

## **Change in Ownership of the Browning-Ferris Group of Companies**

*(City Council on November 23, 24 and 25, 1999, adopted this Clause, without amendment.)*

**The Works Committee recommends that the required consent under the Waste Transport and Disposal Agreement with the Browning-Ferris Group of Companies be given on the basis set out in the following report (October 26, 1999) from the Commissioner of Works and Emergency Services:**

### Purpose:

The purpose of this report is to present the City of Toronto's position on whether consenting to the change in ownership of the Browning-Ferris Companies is the best strategy for the City, at this time, given concerns about future competition levels and ongoing developments in the industry.

### Financial Implications and Impact Statement:

There are no financial implications if consent is granted, as the agreement and services would continue with the same group of companies for the haulage to and disposal of solid waste at the Arbor Hills landfill in Michigan, although the companies would be owned and controlled by other waste management companies. In the event that consent was refused, the City would have to make alternate arrangements for the disposal of the quantity of waste presently being managed under the agreement.

### Recommendation:

It is recommended that this report be received for information and any action deemed necessary by Council.

### Background:

At its meeting held on July 27, 1999, City Council had before it Clause No. 3 of Report No. 2 of The Works Committee, headed "Waste Transport and Disposal Agreement with the Browning-Ferris Group of Companies, and Proposed Acquisition of Browning-Ferris Industries Ltd. by Canadian Waste Services Holdings Inc." The July 12, 1999 joint report recommended that:

- (1) Council consent to the change in ownership of the Browning-Ferris companies, as provided for under the City's Waste Transport and Disposal Agreement with the companies and on the basis set out in this report; and

- (2) the Commissioner of Works and Emergency Services be authorized to execute any documents as may be required, in form satisfactory to the City Solicitor, to give effect to Recommendation No. (1).

The Clause was struck out and referred back to the Commissioner of Works and Emergency services for a report back to the Works Committee on whether consenting to the change in ownership of the Browning-Ferris Companies is the best strategy for the City, at this time, given concerns about future competition levels and ongoing developments in the industry.

Comments:

Council has authorized the Commissioner of Works and Emergency Services to contact the Competition Bureau to discuss the City's concerns with respect to the proposed acquisition. In a private and confidential letter dated June 22, 1999, to Mr. Konrad von Finckenstein, Commissioner of Competition, Competition Bureau, the Commissioner of Works and Emergency Services, acting on behalf of the City of Toronto, voiced concern over the recently announced proposed acquisition by Canadian Waste Services Inc. ("Canadian Waste") of the assets of Browning-Ferris Industries Ltd. ("BFI Canada"). It was assumed that the Competition Bureau had been notified of this transaction pursuant to s. 114 of the *Competition Act* since the acquisition of BFI Canada's assets would likely meet the thirty-five million dollar threshold outlined in the Act. The Commissioner strongly urged that a s. 92 application be brought to the Competition Tribunal to have this transaction reviewed as substantially lessening competition in the Canadian private waste management industry.

Having voiced our position to the Competition Bureau with respect to the proposed acquisition and the City's concerns about future competition levels and ongoing developments in the industry, the question of whether we should consent to the change in ownership of the Browning-Ferris companies is altogether separate. While we are concerned that the change in ownership of the Canadian company may affect the City in the future, the current contract for which consent is required would be unchanged.

By agreement, dated December 23, 1996 ("Waste Transport and Disposal Agreement"), Browning-Ferris Canada is contracted to transport and dispose of Toronto's solid waste to the Arbor Hills landfill in Michigan. The agreement expires at the end of 2002. The other parties to the agreement are Browning-Ferris Industries Inc., the United States parent company, as guarantor of the obligations under the agreement, and BFI Waste Systems of North America, Inc., the successor company to Browning-Ferris Industries of Southeastern Michigan Inc., the owner of the Arbor Hills landfill site where the City's waste is disposed.

Under the provisions of the Waste Transport and Disposal Agreement, any change in control or ownership or the transfer of a controlling interest in the beneficial ownership of any of the BFI parties shall constitute a default under the agreement unless the City consents to the transfer. Such consent is not to be unreasonably withheld. The agreement further states that the City in its sole discretion may determine whether new ownership can adequately and faithfully render the services for the remaining term of the agreement.

Under the pending merger or amalgamation, all of the property rights, privileges and obligations of Browning-Ferris Industries Inc. and BFI Waste Systems of North America, Inc. are transferred to or become the property of the amalgamated company. Accordingly, the merger will not affect the rights and obligations in respect of the services to be provided for the disposal component of the agreement. In particular, the amalgamated company will assume the obligations of Browning-Ferris Industries Inc., as guarantor under the agreement, and BFI Waste Systems of North America, Inc. as owner of the Arbor Hills landfill site. Similarly, after the Canadian Waste share purchase transaction, BFI Canada as an entity remains bound to its rights and obligations under the agreement.

There is no basis for reasonably believing that the companies, with Allied Waste or Canadian Waste, as new owners, cannot adequately and faithfully render the services called for in the agreement. The services will continue to be carried out in the same manner, although with new ownership, and the disposal price is beneficial to the City. Canadian Waste, in addition, has offered to (i) provide the further guaranty of its parent, Waste Management Inc., to all of the obligations to be undertaken under the agreement, and (ii) reimburse the City for any costs reasonably and properly incurred in respect of any due diligence on an alternate site to the primary disposal site, in the event, as a result of the transactions, that alternate site is not available and another alternate site is required.

We should also note that BFI is required to sell the Arbor Hills landfill as a result of U.S. Department of Justice concerns. We understand that the site is currently up for sale, but no buyer has yet been identified. Once the buyer is known, the advisability of our consent to that change in ownership can be evaluated. A further report to Council will be made at that time.

Conclusions:

Therefore it is in the interests of the City that the required consent under the agreement be given on the basis set out above.

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