

10. NON-TRADING COUNCIL-CONTROLLED ORGANISATIONS – APPLICATION FOR EXEMPTION

General Manager responsible:	General Manager Corporate Services, DDI 941-8528
Officer responsible:	Corporate Finance Manager
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PURPOSE OF REPORT

1. The purpose of this report is to seek a resolution of the Council to grant a number of non-trading Council-controlled organisations exemption from the reporting and other requirements imposed by the Local Government Act 2002.

EXECUTIVE SUMMARY

2. At its meeting on 11 June 2007 the Council approved the establishment of shelf companies by Christchurch City Holdings Ltd (CCHL) and the Council. These companies have been established as Council-controlled organisations.
3. Two of them, AMI Stadium Ltd and Ellerslie International Flower Show Ltd have been registered only for the purpose of securing naming rights for the stadium and the flower show.
4. In 2003 Christchurch International Airport (CIAL) Ltd formed 5 shelf companies. These are also Council-controlled organisations.
5. None of these companies are presently engaged in a trading activity. However, they are still required to comply with the reporting and other criteria imposed on Council-controlled organisations by the Local Government Act 2002. This includes the obligation to prepare annual statements of intent.
6. Section 7 of the Act allows the Council to exempt a small Council-controlled organisation that does not trade. The effect is that for the period of the exemption it is not in fact a Council-controlled organisation for the purposes of the Act.
7. It is recommended that exemption be granted to the shelf companies established by CCHL, CIAL and the Council.

FINANCIAL IMPLICATIONS

8. A decision to grant an exemption under section 7 of the Act would result in a reduction in the costs of administering the shelf companies.

LEGAL CONSIDERATIONS

9. The advice of the Legal Services Unit is that because the shelf companies are small organisations and are not Council-controlled trading organisations they may be granted exemption under section 7 of the Act.
10. The Council is required to take into account the following matters:
 - (a) The nature and scope of the activities provided by the companies; and
 - (b) The costs and benefits, if an exemption is granted, to the Council, the companies, and the community.
11. Section 7(6) requires the Council to review any exemption it has granted within three years and thereafter at intervals of not less than three years. The Council may also, at any time, revoke an exemption it has granted.
12. Given that the shelf companies are not undertaking any activities and that there would be a reduction of administrative costs as a result of them being granted an exemption under section 7, it is recommended that the Council take this step.

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

13. Yes.

CONSULTATION FULFILMENT

14. CCHL, CIAL and the Council's Corporate Finance Unit have considered the financial and administrative implications of a decision to grant shelf companies an exemption under section 7 of the Local Government 2002. Advice has been sought from the Legal Services Unit which has also confirmed that advice with the Council's external legal provider, Simpson Grierson.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Grant an exemption under section 7 of the Local Government Act 2002 to each of the companies named in the schedule below, whilst they are not being used for any trading.
- (b) Note that for the period of the exemption the companies are not Council-controlled organisations for the purposes of the Act.

SCHEDULE

CCHL 2 Ltd	CIAL Holdings Number 1 Ltd	AMI Stadium Ltd
CCHL 4 Ltd	CIAL Holdings Number 2 Ltd	Ellerslie International Flower Show Ltd
CCHL 5 Ltd	CIAL Holdings Number 3 Ltd	CCC One Ltd
CCHL 6 Ltd	CIAL Holdings Number 4 Ltd	CCC Two Ltd
CCHL 7 Ltd	CIAL Holdings Number 5 Ltd	

BACKGROUND (THE ISSUES)

15. The Local Government Act 2002 enables the Council to establish at any time a Council organisation, which can be either a company or another entity such as a partnership, trust or a joint venture. To be a Council organisation the Council needs to own at least one share in the company or have the right to appoint one or more directors. In the case of an entity other than a company, the Council needs to control at least one of the votes at any meeting of the board managing the entity or the right to appoint one or more of its members.
16. Section 6 of the Act states that any Council organisation becomes a Council-controlled organisation when it is a company in which the Council holds, directly or indirectly, more than 50 per cent of the shares or in which it has the right to appoint more than half the number of directors. So too does an entity in which the Council controls 50 per cent or more of the votes at any meeting of the board managing that entity or the right to appoint more than half of its members.
17. The shelf companies established by CCHL, CIAL and the Council are Council-controlled organisations. They are required to comply with more stringent reporting and monitoring standards than Council organisations. These include providing annual statements of intent, half-yearly and annual reports, financial statements and auditor's reports.
18. The purpose of establishing the shelf companies was to enable CCHL, CIAL and the Council to make decisions with regard to the financial and governance structures to be used for particular activities without having to delay the process required before such structures could be put in place. The intention was not to deprive ratepayers of the opportunity to have their say, if that was required, but rather to ensure that any opportunities to commence such activities were not lost as a result of the delay in putting suitable structures in place.
19. All shares in the shelf companies are owned by the Council, either directly or indirectly through CCHL and CIAL. They are subject to the reporting requirements referred to earlier, despite them not as yet being engaged in any activities, trading or otherwise.
20. Section 7 of the Act provides some relief from this. It enables the Council to exempt a small organisation from being a Council-controlled organisation provided certain criteria are met.
21. Firstly, the organisation must be "small". This has not been defined in the Act but it is reasonable to expect that a company undertaking no trading activities at all would be regarded as "small".
22. Secondly, the Council must have regard to the nature and scope of the activities provided by the organisation and the costs and benefits of granting an exemption. Again, given that the shelf companies are not carrying out any activities and that a benefit resulting from exemption would be to reduce costs, clearly these criteria can be met.
23. An exemption is granted by resolution of the Council. If this is passed then the shelf companies are no longer Council-controlled organisations for the purposes of the Local Government Act 2002.
24. Decisions to exempt organisations must be reviewed within three years and then at intervals of not less than three years thereafter.
25. The Council may at any time revoke any exemption that it has granted. Should such a decision be made the organisation exempted would then be a Council-controlled organisation again.
26. If granted exemption status the shelf companies would remain as Council organisations. It is not contemplated that the Council's interest in the companies would be reduced at all, nor that they would cease to exist.

27. The Council has already consulted on whether or not the shelf companies should be established and the Council owns (directly and indirectly) more than 50 per cent of the shares. The CIAL companies were formed before the consultation provisions of the Local Government Act 2002 came into effect.
28. Once an exemption is revoked and a shelf company is to be used to carry out a particular activity, it immediately becomes a Council-controlled organisation again without the need for further statutory process.
29. As Council organisations, shelf companies would nevertheless be subject to Council monitoring that includes evaluating from time to time the Council's objectives for the companies. Such monitoring will not be as onerous as the requirements imposed on Council-controlled organisations.

THE OBJECTIVES

30. The objectives of this report are to seek Council approval to grant an exemption to shelf companies that have been established as Council-controlled organisations. The intention is that administrative costs would be reduced during the period of the exemption.

THE OPTIONS

31. The first option is to do nothing. The result of this would be that the administrative costs incurred for the purpose of providing annual statements of intent, half-yearly and annual reports, financial statements and auditor's report would continue to be met by CIAL, CCHL and the Council.
32. The second option is to exempt the shelf companies from the administrative requirements of the Act, thus saving the costs of complying with those requirements. An exemption, once granted, can be revoked at any time should a decision be made to use a shelf company for a trading activity.

THE PREFERRED OPTION

33. The second option is preferred.