



## 6. CENTRAL PLAINS WATER TRUST - REQUEST FOR INDEPENDENT REVIEW

Chief Executive:	Tony Marryatt
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### PURPOSE OF REPORT

1. The purpose of this report is to respond to a resolution adopted by the Council at its meeting held on 20 December 2007. The resolution being:

*"That the staff report to the February 2008 Council meeting on the options available to the Council, to conduct an independent review including a second legal opinion on the matters raised by the Malvern Hills Protection Society, addressing specifically the cost, timing, scope and implications of conducting such a review."*

### STAFF RECOMMENDATION

It is recommended that:

- (a) The report be received.
- (b) That the Council decline the request of the Malvern Hills Protection Society to undertake an Independent review of the Dairy Holdings Limited Loan Agreement covering both the legal matters, and the moral integrity upon which the loan is based.

### BACKGROUND

2. At its 20 December 2007 meeting the Council received a deputation from the Malvern Hills Protection Society regarding the Central Plains Water issues. A copy of the briefing notes provided by them at the meeting is attached as Appendix 1. The Society submitted that it remained strongly of the view that Council was obligated to commission an independent legal review. The Society's view was that the review should at least consider:
  - The objectives of the "Trust" deed;
  - The 2004 Memorandum of Agreement between the Trust and the Company;
  - The conditions for the third party loan which the previous Council approved, as recorded in the minutes for the Council meetings held 5 – 7 June 2007; and
  - The expectations of the ratepayers with respect to the aims and objectives the Council promoted when first co-settling the "Trust".
3. After considering the deputation the Council resolved:

*"That the staff report to the February 2008 Council meeting on the options available to the Council, to conduct an independent review including a second legal opinion on the matters raised by the Malvern Hills Protection Society, addressing specifically the cost, timing, scope and implications of conducting such a review."*
4. To assist the Council in considering whether there is the need to conduct an independent review, a legal opinion has been obtained on the matters raised by the Malvern Hills Protection Society in their deputation.
5. The barrister engaged to give the opinion was Mr Peter Barker of Wellington, who has not previously acted for Council, or any of the other parties referred to in the loan documentation. A copy of Mr Barker's opinion is attached as Appendix 2.

6. The conclusion in Mr Barker's legal opinion is that:
  - (i) The Christchurch City Council (CCC) was fully and accurately briefed on the issues that were to be voted on by Councillors and the Act was complied with.
  - (ii) The main issue for CCC as to whether to grant consent to the Dairy Holdings Limited (DHL) Loan, was in its position as a creditor of Central Plains Water Limited (CPWL).
  - (iii) There were valid reasons for granting consent to the DHL loan, and to have done otherwise would have put the CCC loan at serious risk. In addition, failure to grant consent would have led to serious risk of CPWL not continuing, and the Trust would have had no prospect of seeking to realise its objectives.
  - (iv) It is the responsibilities of the Trustees to the Trust to ensure the objects of the Trust are not breached; not the CCC. The Trustees, by their execution of the Loan Agreement, and after having received independent legal advice, must believe the Loan Agreement does not breach the Trust Deed.
7. Mr Barker, correctly in my opinion, states that it is the responsibility of the Trustees to the Central Plains Water Trust to ensure that the objects of the Trust are not breached. Mr Barker however, does recognise that the Council has a legitimate concern with regard to the operation of the Trust.
8. Mr Barker therefore considered whether the terms of the loan agreement breached clause 4.3 of the Trust Deed. His opinion is that the Trust Deed was not breached as a result of CPWL and the Trust becoming parties to the loan agreement.
9. I wish to note for the record, that this legal opinion from Mr Barker confirms the legal advice given to Council by staff.
10. I believe the legal opinion provided by Mr Barker has addressed all the legal issues raised by Malvern Hills Protection Society in their deputation.
11. Malvern Hills Protection Society, however, also requested that an independent review cover not only the legal matters, but also the moral integrity upon which the loan is based.
12. If the Council wished to undertake an independent review on the moral integrity upon which the loan is based, the process recommended would be to:
  - (i) Appoint a panel of three suitable persons
  - (ii) The panel to recommend draft terms of reference for approval by the Council
  - (iii) The panel to hear submissions from interested parties
  - (iv) The panel to report back to the Council.
13. It is difficult to give an accurate estimate on the cost of such a review, because it is not known how many submissions would be received. Past experience involving other panels shows that the cost to the Council could be a minimum of \$70,000 and the panel could take six months before issuing its findings.
14. I do not recommend the Council undertake an independent review as requested by the Malvern Hills Protection Society. My reasons for having this position being:
  - (i) An independent review could not change the decision in relation to the loan from Dairy Holdings Limited. The Council has given approval to the loan, and contracts have been entered into.
  - (ii) The traditional view in local government in New Zealand, has been that it is the responsibility of Councillors who are elected by the rate payers to reach judgements on the morality of an issue, and whether or not rate payers expectations have been met.
  - (iii) If there was to be a decision to commission an independent review, there would be the precedent effect that such a decision would have. There are, in my opinion, a number of other community groups who could also request an independent review be undertaken, at Council's expense, when Council makes decisions with which they disagree.