

EXTRAORDINARY MEETING OF THE INVERCARGILL CITY COUNCIL 5/6/2019

PUBLIC EXCLUDED SESSION

PRESENT: Sir T R Shadbolt, KNZM JP
 Cr R R Amundsen – Deputy Mayor
 Cr R L Abbott
 Cr A J Arnold
 Cr K F Arnold
 Cr T M Biddle
 Cr A H Crackett
 Cr I L Esler
 Cr G D Lewis
 Cr D J Ludlow
 Cr L F Soper
 Cr L S Thomas

IN ATTENDANCE: Mayor G Tong
 Mayor T Hicks
 Mrs C Hadley – Chief Executive
 Mr C McIntosh – Director of Works and Services
 Mr D Foster – Interim Director of Finance
 Mrs E Harris Mitchell – Manager Communications and Secretarial Services
 Mr A Cameron – Executive Officer
 Mr M Loan - Manager - Drainage and Solid
 Ms D Peterson - Senior Waste Officer
 Ms H McLeod – Communications Advisor
 Ms P Nicolaou – Solicitor – Laine Neave Lawyers
 Mr M Russell – Southland District Council
 Ms L Kuresa – Governance Officer

1. **WASTENET SOUTHLAND – RECYCLABLES ACCEPTANCE REQUEST FOR PROPOSAL**

Note: Cr Soper's interest was carried on into Public Excluded Session.

Moved Cr Thomas, seconded Cr Abbott and **RESOLVED** that Standing Orders be suspended for the sake of full and frank discussion on this matter.

Cr K Arnold commented that she had voted against the first and second part of the motion and was torn about how she could participate in discussions on this matter. She was on the WasteNet Group and for her personal integrity, she asked for advice if she was able to participate under the rules that were discussed earlier in the meeting.

Ms Nicolaou explained that Cr K Arnold's participation to date had been towards whether aspects of the recommendation could be discussed in public meeting. It did not jeopardise her ability to participate in the actual discussions towards the recommendations.

Cr K Arnold felt that so far the meeting had been a circus and she felt uncomfortable to be part of discussions or be part of a group about to decide on such an important tender where they had shown bias. She said that she was tendering her resignation immediately, and left the meeting at 6.30 pm.

Mayor Tong said that Cr K Arnold had done a fantastic job on this issue and gone through a lot of pressure and he appreciated the time and work she had done.

Mr McIntosh took the meeting through a presentation.

In response to questions, the following answers were given:

1. There has been a lot of work done including discussions with the preferred proposer in line with the RFP proposal.
2. We are working through the revenue. Without revenue, the contract price is \$■ million over 15 years and with revenue it reduces to \$■ million. At the moment on a conservative basis the team are factoring in around \$■ million of revenue.
3. We have an approximate difference between \$■ million and \$■ million on the negotiated position which the team believed would be the best outcome for WasteNet compared to Southland DisAbility Enterprises proposal.
4. In discussions with Southland DisAbility Enterprises when they asked for the \$■, accounting staff from Southland District Council went to see if we could understand the major change in their overhead structure and what was driving this. WasteNet offered Southland DisAbility Enterprises professional advice or consulting advice to assist with understanding their cost drivers, and they declined that.
5. Once we are into the RFP we are bound by the processes involved, so there's not much else we can do. Southland DisAbility Enterprises has breached confidentiality significantly in this process, which has put elected members in a difficult position because Council and WasteNet are bound by the process and the risk.
6. WasteNet commissioned us to see if we could negotiate an extension, in the event that Southland DisAbility Enterprises were unsuccessful in the bid. We negotiated through an independent negotiator for up to a 12 month extension. That process has not been successful. Southland DisAbility Enterprises has indicated that it would only be interested in a two month extension. The extension negotiations were running parallel to the RFP and conducted by an independent negotiator who did not know what was happening to the RFP.
7. The negotiations are currently suspended until the outcome of this process.
8. The potential for there to be tensions between a contractor and a principal is standard, we did sit down and discuss what some of the issues were. We had a realistic negotiation and Southland DisAbility Enterprises was asked to present something that was realistic. The difficulties with Southland DisAbility Enterprises are principally around health and safety and to accounting for where some of the money was going. They were reluctant to allow WasteNet to investigate that.

Mrs Hadley explained that with concerns in mind about the relationship between the parties, WAG resolved that an independent person with facilitation skills should be involved when having discussions with Southland DisAbility Enterprises around contract extension.

WasteNet sought someone who was from outside and someone who we knew was experienced in taking a mediation approach. It was disappointing and surprising that he had not been able to achieve any movement.

Mrs Hadley shared some information that address the tenor of what was being discussed in relation to health and safety.

Mayor Tong was invited to take the meeting through a report from the Ministry of Social Development (MSD) on this matter but asked councillors not to make notes on it as it was a highly confidential document. This document highlighted that Southland DisAbility Enterprises had not been helpful to Ministry of Social Development (MSD) in regards to getting Southland DisAbility Enterprises into a frame of mind that would focus on its staff.

Cr Crackett commented that if it was a management issue, why not just remove management in this case. Council was not a business but Council did need to behave in a business-like manner. The other part was the social factor. It was not appropriate to talk about how other councils have voted on this issue but it is appropriate to share that there has been a discussion around the need to think about social wellbeing separate to the tender process. It may be that councillors were bringing the two together, which needed to be separated and think how that responsibility was handled separately.

Note: Councillors A Arnold, Crackett and Abbott left the meeting at 7.25 pm and returned at 7.28 pm.

In response to a question as to whether this Council had a contract with Smart Environmental Limited previously, Mrs Hadley confirmed that there was contract with this Company which they sub-contracted to Southland DisAbility Enterprises for two years.

In response to a question as to whether Smart Environmental Ltd could put in another tender if it wanted to, Ms Nicolou explained that Council was entitled to end the tender process. The RFP allowed for it but Council would lose face in the market. There were only two bidders in this tender process and it was unlikely that anyone else would put in a bid.

Cr Amundsen said that when the Mayors and Chief Executives met to discuss this issue, it was raised that if the recommendation was passed, could an additional recommendation be that the councils work together to provide support, a safety net or jobs or funding to help the Southland DisAbility Enterprises employees to assist with the transition period. She wondered if an additional recommendation could be added to that effect. She asked if it was possible that all councillors could be provided with some guidelines about what information could be disclosed in public to explain why councillors voted the way they did.

Mayor Tong explained that the Communications Teams from the three councils had been working on that over the last few days and Mrs Hadley had a draft of that statement.

Councillors discussed the options in relation to the recommendation.

Mrs Hadley explained that Council could accept the recommendation from the WasteNet Advisory Group. Alternatively Council could end the RFP process but to do anything else tonight would expose Council to significant legal risk. Council would have no basis for direct negotiations with Southland DisAbility Enterprises. If Council wanted to take an alternative step, councillors needed to think about where that would take Council. Council needed to think carefully about whether it would be getting into a legal issue about exposing Smart Environmental Ltd.

In response to a question as to whether a recommendation could be put in place to assist the 82 employees as Cr Amundsen had said earlier if the WasteNet recommendation was passed by Council, Cr Amundsen explained that seeing Council had agreed that the vote would be taken back into the public arena, that resolution could also be made in public.

In response to a question as to whether the increase of \$ [REDACTED] to Southland DisAbility Enterprises funding was so employees' wages could be increased to minimum wage, Mrs Hadley said it was not.

Council discussed the recommendation and the following recommendation was put forward for Council to vote on in the public meeting: *that Council adopts the recommendations of the Waste Advisory Group.*

In response to a question as to what would happen with the negotiations with Southland DisAbility Enterprises if the recommendation was not passed by Council, Mrs Hadley explained negotiations on the extension would be extended.

In response to the question as to what would happen to waste if Southland DisAbility Enterprises did not extend the contract, Mrs Hadley explained that it would go to landfill.

In response to a question as to whether Southland DisAbility Enterprises would continue what it was doing at the moment if the recommendation was overturned, Mrs Hadley explained it would continue for the two months but Mayor Tong had said that the door was open to extend that to 12 months.

Mr McIntosh explained that the two month extension had a cost implication which was quite expensive and it was not acceptable to WasteNet. WasteNet had asked negotiations to be carried out through the independent negotiator for a 12 month extension on the basis that it was an extension of the current contract only. WasteNet had not been able to consider anything else because in effect WasteNet would be doing direct negotiations with somebody that it was in an RFP process with. It was important to recognise that WasteNet found itself negotiating with nothing to compare against. In effect Council was sitting here tonight wrestling with a terrible problem because Southland DisAbility Enterprises had come out and said that it would affect WasteNet's future if it did not do what they wanted. There was no mechanism that WasteNet had to get Southland DisAbility Enterprises to agree to a reasonable price.

In response that if the recommendation was lost, would Southland DisAbility Enterprises continue what it was doing for two months, Mr McIntosh explained that Southland DisAbility Enterprises would cease to be paid by WasteNet at the end of this month.

Mrs Hadley explained that it was likely that any alternative provider would wait around for Council.

Note: Cr Biddle left the meeting at 8.07 pm and returned at 8.09 pm.

The recommendation was confirmed as follows: *that Council adopts the recommendations of the Waste Advisory Group.*

Moved Cr Biddle, seconded Cr Lewis and **RESOLVED** that the meeting moves back into open meeting 8.45 pm.

2. **SOUTHLAND DISTRICT COUNCIL AND GORE DISTRICT COUNCIL
DECISION ON THE RECYCLABLES ACCEPTANCE REQUEST FOR
PROPOSAL**

Mayor Hicks said that this was a sobering meeting for him to witness. He had been around local government for 40 years and he had been in some interesting meetings and tonight topped all those meetings for a number of reasons. This Council had elected to make its decision but effectively that stopped the process. He said that Gore District Council met yesterday and agreed unanimously to adopt the WasteNet recommendation. He was not sure about the future of WasteNet as it was the three councils working together but that needed to be looked at. He was not sure how to move on from here but to say that he was disappointed was an understatement and to say that he was annoyed summed it up better. He thanked Council for the invitation to attend this meeting.

Mayor Tong said that Southland District Council met today and endorsed the recommendations of WasteNet with an additional recommendation that Council worked with the councils and other agencies to achieve results for those affected by this contract. The councils needed to re-group and the three mayors needed to get together tonight with regards to the media, so that everyone was on the same page as this was a shared service at this time.

Moved Cr Biddle, seconded Cr Lewis and **RESOLVED** that the meeting moves back into open meeting at 9.10 pm.



A2641161

30 May 2019

MEMO TO: Chief Executive – Invercargill City Council
Chief Executive – Southland District Council
Chief Executive – Gore District Council

ACTION ON DECISIONS OF COUNCIL, COMMITTEES AND COMMUNITY BOARDS**Waste Advisory Group – 30 May 2019****REQUEST FOR PROPOSAL RECYCLABLES ACCEPTANCE SERVICES**

Moved Mayor G Tong, seconded Cr L Thomas and **RESOLVED** that the report be received;

AND THAT

The Waste Advisory Group recommends that the WasteNet Councils (being Invercargill City Council, Southland District Council and Gore District Council) award Contract 850 Recyclables Acceptance Services to Smart Environmental Limited, with the contract commencing on 1 July 2019 for a term of 16-years (being a 12-month transition period plus 15-years of services) for the value of \$ [REDACTED] comprising contract costs of \$ [REDACTED] and revenue of \$ [REDACTED] (excluding escalation and GST), subject to final clarifications and negotiations ahead of contract award.

Eirwen Harris Mitchell

Eirwen Harris Mitchell
MANAGER - COMMUNICATIONS AND SECRETARIAL SERVICES