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BARRISTER & SOLICITOR · BA LLM GRAY'S INN

12 December 2007

The Chief Executive  
Christchurch City Council  
P O Box 237  
**CHRISTCHURCH**

**Attention Tony Marryatt**

Dear Sir

**CENTRAL PLAINS WATER TRUST & CENTRAL PLAINS WATER LIMITED**

On 7 November 2007 the Council received a deputation from the Malvern Hills Protection Society and granted speaking rights at that meeting. A memorandum was tabled for the benefit of the Mayor and Councillors, a copy of which is **attached** hereto.

The essence of the Society's concerns is that the Christchurch City Council (and also the Selwyn District Council) as settlor of the above Trust was authorising loan security arrangements, which incidentally involved a serious derogation from the Objects of the Trust, by placing resource consents for the Central Plains Water Scheme as security in the hands of lenders to Central Plains Water Limited (CPWL).

As can be seen from the attached Memorandum, the Objects of the Trust are charitable and the Trust could not contemplate using the resource consents (its only possible assets, as yet unobtained) for any purpose that is not incidental or conducive to the attainment of the charitable objects.

I refer again to clause 20.2 of the Memorandum of Agreement between the Trust and CPWL which states:

*"The Water Trust may not transfer or assign its interests in the Resource Consents other than for the purposes of a genuine reorganisation or restructuring of the Water Trust."*

A report has been prepared on this matter by a Mr Peter Mitchell, whose position in Council seems to be as "General Manager Regulation Democracy Services". Putting aside the Society's surprise that independent counsel was not asked to review the question, that report, among other things, makes recommendations including that the Council:

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*“Note that the information contained in the section of this report regarding the deputation by the Malvern Hills Protection Society meets the concerns expressed by the Malvern Hills Protection Society with regard to loan documentation entered into by Central Plains Water Trust, Central Plains Water Limited and Dairy Holdings Limited.”*

However, as a preliminary point, that statement fails to note the involvement of two other lenders to CPWL, namely Willsden Farm Land and Clovernook Farm Limited, as well as Dairy Holdings Limited.

Further, the report does its best to exclude any direct reference to, or quotation from, the actual arrangements between CPWL and the lenders, or the documentation comprising these arrangements.

The report is correct in indicating that CPWL has an exclusive licence to use the resource consents. The ownership remains with the Trust.

However, in immediate contradiction of that statement, and in derogation from that exclusive licence to the company, the report indicates that in return for DHL lending monies to CPWL (again without reference to the other lenders) that company has granted a sub-licence to DHL so that DHL can irrigate its own land.

That also contradicts the exclusivity of the licence and, as the Trust is to be the owner of the resource consents, it begs the question as to whether it is possible for the company to purport to grant a sub-licence to DHL.

It also raises the question as to when the Trust, if indeed it has, gave permission to CPWL to grant such a sub-licence and where the power to do so appears under the Memorandum of Agreement between those two entities. There is no such power in the Trust Deed.

It is disingenuous for the report, at paragraph 43, to intimate that the loan document excludes any interest that the company has or may have in the resource consents from being offered as security when paragraph 39 is to the contrary (DHL is lending money on the basis of a sub-licence of the use of the resource consents to irrigate its own land).

Furthermore, the report says that the company's rights in respect of the conduct of the resource consent applications for the Central Plains Scheme will be assigned to DHL if CPWL does not proceed with the applications for six months or more. There is no mandate for the Trust, the applicant for the resource consents, to transfer the applications in this way.

If the Trust and CPWL do not proceed with the applications, there is nothing to prevent DHL applying for its own scheme rather than trying to take assignment of something which cannot be assigned lawfully to it by the Trust and/or CPWL.

The question of conflict of interest is not adequately dealt with in paragraphs 55 and 56, and fails to acknowledge the simple point that CPWL is a private company which has to be run in the interests of its shareholders, as is DHL, and that any suggestion that CPWL is somehow subject to the charitable objectives of the Trust is ill-conceived and gives no comfort of the safeguarding of the Trust Fund, namely the resource consents, or its retention for the benefit of the communities of the geographical regions of the Christchurch City Council and Selwyn District Council.

There is no real advice in the report on the security arrangements that apply to the Loan Agreement between CPWL and DHL (if indeed it is only with that company). There is reference to "priority" between Christchurch City Council and DHL. Priority only becomes an issue where there is a security arrangement whereby there is an asset to which competing claims on the same fund are ranked.

One of the basic messages that the Society sought to give to the Council in its attendance on 7 November 2007 was to ask for two basic things, namely disclosure and review; that is, disclosure of the loan and security documentation, and review of this process so that there is no undue haste resulting in dismissal of the rights of the Council's constituents in a rush to get the resource consents heard.

Given that the negotiations in these arrangements are supposedly already in place (to the satisfaction of the Council's in-house managers), disclosure should be of no difficulty and review would seem to be the appropriate thing to do in light of the Council's obligations under s.3 and 14 of the Local Government Act 2002.

I therefore urge you on behalf of the Society to have the arrangements reviewed independently and the relevant documentation made available so that there can be dialogue between the Society and any independent reviewer with a view to fully understanding what is continually subject to second-hand interpretation.

I am requesting that this letter be added to the Council agenda for tomorrow's meeting as a supplementary item.

This is justified for ensuring elected members comply with their Statutory and Related Legal Requirements in respect of receiving, considering and any decision making in respect of the Christchurch City Council reporting of Malvern Hills Protection Society deputation made on 7 November 2007.

Further, Malvern Hills Protection Society has a right to respond to the Christchurch City Council report which it only received on 7 Dec and believes elected members have an obligation to receive and consider their response at tomorrows meeting.

I look forward to hearing from you at your earliest convenience. The Society's representatives are always ready to meet with you to discuss the matter.

Yours sincerely

A handwritten signature in black ink, appearing to read "Wynward".

*ef* **Michael E Parker**