

**EXTRACT FROM PUBLIC EXCLUDED COUNCIL MINUTES OF MEETING  
HELD 23 MAY 2007**

**(c) Agreement to Consent to a New Loan Agreement being provided to Central Plains Water Limited by a Third Party**

The Manager Corporate Services explained the background to this item. He said that representatives from Central Plains Water Limited (CPWL) had met with the Chief Executive and himself to discuss funding the shortfall. He noted that the merits of the shortfall are not for discussion today. He commented that CPWL had under capitalised to some degree. He said some people would ask why they don't do a Prospectus to raise the shortfall but he highlighted cost and timing issues around this option. He added that a number of shareholders who have the rights to the water have indicated they would provide debt funding.

Why is the Council involved? The Manager Corporate Services said anybody who lends money to someone else wants to be advised when further lending is occurring. He noted that the Council has to give their consent along with Christchurch City Council and the Central Development Fund.

The Manager Corporate Services highlighted the fact that the Trust is set up for charitable processes. He said the Council is now in the situation where they have to give its approval. If the Council doesn't provide the funding what happens? CPWL will have a fall back position. A Prospectus would not require Council approval but it would take time and the process would drag on and while the costs increase. He believed that if the Council doesn't approve this the existing loan could be forfeited.

The Manager Corporate Services said decisions had to be made on the best information available on the day. He advised that a lot of information had been provided by Paul Rogers, Anthony Rogers, to ensure the Council and Trust rights were not usurped by this process and control of the consent was not inadvertently lost.

He highlighted the fact that this would be a three part process, with discussion 23<sup>rd</sup> May and the eventual construction of the scheme. In between the consents would need approval. He believed it made sense for Dairy Holdings Limited (DHL) to be involved, as they are in a position to act on the consents sooner.

The Manager Corporate Services said that if the second option fails the hurdles at any stage of the consent process it would be a non-runner and the debt would be forfeited.

The third option is if the scheme doesn't get through the Environment Court and runs out of steam. There would be a need to ensure that DHL cannot proceed to construct a smaller scheme with the Council losing its funding and finishing up with a privately owned scheme. He said this is the issue the legal perspective is concentrating on, to ensure the Council's position and the Trust Deed remain protected.

The Manager Corporate Services noted that concerns are extreme in some areas but do need to be addressed.

It was noted that the Council is the settlor who has the ownership of the Trust i.e. not just lenders of first resort. How can somebody usurp the settlor position if it falls was queried, as the rights should revert to the settlor. It was agreed that there is nobody to make absolutely sure about this.

The Manager Corporate Services noted there is a need to ensure the intellectual property remains with the Council. He highlighted the need to ensure all specifics are covered. He suggested that time is of the essence because CPWL needs to commit funding. He said he would like to see the Council give approval that the consent can be given.

The Manager Corporate Services advised that the Canterbury Development Fund had given their approval yesterday. He said the Christchurch City Council had talked about requesting a joint meeting regarding the 9 month financial report but he had requested that this joint Council meeting be given the questions in advance. He said the Council should not be a resource consent process by default. He noted that the Christchurch City Council are meeting on the 5<sup>th</sup> June to form questions and were looking at the 25<sup>th</sup> or 26<sup>th</sup> for a joint meeting.

The Manager Corporate Services noted the lengthy process undergone last year and suggested the Council would not want to go over old ground. He advised that Anthony Harper is working with both Councils on this debt consent and legal opinions would be provided to all.

Councillor Hasson noted that this situation only involves DHL but what if there were several parties providing the money. The Manager Corporate Services agreed there could be more looking for water rights. He said if DHL gets the consents they get the ability to proceed a bit quicker but he highlighted the need for the Council to protect itself

The Mayor believed this was a fundamental issue if the Council doesn't proceed by giving the right assurances it would be 'dead in the water'. He said if the Council doesn't allow this to proceed

with all the assurances in place they would not be giving it the chance of going through the process i.e. throwing away \$1m before it has had the chance to be tested.

The Mayor said this is not the end of a road it is the beginning.

The Manager Corporate Services said the Christchurch City Council have some questions but these are hardly likely to relate to whether or not, they are more likely to have concern with other issues.

The Chief Executive believed it is likely to centre round the Statement of Intent and the reasons why they are not accepting it. He said this is a separate issue that must deal with as a separate issue.

The Manager Corporate Services commented that if the Christchurch City Council doesn't approve this, there would be issues with the consenting process and the Council may need to think about buying out their share. He said if the Council doesn't consent CPWL are looking at other options which are less attractive and more costly.

Councillor Stewart believed they would be going to want more than \$1m soon and questions needed to be asked.

The Manager Corporate Services said Councillor Stewart has been advised that Synlait are appealing the Environment Court decision against their (Synlait's) look of priority to Rakaia River water.

He said advice received indicates that the funding CPWL are seeking will fund this appeal. He said he was comfortable they have thought this through but although targeting \$1m, they are clearly looking at other options.

Councillor Hasson proposed an addition to the resolution to ensure the Council is not left wide open to further funding arrangements.

**Resolved – Councillors Christensen/Coe**

*“That*

- (a) the Council agree to consent to a loan agreement between Central Plains Water Limited, Central Plains Trust and Dairy Holdings Limited, with regard to a borrowing by Central Plains Water*

*Limited from Dairy Holdings Limited, to provide funding for the Central Plains Water project;*

- (b) the Manager Corporate Services and the Council's legal adviser Anthony Harper, be given delegated authority to complete the legal documentation with regard to this arrangement subject to the legal documentation not reducing the Council's debt repayment priority or the Council's rights under the objectives of the Central Plains Water Trust Deed;*
- (c) the Manager Corporate Services and the Council's legal adviser Anthony Harper, be given delegated authority to approve any further agreements to consent that are required to assist Central Plains Water Limited with the funding of the Central Plains project subject to those agreements not reducing the Council's debt repayment priority or the Council's rights under the objectives of the Central Plains Water Trust Deed;*
- (d) in providing the delegations in (b) and (c) it is acknowledged that the Council will not be providing any further equity, debt or grant funding to the Central Plains Water project without the Council's prior approval."*

CARRIED UNANIMOUSLY

The Mayor suggested that the Manager Corporate Services be the only person authorised to speak on the Council's behalf.

Councillor Hasson believed there is an obligation to release the fact that the Council is not intending to provide any further funding.

Councillor Hasson said she was following Standing Orders and would like the fact that her motion to release information was not accepted by the Mayor, recorded in the minutes.

The Mayor said it is a moving feast and he will respond accordingly. He did not believe anything should be released until the city decision has been made.

Councillor Hasson asked that once the city has made a decision any information that does not need to stay in committee be released. This was supported.

Councillor Percy noted that the reworded resolution indicates the Council cannot lend any further money without Council's prior approval. He noted the need to be careful what is indicated.

The Manager Corporate Services said it could be necessary to provide bridging funding if the decision is made to issue a Prospectus.