

## MINUTES

### OF A SPECIAL MEETING OF THE COUNCIL OF THE CITY OF CAPE TOWN

HELD IN THE COUNCIL CHAMBER, 6 TH FLOOR, PODIUM BLOCK, CIVIC CENTRE, 12 HERTZOG BOULEVARD, CAPE TOWN ON 24 APRIL 2002 AT 10:00 A.M

---

SPC 29/04/02

EXCO 44/04/02 SOLID WASTE MANAGEMENT SERVICES:  
FRAMEWORK

FOR SERVICE DELIVERY, SERVICE LEVELS AND  
FUNDING OPTIONS

(A VAN VUUREN) (TYGERBERG ADMINISTRATION)

RESOLVED that:

(a) the PricewaterhouseCoopers Report entitled "Development of a Framework for Service Delivery, Service Levels and Funding Options – Solid Waste Services" be adopted as an interim policy document and the following proposed policies and recommendations be adopted:

i. service Delivery Option 4 as agreed with the "internal customers" and described in paragraph 9.1 of the report

ii. service boundaries as described in paragraph 9.2 of the report

iii. level of service for domestic collections, i.e. a rudimentary service to all informal households on Council property to be funded from rates, a basic

service to be funded from rates/basic charges and rebated on affordability (option 4 only) and current service level (option 3 & 4 only) with higher levels of service consumption per service point funded from tariffs and rebated on current service level (option 3 & 4 only) as described in paragraph 9.6 of the report

**ADOPTED BY ORDINARY RESOLUTION**

**MINUTES  
OF A SPECIAL MEETING OF THE COUNCIL OF THE CITY OF CAPE  
TOWN  
HELD IN THE COUNCIL CHAMBER, 6 TH FLOOR, PODIUM BLOCK, CIVIC  
CENTRE, 12 HERTZOG BOULEVARD, CAPE TOWN ON 24 APRIL 2002 AT  
10:00 A.M**

---

iv. level of service for trade collections, i.e. a rudimentary ad-hoc service to informal traders as per Council policy to be funded from rates, a basic service to be funded from tariffs with higher levels of service consumption by the trade customer funded from tariffs, as described in paragraph 9.6 of the report

v. level of service for garden refuse and limited free disposal at landfill sites and drop-off areas as described in paragraphs 9.3.3, 9.3.4 and 9.3.5 of the report

vi. tariff policy by-laws be enacted under section 74 of the Systems Act within the context of a carefully determined system of service levels which will mitigate the risk to Council of a legal challenge.

(b) the policy be further developed through submission to:

i. Subcouncils

ii. relevant portfolio committees

iii. EXCO and Council  
together with a public participation process, including at Subcouncil level

(c) the implementation plan be prepared and submitted

(d) the directorate, after receiving public comments and

Subcouncil input, prepare a report on the current and proposed handling of waste and cleansing, in particular along routes and in areas with a high tourist impact.

**ADOPTED BY ORDINARY RESOLUTION**

## FOR DECISION BY COUNCIL

**SOLID WASTE MANAGEMENT SERVICES: FRAMEWORK FOR SERVICE DELIVERY, SERVICE LEVELS AND FUNDING OPTIONS**

EXCO 44/04/02

SPC29/04/02

A van Vuuren  
Tygerberg Administration  
(918 7466)  
2 April 2002

---

**1. EXECUTIVE SUMMARY**

The assessment of internal mechanisms to provide a Solid Waste Management Service, carried out in terms of Section 78(1) of the Local Government: Municipal Systems Act highlighted the need to reach agreement on service boundaries to determine which service unit does what where (e.g. responsibility for street sweeping). Further, it has been identified that service delivery options and levels of service for service delivery must be established. To this end PricewaterhouseCoopers were appointed to assist with preparation of a report covering these issues as well as a financial model for the functions performed by the Solid Waste Management Service.

**2. BUSINESS PLAN REFERENCE**

Service: Trading Services

Directorate: Solid Waste Management Services

Business Plan Heading: Management Services

**3. COMPLIANCE WITH STRATEGIC OBJECTIVE**

This report complies with the strategic objectives of Council and includes a policy proposal for the funding of a rudimentary service, a basic service and higher levels of consumption for solid waste collections.

The development of a framework for service delivery, service levels and funding Options complies with the 2001/2002 Corporate Business Plan which states:

"Priority /Pledge: A well run, corruption free City for all."

3-5 Year Objectives

Trading Services:

- "Standardised package of policies and services in place to ensure equitable service provision across the metro."

#### 4. DELEGATED AUTHORITY

For recommendation by the Portfolio Committee: Trading Services as per Section 9.2.1 of the document entitled "Functions and Delegation of Powers of Council's Political Structures"

#### 5. ANNEXURES

ANNEXURE A	Extract from Consultant's Report – PREFERRED FRAMEWORK FOR SERVICE DELIVERY, SERVICE LEVELS AND FUNDING OPTIONS: RECOMMENDATIONS
ANNEXURE B	Extract from Consultant's Report – SERVICE BOUNDARIES – RECOMMENDATION
ANNEXURE C	Rates vs Tariffs – PRIVATE/PUBLIC GOOD CONTINUUM
ANNEXURE D1	DOMESTIC COLLECTIONS – FUNDING RECOMMENDATIONS
ANNEXURE D2	TRADE COLLECTIONS – FUNDING RECOMMENDATIONS
ANNEXURE E	Extract from Consultant's Report – PREFERRED FRAMEWORK FOR SERVICE DELIVERY, SERVICE LEVELS AND FUNDING OPTIONS: LEGAL ISSUES

#### 6. POLICY

This report motivates the adoption of the report prepared by PWC in close cooperation with all relevant Council officials entitled: "Development of a Framework for Service Delivery, Service Levels and Funding Options" as a policy document.

#### 7. LEGAL REQUIREMENTS

The Consultant, PWC, used the services of Ashira Consulting (Pty) Ltd a firm of Attorney's to deal with the legal issues. The Consultant's report covers the findings in this regard and provides the following:

A legal framework – whether any distinction between rates and tariffs is prescribed in South African Law

Understanding tariffs – whether there is anything in the concept of a tariff for which services a tariff should be levied.

Equality rights and legality – what rights constrain the process of implementing the optimal payment option.

Paragraph 7 Legal Issues (Funding Options) of the PricewaterhouseCoopers Report entitled "Development of a Framework for Service Delivery, Service Levels and Funding Options – Solid Waste Services is attached as ANNEXURE E.

## 8. INTRODUCTION

On 27 June 2001, Council resolved: "To commence with an assessment in terms of Section 78 of the Systems Act to decide on the mechanism/s to provide water and sanitation, electricity and solid waste services". On 28 November 2001 Council authorised, in terms of section 78(2) of the Systems Act, the recommendation of the assessment that fully-fledged Business Units be established.

In the case of the Solid Waste Management Service the assessment highlighted the need to reach agreement on the **service boundaries** to determine which service unit does what where (e.g. responsibility for street sweeping). The Area cleaning function is extremely fragmented throughout the Metropolitan Area as the functions are performed by and the responsibility resides with different departments in the former MLC's. Only after thoroughly work shopping the options and reaching agreements, were all the boundaries of the functions of the Solid Waste Management Service identified.

The **Level of Service** for the all the Solid Waste Management Functions vary throughout the Metropolitan Area. These varying levels of service must be identified and policies adopted which are based on affordability, "Output Equity" (output = product achieved after the service has been rendered) where relevant and also based on community requirements (particularly in the case of tariff funded collection services for higher levels of service).

It was further identified that once the service boundaries were agreed **service delivery options** must be considered and agreed for area cleaning as well as collections and disposal, i.e. which Department owns the property, which service/department owns/controls the budget, which service/department is responsible for delivering the service and what service level agreements should be in place, if any.

It is evident that the legality of rendering any of the Solid Waste functions on a tariff basis needed to be examined due to equality provisions of the Constitution and the Systems Act. Further, if legally defensible, a **tariff convergence financial model** and expenditure model would have to be developed for the services rendered by the Solid Waste Management Service to test the affordability (to the internal and external customers) of different levels of service for tariff funded services, and to set appropriate tariffs for a level of service accepted and agreed with the customer.

To accomplish the above Messrs PricewaterhouseCoopers were appointed in November 2001 to facilitate workshops with "Internal Customers" (roads, parks, community services) to establish and agree service delivery boundaries, to identify the current and varying levels of service, to reach agreement of an acceptable

service delivery option, to recommend a basic level of service for collections, and to develop a financial model for the convergence of tariffs for the trade and domestic collection function. To achieve this, the process would have to be informed by an identified set of Guiding Principles and Legal Framework. The consultant was appointed in terms of the following brief:

- *“To outline understanding of the current situation and progress to date.*
- *To highlight key considerations and pertinent issues regarding the development of a framework for service delivery, service levels, and funding options.*
- *The development of options for service levels and product and service definitions*
- *To determine the source of funding for indigent subsidy, non-payment, and free basic solid waste service.*
- *To define a high level plan of action for the implementation of the adopted Options for Service Levels and Product and Services Definition.”*

*In broad terms the objective is to:*

- 1) *Agree on a set of Guiding Principles, such as:*
  - *Affordability;*
  - *Equity;*
  - *Transparency;*
  - *Sustainability;*
  - *Separation of Service Provider and Service Authority, etc.*
- 2) *Investigate the issue of rates versus tariff funding and develop a full range of suitable options and combination of options;*
- 3) *Develop a framework for choosing the appropriate funding source (rates / tariffs);*
- 4) *Develop a Framework for Functional Service Boundaries (This includes a framework to determine which service unit does what where)*
- 5) *Develop a Tariff Convergence Model and Framework; and*
- 6) *Propose standard measurements”*

## **9. DISCUSSION/PROPOSAL**

The Guiding Principles (refer **ANNEXURE A** - Recommendations - Paragraph 1) were developed to inform the framework for service delivery, service levels and funding.

This section of the report will cover the consultant's/Project Team's findings with regard to the key areas of the investigation and the recommended policies pertaining thereto.

### 9.1 Service Delivery Option

Four service delivery options were identified for the collection and disposal functions, core businesses of the Solid Waste Service, and the area cleaning function. In the case of the area cleaning function these options were thoroughly work shopped with all role players, i.e. the "internal customers" (property owners - roads, parks, community facilities) and consensus reached. At the request of the Executive Director: Trading Services the following officials were nominated and mandated by the relevant Executive Directors to ensure the interests of internal customers/property owners were satisfactorily addressed:

Mr. L Bester representing Development Directorate - Road, Transportation and Storm water Services

Dr L Dudley and Mr. F Bischoff representing Community Services Directorate

The preferred option by the overwhelming majority was "Option 4". This option is illustrated and its main features detailed in **ANNEXURE A** (refer paragraph 3).

### 9.2 Service Boundaries

The Branch/Department responsible for the budget and provision of the services differs from one former MLC to another. This fragmented nature of service provision is depicted in the consultant's table (refer **ANNEXURE B**) and the right hand column indicates recommendations proposed and agreed by representatives of the Solid Waste Service, Community Services and Development Services.

### 9.3 Levels of Service

The Solid Waste Management Service is comprised of the following functions:

- Domestic Collections
- Trade Collections
- Garden Refuse Service
- Drop-off Area Service
- Area Cleaning
- Transfer and Disposal
- Waste Minimisation

In the case of waste minimisation it is considered imperative that it be policy that this function be endorsed and encouraged and that Council's role be to

promote at source separation and the establishment of Material recovery Facilities as well as education.

The output vs input equity issue (resources allocated to a service vs product achieved after service delivery) is extremely sensitive, as outputs resulting from similar inputs will vary from one area to another. This issue is particularly relevant when negotiating levels of service and service level agreements with internal customers for the area cleaning operation. The report recommends the alignment of service delivery needs outputs with the available allocated resources (i.e. ensuring affordability) to ensure that service level targets can be met effectively.

### **9.3.1 Domestic Collections**

The service level for domestic collections is dealt with in Section 9.6 below.

### **9.3.2 Trade Collections**

The service level for trade collections is dealt with in Section 9.6 below.

### **9.3.3 Garden Refuse Service**

The preferred service level solution for this service is the abolishment of the current garden collection system.

It was proposed and accepted, through an interactive process, that garden refuse be treated as domestic waste, which would give the customer the choice of topping up their normal domestic service, acquiring an additional container, making use of the drop-off facilities, or using accredited contractors.

### **9.3.4 Landfill Service**

The disposal of waste by landfill is strictly controlled and has to meet the statutory requirements as set out by the Regulatory Authority, the Department of Water Affairs and Forestry (DWAF). In terms of Section 20 of the Environmental Conservation Act (73) of 1989 all landfill sites require a permit to operate. The permitting process can be extremely protracted and is preceded by an Environmental Impact Assessment (EIA) by an independent Body/consultant in terms of Sections 21, 22 and 26 of the above Act and the EIA Regulations promulgated under these sections in 1998. On completion of the EIA an application is made to the Environmental Impact Management Unit of the Department of Environmental Affairs, Culture and Sport (DECAS) for authorisation



to undertake a "listed activity". The landfill site will be operated in terms of the permit conditions and is subject to quarterly audit. Transfer Stations are permitted in a similar manner.

The permitting process and the development of the landfill site is further undertaken in terms of the DWAF document entitled "Minimum Requirements for Waste Disposal by Landfill"

The six landfill sites across the metropolitan area currently accepts domestic waste including separated garden refuse and clean building rubble of less than 1 ton free, whilst everything else is weighted and billed according the published tariffs.

### **9.3.5 Drop-off Area Service**

It was agreed through the interactive process that operation of drop-off areas should be rates funded as this function is regarded as public good.

There are at present 18 drop-off sites spread across the metropolitan area. They are operated in various different ways, some underdeveloped and others even unmanned. In addition to the latter, there are 6 previously CMC owned regional disposal sites available to residents willing to take certain types of waste up to 1 ton in weight (at no charge).

It is recommended that the above policy be adopted and extended to all drop-off facilities. Due to operational limitations only approved and separated waste can be accepted free of charge.

### **9.3.6 Disposal**

Many communities' attitude towards littering and dumping contributes to illegal dumping.

It was agreed, through an interactive process, that disposal services would include both composting plants as well as material recovery facilities (MRF's), the service would be fully cost recoverable, and that charges would be standardised.

#### 9.4 Legal Framework

Paragraph 7 above, Legal Requirements, sets out the legal issues that were dealt with in the report. The Legal Framework is summarised in **paragraph 2, ANNEXURE A** and highlights the risks of treating service areas differently, particularly where these correlate with demographic differences.

The legal recommendation of the report is to enact tariff policy by-laws under section 74 of the systems act within the context of carefully determined system of service levels.

#### 9.5 Rates vs Tariff

The rate vs. tariff issue is dealt with in detail in the Legal Framework – refer paragraph 9.4 above. The report explains the principle of private vs. public good that generally all services can be classified in terms of a continuum from those, which are public goods (collective services) to those, which are private or individual goods.

The characteristics of public goods or collective services are that they are not apportionable and non-exclusive, and therefore are financed from taxes resulting in the beneficiaries receiving no direct quid pro quo for their tax payment.

On the other hand the characteristics of private or individual goods are exactly the opposite. They are apportionable and exclusive, and therefore are provided on the basis of supply and demand. These services can be financed by levying an appropriate fee as the beneficiaries will, in effect, receive a direct quid pro quo for their purchase.

The private vs public good principle (tariff vs. rate funding) is illustrated by way of a continuum in **ANNEXURE C**.

#### 9.6 Basic Level of Service – Funding Source – Domestic and trade Collections

Two basic levels of service options have been identified. The objectives of these options are reasonably similar and are based on the principles of equity, sustainability and affordability, i.e.

- Provide a rudimentary service of 1 bag equivalent per service point per week to all informal areas on Council property,

and

- Containerise all service points generating in excess of 9kg waste per week (Option 1) or
- Containerise all formal service points (Option 2).

**ANNEXURE D1** illustrates the proposal of a rudimentary service to all informal households on Council property to be funded from rates, a basic service for domestic collections to be funded from rates/basic charges and rebated for affordability (option 4 only) and current service level (option 3 & 4 only) with higher levels of service consumption per service point funded from tariffs.

**ANNEXURE D2** illustrates the proposal of a rudimentary ad-hoc service provided to informal traders as per Council policy to be funded from rates, a basic service for trade collections to be funded from tariffs with higher levels of service consumption by the trade customer funded from tariffs.

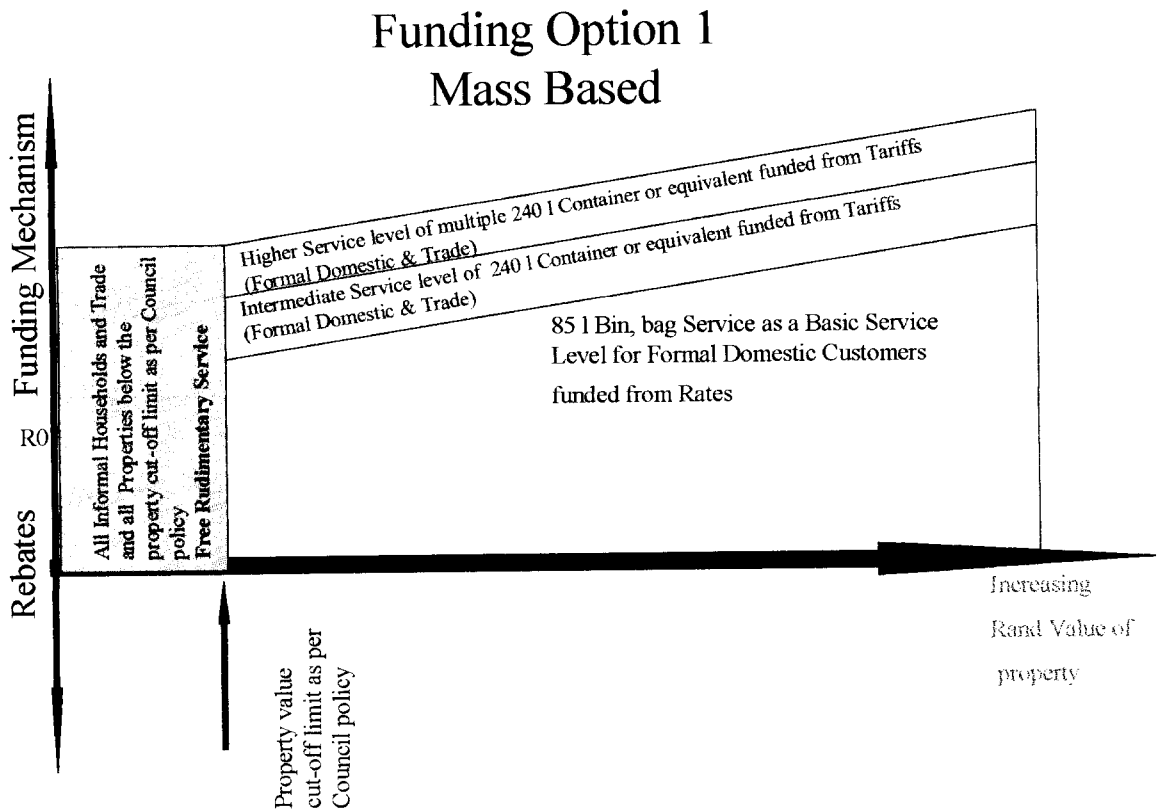
***Exceptions may apply due to operational requirements.***

Four (4) funding framework options have been developed namely:

- “Mass Based”
- “Rates Funded”
- “Basic Charge”
- “Rebated Basic Charge”

9.6.1 Mass Based

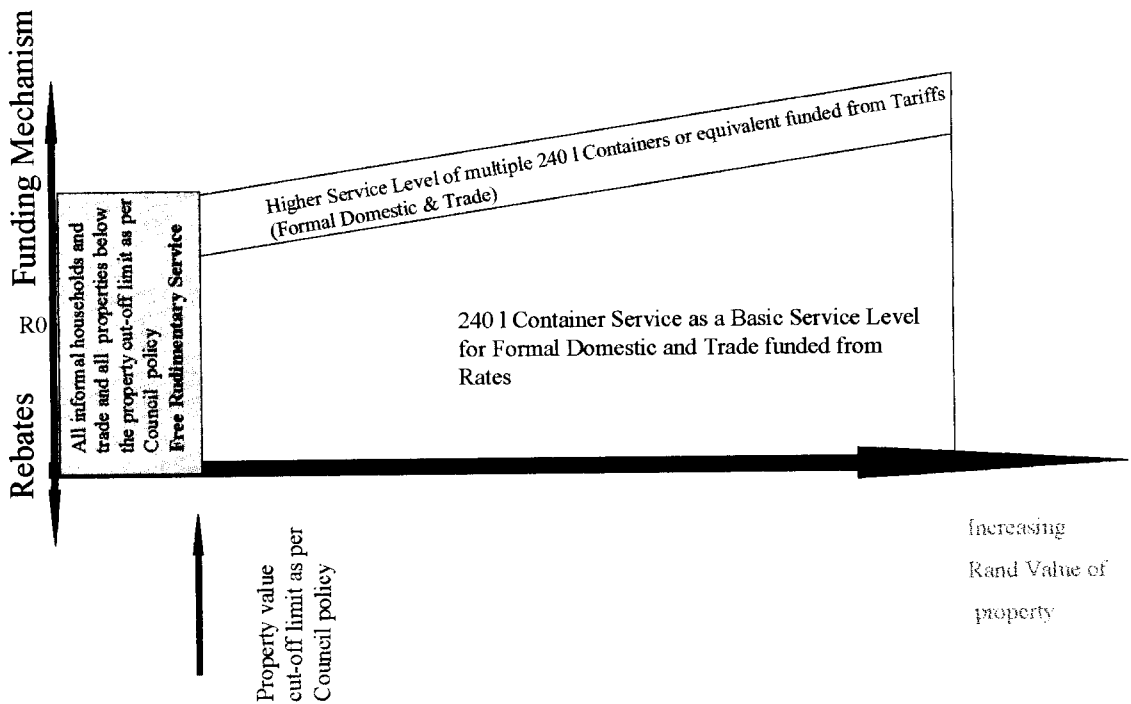
The proposed funding framework is based on the calculated average waste generated per service point in a defined community.



9.6.2 Rates Funded

The proposed funding framework is based on a 240 I Container or equivalent service.

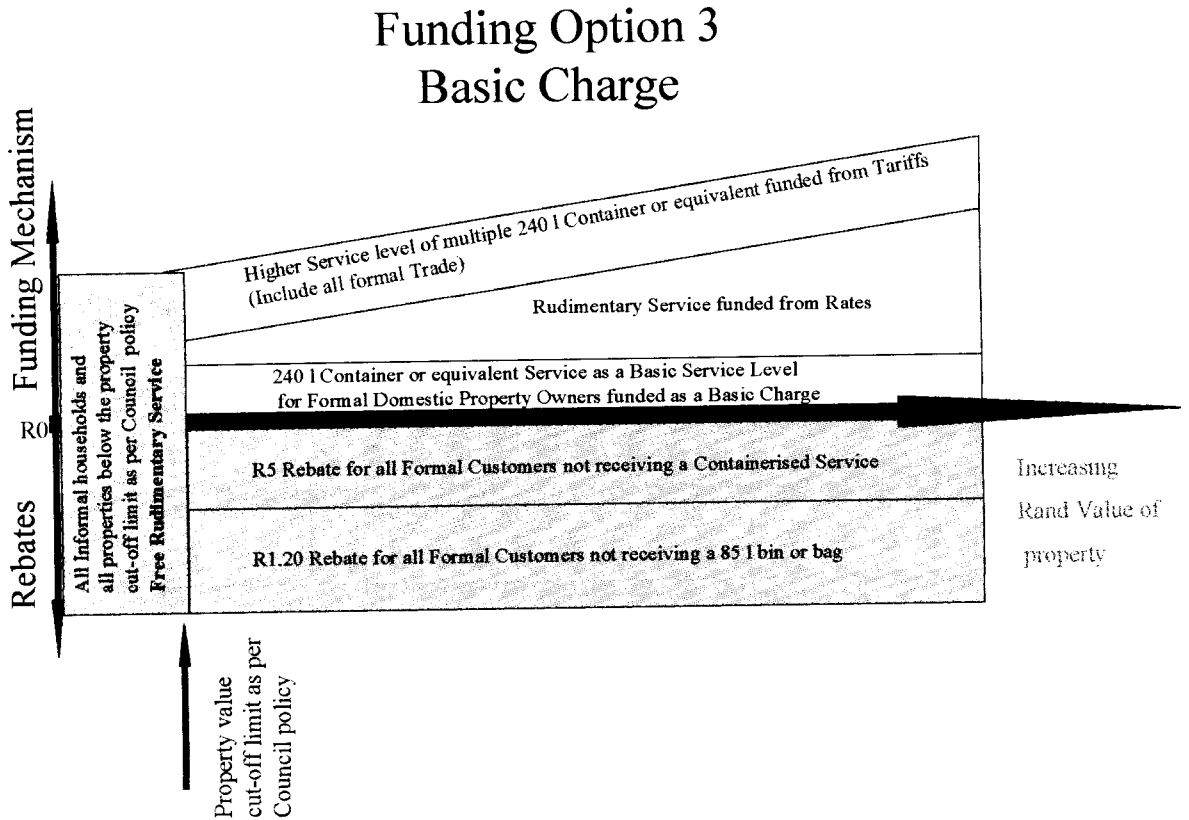
Funding Option 2  
Rates Funded



9.6.2 Basic Charge

The proposed funding framework is based on a 240 l Container or equivalent service.

Two (2) rebates are proposed for the "Basic Charge" option. All formal customers not receiving a containerized service qualify for a R5.00 rebate. Those customers that are not receiving plastic bags or being issued with other receptacles qualify for a further rebate of R1.20.



9.6.2 Rebated Basic Charge

The proposed funding framework is based on a 240 l Container or equivalent service.

Three (3) rebates are proposed for the "Rebated Basic Charge" option. All formal customers not receiving a containerized service qualify for a R5.00 rebate.

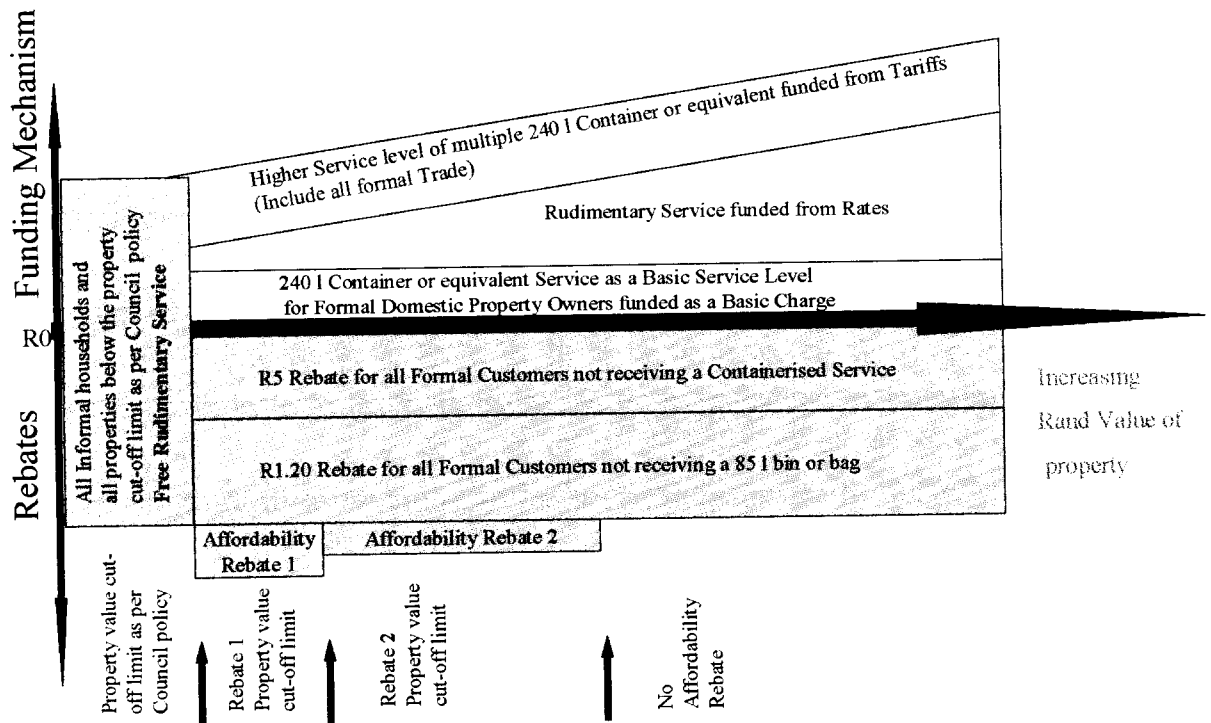
Those customers that are not receiving plastic bags or being issued with other receptacles qualify for a further rebate of R1.20.

Affordability rebates are proposed as follows:

Owners of properties valued from R20 000 up to and including R50 000 qualify for a 50% rebate.

Owners of properties valued from R50 000 up to and including R200 000 qualify for a 25% rebate.

### Funding Option 4 Rebated Basic Charge



## Comparison of Funding Options

		<b>Mass Based</b>	<b>Rates Funded</b>	<b>Basic Charge</b>
	<b>Definition</b>	Based on the calculated average waste generated per service point in a defined community	Based on a 240 l Container or equivalent service	Based on a 240 l Container or equivalent service
<b>Domestic</b>	<b>Rudimentary Service level</b>	Weekly bagged service <i>Rates funded</i>	Weekly bagged service <i>Rates funded</i>	Weekly bagged service <i>Rates funded</i>
	<b>Basic Service level</b>	Weekly door-to-door bagged service <i>Rates funded</i>	Weekly door-to-door 240 l container service or equivalent <i>Rates funded</i>	Weekly door-to-door 240 l container service or equivalent <i>Basic charge funded</i>
	<b>Interim Service level</b>	Weekly door-to-door 240 l container service or equivalent <i>Tariff funded</i>	Not Applicable	Not Applicable
	<b>Higher Service level</b>	Additional 240 l container service or equivalent <i>Tariff funded</i>	Additional 240 l container service or equivalent <i>Tariff funded</i>	Additional 240 l container service or equivalent <i>Tariff funded</i>
<b>Trade</b>	<b>Rudimentary Service level (Informal only)</b>	Rudimentary ad-hoc service to informal traders as per Council policy <i>Rates funded</i>	Rudimentary ad-hoc service to informal traders as per Council policy <i>Rates funded</i>	Rudimentary ad-hoc service to informal traders as per Council policy <i>Rates funded</i>
	<b>Basic Service level</b>	Weekly door-to-door bagged or 240 l container service <i>Tariff funded</i>	Weekly door-to-door 240 l container service or equivalent <i>Rates funded</i>	Weekly door-to-door 240 l container service or equivalent <i>Tariff funded</i>
	<b>Trade Higher Service level</b>	Multiple lift door-to-door bagged or 240 l container service or equivalent <i>Tariff funded</i>	Multiple lift door-to-door 240 l container service or equivalent <i>Tariff funded</i>	Multiple lift door-to-door 240 l container service or equivalent <i>Tariff funded</i>

## CRITERIA ASSESSMENT

GUIDING PRINCIPLE/CRITERIA	OPTION 1 MASS BASED	OPTION 2 RATES FUNDED	OPTION 3 & 4 BASIC CHARGE/REBATED BASIC CHARGE
<b>CUSTOMER CARE</b>			
SERVICE LEVEL DEFINITION	Complex method of suburb based weighing problematic	Simple and easy to be explained and implemented	Simple and easy to be explained and implemented
COMPLEXITY OF FUNDING MECHANISM	Extremely complex	Simple and easy to be implemented	Simple and easy to be implemented
LEVEL OF COMPLAINTS ANTICIPATED	Dissatisfaction expected from customers on bin/bag system	Complaints only expected during containerisation	Complaints only expected during containerisation
<b>SEPERATION OF SERVICE AUTHORITY &amp; PROVIDER</b>			
SEPERATION	Supportive of separation	Could lead to departmentalisation, less supportive	Most supportive of separation
FUNDING ARRANGEMENT ITO SDA	Contribution from rates difficult to define	Clear definition of rates contribution	Clear definition of rates contribution



<b>SIMPLICITY</b>			
	Mass based averaging per suburb complex	Simple and easy to be implemented	Simple and easy to be implemented
<b>OPERATIONAL EFFICIENCY</b>			
APPLICATION OF COMPACTION VEHICLES	Less specially equipped compaction vehicles required	More specially equipped compaction vehicles required	More specially equipped compaction vehicles required
POTENTIAL BIN LOSSES	Lower potential of bin losses	Higher potential of bin losses	Higher potential of bin losses
COST EFFICIENCY	More opportunity for community based alternatives	Highly mechanised and more expensive	Highly mechanised and more expensive
INCENTIVE TO REDUCE COLLECTION COSTS	High incentive - higher component tariff funded	Low incentive - low component tariff funded	High incentive largest component basic charge and tariff funded
<b>EQUITY &amp; FAIRNESS</b>			
DOMESTIC COLLECTIONS	Customers in similar circumstances pay different charges	High value property owners pay more for the same service	All owners pay same basic charge & tariffs for higher service levels
TRADE COLLECTIONS	Tariff based payment for services rendered	Tariff based payment for services rendered	Tariff based payment for services rendered
<b>TRUE COST ALLOCATION</b>			
	Reasonably cost reflective	Rates funded basic services not cost reflective	Highly cost reflective
<b>AFFORDABILITY</b>			
	Free rates funded service to poor households	More expensive for high value property owners	Free rates funded service to poor households Option 3: Service could be unaffordable for owners within the lower-valued property range Option 4: Service could be affordable for owners within the lower-valued property range
<b>WASTE MINIMISATION</b>			
	Favourable to minimisation	Less favourable for minimisation	Less favourable for minimisation
<b>REVENUE</b>			
ACCOUNT ADMINISTRATION	Problematic because of complexity	Mostly rates funded therefore least complex option	Not complex but more admin required
REVENUE STABILITY	Least stable	Most stable	Less stable
BAD DEBT MANAGEMENT	Required	Not required	Required
<b>INDIGENCY</b>			
	Policy critical Biggest need for - policy in place	Policy not critical SMALLEST NEED FOR - POLICY IN PLACE	Policy less critical SMALLEST NEED FOR - POLICY IN PLACE
<b>BASIC SERVICES</b>			
	Complex package of services	All in package of services	Clear distinction between rudimentary, basic & higher service levels
<b>INTEGRATION OF SERVICES</b>			
INTEGRATABILITY	Integration of service compromised by complexity	Integration of service compromised by garden refuse service	Fully integrated solution
ACCOMMODATION OF MULTI RESIDENTIAL COMPLEXES	Complex	Accommodated	Accommodated, high incentive to limit number of lifts paid for
ACCOMMODATION OF TRADE USERS	Accommodated	Accommodated	Accommodated
ACCOMMODATION OF GARDEN WASTE	Accommodated	Accommodated but unfair	Fairly accommodated

<b>ACCEPTABILITY</b>			
	Varying payment for similar service unacceptable	Higher payment for similar basic service unacceptable	Most acceptable option
<b>TRANSPARENCY</b>			
	Least transparent option	Less transparent option	Most transparent option
<b>FINANCIAL VIABILITY</b>			
ABILITY TO RINGFENCE	High risk of availability of income stream	Most stable income stream	Less stable income stream
	Reasonable	Low	Highest
<b>JOB CREATION CAPABILITY</b>			
	Most supportive of empowering local entrepreneurs	Less supportive of empowering local entrepreneurs	Less supportive of empowering local entrepreneurs

### 9.7 Financial Model

The consultants have developed a cost centre structure/expenditure model and a revenue model for the full Solid Waste Management Service including transfer and disposal, collections, drop-off areas and the agreed and recommended area cleaning functions.

The expenditure model will be used to calculate tariffs for transfer and disposal and to cost different levels of service for rates funded services (e.g. street sweeping) to establish affordability.

The revenue model will be used to calculate rates contributions, basic charges for basic services and tariffs for higher levels of service for domestic and or trade collections.

## 10. STAFF IMPLICATIONS

Detailed staff implications are unavailable at this stage. Clearly, costs will increase for higher levels of service especially where cleaning and street sweeping are concerned. The expenditure model will be used to establish the affordability of different levels of service given those higher levels of service will require more resources.

## 11. COMMENTS FROM OTHER DIRECTORATES

A Project Committee chaired by the Executive Director directed this project: Trading Services. Mr M Richardson and Ms V Johnson represented financial Services and

Legal Services on the Project Committee respectively. Both Departments were presented draft reports for comment prior to the finalisation of the study.

From a financial perspective Mr. M Richardson confirmed that he had no objection to the principle of a rates/service charge funded basic level of service and tariff funding of higher levels of service.

From a legal perspective Ms V Johnson commented in detail on the Legal Framework drawn up by Ashira Consultants and worked closely with that firm in finalising the legal recommendation.

Mandated representatives from the Development and Community Services Directorates were included on the project team and played a significant role in the selection and acceptance of the proposed service boundaries and preferred Service Delivery Option for area cleaning – refer **Paragraph 9.1 above**.

## 12. RECOMMENDATION

It is recommended that the PricewaterhouseCoopers Report entitled “Development of a Framework for Service Delivery, Service Levels and Funding Options – Solid Waste Services” be adopted as a policy document and the following proposed policies and recommendations be adopted:

- 12.1 Service Delivery Option 4 as agreed with the “internal customers” and described in paragraph 9.1 above.
- 12.2 Service boundaries as described in paragraph 9.2 above.
- 12.3 Level of Service for domestic collections, i.e. a rudimentary service to all informal households on Council property to be funded from rates, a basic service to be funded from rates/basic charges and rebated on affordability (option 4 only) and current service level (option 3 & 4 only) with higher levels of service consumption per service point funded from tariffs and rebated on current service level (option 3 & 4 only), as described in paragraph 9.6 above.
- 12.4 Level of Service for trade collections, i.e. a rudimentary ad-hoc service to informal traders as per Council policy to be funded from rates, a basic service to be funded from tariffs with higher levels of service consumption by the trade customer funded from tariffs, as described in paragraph 9.6 above.
- 12.5 Level of Service for garden refuse and limited free disposal at landfill sites and drop-off areas as described in paragraphs 9.3.3, 9.3.4, and 9.3.5 above.

12.6 That tariff policy by-laws be enacted under section 74 of the systems act within the context of a carefully determined system of service levels which will mitigate the risk to Council of a legal challenge.

  
AUTHOR OF REPORT

DATE: 11-04-2002

  
DIRECTOR: SOLID WASTE

Comment:  
\_\_\_\_\_  
\_\_\_\_\_

TELE. NO.: 9187342

DATE: 11/4/02

  
EXECUTIVE DIRECTOR: TRADING SERVICES

Comment:  
\_\_\_\_\_  
\_\_\_\_\_

TELE. NO.: 4005010

DATE: 2002-04-11

  
EXECUTIVE MEMBER: TRADING SERVICES:

Comment:  
\_\_\_\_\_  
\_\_\_\_\_

DATE: 12-4-2002

  
EXECUTIVE MEMBER: FINANCE

Comment:  
\_\_\_\_\_  
\_\_\_\_\_

DATE: 12-4-2002  
Acting

## ANNEXURE A

### THE PREFERRED FRAMEWORK FOR SERVICE DELIVERY, SERVICE LEVELS AND FUNDING OPTIONS: RECOMMENDATIONS

Taking the guiding principles as the basis for a framework for making decisions on both functional service delivery boundaries and service levels, a preferred framework in effect constitutes the interactive development and evolution of a number of options that are then tested individually and/or via a modeling process. One test to service level includes affordability using the financial framework.

The solid waste function was tested against four service delivery options and through an interactive process involving key stakeholders (i.e. property owners such as Parks, Roads, protective services, etc) option 4 was agreed upon as being the preferred service delivery option for solid waste services. Thereafter, specific functional and geographical sub-functions of area cleaning were tested and Option 4 was agreed upon by the stakeholders as a basis for a service delivery.

On the basis of an interactive process with the key stakeholders from Solid Waste Services, Finance Support Services, and relevant property owners i.e. Parks, Roads, etc, the overwhelming majority of the above named stakeholders recommended the following set of recommendations as the basis for the Framework for Service Delivery, Service Levels, and Funding Options:

1. The set of **Guiding Principles** as defined in Section 8 of the report. These Guiding Principles were developed to inform the framework for service delivery, service levels and funding. The Guiding Principles in brief are as follows:
  - Customer Care
  - Separation of Service Authority (Client) and Service Provider (Contractor)
  - Simplicity
  - Operating Efficiency
  - Equity and Fairness
  - True Cost Allocation
  - Affordability
  - Waste Minimization
  - Revenue Stability
  - Indigency
  - Basic Services
  - Integration of services
  - Acceptability
  - Transparency
  - Comprehensiveness
  - Financial viability
2. The **legal framework** as discussed in Section 7 of the report. Section 7 provides a legal background to the development of the framework for service delivery, service levels, and funding sources.

The report identifies legal risks arising from the equality provisions of the Constitution and the provisions of the Systems Act. The risks in the former case are more significant and can be managed by the drafting and enactment of Tariff Policy By-Laws under section 76 of the Municipal Systems Act. Such by-laws will constitute a “law of general application” and in circumstances where equality rights are limited, will allow the City of Cape Town to attempt to justify such limitation under section 36(1) of the Constitution. In the absence of a law of general application where, for example, decisions about service levels and funding options are a function of policy decisions alone, the City of Cape Town will not have an opportunity to set out the reasons for treating different service areas differently.

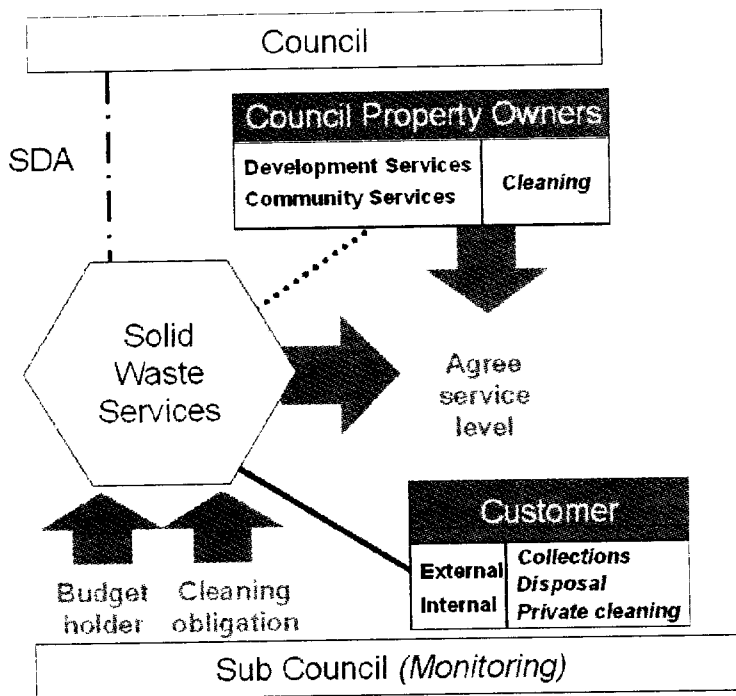
Even with the enactment of Tariff Policy By-Laws, the legal risk is not eliminated, and Cape Town should exercise caution to ensure that the different treatment of service areas, especially where they correlate with demographic differences, can be justified in terms of a range of factors set out in the Systems Act, including resource limitations, financial sustainability, and the pressures imposed by local government transition. Furthermore, the City must provide a minimum level of service to the entire community as a priority (as recommended in this report) and make provision for the improvement and equalization of service levels.

As suggested in section 7.3 (see above), the risks arising from the provisions of the Systems Act are manageable. This arises largely from the fact that section 73 of the Systems Act sets out a wide range of general duties, which cut in different directions. Inevitably, a balancing of duties will be required, and provided there is a minimum level of basic municipal services (as required in section 73(1)(c)) and provided that different service levels are rationally based on other factors set out in section 73(2), it is likely that a Court will vindicate the City's approach.

Accordingly, the enactment of Tariff Policy By-Laws under section 74 of the Systems Act within the context of carefully determined system of service levels, is the legal recommendation arising from this report.

3. The **Service Delivery Option**, as illustrated in Section 11.2.4. The service delivery Option 4 was the preferred Service Delivery Option for Solid Waste Services by the overwhelming majority of key stakeholders. This Option 4 is illustrated and defined as follows:

**Illustration of Option 4:**



**Definition of Option 4:** Solid Waste Services is accountable to Council for the cleanliness of the City and to this end will agree with the individual Council Property Owners the service level. The Solid Waste Services will then determine and control the Budget.

**Some of the main features of Option 4 are the following:**

- Consensus between Client and Contractor on budget
- More than one party fighting for the budget
- Joint / Integrated effort on service delivery
- Easier to regulate
- Clear distinction between Client and Contractor
- Clear accountability to Council

- Interface with customer is clear
- Operating efficiencies can be optimised
- Ownership and accountability is clear

4. The **functional Service Delivery Boundaries** as discussed in section 9.1 of the report. These boundaries were developed through an interactive process with the key stakeholders and these boundaries were considered to be most suitable for Solid Waste Services.

The service boundaries, discussed under section 9.1, indicates the current fragmented service boundaries and the recommended Branches/Services of Council responsible for cleaning and cleansing open spaces, the Budget, Removal and Disposal in the various areas of the City of Cape Town.

The recommended Functional Service Boundaries are provided in the matrix showing the branches of Council responsible for cleaning and cleansing open spaces, the Budget, Removal and Disposal in the various administrative areas of the City of Cape Town.

5. The **Service Level Framework** that incorporates a broad process defined by the various issues, as discussed in Section 9.2 and Section 9.2.7 of the report:

Given the issues discussed in Section 9.2, the Service Level Framework incorporates the following broad process to be followed by Council:

- Agree on the functional service boundaries (as per Table 9.1)
- Decide on the minimum input level bearing in mind the current dilemma regarding the Input vs. Output Equity issues.
- Develop Service Level Agreements (SLA) between the Service Provider and the Property Owners e.g. Parks, Roads, etc. informed by the Guiding Principles and the preferred Service Delivery Option / Model 4.
- Align service delivery needs “outputs” with available allocated resources to ensure that service level targets can be met effectively.
- Develop Service Delivery Agreements (SDA) between Council and the Service Provider
- Obtain buy-in from all relevant stakeholders
- Present the preferred Service Level Framework to Council for approval.

6. The **Tariff Convergence Model and Framework** that was developed based on the guiding principles, service levels and service boundaries. The model has been populated with cost centers identified as being part of the solid waste service. Unfortunately, unbundling of these cost centers is an ongoing process which affects the results of the model.

7. The need for **measurable standards** is urgently required to develop KPI's and in order for service delivery and service level agreements to be practical. Measurable refers to both input and outputs and with regard to a set of informative and measurable Key Performance Indicators (KPI's).

8. The **preferred revenue funding option** (rates, tariffs or rates / tariffs) to be chosen. The Funding Options are discussed under Section 10 Rates and Tariff Funding Option of the report.

9. Develop and agree on a **process of unbundling**. Identify and isolate the activities, costs, assets, and revenues that are provided by the Solid Waste Services, the property owners, and other service providers according to the preferred service delivery options. Then commence with unbundling of:
- Resources;
  - Assets; and
  - Finance
- according to the preferred service delivery options.

## ANNEXURE B

Matrix of responsibilities for cleaning and cleansing open spaces in City of Cape Town

Location and nature of offending waste		Branch or person responsible to Budget, Remove and Dispose						Workshop Recommendation
		Historical practice						
		BLA	CTN	HLD	OOS	SPM	TYG	
1	National Roads RRB-RRB	SANRAL	SANRAL				SANRAL	
2	Provincial MR RRB-RRB	PAWC	PAWC				CL	
3	Roads & streets							
3.1	Kerb to kerb	CL	CL	CL		CL/Rds	CL	"Fence-to-fence" <sup>1</sup> cleaning by SWS
3.2	Verges vegetation paved	Pks	Pks		Pks	Pks	Pks	
3.3	Sidewalks	CL	CL	CL	CL	CL/Rds	CL	
3.4	Verges other	Pks	CL	Pks Sw	CL	Pks	Pks	
3.5	Residential Street frontage cleaning	CL	CL	No service	No service	No service	No service	Areas with stabilized sidewalks swept by residents
3.6	Weeds unpaved sidewalk	-----	-----	Pks	-----			Pks
3.7	Gulleys	Sw	Sw	Sw	CL	Rds/CL	Sw	Sw
3.8	Under storm water branch	Sw	Sw	Sw	Rds	Rds/CL	Sw	
4	Parks	Pks	Pks	Pks/CL	Pks	Pks	Pks	Enclosed spaces <sup>2</sup> & amenities done by Pks
5	POS							Open-spaces done by SWS
6	Natural rivers, lakes & ponds							
6.1	Hydraulic silt / debris	Sw	Sw	Sw	Pks	Rds	CMC Sw	"Hydraulic & out-of-reach areas" done by Sw
6.2	Banks vegetation	Pks	Pks	Pks	Pks	Pks	CMC Sw	"Reachable areas" <sup>3</sup> done by SWS.
6.3	Banks litter	Pks	CL	CL	CL	Pks	CMC Sw	
6.4	Dumped rubble out of water	Pks	CL	CL	CL	Pks	Pks	
6.5	Dumped rubble in water	Pks	Sw	CL	CL	Pks	Pks	
7	Canals							
7.1	Hydraulic silt / debris	Sw	Sw	Sw	Pks	Rds	CMC Sw	"Hydraulic & out-of-reach areas" done by Sw
7.2	Verges in former Ikapa	-----	Roads	-----	-----	-----	-----	"Reachable areas" done by SWS.
7.3	Verges elsewhere	Sw	CL	Pks	CL	Pks	CL	
7.4	Illegal rubble out of water	Sw	CL	Sw	CL		CL	
7.5	Illegal rubble in water	Sw	Sw	Sw	CL		CL	

<sup>1</sup> Council owned open areas

<sup>2</sup> Council owned fully enclosed area or protected area

<sup>3</sup> All council owned areas in rivers, canals and ponds that cannot be reached manually and requires specialized equipment.



Location and nature of offending waste		Branch or person responsible to Budget, Remove and Dispose						Workshop Recommendation
		Historical practice						
		BLA	CTN	HLD	OOS	SPM	TYG	
8	Ponds (man made)							
8.1	Hydraulic structures	Sw	Sw	Sw	Pks Sw	Rds	CMC Sw	"Hydraulic & out-of-reach areas" done by Sw
8.2	Floor/ banks vegetation	Pks	Pks	Pks	Pks	Rds	Sw Pks	Pks
8.3	Floor/ banks litter	Sw		CL	Pks	Pks	CL Pks	SWS
8.4	Dumped rubble	Sw		CL/Sw	CL	Pks	CL	SWS
9	Council owned land	Resp Dept	Resp Dept	CL	CL	Pks	Admin	SWS
10	Non council owned Vacant private land	Owner	Owner	Owner	Owner	Pks	Owner	Owner <sup>4</sup>
11	Beaches	Pks	CL	Pks	-----	Am	Pks	SWS

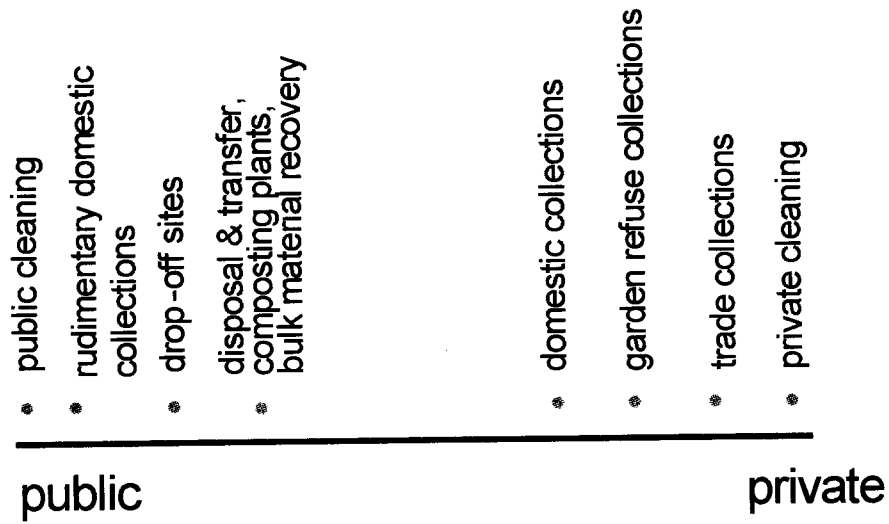
<b>Key:</b>	<b>SANRAL</b>	<b>South African National Road Agency Limited</b>
	<b>PAWC</b>	<b>Provincial Administration of the Western Cape</b>
	<b>CL</b>	<b>Cleaning / Cleansing</b>
	<b>SWS</b>	<b>Solid Waste Services (which is the Unicity proposed title for the service formally known as cleansing in most of the Administrations)</b>
	<b>Rds</b>	<b>Roads</b>
	<b>SW</b>	<b>Storm water</b>
	<b>Pks</b>	<b>Parks</b>
	<b>Am</b>	<b>Amenities</b>

<sup>4</sup> Council will be required to interact with Community Health Services or other relevant Council service in the event where the neglect on the owners property creates or could lead to a health or fire hazard

ANNEXURE C

# Rates vs Tariffs

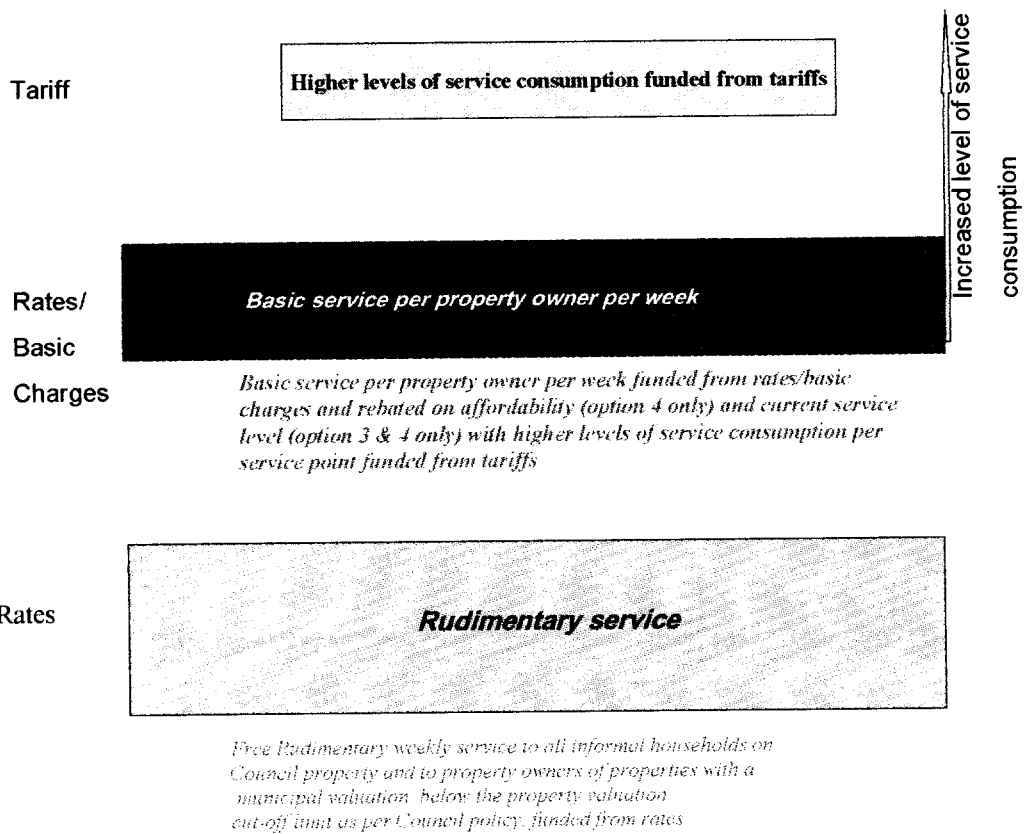
## Public/Private Good Continuum



ANNEXURE D1

# Financial Proposal: Collections (Domestic)

## Funding Source



ANNEXURE D2

Financial Proposal: Collections  
(Trade)

Funding Source

Tariff

Higher levels of service consumption funded from tariffs

Tariff

Basic service per property owner per week

Basic service for trade customers per week funded from tariffs with higher levels of service consumption funded from tariffs.

Rates

Basic rudimentary ad hoc service to all informal traders as per Council policy, funded from Rates

Increased level of service  
consumption

## ANNEXURE E

### LEGAL ISSUES

In developing a framework for service delivery, service levels, and funding options, Ashira Consulting (Pty) Ltd ("Ashira") has been appointed to consider the legal framework relating to rates and tariffs. The purpose of the exercise is to determine the extent to which the City of Cape Town is constrained in reviewing its funding options. Ashira's views are set out in this section.

The six former Metropolitan Local Councils disestablished under the structures Act in the formation of the City of Cape Town implemented different funding methods for solid waste services. In two of the administrations the domestic collections service is fully rates-funded (Cape Town and South Peninsula), whereas in the remaining four administrations the service is tariff-funded. These inconsistencies will remain until a uniform funding solution has been accepted for the City of Cape Town as a whole.

The question that arises is whether there are legal considerations that have a bearing on possible future funding options and, in particular, whether there is any requirement that solid waste services be funded using a particular mechanism. This section of the report provides clarity on these issues and follows a workshop held in Cape Town on 18 January 2002. It is divided into four parts, which canvass the following issues:

Part I:	The legal framework;
Part II:	Understanding tariffs;
Part III:	Equality rights and legality
Part IV:	Johannesburg's Practice

#### 7.1 PART 1: The Legal Framework

The treatment of rates and tariffs is across a wide body of legislation including the Constitution of the Republic of South Africa, 1996 ("the Constitution"), the Local Government: municipal Systems Act 32 of 2000 ("the Systems Act"), the Local Government Transition Act 209 of 1993 ("the LGTA"), the Western Cape Municipal Ordinance 20 of 1974 ("the Municipal Ordinance") and the not yet enacted Local Government: Property Rates Bill (published in Government Gazette No.21448 on 4 August 2000) ("the Rates Bill"). Furthermore, there is environmental legislation which does not have a direct bearing on rates and tariffs but deals with solid waste services and is pertinent to this study. This legislation includes the Environment Conservation Act No. 73 of 1989 ("ECA") and the National Environmental Management Act No. 107 of 1998 ("NEMA"). Finally there is government policy such as the National Waste Management Strategy (Version D 15 October 1999) ("the NWMS"), which has an impact of funding options as will be seen below.

Generally the legislation provides no explicit guidance on what rates and tariffs should be used to pay for. In the Constitution, it is clear that rates may be imposed

for services provided by the municipality (see sections 229(1)(a) and 229(2)); and in the LGTA it is made clear that fees may be similarly levied in respect of any function or service of the municipality (see section 10G(7)(a)(ii)). The detailed provisions regarding the imposition of rates on property in the Rates Bill and in Part II of Chapter VIII of the Municipal Ordinance do not in any way restrict the purpose for which the rates account is used. There is a dictum in a recent unreported judgement, *South African Municipal Workers (SAMWU) v The City of Cape Town and others* Unreported Case No 7262/2001 (14 December 2001) (“the SAMWU judgement”), that the term “municipal services” applies to “services for which fees are levied in accordance with a tariff policy” (at page 10). The full implications of this judgement will be considered in Part II below, but it seems to suggest that tariffs rather than rates should be charged for the provision of “municipal services”. This judgement does not clarify the question of when rates or tariffs should be imposed for the provision of services, because the term “municipal services” is not defined in the Systems Act, or elsewhere (see the discussion in Part II below).

The environmental legislation, including NEMA and the ECA, also does not provide any explicit guidance on when rates or tariffs should be levied for the provision of a service. NEMA does state in Section 2(3)(p) that,

*“The costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment.”*

This provision translates into the so-called “polluter pays” principle which is defined in the NWMS as the principal that,

*“those responsible for environmental damage must pay the remediation costs, both to the environment and to human health, and the costs of preventative measures to reduce or prevent further pollution and environmental damage”.*

This principle is neutral on the distinction between tariffs and rates because it relates not to the payment for the delivery of service but to the payment to the municipality for the cost of prevention or remediation. This principle may have been misconceived in the NWMS itself which comments that it is an “integral component” of funding approaches (see paragraph 4.2.2 under the heading “Funding”).

The NWMS does provide some indication that national government strategy favours a tariff system for solid waste services. In Paragraph 4.2.2 (under the heading “Funding”) it is stated that two distinct funding mechanisms will be used, namely.

*“Financial pricing mechanisms - based on a cost recovery approach; and economic approaches - which introduce economic instruments into the pricing structure of*

*integrated waste management in order to achieve specific waste management objectives”.*

The phrase “specific waste management objectives” in the NWMS is somewhat enigmatic, but may suggest that management objectives (including financial ring-fencing, cross-subsidation, differential service levels, demand-driven pricing) should be achievable, and these require tariff-based pricing structures (see the résumé of the Workshop on the proposed Domestic Refuse Removal Policy Framework for the City of Cape Town held on 26 June 2001 which stresses the need for a tariff-funded service so that costs will not be “hidden in the rates structure”). However, it is a principle in NEMA set out in section 2(4)d) that,

*“Equitable access to environmental resources, benefits and services to meet basic human needs and ensure human well-being must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination.”*

This principle, would suggest the appropriateness of a rates-based pricing system because it has a natural progressive structure involving both a valuation of immovable property and improvements (see section 85 of the Municipal Ordinance) and because provision is made in the Municipal Ordinance for rebates on “ratable property which is owned and occupied by persons who belong to a particular class or category determined by the council and approved by the administrator” (see section 83(3)(A)(III)).

In short, there is no provision in the existing regulatory environment, which explains when services should be paid for out of the rates account and when they should be paid for through a system of tariffs. Accordingly, municipalities are currently free to determine *how* to pay for solid waste management services.

As an expression of the lack of regulation in this area, the Department of the Environment and Tourism (“DEAT”) has appointed consultants to consider current solid waste tariffs and financial practices in South African municipalities (the research is captured in a discussion document entitled “Solid Waste Tariff Strategy - Tariff Survey : Initial Results”. October 2000 by Palmer Development Group) (“the PDG Survey”). The research indicates that across South African Municipalities there are different approaches to pricing for solid waste services much as there has been between the different former administrations (according to the PDG survey 14% of the municipalities who responded to the survey split solid waste services between community and economic services 32% have it listed as a community service; and 55% have it listed as an economic service. See the PDG survey at paragraph three). The commissioning of the research by DEAT indicates, as suggested in the NWMS, that DEAT perceives the need for guidance in this area.

## **7.2 PART II : Understanding Tariffs**

Although the decision whether to fund solid waste services through a system of tariffs or rates appears unconstrained by legislation, the question of *which* services may be funded through tariffs is somewhat uncertain in South African law. This question has

important implications in the context of solid waste services as will become clear in the discussion that follows.

### **7.2.1 Tariff as Price Control**

Although the imposition of tariffs is principally regulated by the Municipal Ordinance (see section 187 and see also section 10 of the Cape Metropolitan Council Waste Management By-law (published under PN467/2000 in the Province of the Western Cape Provincial Gazette No 5582 dated 15 September 2000)), the newly-enacted Systems Act which regulates service delivery is central in understanding when tariffs may be levied. The recent judgement in the Western Provincial Division of the High Court in the *SAMWU* judgement provides some guidance, but many issues remain unsettled.

When municipalities levy tariffs on services, they control the price of providing those services by the municipality or its service providers. Tariffs cannot be exceeded when end users are invoiced for the provision of a municipal service, and it may even be argued that they cannot be discounted. In the disestablished Greater Johannesburg Metropolitan Council (“GMMC”), competition with the private sector in the delivery of certain solid waste services was accordingly characterized by price rigidity on the side of the GJMC. This allowed the private sector to reduce the GJMC’s market share of these services. The City of Johannesburg Metropolitan Municipality (“the CoJ”) has accordingly introduced the notion of a maximum tariff which may not be exceeded but can be discounted by the CoJ and its service providers, and (more importantly) has introduced a distinction between so-called waste collection and waste management services which allows for free competition with the private sector in the context of the provision of certain services.

Because of the importance of providing affordable municipal services on an equitable basis, national legislation regulates the setting of tariffs by prescribing principles that must be reflected in municipal tariff policies (see section 74 of the Systems act and note that section 13 of the Rates Bill provides similar controls in the context of rate-funded services). The question that arises is which services are subject to price control in this way, and how do these price controls impact the private sector?

Section 74(1) of the Systems Act makes it clear that tariffs are levied for the provision of “municipal services”. Putting it differently, whether tariffs apply depends on whether or not a “municipal service” is being provided. This appears to be the view set out in the *SAMWU* judgement as appears from the following extract from the judgement of Emslie AJ:

“Section 74(1) [of the Systems Act] contemplates ‘the levying of fees for municipal services provided’ and in my view, taking account of the purpose and scheme of the Systems Act as a whole, the Legislature has chosen to characterize as “municipal services” those services for which fees are leviable and this is why municipalities are required to adopt and implement a tariff policy in relation to (new or significantly upgraded) “municipal services”. This view is supported by the consistent use in the Systems Act of the word “users” in relation to “municipal services” provided. Clearly municipalities do many things for the benefit of the community at large for which no fee can be or is charged, and they fund the cost thereof by levying rates, but in my view the Legislature has chosen not to characterize these as “municipal services” in



chapter 8 of the Systems Act. This accords with the fact that, as set out in the long title thereof, the purpose of the Systems Act is *inter alia* to ensure universal access to essential services that are *affordable* to all. Affordability is an issue in relation to services in respect of which fees are leviable, and this is why (as already suggested) it is logical that the Systems Act governs the position in relation to services for which fees are leviable, and that it is these services that are to be characterized as ‘municipal services’ (at pp 13-14).

Before considering the *SAMWU* judgement, it is important to understand the implications of classifying a service as a “municipal service”. As appears from the *SAMWU* judgement, the meaning of “municipal services” controls the application of the Systems Act. **This has profound implications.** If the Systems Act is not applicable, then the section 78 requirements of the Systems act do not apply, a tariff is not levied in pricing the service and (unless a rates regime is applicable) the private sector may provide the service without contracting with Cape Town. The latter implication needs to be elaborated. “Municipal services” may only be provided by the municipality itself or its contractors (that is, those companies that have service delivery agreements with the City of Cape Town). As exhaustive reading of the Systems Act indicates that it nowhere envisages the provision of “municipal services” by any party other than a municipality or a municipal contractor. Indeed, in addition to section 74(1) which postulates that municipal services are provided either by “the municipality itself or by way of service delivery agreements”, the entire structure of Part 2 of Chapter 8 is premised on the idea that municipal services are provided either by “internal mechanisms” (see section 76(a)) or “external [contractual] mechanisms” (see section 76(b)). In short, private companies may not provide municipal services, *except through service delivery agreements with Cape Town*. And conversely, private companies may provide non-municipal services *without contracting with Cape Town*.

What forms of refuse collection are “municipal services” and subject to the Systems Act? The term “municipal service” is nowhere defined and consequently the Systems Act must be construed. The *SAMWU* judgement classifies as “municipal services’ those services for which fees are leviable. The obvious difficulty with this position is that there is currently no uniformity in Cape Town or in South Africa around which services are subject to a tariff (see the PDG Survey in paragraph 3). This could mean that in Cape Town, whether a particular service was to be characterized as a “municipal service” and subject to the provisions of the System Act would depend on which former administration provided the service. As service delivery becomes integrated in operational terms in Cape Town, this could mean that an end loader traversing a Cape Town Street collecting domestic waste could sometimes be providing a municipal service and at other times a non-municipal service.

In our view, the determination of what is a “municipal service” cannot be made in a mechanical manner. The concept of “municipal service” is a qualitative concept which applies to a greater or lesser extent in respect of any particular service. The following factors appear to be relevant:

- historical practice, including the extent of penetration by the private sector;

- policy and political concerns, including whether the service needs to be provided on an equitable basis;
- resource allocation which considers whether a municipality should allocate resources for the provision of a service; and
- regulation, including the manner in which the provision of the service is controlled by legislation at all levels of government.

In certain cases, such as “domestic refuse”, it is clear that the service is a municipal service, indeed it may even be a “basic municipal service”. In other cases, such as “builders refuse”, the limited developmental, health and environmental implications association with non-collection, and the history of licensee involvement, makes it equally clear that a “municipal service” is not involved. Likewise with hazardous waste which as indicated in the PDG Survey, is generally not a form of waste handled by municipalities (see paragraph 5 of the Survey). There will, of course, be a number of services which are difficult to categorise (see the classification provided under paragraph 5 of the “Strategic Overview Report on Solid Waste” dated 06/30, and note that in many cases the recommended service provider is private). Garden waste and commercial waste can probably be in a grey area between municipal and non-municipal services (see the “Trade Waste Collection Policy Framework” authored by F Fourie and dated 18 July 2001 in paragraph 2 which clarifies that the previous administrations deal with trade refuse collection in different ways, and in two cases - Helderberg and Oostenberg - seem to create monopolies as is the case in Johannesburg for containerized commercial waste). For those waste streams that are not municipal services (such as industrial waste, medical waste, builder’s rubble and hazardous waste - see “Strategic Overview Report on Solid Waste” dated 06/30, p 3), the City of Cape Town may lack the power to impose tariffs or provide the service on a monopolistic basis (that is, to the exclusion of private companies contracting directly with end users).

### **7.2.2 Implications**

The implications of this analysis are very important. There appear to be the following three categories of service:

#### ***Rates-Funded Services***

These services, applying the judgement in *SAMWU*, are services in respect of which fees are not leviable. In order to avoid circularity, these services (conventionally defined as “community services”), do not typically involve a one-to-one relationship between units of service and individual users (see the Proposed Domestic Refuse Removal Policy Framework authored by F Fourie and dated 18 July 2001 at paragraph 8). In short, they involve the provision of a public good.

#### ***Tariff-Funded Services***

These services must be paid for by individual users (unlike rates-funded services), but applying the analysis above and the *SAMWU* analysis, they

must be provided on a basis that is affordable (see *SAMWU* at page 13) and equitable (see section 73(2)(a) of the Systems Act). These services are “municipal services” regulated by the Systems Act.

### ***Competitive Services***

These services must be paid for by individual users at a price that is determined by the market. Typically these are lucrative services provided by the private sector contracting directly with end users. These services are not regulated by the Systems Act, but nevertheless subject to a wide body of legislation including by-laws and national legislation.

The current difficulty in Cape Town is the distinction between tariff-funded and rates-funded services. Given that the *SAMWU* judgement applies to Cape Town, it might be useful to reason backwards from the judgement and state that *where it would be inappropriate to treat a service as a municipal service, but that service should nevertheless be provided on a universal basis (and hence is not a competitive service), it should be a rates-funded service.* Within these very broad parameters, Cape Town is free to devise a pricing strategy that is appropriate in organizational, financial and policy terms.

### **7.2.3 The Residual Obligation**

It is important to clarify that although a service may be designated a non-municipal service, the City of Cape Town would still have a “residual obligation” to ensure that in cases of non-performance by the private sector, the public health or safety of the environment was not endangered. The provision of a service in this context is the provision of a “basic municipal service” as this term is defined in the Systems Act. The role of the city here is not a “step in right” arising from a contract, but a statutory obligation having its source in the Systems Act.

## **7.3 PART III : Equality Rights and Legality**

Several recent judicial decisions have considered the impact of equality rights in the context of tariff and rates policies (or valuations) and the requirements of legality. These cases include *Lotus River, Ottery, Grassy Park Residents Association and another v South Peninsula Municipality* 1999 (2) 817 (C) (the “*Lotus River case*”), *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Local Council and others* 1999 (1) SA 374 (CC) (“the *Fedsure case*”), *Kempton Park/Tembisa Metropolitan Substructure v Kelder* 2000 (2) SA 980 (SCA), and *Pretoria City Council v Walker* 1998 (2) SA 363 (CC) (“the *Walker Case*”). This body of case law is highly complex, and there will be no attempt to summarise it here. It is, however, important to note its core features.

It is clear from the *Fedsure* case that levying of tariffs and raising of rates constitutes “legislative action” on the part of a municipality (see *Fedsure* at paragraph 45) and is subject both the principles of legality (including the requirement that a municipal council act within its powers - see *Fedsure* at paragraph 56) and equality (see the *Lotus River case* at 824D-830G). Within these constraints, the courts have clearly understood the need for differentiation in pricing structures both generally and in a transitional context. A rather lengthy quotation from the *Walker* case illustrates

these ideas. *Walker* considers both the manner in which Pretoria City Council introduced metered rates for water and electricity in formerly black areas of Pretoria, and its decision to selectively enforce debt. In the former case, Pretoria's decision was found to be "a matter of judgement, strategy and practical considerations (at para 67); but in the latter case it was found to violate equality rights (at para 81). Although not necessary for the decision, Langa DP considered section 178(2) of the interim Constitution and sets out principles which appear to have general application:

*"The constitutional requirement that the rates and tariffs charged by a local government shall be based on a 'uniform structure' needs to be interpreted within the context of local government as it exists. There are enormous disparities in the quality of facilities and services provided by local government authorities to users within their municipal areas. Particularly important is the fact that there are for historical reasons enormous differences in the overall quality of services provided to what were formerly white suburbs and black townships. In addition, it should be borne in mind that local governments provide services to widely different categories of users, such as industrial, commercial and agricultural users as well as to domestic consumers in formal and informal settlements. Section 178(2) does not stipulate that a uniform tariff be established but that it be based on a 'uniform structure'. It should not be interpreted therefore to mean that the tariff must provide for identical rates to be charged to all consumers regardless of the quality of service or the type or circumstances of the user. That could produce a highly inequitable result. The section requires instead that local governments establish a 'uniform structure' for tariffs. In my view, this requirement compels local governments to have a clear set of tariffs applicable to users within their areas. The tariffs themselves may vary from user to user, depending on the type of user and the quality of service provided. As long as there is a clear structure established, and differentiation within that structure is rationally related to the quality of service and type or circumstances of the user, the obligation imposed by s 178(2) will have been met" (at paragraph 85).*

This approach is also illustrated in the *Lotus River* case. The applicants in *Lotus River* sought to challenge a decision to increase property levies by 19%, notwithstanding its disproportionate impact on properties valued at different times. Davis J put the differential impact of the property levies in their context of local government transition, and although he found that equality rights had been violated, he went on to find that the limitation of the right was justified within "a short-term perspective" by the pressures imposed by the restructuring of local government, an outdated valuation roll and other factors (see 833C-D). Clearly, it appears from these judgements that the danger of equality challenges is eras (this risk is appreciated in the document entitled "Tariff Convergence Framework and Guidelines" dated 28 November 2000 at paragraph 1). In both *Walker* and *Lotus Park* it was found that equality rights had been violated. Both judgements nevertheless appreciate the pressures imposed by local government restructuring and vindicate differentiation that is "rationally related to the quality of service and type or circumstances of the user". This report will recommend the enactment of Tariff Policy By-Laws under section 75 of the Systems Act to reduce the risks arising from equality challenges (see the legal recommendation proposed under section 14(3) of this report).

In addition to the rights-based decisions alluded to above, the Systems act itself (see section 74(3)) and the LGTA condones reasonable differentiation between different categories of users or property (see section 10G(7)(b)(i)), provided (as in the case of *Lotus River*) the differentiation does not amount to unfair discrimination. There is also a similar provision in the municipal ordinance (see section 187(1)(i)). In determining whether differentiation constitutes unfair discrimination contrary to the constitution, the courts (as illustrated in such cases as *Walker* and *Lotus River*) have a deep appreciation of the awkwardness of the local government transition. It is a fair assumption that this approach would favour an incremental amalgamation producing differentiation for limited periods of time during the process. As regards the Systems Act, it should also be mentioned that, in providing municipal services, municipalities are subject to a range of duties set out in section 73 of the Systems Act. Section 73 sets out a group of demands including equity and financial sustainability. It is clear from the duties, when examined together, that some balancing of the principles underlying the duties is required. Furthermore, section 73 seems to postulate different service levels (see section 73(1)(c)) and standards of service that improve over time (see section 73(2)(b)(ii)). Accordingly, provided that a basic service is provided (and is made a priority as stipulated in section 73(1)(a)), the requirement of equity under the Systems act is weaker than the requirement of equality under the Constitution, and the risks arising from the Systems Act can be managed (see further the legal recommendation proposed under section 14(3) of this report).

## 7.5 Legal Summary

The section above identified the following relevant legal issues:

1. The legal framework - whether any distinction between rates and tariffs is prescribed in South African Law.

*The section clarifies that South African law does not prescribe whether solid waste should be tariff or rates funded. There are indications in government policy (in the NWMS and in Cape Town policy documents) that there is a tendency towards a tariff-funded system. But this tendency is not required as a matter of law.*

2. Understanding tariffs - whether there is anything in the concept of a tariff which explains for which services a tariff should be levied.

*It is suggested in the section that tariffs fit into one of three categories of payment mechanisms: tariff-funded; rates-funded and competitive pricing. Among these three mechanisms, it follows from the reading of the Systems Act in the SAMWU case that only "municipal services" may be tariff-funded. The difficulty is that it is not clear what "municipal services" means. We have suggested that its meaning is to be found in understanding historical practice, policy and political concerns, resource allocation issues and forms of regulation. Applying these criteria, a classification of the different waste streams forming solid waste services are provided, the City of Cape Town retains a residual obligation to provide "basic municipal services" if the provision of non-municipal services fail.*

3. Equality rights and legality - what rights constrain the process of implementing the optimal payment option -

*The section indicates that the City of Cape Town in promulgating rates or tariffs is acting as a legislature and is subject to the requirements of legality and equality.*

*A series of cases considers these requirements and appears to allow differentiation in service levels and payment mechanisms provided that such differentiation is rationally related to the quality of service and type or circumstances of the user, and particularly if it is an expression of the transitional pressures imposed by local government restructuring. Nevertheless, the risk of equality challenges is real and the City of Cape Town must be aware of this constraint in devising its funding mechanism; and*

4. Johannesburg's practice - whether practice in Johannesburg sheds light on these issues.

*The section briefly describes Johannesburg's practice. Johannesburg has implemented a division of rates and tariff pricing which conforms to the distinction between economic and community services. Where Pikitup provides waste management services (that is non-municipal services) it sets its own prices like any other private company.*