

15. **SHARES HELD BY THE COUNCIL IN ORION GROUP LTD**

<b>General Manager responsible:</b>	Bob Lineham, Strategic Investment
<b>Officer responsible:</b>	As above
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**PURPOSE OF REPORT**

1. The purpose of this report is to recommend that the Council sell to Christchurch City Holdings Ltd the 6,369,000 shares in Orion Group Ltd ('Orion') it acquired following the amalgamation with Banks Peninsula District Council ('BPDC'). The shares represent a 1.65% holding in Orion.

**BACKGROUND**

2. BPDC was dissolved on 5 March 2006. Following dissolution, Banks Peninsula District is included in the area of Christchurch City. Pursuant to the Local Government Act 2002, Christchurch City Council has therefore assumed ownership of all the assets held by the former BPDC.
3. Included in the assets previously held by BPDC are 6,369,000 shares in Orion, made up of 4,389,000 ordinary shares and 1,980,000 redeemable preference shares ('RPS'). The other shareholders are CCHL and Selwyn Investment Holdings Ltd ('SIHL'), a wholly-owned subsidiary of Selwyn District Council.
4. The following table summarises the current shareholdings in Orion:

**Paid up value of shares - May 2006**

	Ord	%	RPS	%
CCHL	233,082,500	87.625%	105,150,000	87.625%
SIHL	28,528,500	10.725%	12,870,000	10.725%
CCC	4,389,000	1.650%	1,980,000	1.650%
Total	<u>266,000,000</u>	100.000%	<u>120,000,000</u>	100.000%

4. For the following reasons it is recommended that CCHL purchase at market value the shares held by the Council in Orion:
  - CCHL's role is to act as the holding company for the Council's equity investments in its CCTOs;
  - It is a way of returning further capital to the Council;
  - It would create accounting complexity and administrative overhead were CCC to retain the shares.
5. The shares should be transferred prior to 30 June 2006, and prior to the payment of Orion's final dividend, to avoid the accounting complexity referred to in the above bullet point.

**VALUATION CONSIDERATIONS**

6. As with the purchase of City Care Ltd and Selwyn Plantation Board Ltd in 2002, the transfer of shares between the Council and CCHL will need to be effected at market value. This will ensure that correct value is exchanged between the two parties, and will avoid any risk of adverse tax consequences arising from transfers between related parties at amounts less than or greater than market value.

7. The Council and CCHL will in any case be performing their triennial revaluation of their respective investments in CCHL and the operating companies owned by CCHL. This valuation exercise can be used to determine the value of the Council's current holding in Orion.
8. Based solely on the existing market valuation of CCHL's investment in Orion (now two years old) and ignoring any adjustments for minority discount etc, the value of the Council's shareholding would be in the order of \$10 million.

**FINANCIAL IMPACT**

9. The Council will receive an unbudgeted capital sum which can be factored into the final version of the LTCCP. This will be available as funding for the Council's capital programme. The estimated net financial on revenues will be:

Interest on \$10 million @ 7%	700,000
Less: Dividends foregone	(462,000)
Estimated net annual gain to CCC	238,000

**LEGAL CONSIDERATIONS**

10. While there are pre-emptive clauses contained within the Orion constitution, these are not applicable in the case where shares are transferred to another entity that is 100% owned by the existing shareholder. Clause 10.6(b) provides:

*“Notwithstanding any provision to the contrary contained in this constitution any shareholder may transfer its equity securities to any company which has the same beneficial ownership and control as the shareholder transferring such equity securities and which continues to have the same beneficial ownership and control. Before registering such transfer the board may require the proposed transferor to give such declaration or other evidence as the board in their absolute discretion may think fit to satisfy themselves that the provisions of this clause are being adhered to.”*

11. All parties will be fully advised of the proposed transaction. A formal sale and purchase agreement will be entered into, and the Council's legal team will be fully involved in reviewing the documentation from the Council's perspective.

**RECOMMENDATION**

It is recommended that the Council approve the proposed sale of the Orion shares to CCHL at market value and, subject to the approval of Legal Services manager, authorise the Director of Strategic Investment to complete and sign the necessary documentation.