

## 5. CENTRAL PLAINS WATER TRUST ISSUES

<b>General Manager responsible:</b>	General Manager Regulation and Democracy Services, DDI 941-8549
<b>Officer responsible:</b>	General Manager Regulation and Democracy Services
<b>Author:</b>	Peter Mitchell

### PURPOSE OF REPORT

1. The purpose of this report is to:
  - (a) Advise the Council regarding the outcome of its resolution of 5 June 2007 to approve a loan agreement between the Trust, Central Plains Water Limited and Dairy Holdings Limited.
  - (b) Recommend the appointment of Mr Vivian Smart as a Trustee of the Central Plains Water Trust.
  - (c) Receive the quarterly Trust report (including the report for the quarter ending September 2007 and the Annual Report for the year ending 30 June 2007).
  - (d) Report back to the Council from the joint meeting held between the Christchurch City Council and the Selwyn District Council held on Monday 24 September 2007.
  - (e) Respond to the submissions made by the Malvern Hills Protection Society to the Council at its meeting on 7 November 2007.

### FINANCIAL IMPLICATIONS

2. There are no financial implications arising out of the issues discussed in this report.

### Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

3. Yes

### LEGAL CONSIDERATIONS

4. No legal considerations affecting the Councils interest arise out of the recommendations of this report.

### Have you considered the legal implications of the issue under consideration?

5. n/a

### ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

6. Yes

### Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

7. n/a

### ALIGNMENT WITH STRATEGIES

8. No specific strategies involved

### Do the recommendations align with the Council's strategies?

9. n/a

## **CONSULTATION FULFILMENT**

10. There is no requirement to consult the public regarding the recommendations of the Council in this report.

## **STAFF RECOMMENDATION**

It is recommended that the Council:

- (a) Appoint Mr Vivian Smart as a trustee of the Central Plains Water Trust Board for a term of three years commencing 1 July 2007.
- (b) Receive the:
  - (i) report for the quarter ending September 2007
  - (ii) Annual Report for the year ending 30 June 2007
- (c) Meet with the Trustees in June and November each year.
- (d) Discuss with the Selwyn District Council the appointment of a Joint Committee of the two Councils to discuss issues of mutual interest such as Central Plains.
- (e) 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.
- (e) Advise the Society accordingly.

## BACKGROUND

### DAIRY HOLDINGS LIMITED (DHL) LOAN AGREEMENT

11. At the meeting of 5 July 2007 the Council resolved:

*“Further to its Central Plains resolution 2 of 7 June 2007, the Council, now having had the opportunity to hold discussions with the Central Plains Water Trustees, confirm that it is satisfied that the Trust is meeting those parts of the Memorandum of Understanding and the objects of the Trust Deed referred to in resolution 2 and accordingly confirm part 1 of the Council resolution of 7 June 2007, being:*

*“1. That the Council authorise the General Manager Corporate Services and the General Manager Regulation and Democracy Services jointly to:*

- (i) approve the Loan Agreement that CPWL borrow funds from DHL and any amendments to the Loan Agreement that will ensure that its terms comply with the objectives of CPWT’s Trust Deed;*
- (ii) approve the security arrangements in the Loan Agreement to protect as far as is commercially possible the Council’s position with regard to its existing advance of \$494,145.88;*
- (iii) approve further loan agreements between CPWT, CPWL and lenders in respect of borrowings by CPWL up to a maximum of \$4.8 million, being the limit of permitted borrowings set out in the DHL Loan Agreement.”*

12. The two General Managers referred to in the July 2007 resolution, in accordance with that Councils resolution, signed the City Council approval to the Loan Agreement on 19 October 2007. The amount that the two officers approved was the sum of \$1.7M. It will be noted from the resolutions that the officers have authority to approve loan agreements up to a maximum of \$4.8million.
13. Mr Paul Rodgers, acting on behalf of the Selwyn District and Christchurch City Councils, has provided a certificate to the two Councils to the effect that the approvals met the terms of the Councils 5 July 2007 resolution.
14. It should be noted that the loan agreement approved by the two General Managers provides that the resource consents that may be obtained by the Central Plains Water Ltd are excluded from any security arrangements for the loans to Central Plains Water Ltd. It is not possible for Dairy Holding Limited to become the owner of those resource consents without further approval by the two Councils.

### TRUSTEE MEMBERSHIP

15. Mr Vivian Smart has been previously appointed a Trustee of CPWT by Christchurch City and Selwyn District Council on the recommendation of Ngāi Tahu. That appointment expired on 30 June 2007.
16. In October 2007 Ngāi Tahu advised the Christchurch City Council that it recommended Mr Smart be re-appointed as a trustee of CPWT for a further term of three years commencing 1 July 2007.
17. Accordingly one of the recommendations of this report is the Council appoint Mr Smart as a trustee for a term of three years expiring on 30 June 2010.
18. The current trustees, and expiry dates of their appointments if this recommendation is accepted by the Council would then be:
- Doug Marsh 30 June 2010
  - Doug Catherwood 30 June 2010
  - David Haslam 30 June 2010

- Richard Davidson 30 June 2009
- Denis O'Rourke 30 June 2009
- Viv Smart (Ngāi Tahu) 30 June 2010
- Claire Williams (Ngāi Tahu ) 30 June 2008

(Messer Marsh and Catherwood are also Directors of Central Plains Water Limited.)

19. Selwyn District Council has yet to resolve to appoint Mr Smart as a trustee of the trust. Appointments of trustees need to be made jointly by both the Christchurch City Council and Selwyn District.

#### **QUARTERLY REPORT BY THE TRUST**

20. Attached for the Council's information is a copy of the Trust's report for the quarter ending September 2007 and the un-audited Annual Report for the year ending 30 June 2007 including Financial Statements. (**Attachment A**).

#### **JOINT MEETING WITH SELWYN DISTRICT COUNCIL**

21. At its meeting on 5 July 2007 the Council resolved that it hold a meeting with the Selwyn District Council before it considered the 2007 Statement of Intent and that it meet with the Central Plains Water Trustees at that meeting.
22. At its meeting on 5 July the City Council resolved that the joint meeting with Selwyn District consider the matters of:
  - (a) Reviewing the number of Trustees and the process of nomination and election.
  - (b) The make up of the trust in its entirety.
  - (c) Issues regarding communication, administration and support governance in general.
23. That joint meeting with Selwyn District and Christchurch City Council was held at the Darfield Service Centre on Friday 24 September 2007. The Councillors met amongst themselves, and were then joined by the Trustees.
24. There was a general discussion amongst Councillors, and with the trustees on these three issues.
25. It was noted that there was a need to appoint trustees with an environmental background to the trust and there was also discussion as to the number of trustees.
26. From the discussions at the Christchurch City Council earlier this year in the writer's view there was a consensus amongst Councillors that there should be regular meetings between the City Council and the trustees.
27. In addition at the joint meeting with Selwyn District the comment was made that given that both Councils are joint settlers of the Trust Deed which established the Trust, and given that they must jointly appoint trustees to the Trust, then there would be merit in considering a process whereby both Councils could liaise at a level below a meeting of the two full Councils.
28. To address these matters I recommend the following process is recommended for consideration and discussion by the Christchurch City Council.
29. Firstly the Christchurch City Council could invite the trustees to meet with the Council twice a year to be updated by the trustees on ongoing issues and to afford Councillors the opportunity to ask questions or raise issues they may have with the trustees. I would suggest that those two meetings could occur in June and November of each year.

30. Secondly the two Councils could give consideration to the formation of a Joint Standing Committee which could address issues of mutual concern to both Councils, including Central Plains Water Trust issues. Other issues that would be of mutual interests could be the Canterbury Museum Trust Board and the implementation of the Urban Development Strategy.
31. Of particular relevance to Central Plains issues the following matters could be within the Joint Committees Terms of Reference for recommendation underlined to both Councils:
  - (a) The appointment of new trustees.
  - (b) the establishment of criteria by which the Central Plains Water Trust can be measured.
  - (c) consideration of the Draft Annual Statement of Intent.
  - (d) the makeup of the Trust.
32. Those matters would address items identified by the City Council earlier this year, and also issues that were raised at the joint meeting with Selwyn District
33. This concept of a Joint Standing Committee has not yet been formally considered by the Selwyn District Council but is raised here to establish whether there is support from the Christchurch City Council to enter into discussions with Selwyn regarding the formation of such a Joint Standing Committee.
34. Accordingly one of the recommendations is that the City Council enters into discussions with Selwyn District regarding the formation of a Joint Standing Committee to consider issues of mutual interests to both Councils.

#### **DEPUTATION BY MALVERN HILLS PROTECTION SOCIETY**

35. The issues raised by the Society mostly related to its concern that the Council had acted improperly in giving its consent to the loan documentation between the Central Plains Water Trust ("the Trust"), Central Plains Water Limited ("the Company") and Dairy Holdings Limited ("DHL").
36. There were two documents tabled on behalf of the Society at the Council's meeting on 7 November 2007. This section of the report will deal with each one in the order presented, beginning with the document "Christchurch City Council Deputation".
37. The Society is of the view that DHL will be able to take water from the Rakaia River should resource consents be granted to the Trust. The Society also believes that DHL will have exclusive use of the Rakaia water entitlement until such time as the Central Plains Water Scheme is built. This could be some years away.
38. In response, it may be useful to comment briefly on the terms of the agreement between the Trust and the Company entered into in 2004:
  - (a) The Trust agreed to assist the Company in the conduct of the applications for resource consents.
  - (b) The Trust will own the resource consents.
  - (c) The Trust will make the resource consents available exclusively to the Company.
  - (d) The Company will raise funds to meet the costs of the applications.
  - (e) The Company will conduct the applications in the name of the Trust.
39. The Company therefore has an exclusive licence to use the resource consents. In return for DHL lending money to the Company, it has granted a sub-licence to DHL so that DHL can irrigate its own land. This sub-licence applies to water from the Rakaia River only.
40. The sub-licence commences on the date the resource consents are granted and expires once the Central Plains Water Scheme is operational. DHL is to meet all costs it incurs to take water and the volume available is restricted under a formula set out in the loan agreement.

41. DHL will have exclusive use of water from the Rakaia River in respect of its own entitlement only until such time as the Scheme is completed and water rights are available to all participants in accordance with the allocation granted to them.
42. The Society is concerned that any resource consents granted to the Trust will be used as security for the loan from DHL to the Company.
43. In response, the loan documentation excludes from a property offered a security any interest that the company has or may have in the resource consents.
44. There are, however, "step in rights" that may be available to DHL should a number of events occur. The loan agreement provides that:
  - (a) If the Company does not proceed with the applications for resource consent for six months or more; and
  - (b) The principal sum has not been repaid; then
  - (c) The Company's rights in respect of the conduct of the applications are assigned to DHL.
45. If this occurs, then DHL will have the same rights that the Company has so far as the conduct of the applications is concerned. The applications remain in the name of the Trust and DHL must comply with the terms of the 2004 agreement between the Trust and the Company.
46. Only in the event that the two Councils through the Trust and DHL agree that it is not possible for DHL to conduct the applications in the name of the Trust can DHL then conduct them in its own name. Notwithstanding that, DHL will be able to take no more water than it would be entitled to take for its own land.
47. The Society is concerned that the objectives of the Trust's Deed of Trust have not been met as a result of the Company entering into the Loan Agreement with DHL.
48. In response, it should be noted that the consent of the Council and Selwyn District Council was required because they are creditors of the Company. In this Council's case, it is owed \$494,000. The only reasonable prospect of the Council recovering these funds is if the Central Plains Water Scheme becomes operational. If it does not, then it is unlikely that the Company will be able to repay the loan.
49. One of the issues the Council had with regard to the Company borrowing funds from DHL was that any resource consents granted must continue to be owned by the Trust and not by DHL. After negotiation between the parties this has been achieved and the trustees of the Trust remain committed to achieving its objectives. There has been no change to the original intention of the Council and the Selwyn District Council that the Trust must have as its sole overriding objective, continued public ownership of the resource consents. Any alteration to that commitment can only be made with the agreement of the Trust and the two Councils.
50. The Legal Services Unit and Selwyn District Council retained Anthony Harper as their external legal advisers in the negotiations with the other parties so far as the terms of the proposed loan documentation were concerned. The position was eventually reached where Anthony Harper was able to certify that the documents complied with the objectives of the Trust's Deed of Trust.
51. The second document presented to the Council on 7 November 2007 is headed "Memorandum".
52. In that document, the Society concludes that not only is the Council's position as a creditor affected by the loan arrangements but that Trust property is also directly affected.
53. In response, it is acknowledged that the Council's position as a creditor is affected but it was simply not commercially possible to retain priority ahead of DHL. In any event, the funds advanced by the Council to the Company were, and are, essentially unsecured.

54. As indicated earlier in this report, the resource consents that will comprise the Trust property have been excluded from the security arrangements between the Company and DHL.
55. The Society refers to a possible conflict of interest arising as a result of shareholders in the Company being associated with DHL. It is further noted that two individuals are directors of both entities.
56. In response, it has to be remembered that DHL is just one of many other shareholders, both private individuals and incorporated bodies, that have and will continue to lend money to the Company. By doing so all shareholders have secured their entitlement to water rights that will be available to them should the Central Plains Water Scheme become operational.
57. Much has been made of the fact that the Council has considered matters relating to the loan agreement between the Company and DHL at meetings from which the public were excluded. The reason for this was that negotiations between the parties were ongoing and in fact were not completed until the Legal Services Unit was advised last week that final documentation had been signed. The Unit had advised the other parties some time ago that it intended to make the documents publicly available as soon as this happened and it has now done so.
58. Finally, it should be noted that all Council staff involved in this matter have worked extremely hard to ensure that the General Managers Corporate Services and Regulation and Democracy Services were in a position to approve the loan agreement between the Company and DHL on terms that complied with the objectives of the Trust's Deed of Trust and the Council's July 2007 resolutions. Although it was not commercially possible for the Council to take priority ahead of the advance from DHL, by granting its consent to the security arrangements the Council has at least ensured that repayment of its loan may be possible in some point in the future. This could not have happened had the Company failed because it was not able to fund its applications for resource consent.