCIL)
was affixed in the presence of)

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