

## 14. COSTS IN ENVIRONMENT COURT - MALVERN HILLS V CHRISTCHURCH CITY COUNCIL

<b>General Manager responsible:</b>	General Manager Peter Mitchell, DDI 941- 8549
<b>Officer responsible:</b>	Ian Thomson (Acting) Unit Manager
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### PURPOSE OF REPORT

1. The purpose of this report is to seek the Council's instructions as to making an application for costs against a community group the Malvern Hills Protection Society Incorporated and Synlait Limited.

### EXECUTIVE SUMMARY

2. The Christchurch City Council participated in declaration proceedings to determine the scope of its requiring authority status with respect to the Central Plains Water scheme. The Council succeeded in these proceedings with the Environment Court strongly criticising the arguments presented by the Malvern Hills Community Group and Synlait Limited.
3. Council incurred costs of \$2,879 (including GST) in the representation of its interests in this proceeding. This represents 25% of the total legal expenses, with the Selwyn District Council being responsible for the remainder. It is estimated that the cost of making an application to recover the Christchurch City Council's legal fees from the parties is in the vicinity of \$2,559 (including GST).
4. As the costs of making the application are broadly equivalent to the Council's required expenditure on such an application it is recommended that the Council does not apply for costs.

### FINANCIAL IMPLICATIONS

5. The Council has expended approximately \$2,879 (including GST). Seeking costs provides a way for the Council to recover those funds, however, the cost of doing so is prohibitive in the sense that the costs of making the application would be substantially consumed by any cost awards granted by the Court.

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

6. Not applicable.

### LEGAL CONSIDERATIONS

7. Please see attached report and letter from Paul Rogers annexed to this report (attachment 1).

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

8. Counsel for the Christchurch City Council has recommended that costs are sought in order to deter the Malvern Hills Protection Society from bringing similar proceedings lacking merit in the future. It was also suggested by Counsel that a costs award would ensure that the society takes responsibility for its actions in bringing proceedings without merit.
9. However, the Environment Court made strong comments in its decisions which were highly critical of the arguments put forward by the Society and Synlait Limited. It is likely that such criticisms have had already had a deterrent effect, and that a costs award would not achieve any greater effect.
10. Although the Council is likely to be successful in any claim for costs any component of costs awarded will be consumed by the expenses in making such an application. Therefore it is recommended that no application is made at this time.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

11. Not applicable.

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

12. Not applicable.

**ALIGNMENT WITH STRATEGIES**

13. Not applicable.

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

14. Not applicable.

**STAFF RECOMMENDATION**

It is recommended that the Council resolve:

- (a) To receive this report;
- (b) That it will not seek an order for costs arising from the Council's successful defence of Environment Court proceedings brought by the Malvern Hills Protection Society and Synlait Limited.

## **BACKGROUND (THE ISSUES)**

15. Generally speaking the Environment Court does not award costs against community groups, as it is in the public interest for such groups to be active in a “watch-dog” capacity and costs awards prejudice the long term survival of such community groups.
16. However, the Environment Court does have a practice of awarding costs against community groups in circumstances where it has conducted its litigation irresponsibly, or has brought a case without grounds.
17. The Environment Court made a specific finding that the Malvern Hills Protection Society and Synlait brought a vexatious proceeding. Further background is contained in the reporting letter from Counsel for Christchurch City Council annexed as attachment 1.
18. The Council should be aware that a costs award can deter such community groups from taking similar groundless litigation in the future. However, in the context of this decision the Court was highly critical and it is likely that deterrence has been achieved in any event.
19. Environment Canterbury and Selwyn District Council have signalled its interest in making a costs application, as have other interested parties.
20. The financial circumstances of the Society are unknown, and therefore it is unclear what financial impact if any, a successful award of costs would have.
21. It is also possible for the Council to seek its costs against Synlait Limited. It is unknown what impact a costs award would have on this commercial entity as it is unclear what its financial position is.
22. However, irrespective of which entity the Council pursues, any costs awarded by the Court are likely to be consumed by the expenses associated with lodging an application.

## **THE OPTIONS**

23. The legal advice received is that the Council has a high probability of succeeding in having its full costs awarded.
24. The Council has the option to seek costs against one or both of the Malvern Hills Protection Society Incorporated and Synlait Limited.
25. Alternatively the Council can determine that it will not seek its costs.

## **THE PREFERRED OPTION**

26. The preferred option is that Council does not seek costs as any costs award by the Court will be consumed by the expense of making such an application.

**ASSESSMENT OF OPTIONS**

**The Preferred Option**

27. Do not seek costs.

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	The	
<b>Cultural</b>	N/A	
<b>Environmental</b>	N/A as this decision concerns litigation	
<b>Economic</b>	The Council is not required to pay additional legal expenses to meet the costs of making an application.	The Council is required to meet its current legal costs without a subsidy from the unsuccessful parties.
<p><b>Extent to which community outcomes are achieved:</b></p> <p>N/A.</p> <p><b>Impact on the Council’s capacity and responsibilities:</b></p> <p>N/A.</p> <p><b>Effects on Maori:</b></p> <p>N/A.</p> <p><b>Consistency with existing Council policies:</b></p> <p>The Council has a previous practice of not seeking costs against community groups, and this option is consistent with that practice.</p> <p><b>Views and preferences of persons affected or likely to have an interest:</b></p> <p>The Selwyn District Council will not have the opportunity to have their expenses on the costs application shared by CCC. This is unlikely to affect their decision to seek costs.</p> <p><b>Other relevant matters:</b></p> <p>There is no net financial gain from seeking costs as any costs award is likely to be consumed by the expense of making the application. The deterrent effects of a costs application are likely to have been achieved in the context of the Court’s criticism. It is unnecessary to incur additional expenses to reinforce the impact of that criticism.</p>		

**Maintain the Status Quo (if not preferred option)**

28. Make an application for costs.

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>	N/A	N/A
<b>Cultural</b>	N/A	N/A
<b>Environmental</b>		
<b>Economic</b>	The Council has its legal expenses reimbursed.	The expense of making the application is prohibitive as any costs award is likely to be consumed by the expense of making the application.

**Extent to which community outcomes are achieved:**

N/A.

**Impact on the Council's capacity and responsibilities:**

N/A.

**Effects on Maori:**

N/A.

**Consistency with existing Council policies:**

The Council has a practice of not seeking costs from a community group. This option would be inconsistent with that practice.

**Views and preferences of persons affected or likely to have an interest:**

The Selwyn District Council would have their costs of the application met in part by CCC. Therefore, the Council would likely encourage CCC to make a costs application. It is suggested that this factor is not relevant to CCC's decision as the CCC must make a decision in accordance with its own interests, and not that of an alternative party to the proceedings.

**Other relevant matters:**

None.

**At Least one Other Option (or an explanation of why another option has not been considered)**

29. No other option has been considered as the Council has only to choose between seeking costs or not seeking costs.