

The Chairman and Councillors  
**Finance and Governance Committee**

**NOTICE IS GIVEN** that the next meeting of the **Finance and Governance Committee** will be held in **The Domain Room, Hotel Armitage, Cnr Willow and Park Streets, Tauranga** on:

**EMBARGOED**

Until 2 working days before meeting on:

**Thursday, 18 February 2010**

**commencing at 1.00 p.m.**

Or at the Conclusion of the Policy and Planning Committee Meeting

Bill Bayfield  
**Chief Executive**

11 February 2010

*Working with our communities for a better environment*





## **Finance and Governance Committee**

### **Purpose**

- To provide strategic oversight of, and establish policy for, the financial affairs of Council.
- To overview Council's financial reports and annual financial statements, and to monitor Council's financial performance.
- To ensure the effective functioning of the organisation as a corporate body.

### **Role**

- 1 To receive the Council's quarterly overall financial reports and to review the appropriateness of reports received.
- 2 To receive and consider month-end reports between quarters, if required.
- 3 To preview and approve the form and content of the annual financial statements.
- 4 To monitor Council's overall service and financial performance against the Ten Year Plan and Annual Plan, including overseeing the production of the Annual Report.
- 5 To develop and review Council's funding and financial policies, including the Policy on partnerships with the Private Sector, Revenue and Financing Policy, Liability Management Policy, Investment Policy, Policy on Development Contributions or Financial Contributions, Policy on the Remission and Postponement of Rates, Policy on the Remission and Postponement of Rates on Maori Freehold Land, and rating policy in general.
- 6 To review internal systems and their effectiveness.
- 7 To audit decisions if required.
- 8 To consider applications for the remittance of user fees and charges that are not dealt with under delegation.

### **Delegated Authority**

- (a) Authority to delegate to any subcommittee of the Finance and Governance Committee, any authorities that have been delegated by Council to the Committee and to appoint members.
- (b) Authority for the governance of all statutory functions, powers and duties within its terms of reference.
- (c) Authority to make recommendations to Council on financial matters arising from Council's financial reports.
- (d) Authority to determine processes for preparing Council's funding and financial policies, including the Policy on partnerships with the Private Sector, Revenue and Financing Policy, Liability Management Policy, Investment Policy, Policy on Development Contributions or Financial Contributions, Policy on the Remission and Postponement of Rates, Policy on the Remission and Postponement of Rates on Maori Freehold Land, and rating policy in general.
- (e) Authority to remit user charges and rates.
- (f) Authority to approve un-audited annual financial statements for audit purposes.
- (g) Authority, within its terms of reference, to approve the transfer of budget levels between activities or to exceed the budget level for an activity with no commensurate savings elsewhere, up to \$100,000 and to recommend to Council amounts exceeding \$100,000.



## Committee Membership

<b>Chairman:</b>	I Noble
<b>Deputy Chairman:</b>	J Nees
<b>Councillors:</b>	R Ford, J Mansell, P Sherry, A von Dadelszen
<b>Ex Officio:</b>	Chairman J Cronin
<b>Secretary:</b>	L Butt

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Recommendations in reports are not to be construed as Council policy until adopted by Council.

## Agenda

- 1 **Apologies**
- 2 **General Business and Tabled Items**

Items not on the agenda for the meeting require a resolution under section 46A of the Local Government Official Information and Meetings Act 1987 stating the reasons why the item was not on the agenda and why it cannot be delayed until a subsequent meeting.
- 3 **Reports**
  - 3.1 **Financial Statements for the month ending 31 October 2009** **9**

Financial Statements for period ending October 2009
  - 3.2 **Financial Statements for the month ending 30 November 2009** **11**

Financial Statements for the period ending 30 November 2009
  - 3.3 **Financial Statements for the month ending 31 December 2009** **13**

Financial Statements for the month ending 31 December 2009
  - 3.4 **Quarterly Financial Performance Report for the six months ending 31 December 2009** **17**

Financial Reports for the quarter ended 31 December 2009
  - 3.5 **PPS Investment Performance Report for the month ending 30 November 2009** **19**

PPS Investment Performance Report for the month ending 30 November 2009

3.6	<b>PPS Investment Performance Report for the quarter ending 31 December 2009</b>	<b>21</b>
3.7	<b>PPS Binding Ruling Renewal</b>	<b>23</b>
3.8	<b>Perpetual Preference Share Issue and Binding Ruling Costs</b>	<b>25</b>
3.9	<b>Investment Fund - Application and Compliance Report</b>	<b>27</b>
	Binding Ruling Monitoring Checklist (post allotment)	
3.10	<b>Contracting Quarterly Report - 1 October 2009 to 31 January 2010</b>	<b>29</b>
3.11	<b>Group Managers' Report</b>	<b>33</b>
4	<b>Consideration of General Business</b>	

## Reports



**File Reference:** 1.00415  
**Significance of Decision:** Receives Only - No Decisions



**Report To:** Finance and Governance Committee  
**Meeting Date:** 18 February 2010  
**Report From:** Brian Trott, Group Manager Corporate Services

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## Financial Statements for the month ending 31 October 2009

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### Executive Summary

The purpose of this report is to present the financial statements for the period ending 31 October 2009.

### 1 Recommendations

**That the Finance and Governance Committee under its delegated authority:**

- 1 Receives the report, Financial Statements for the month ending 31 October 2009.**

### 2 Introduction

This report provides a brief overview of the Council's financial performance for the period ended 31 October 2009.

### 3 Financial Overview

For the four months to 31 October 2009, Council achieved a net surplus of \$1.3 million. Significant revenue and expenditure variances are explained below.

*Revenue under budget by \$3.5 million:*

- Other public funding \$2.6 million is under budget. This is mainly due to deed funding of \$2.3 million from the Ministry for the Environment (MFE) for Rotorua Lakes, budgeted for, but not yet received. In addition, subsidies received from New Zealand Transport Agency (NZTA) are under by \$0.2 million, as the bus contract paid to Go Bus is less than budgeted (the NZTA subsidy is directly related to costs incurred).
- Investment income is under budget by \$0.6 million. Council has recognised \$0.4 million less interest on our PPS investments than expected. Accrued interest calculations are currently being reviewed in consultation with Bancorp and any adjustments will be recorded in December. Internal interest is also under budget by \$0.2 million and the lower capital expenditure has resulted in a lower internal loan funding drawn down.

- User fees and charges are \$0.2 million lower than budget due to lower than expected bus fare income received from Go Bus, and lower than budgeted rent received.

*Expenditure under budget by \$5 million:*

- Grants and subsidies are under budget by \$1.7 million. This is due to a subsidy claim for the Rotorua Lakes clean up not being received from Rotorua District Council.
- Other expenses under budget by \$2.7 million:
  - Rotorua Lakes contract work and materials costs are \$0.9 million lower than budget. Several projects are still in the consultation phase and therefore the anticipated expenditure has not yet been incurred.
  - Contract costs with Go Bus are \$0.5 million less than budgeted.
  - Delays in land use change projects have resulted in contract costs in the Sustainable Land Management activity being under budget by \$0.3 million.
  - Bad debts expense and rates remissions are \$0.2 million lower than budget – this is a timing variance as most adjustments will be done at year end.

The remaining under-spending is in general expenses across most activities.

*Capital expenditure under budget by \$0.5 million.*

Corporate Services capital expenditure is under budget by \$0.7 million due to delays in purchasing replacement IT equipment, plant and vehicles.

Rotorua lakes capital expenditure is under budget by \$0.2 million, mainly due to planned work on Wetland Construction (Rotoehu) not yet carried out.

Rivers, Drainage and Flood Management capital expenditure is \$0.4 million higher than budgeted. The expenditure to date relates to capital “work in progress” for the river schemes. The majority of the budgets have been set in the second half of the financial year when the work is expected to be capitalised. In addition, some capital work has been brought forward.

## 4 **Financial Implications**

### **Current Budget**

Council revenue and expenditure is currently under budget mainly due to the timing of work being carried out. It is expected that once projects are underway, revenue and expenditure will be close to budget.

### **Future Implications**

None

### **Ten Year / Annual Plan Implications**

None

Tracey Wilson  
**Financial Accountant**

**for Group Manager Corporate Services**

**26 January 2010**

**File Reference:** 1.00415  
**Significance of Decision:** Receives Only - No Decisions



**Report To:** Finance and Governance Committee  
**Meeting Date:** 18 February 2010  
**Report From:** Brian Trott, Group Manager Corporate Services

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## Financial Statements for the month ending 30 November 2009

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### Executive Summary

The purpose of this report is to present the Financial Statements for the period ending 30 November 2009.

### 1 Recommendations

**That the Finance and Governance Committee under its delegated authority:**

- 1 Receives the report, Financial Statements for the month ending 30 November 2009.**

### 2 Financial Overview

For the five months to 30 November 2009, Council achieved a net surplus of \$1.6 million. Significant revenue and expenditure variances are explained below.

*Operating revenue under budget by \$4 million:*

- 'Other public funding' is under budget by \$2.9 million. This is mainly due to the deed funding of \$2.7 million from the Ministry for the Environment (MFE) for the Rotorua Lakes clean-up work, which has been budgeted for but not yet received. This funding is now expected to be received in December 2009.
- User fees and charges are under budget by \$0.2 million mainly due to lower than expected rent received (\$0.15 million) and lower bus fare income received from Go Bus (\$0.08 million). This has been partly offset by higher than expected Land owner contributions (\$0.09 million).
- Investment income under budget by \$0.9 million. Council has recognised \$0.6 million less interest on our PPS investments than expected. Accrued interest calculations are currently being reviewed in consultation with Bancorp and any adjustments will be recorded in December. Internal interest is also under budget by \$0.2 million - lower capital expenditure has resulted in less internal loan funding drawn down.

*Operating expenditure under budget by \$5.6 million:*

- Grants and subsidies are under budget by \$2.1 million due to a subsidy claim for the Rotorua Lakes clean-up not being received from Rotorua District Council. This expenditure will be incurred in December 2009.
- Other expenses under budget by \$2.9 million:
  - Rotorua Lakes contract work and materials costs are \$1.1 million lower than budget. Several projects are still in the consultation phase so it's expected that all anticipated expenditure has not been incurred.
  - Contract costs paid to Go Bus are \$0.4 million lower than expected.
  - Delays in land use change projects have resulted in contract work costs for the Sustainable Land Management activity being under budget by \$0.3 million.
  - Bad debts expense and rates remissions are \$0.2 million lower than budgeted. This is a timing variance as most adjustments are recorded at year end.
  - Expenditure on consultants across a number of activities has been \$0.2 million lower than budget.

The remaining under-spending is in general expenses across most activities.

*Capital expenditure under budget by \$0.8 million.*

Corporate Services capital expenditure is under budget by \$0.9 million due to delays in purchasing replacement IT equipment, plant and vehicles.

Rotorua lakes capital expenditure is under budget by \$0.2 million, mainly due to the planned work on wetland construction (Rotoehu) not yet carried out.

Rivers, Drainage and Flood Management capital expenditure is \$0.4 million higher than budgeted. The expenditure to date relates to capital "work in progress" for the river schemes. The majority of budgets have been set in the second half of the financial year when the work is expected to be capitalised. In addition, some capital work has been brought forward.

### **3 Financial Implications**

#### **Current Budget**

Council revenue and expenditure is currently under budget mainly due to the timing of work being carried out. It is expected that once projects are underway, revenue and expenditure will be close to budget

#### **Future Implications**

None

#### **Ten Year / Annual Plan Implications**

None

Tracey Wilson  
**Financial Accountant**

**for Group Manager Corporate Services**

**27 January 2010**

**File Reference:** 1.00415  
**Significance of Decision:** Receives Only - No Decisions



**Report To:** Finance and Governance Committee  
**Meeting Date:** 18 February 2010  
**Report From:** Brian Trott, Group Manager Corporate Services

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## **Financial Statements for the month ending 31 December 2009**

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### **Executive Summary**

The purpose of this report is to present the Financial Statements for the period ending 31 December 2009.

#### **1 Recommendations**

**That the Finance and Governance Committee under its delegated authority:**

- 1 Receives the report, Financial Statements for the month ending 31 December 2009.**

#### **2 Financial Overview**

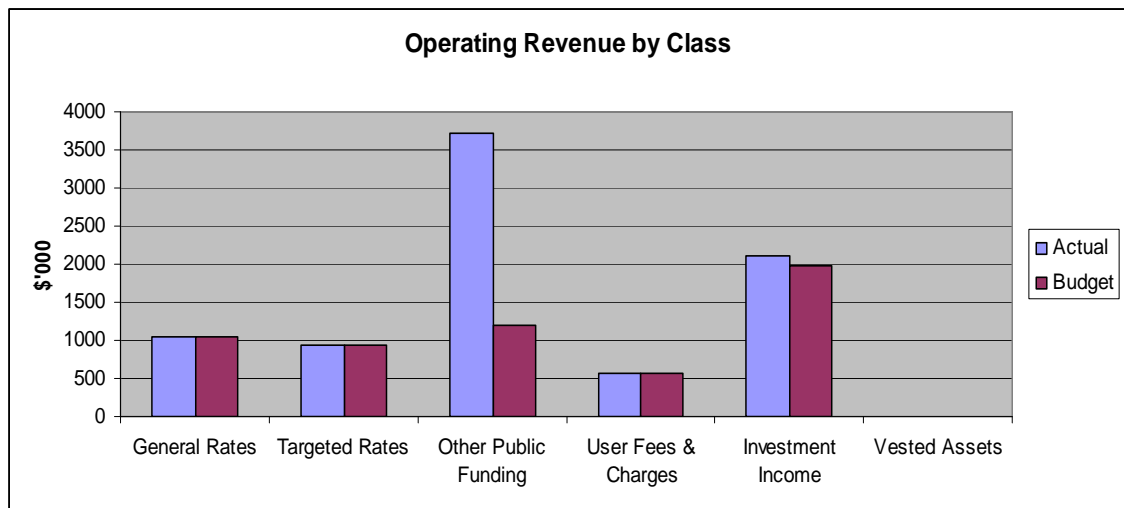
This purpose of this report is to highlight the financial performance for the December 2009 reporting month, and explain any significant variations for the month. For full details of the Council's year to date performance please refer to the Quarterly Financial Performance Report for the six months ending 31 December 2009.

For the month ending 31 December 2009, Council achieved a surplus of \$1.838 million. The significant revenue and expenditure variances are explained in the sections below.

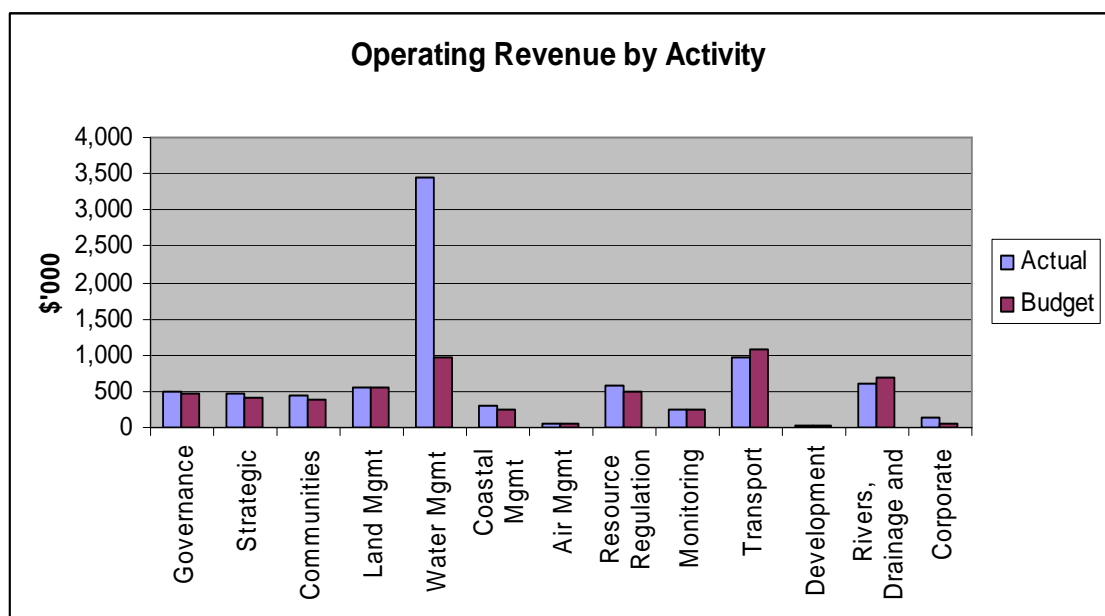
##### **2.1 Operating revenue**

Total revenue is over budget by \$2.636 million (46%).

The graph below shows the period actual compared to budget for each major revenue class.



The graph below shows the period actual revenue compared to budget for each activity.



Other Public Funding (Sustainable Water Management) is \$2.5 million over budget due to the budgeting being split over a monthly basis and the actual being a Deed Funding lump claim for six months (there is minimal variance year to date).

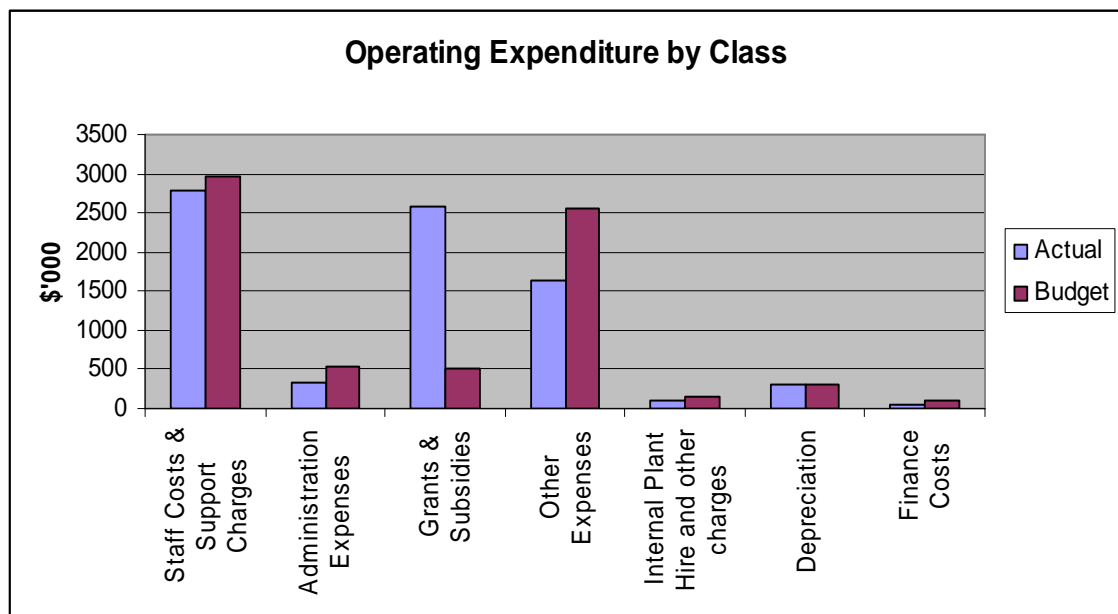
Investment Income is over budget by \$0.1 million due to swap interest coming in during the period.

Transport is under budget by \$0.1 million due to the subsidy received from the New Zealand Transport Agency being less than budgeted. Revenue received is directly related to the amount paid for the bus contract.

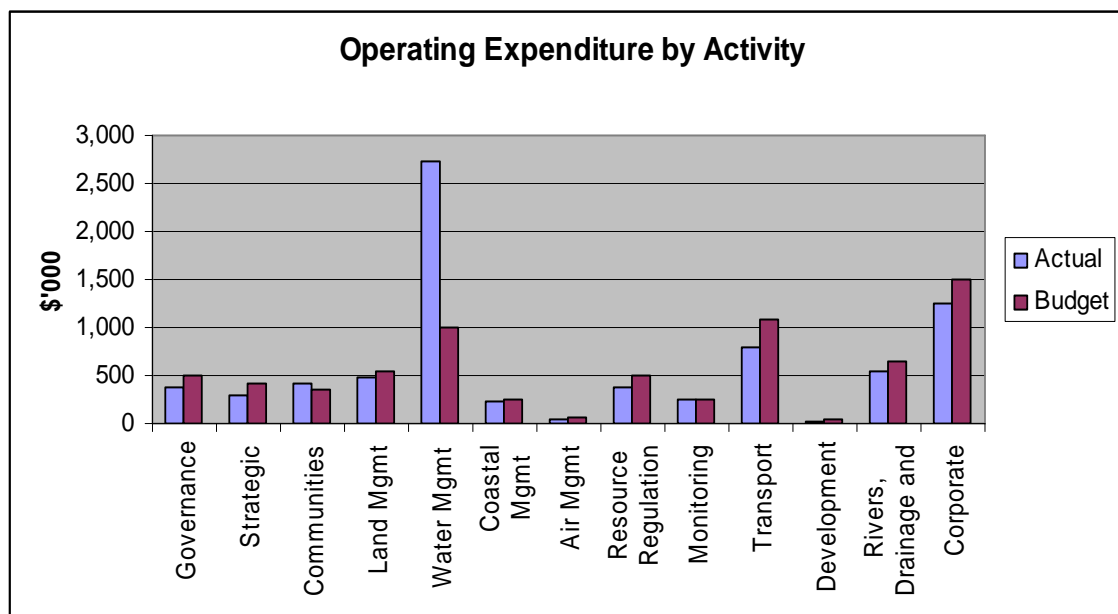
## 2.2 Operating Expenditure

Total operating expenditure is over budget by \$0.677 million.

The graph below shows the period actual compared to budget for each major expenditure class.



The graph below shows the period actual expenditure compared to budget for each activity.



Grants and Subsidies are over budget by \$2.1 million for the month. Funding for Rotorua Lakes clean up work was paid to Rotorua District Council in December, but was budgeted for in previous months (there is minimal variance year to date).

Transport is under budget by \$0.283 million due to unbudgeted staff recoveries of \$0.1 million and the amount paid for the Bus contract was less than budgeted.

Other expenses are under budget by \$0.92 million because the total budget for contract work and consultancy fees has not been utilised as contracts are still being negotiated.

### 2.3 Internal Recoveries

Internal recoveries are under budget due to Corporate Services operating expenditure being lower than budgeted.

### 3 **Financial Implications**

#### **Current Budget**

Any permanent variances identified have been disclosed in the Quarterly Financial Performance report.

#### **Future Implications**

None

#### **Ten Year / Annual Plan Implications**

None

Andrew Dixon  
**Asset Accountant**

**for Group Manager Corporate Services**

**29 January 2010**

**File Reference:** 1.00415  
**Significance of Decision:** Receives Only - No Decisions



**Report To:** Finance and Governance Committee  
**Meeting Date:** 18 February 2010  
**Report From:** Brian Trott, Group Manager Corporate Services

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## **Quarterly Financial Performance Report for the six months ending 31 December 2009**

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### **Executive Summary**

The purpose of this report is to provide an overview of the Council's financial performance for the six months ending 31 December and for the Finance and Governance Committee to receive the Quarterly Financial Performance Report for the six months to 31 December 2009.

### **1 Recommendations**

**That the Finance and Governance Committee under its delegated authority:**

- 1 Receives the report, Quarterly Financial Performance Report for the six months ending 31 December 2009.**

### **2 Introduction**

This report provides a brief overview of the Council's financial performance for the six months to 31 December 2009.

Accompanying this report is the full Quarterly Financial Performance report, which provides detailed financial information for each activity for the six month period.

### **3 Organisational Overview**

In this quarter the Council has carried out a number of activities, including;

- Carter Holt Harvey and Norske Skog Tasman were granted resource consents for their Kawerau mill operations for a period of 25 years.
- The draft next Regional Policy 2009 statement was approved in December.
- More than 50 submissions and comments were received on the future of pest management in the region.
- A new civil defence website was launched [www.bopcivildefence.govt.nz](http://www.bopcivildefence.govt.nz).
- Matatā lagoon restoration project commenced.

For more information about these and other achievements, please refer to the full Organisational Overview in the Quarterly Financial Performance Report.

### 3.1 Financial Overview

The Council achieved a net surplus of \$2.8 million against a budgeted deficit of \$0.5 million. The significant items that contribute to this variance are explained below:

#### *Operating Revenue \$1.4 million under budget*

- Other public funding under budget by \$0.4 million, mainly due to grants budgeted for but not received.
- User fees and charges under budget by \$0.2 million due to lower than expected rental income received.
- Investment income under budget by \$0.7 million due to lower than budgeted interest income from PPS investments (\$0.4 million) and less internal interest revenue received (\$0.3 million).

#### *Operating Expenditure \$4.6 million under budget*

- Contract work under budget by \$2.9 million due to delays in projects starting and lower than expected costs to date in Rotorua Lakes, Sustainable Land Management and Sustainable Transport activities.
- Consultancy expenditure under budget by \$0.4 million across several activities due to delays in work commencing.
- Finance costs and internal interest is under budget by \$0.3 million due to lower than expected internal interest expense.
- The remaining variance of \$1 million is due to timing and is spread across a number of activities and expense types, including audit fees and bad debts.

#### *Capital Expenditure \$1.2 million under budget*

- Corporate Services is \$1.3 million under budget due to the programming of replacement IT equipment, plant and vehicles (\$1.3 million).
- Rivers and drainage capital expenditure is \$0.4 million higher as work has been capitalised earlier than budgeted.
- Rotorua Lakes capital expenditure is \$0.3 million under budget due to planned work on wetland construction not yet carried out.

## 4 Financial Implications

### **Current Budget**

Council revenue and expenditure is currently under budget mainly due to the timing of work being carried out. It is expected that once projects are underway, revenue and expenditure will be close to budget by the end of the financial year.

### **Future Implications**

None

### **Ten Year / Annual Plan Implications**

None

Tracey Wilson  
**Financial Accountant**

**for Group Manager Corporate Services**

**8 February 2010**

**File Reference:** 1.00035  
**Significance of Decision:** Receives Only - No Decisions



**Report To:** Finance and Governance Committee  
**Meeting Date:** 18 February 2010  
**Report From:** Brian Trott, Group Manager Corporate Services

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## PPS Investment Performance Report for the month ending 30 November 2009

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### **Executive Summary**

The purpose of this report is to inform Council of the financial performance of the PPS Investment Fund for the month ended 30 November 2009.

### **1 Recommendations**

**That the Finance and Governance Committee under its delegated authority:**

- 1 Receives the report, PPS Investment Performance Report for the month ending 30 November 2009.**

### **2 Background**

Since 1 July 2009, the \$200 million proceeds received from the Perpetual Preference Share issue have been under investment in accordance with our Investment Policy.

This month was quiet for trades with \$1.4 million ANZ perpetual bonds sold, and no purchases made. This resulted in realised gains on the sales of \$0.029 million.

The actual capital value of the portfolio at 30 November 2009 fell by \$0.28 million from the prior month, with the average yield of the portfolio rising to 8.02% from 7.84%.

This level of return continues to support the intentions of the reviewed Investment Policy and Council's desire to reduce general rate requirements through maximising its investment returns.

Attached to this report is a report from our advisors, Bancorp Treasury Services, which provides more detailed information. Earl White from Bancorp Treasury Services will be in attendance at the meeting.

### **3 Financial Implications**

#### **Current Budget**

The cost of managing the fund and its projected returns are included in the current Annual Plan.

**Future Implications**

None outside of Council's Investment Policy and direction.

**Ten Year / Annual Plan Implications**

Future provisions have been included in the adopted 2009-2019 Ten Year Plan.

Andrew Dixon  
**Asset Accountant**

**for Group Manager Corporate Services**

**28 January 2010**

# Appendix





# BANCORP

BANCORP TREASURY SERVICES LIMITED

11th Floor, 191 Queen Street, PO Box 4270, Auckland 1, New Zealand  
Tel: 64-9 912 7600, Fax: 64-9 912 7601

30 November 2009

Brian Trott  
Group Manager Finance & Organisation  
Environment Bay of Plenty  
Regional Council  
PO Box 304  
**WHAKATANE**

Dear Brian

## **INVESTMENT FUND VALUATION AND REPORT NOVEMBER 2009**

### **FINANCIAL MARKET UPDATE AS AT 30 NOVEMBER**

The recovery in the US remains very much in a fragile state, with November providing little evidence to suggest the real economy is embarking on a sustainable recovery. US unemployment reached 10.2% at the end of October, a 26 year high and a main driver for the Federal Reserve ("Fed") restating it will hold benchmark interest rates at between 0 – 0.25% for an "extended period". Unemployment forms part of the dual inflation/growth mandate for the Fed so there will need to be consistent signs of improvement before the Fed begins to unwind its monetary stimulus measures. Such an improvement looks unlikely anytime soon. With doubts surfacing about the pace of the US recovery and the Fed maintaining its cautious tone, markets are currently pricing in little prospect of interest rate hikes in the US or Europe until the latter part of 2010 at the earliest.

Australia on the other hand continues to benefit from Chinese demand. The Reserve Bank of Australia ("RBA") increased its official cash rate for a second time in November, by 0.25% to 3.50%. A further 25 basis point hike at the next review on 1 December is widely expected and market pricing is indicating that the cash rate could reach as high as 5.50% by the end of next year. The RBA, in its quarterly *Statement on Monetary Policy*, ramped up its forecasts for economic growth to the end of 2010 and signalled further interest rate hikes, supporting the market view. The RBA is increasingly optimistic about Australia's recovery, with growth in business investment and exports expected to be strong, underpinned by an ongoing expansion in the resources sector and a bounce back in Asian economies, particularly China.

New Zealand's economic prospects currently seems to be sitting somewhere between the struggling economies of the Northern Hemisphere and the accelerating growth in Australia. Reserve Bank Governor Alan Bollard recognised this when he held the OCR at 2.5% at the end of October stating he would keep rates low "until the second half of 2010", essentially the same timeframe as he has stated at earlier meetings. He continues to voice his concerns in relation to the high NZD hampering export growth, which he thinks is slowing the economic recovery.

Financial markets however are pricing in OCR increases around April, ahead of Bollard's stated timeframe, as commentators focus on recovery in the housing market and also strong migrations inflows. However, Bollard does now have some extra tools available to suppress demand with a core funding ratio for banks to be introduced next year. This will force registered banks to maintain a core ratio of 65%, increasing to 75% by 2011 for funding, either being from retail sources or maturing beyond 12 months. With the bulk of bank funding having to ultimately come from domestic retail deposits or wholesale funding maturing greater than one year, this will lessen their ability to access 'cheap' offshore sourced hot money to meet credit demand.

linked to the housing sector. This should also underpin credit margins and probably push up longer term mortgage rates further. This will mean that retail borrowers will continue to be swayed towards the relatively lower floating rates enabling the OCR to be a much more effective tool for controlling inflation. In the medium term this may actually lessen the need to have a very high OCR to suppress consumer spending and may ultimately lead to less volatility for the currency. This is a medium term prospect though and at the moment the NZD continues to be driven by offshore sentiment and the gyrations of the Australian dollar.

### INVESTMENT PORTFOLIO UPDATE

The current investment portfolio maintains a solid credit exposure with no specific investment concerns. We continue to decrease the overall holding of ANZ perpetual bonds, through the retail market, targeting yields around 8.95%. As at 30 November we had sold \$9.633 million of these bonds. We are also investigating options to sell the remaining \$7 million of Westpac 2011 floating rate notes held, looking to replace them with 2011 fixed rate investments at yields above 7.00%.

The table below shows the changes in valuations since the end of October taking into account activity over the month.

		31/10/2009	30/11/2009	Change	31/10/2009	30/11/2009	
		MARGIN/YIELD	MARGIN/YIELD		IMPLIED CAPITAL	CAPITAL	
					VALUE	VALUE	
Westpac	FRN	0.85%	0.95%	0.10%	6,985,525	6,995,428	9,903
AIAL		7.19%	6.91%	-0.28%	10,440,920	10,593,691	152,772
ASB Bank Limited		4.91%	4.72%	-0.19%	26,303,075	26,307,551	4,476
ANZ Sub Debt		8.95%	8.95%	0.00%	66,719,161	66,683,565	-35,596
Fonterra		7.14%	6.80%	-0.34%	4,947,038	5,010,733	63,695
Fonterra		7.14%	6.80%	-0.34%	4,947,038	5,010,733	63,695
HBOS		4.60%	4.47%	-0.13%	5,068,256	5,056,474	-11,781
HBOS		4.60%	4.47%	-0.13%	5,068,256	5,056,474	-11,781
Insurance Australia		10.92%	9.93%	-0.99%	4,769,405	4,896,318	126,913
Westpac		4.73%	4.63%	-0.10%	15,868,150	15,840,571	-27,579
KiwiBank	FRN	1.15%	1.20%	0.05%	27,610,637	27,524,237	-86,399
Watercare	FRN	1.25%	1.25%	0.00%	1,552,746	1,537,435	-15,311
Vector		7.39%	7.10%	-0.29%	1,525,054	1,542,436	17,382
Vector	FRN	2.65%	2.60%	-0.05%	7,389,692	7,407,745	18,053
Powerco		7.38%	6.86%	-0.52%	745,302	750,871	5,569
Citigroup	FRN	3.25%	3.20%	-0.05%	4,647,322	4,661,064	13,742
Citigroup	FRN	3.25%	3.20%	-0.05%	4,647,322	4,661,064	13,742
Cash ANZ		0.00%	3.00%	0.00%	3,376,000	3,376,000	0
					202,610,898	202,912,393	301,495

Yours sincerely



**EARL A WHITE**

Director

This document has been prepared by Bancorp Treasury Services Limited ("BTSL"). Whilst all reasonable care has been taken to ensure the facts stated are accurate and the opinions given are fair and reasonable, neither BTSL nor any of its directors, officers or employees shall in any way be responsible for the contents. No liability is assumed by BTSL, its directors, officers or employees for action taken or not taken on the basis of this document.



**BANCORP**

BANCORP TREASURY SERVICES LIMITED

<b>Total Portfolio</b>	<b>\$</b>	<b>200,000,000</b>				
<b>Average Portfolio Duration (years)</b>		<b>2.38</b>				
<b>Average Yield %</b>		<b>8.02%</b>				
<b>Portfolio Exposure by Face Value</b>	<b>Minimum Rating Criteria (S&amp;P)</b>	<b>Individual Issuer Limit</b>	<b>Face Value</b>	<b>Percentage total portfolio</b>	<b>Category Limit</b>	<b>Compliant</b>
NZ Govt Guaranteed	Not Applicable	Unlimited	\$0	0.0%	100%	Yes
Local Authorities	A+	\$20 million	\$0	0.0%	50%	Yes
NZ Registered Banks	A+	\$50 million	\$142,743,000	71.4%	80%	Yes
SOE's	A+	\$20 million	\$0	0.0%	40%	Yes
Rated Corporates	A+	\$20 million	\$16,500,000	8.3%	40%	Yes
Rated Financials	A+	\$20 million	\$10,000,000	5.0%	40%	Yes
Investment Committee approved	N/A	N/A	\$30,757,000	15.4%	100%	Yes
			<b>\$200,000,000</b>	<b>100.00%</b>		
<b>Portfolio exposure by Counterparty</b>						
		<b>Rating</b>	<b>Individual Limit</b>	<b>Compliant</b>	<b>Limit available</b>	
ASB Bank Limited	25,000,000	AA	\$50,000,000	Yes	\$25,000,000	
ANZ National Bank Limited Sub	65,367,000	A+	\$50,000,000	No	-\$15,367,000	
AIAL	10,000,000	A-	\$10,000,000	Yes	\$0	
Citigroup	10,000,000	A	\$10,000,000	Yes	\$0	
Fonterra	10,000,000	A+	\$20,000,000	Yes	\$10,000,000	
HBOS	10,000,000	A+	\$20,000,000	Yes	\$10,000,000	
Insurance Australia Funding 2007 Ltd	5,000,000	A+	\$20,000,000	Yes	\$15,000,000	
KiwiBank	27,000,000	AA-	\$50,000,000	Yes	\$23,000,000	
Powerco	757,000	BBB	\$757,000	Yes	\$0	
Vector	10,000,000	BBB+	\$10,000,000	Yes	\$0	
Watercare	1,500,000	AA (*)	\$20,000,000	Yes	\$18,500,000	
Westpac	22,000,000	AA	\$50,000,000	Yes	\$28,000,000	
ANZ Cash	3,376,000	AA	\$0	No	-\$3,376,000	
<b>Total</b>	<b>200,000,000</b>					

(\* *Guaranteed by Auckland City 'AA'*)



**File Reference:** 1.00035  
**Significance of Decision:** Receives Only - No Decisions



**Report To:** Finance and Governance Committee  
**Meeting Date:** 18 February 2010  
**Report From:** Brian Trott, Group Manager Corporate Services

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## PPS Investment Performance Report for the quarter ending 31 December 2009

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### Executive Summary

The purpose of this report is to inform Council of the financial performance of the PPS Investment Fund for the three months ending 31 December 2009.

### 1 Recommendations

**That the Finance and Governance Committee under its delegated authority:**

- 1 Receives the report, PPS Investment Performance Report for the quarter ending 31 December 2009.**

### 2 Background

Since 1 July 2009, the \$200 million proceeds received from the Perpetual Preference Share issue have been under investment in accordance with our Investment Policy.

#### December

During the month \$7.0 million Westpac floating rate notes (FRN), \$0.757 PowerCo Ltd bonds and \$0.54 million ANZ perpetual bonds were sold, and these were replaced with investments of \$5 million in Insurance Australia Group and \$5 million in PowerCo Ltd bonds. This resulted in unrealised gains on purchases of \$0.57 million, which will be released over the life on the investments, realised gains on the sales of \$0.01 million, and realised losses on the sales of \$0.013 million.

The actual capital value of the portfolio at 31 December 2009 fell by \$0.74 million from the value shown as at 30 November 2009, and the average yield of the portfolio has risen to 8.26% from 8.02%.

#### Quarter

During the quarter \$20.0 million Westpac floating rate notes (FRN), \$0.757 PowerCo Ltd bonds and \$8.296 million ANZ perpetual bonds were sold, and these were replaced with investments of \$5 million in Insurance Australia Group, \$10 million in Citigroup, \$8.5 million in Vector and \$5 million in PowerCo Ltd bonds. This resulted in unrealised gains on purchases of \$2.45 million, which will be released over the life on

the investments, realised gains on the sales of \$0.18 million, and realised losses on the sales of \$0.02 million.

The actual capital value of the portfolio at 31 December 2009 fell by \$2.46 million from the value at the start of the quarter, and the average yield of the portfolio has risen from 7.91% to 8.02% during the quarter.

This level of return continues to support the intentions of the reviewed Investment Policy and Council's desire to reduce general rate requirements through maximising its investment returns.

Attached to this report is a report from our advisors, Bancorp Treasury Services, which provides more detailed information. Earl White from Bancorp Treasury Services will be in attendance at the meeting.

### **3 Financial Implications**

#### **Current Budget**

The cost of managing the fund and its projected returns are included in the current Annual Plan.

#### **Future Implications**

None outside of Council's Investment Policy and direction.

#### **Ten Year / Annual Plan Implications**

Future provisions have been included in the adopted 2009-2019 Ten Year Plan.

Andrew Dixon  
**Asset Accountant**

**for Group Manager Corporate Services**

**28 January 2010**

# Appendix





# BANCORP

BANCORP TREASURY SERVICES LIMITED

11th Floor, 191 Queen Street, PO Box 4270, Auckland 1, New Zealand  
Tel: 64-9 912 7600, Fax: 64-9 912 7601

25 January 2010

Brian Trott  
Group Manager Finance & Organisation  
Environment Bay of Plenty  
Regional Council  
PO Box 304  
**WHAKATANE**

Dear Brian

## INVESTMENT FUND VALUATION AND REPORT DECEMBER 2009

### FINANCIAL MARKET OVERVIEW FOR DECEMBER 2009 QUARTER- INTERNATIONAL

The 4<sup>th</sup> quarter of 2009 was characterised by a general sense of optimism that the worst of what has become known as the GFC (Global Financial Crisis) was behind us and that the prospects for the global economy were certainly much more positive than the thoughts of depression that dominated late 2008 and early 2009.

Despite the more encouraging outlook the US Federal Reserve maintained the Fed Funds rate at the extremely stimulatory level of 0% to 0.25% over the last quarter of 2009 and when it reviewed monetary policy in December it again committed to maintaining the rate at close to zero for "*an extended period*". While it did acknowledge that economic conditions across the US had improved "*modestly*" and that the beleaguered labour market was showing signs of progress the Fed clearly believes it is more a case of things not getting worse rather than actually improving.

Equity markets around the world reflected the brighter outlook into year-end as they continued the recovery that began in March. The Dow Jones index gained 9.5% over the 4<sup>th</sup> quarter, the FTSE 7.2%, the Australian All Ordinaries 3.8% and the NZX a more modest 1.5%. The question now, especially for the Dow Jones, is whether corporate earnings will match the expectations which have been built into current share prices.

The Reserve Bank of Australia ("RBA") became the first major central bank to raise its benchmark interest rates from "emergency" levels. The RBA increased the official interest rate by 25 basis points in October and followed this up with similar moves in both November and December, bringing the benchmark rate to 3.75%. These reflected the strong trading relationship Australia has with China and the positive impact this has had on employment, especially in Queensland and Western Australia and also the positive impact that Government stimulus has had on consumers.

However, the general mood of optimism that dominated markets into the holiday season has been accompanied by words of caution from various commentators. In December a United Nation's economic report predicted global growth in 2010 of 2.4%, but warned that despite there being "*important signs of some recovery ... there are also very grave concerns about the possibility that this recovery will be short-lived and will not be sustained*". The United Nations saw two key risks that could that could cause a double-dip downturn; prematurely removing the fiscal and monetary stimuli and secondly the risk of the ever widening US deficit and mounting external debt that could cause a "*hard landing*" for the US dollar and set off another wave of

financial instability. A further note of caution was added recently by the Nobel Prize-winning economist Paul Krugman. He believes that there is a “30 to 40 percent chance” of the US economy falling back into recession this year, and a better than even chance of unemployment rising again.

### **FINANCIAL MARKET OVERVIEW FOR DECEMBER 2009 QUARTER- NEW ZEALAND**

Leading indicators continue to suggest that the New Zealand economy is slowly recovering with the housing market maintaining its upward momentum while consumer spending rebounded in the latter part of 2009. Towards year-end the rural sector had a boost with Fonterra increasing its forecast payout for the 2009/2010 season to \$6.05 per kilogram of milk solids, up sharply from the \$4.90 low forecast in May. Another increase of 35 to 40 cents in coming weeks is tipped by some in the agri-sector. Business confidence also improved which implies that conditions in the labour market should start to free up.

The improving nature of the economy, albeit at a modest pace, was highlighted just prior to Christmas by the release of the third quarter GDP data showing that the economy grew by 0.2% in the three months ending 30 September, while the second quarter increase of 0.1% was revised up to 0.2%. Against this backdrop the RBNZ has kept the Official Cash Rate (“OCR”) at 2.50% although in the December *Monetary Policy Statement* (“MPS”) it stated that “*If the economy continues to recover, conditions may support beginning to remove monetary stimulus around the middle of 2010.*” While “*the middle of 2010*” was not defined in the MPS it was revealed in a subsequent press conference that this could mean anytime between April and September. Financial markets are pricing in the first tightening in April whereas we expect the relative weakness of the (non-Chinese) recovery to see the RBNZ continue to err on the side of caution, especially with latest housing data implying prices peaked in November and also the worsening drought situation facing many areas.

### **CREDIT MARKET UPDATE**

Fixed interest investors are still of the view that while the recovery may be slow and patchy the worst has been seen. This has continued to support demand for fixed interest with investors increasingly looking to move out of cash to obtain a higher yield. Demand is still focused on vanilla issuance from rated entities (‘BBB’ or better) with a strong focus on infrastructure linked organisations. The table below shows just how much these spreads have narrowed over the last 9 months.

<b>SPREAD TO SWAP</b>							
<b>Issuer</b>	<b>Rating</b>	<b>Maturity</b>	<b>Margin above Swaps</b>				
			<b>15-Jan</b>	<b>30-Nov</b>	<b>30-Sep</b>	<b>31-Mar</b>	
Mighty River Power	BBB+	May-2013	130	130	155	235	
Wellington International Airport	BBB+	Nov-2013	205	205	195	353	
Contact	BBB	May-2014	165	180	170	343	
Genesis Energy	BBB+	Mar-2014	140	135	150	220	
Vector	BBB+	Oct-2014	140	135	170	-	
Genesis Energy	BBB+	Mar-2016	155	155	170	250	



After the surge in capital market activity over the first nine months of 2009, driven by investor demand and also the relative cheapness of capital markets versus bank funding, issuance levels fell away over the 4<sup>th</sup> quarter and this added support to local credit spreads. The solid investment demand being seen is reflected in the table below which shows the movement in credit spreads for the bonds currently held by Environment Bay of Plenty since 30 June 2009.

	Bought Margin	30/06/2009 Margin	31/12/2009 Margin	Change
AIAL	1.50%	2.25%	1.41%	-0.84%
ASB Bank Limited	0.90%	1.10%	0.80%	-0.30%
ANZ Sub Debt	4.50%	5.63%	3.75%	-1.88%
Fonterra	1.23%	2.60%	1.40%	-1.20%
HBOS	0.86%	3.00%	1.35%	-1.65%
Insurance Australia	1.78%	6.75%	4.00%	-2.75%
Insurance Australia	4.50%	6.75%	4.00%	-2.75%
Westpac	0.90%	1.13%	0.79%	-0.34%
KiwiBank FRN	1.70%	1.70%	0.95%	-0.75%
Watercare FRN	1.90%	1.80%	1.00%	-0.80%
Vector	2.75%	2.65%	1.55%	-1.10%
Vector FRN	2.63%	2.60%	2.75%	0.15%
Powerco	2.90%	4.50%	3.15%	-1.35%
Citigroup FRN	3.55%	3.20%	3.15%	-0.05%

#### INVESTMENT PORTFOLIO UPDATE

The current investment portfolio maintains a solid credit exposure with no specific investment concerns. We have decreased the overall holding of ANZ perpetual bonds, through the retail market, at an average yield of better than par. \$8.296 million of bonds was sold over the quarter delivering a capital gain of \$176,150. Total sales are now \$10.334 million with a capital gain of \$191,964.

	30/11/2009 MARGIN/YIELD	31/12/2009 MARGIN/YIELD	Change	30/11/2009 IMPLIED CAPITAL VALUE	31/12/2009 CAPITAL VALUE	
AIAL	6.91%	7.24%	0.33%	10,593,691	10,404,522	-189,169
ASB Bank Limited	4.72%	4.82%	0.10%	26,307,551	26,198,243	-109,308
ANZ Sub Debt	8.95%	8.95%	0.00%	65,968,446	65,935,708	-32,738
Fonterra	6.80%	6.85%	0.05%	5,010,733	5,001,151	-9,582
Fonterra	6.80%	6.85%	0.05%	5,010,733	5,001,151	-9,582
HBOS	4.47%	4.14%	-0.33%	5,056,474	5,045,772	-10,702
HBOS	4.47%	4.14%	-0.33%	5,056,474	5,045,772	-10,702
Insurance Australia	9.93%	9.04%	-0.89%	4,896,318	5,007,866	111,548
Insurance Australia	9.93%	9.04%	-0.89%	4,896,318	5,007,866	111,548
Westpac	4.63%	4.72%	0.09%	15,840,571	15,772,297	-68,274
KiwiBank	1.20%	0.95%	-0.25%	27,524,237	27,804,425	280,188
Watercare	1.25%	1.00%	-0.25%	1,537,435	1,558,659	21,224
Vector	7.10%	7.53%	0.43%	1,542,436	1,515,769	-26,667
Vector	2.60%	2.75%	0.15%	7,407,745	7,290,003	-117,742
Powerco	8.92%	9.02%	0.10%	4,390,440	4,369,689	-20,751
Citigroup	3.20%	3.15%	-0.05%	4,661,064	4,691,245	30,181
Citigroup	3.20%	3.15%	-0.05%	4,661,064	4,691,245	30,181
Cash ANZ	3.00%	3.00%	0.00%	1,834,000	1,834,000	0
				202,195,732	202,175,384	
Swaps Valuation				10,134	-26,381	-36,515
Net Valuation				202,205,866	202,149,003	-56,864

The average running yield as at 31 December was 8.26% up from 7.91% at the end of September. The implied yield, including the amortisation of capital gains and original swap



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hedging profits was 8.94% up from 8.53% at the end of September. This reflects the switching out of Floating Rate Notes that were not fixed via swaps helping to offset the impact on the overall yield generated by the sale of the ANZ perpetual notes which have a running yield of 9.66%.

Yours sincerely



**EARL A WHITE**  
Director



**STUART F E MARSHALL**  
General Manager – Treasury Advisory Services

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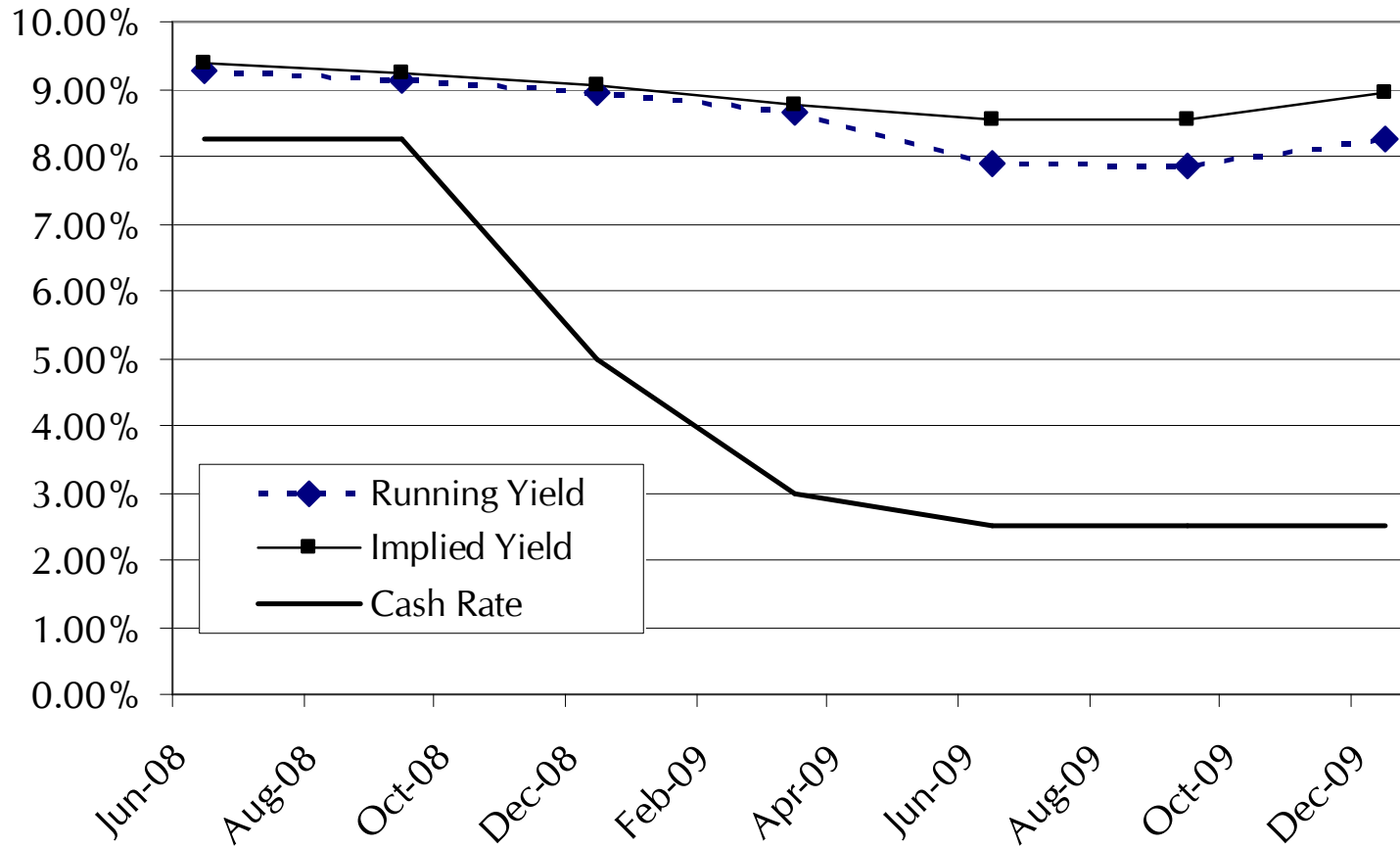


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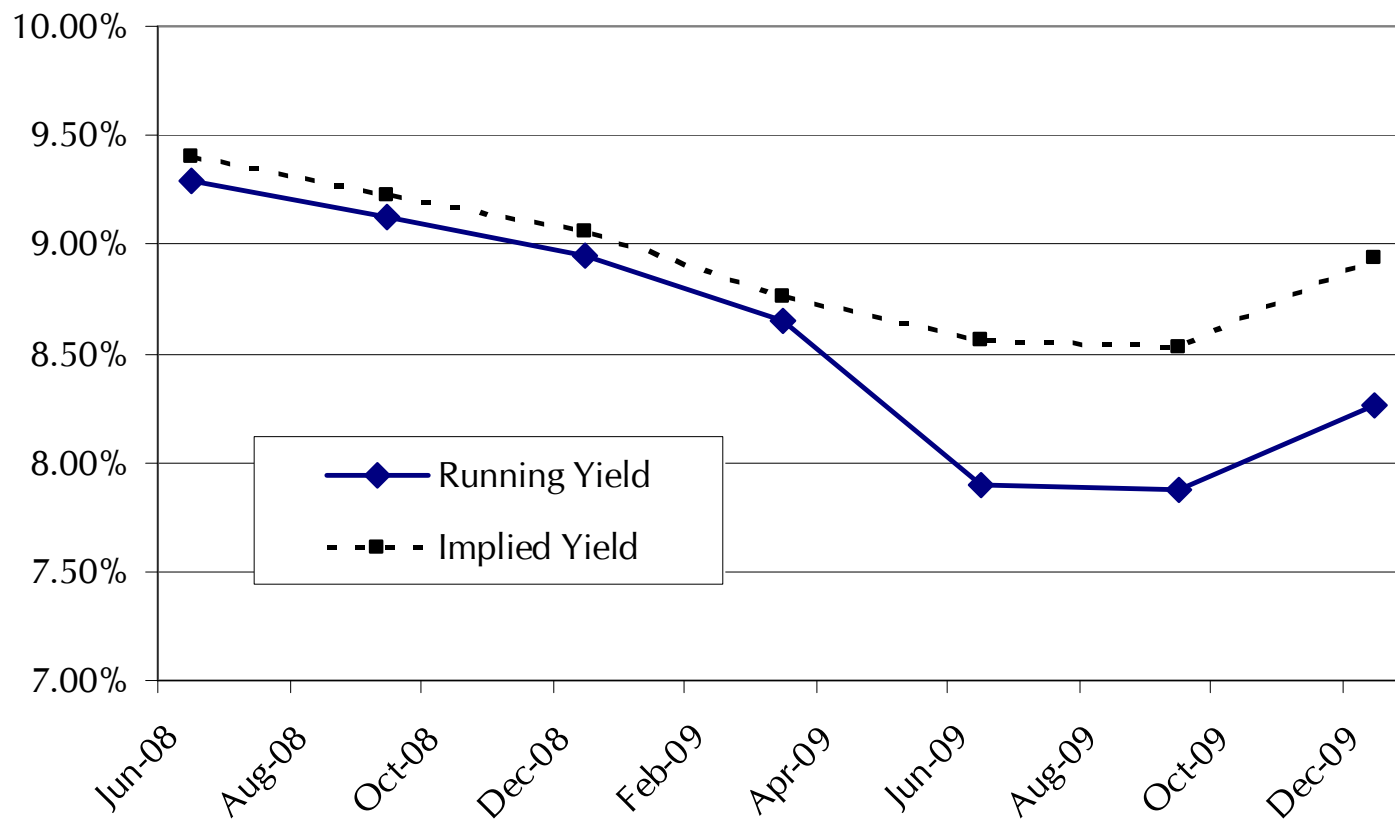
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<b>Total Portfolio</b>	\$	<b>200,000,000</b>				
<b>Average Portfolio Duration (years)</b>		<b>2.36</b>				
<b>Average Yield %</b>			<b>8.26%</b>			
<b>Average Yield including sales gains and swap hedges</b>			<b>8.94%</b>			
<b>Portfolio Exposure by Face Value</b>	<b>Minimum Rating Criteria (S&amp;P)</b>	<b>Individual Issuer Limit</b>	<b>Face Value</b>	<b>Percentage total portfolio</b>	<b>Category Limit</b>	<b>Compliant</b>
NZ Govt Guaranteed	Not Applicable	Unlimited	\$0	0.0%	100%	Yes
Local Authorities	A+	\$20 million	\$0	0.0%	50%	Yes
NZ Registered Banks	A+	\$50 million	\$133,500,000	66.8%	80%	Yes
SOE's	A+	\$20 million	\$0	0.0%	40%	Yes
Rated Corporates	A+	\$20 million	\$21,500,000	10.8%	40%	Yes
Rated Financials	A+	\$20 million	\$10,000,000	5.0%	40%	Yes
Investment Committee approved	N/A	N/A	\$35,000,000	17.5%	100%	Yes
			<b>\$200,000,000</b>	<b>100.00%</b>		
<b>Portfolio exposure by Counterparty</b>						
		<b>Rating</b>	<b>Individual Limit</b>	<b>Compliant</b>	<b>Limit available</b>	
ASB Bank Limited	25,000,000	AA	\$50,000,000	Yes	\$25,000,000	
ANZ National Bank Limited Sub	64,666,000	A+	\$50,000,000	No	-\$14,666,000	
AIAL	10,000,000	A-	\$10,000,000	Yes	\$0	
Citigroup	10,000,000	A	\$10,000,000	Yes	\$0	
Fonterra	10,000,000	A+	\$20,000,000	Yes	\$10,000,000	
HBOS	10,000,000	A+	\$20,000,000	Yes	\$10,000,000	
Insurance Australia Funding 2007 Ltd	10,000,000	A+	\$20,000,000	Yes	\$10,000,000	
KiwiBank	27,000,000	AA-	\$50,000,000	Yes	\$23,000,000	
Powerco	5,000,000	BBB	\$5,000,000	Yes	\$0	
Vector	10,000,000	BBB+	\$10,000,000	Yes	\$0	
Watercare	1,500,000	AA (*)	\$20,000,000	Yes	\$18,500,000	
Westpac	15,000,000	AA	\$50,000,000	Yes	\$35,000,000	
ANZ Cash	1,834,000	AA	\$0	No	-\$1,834,000	
<b>Total</b>	<b>200,000,000</b>					
(*) <i>Guaranteed by Auckland City 'AA'</i>						

### Yield Analysis



### Running Versus Implied Yield





**File Reference:** 7.00225  
**Significance of Decision:** Receives Only - No Decisions



**Report To:** Finance and Governance Committee  
**Meeting Date:** 18 February 2010  
**Report From:** Brian Trott, Group Manager Corporate Services

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## PPS Binding Ruling Renewal

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### Executive Summary

The purpose of this report is to inform the Finance and Governance Committee of the process and proposed timeline for the renewal of the PPS binding ruling.

### 1 Recommendations

**That the Finance and Governance Committee under its delegated authority:**

- 1 Receives the report, PPS Binding Ruling Renewal.**

### 2 Background

In September 2007 a private binding ruling was issued by Inland Revenue which set out the tax arrangement regarding the Perpetual Preference Share (PPS) issue. The ruling outlines a number of conditions which must be followed for the tax arrangement to apply.

The binding ruling is valid until 17 September 2010 and both Environment Bay of Plenty (EBOP) and Quayside Holdings Limited (QHL) are required to apply for a renewal of the ruling before the current arrangement expires.

John Shewan of Pricewaterhouse Coopers (PwC) was engaged in November 2009 by both EBOP and QHL to carry out a compliance review and negotiate an extension of the binding ruling with Inland Revenue.

### 3 Proposed timeline for the renewal

John Shewan has provided the following timeline for the renewal of the ruling:

- 1) Provide a list of questions to EBOP to obtain the information required to enable PwC to draft a binding ruling application. *Deadline - 28<sup>th</sup> January 2010.*
- 2) Receive responses from EBOP. *Deadline - 15 February 2010*
- 3) Draft binding ruling application and deliver to EBOP for review. *Deadline - 28 February 2010*
- 4) Pre-lodgement meeting with Inland Revenue. *Mid March 2010*

5) Lodgement of binding ruling with Inland Revenue. *Late March 2010*

#### 4 **Inland Revenue binding ruling process**

From 1 February 2010, Inland Revenue is implementing new procedures designed to ensure binding rulings are issued within three months of application. As part of the process, Inland Revenue intends meeting with applicants prior to the lodgement of an application. The pre-lodgement meeting is intended to provide Inland Revenue with an opportunity to:

- Clarify its understanding of the application;
- Provide a scope for what the ruling will cover; and
- Establish an expectation of what information will be required

Where there are a number of issues, Inland Revenue may renegotiate an extension on the three month timeframe. This will be communicated at the pre-lodgement meeting.

#### 5 **Financial Implications**

##### **Current Budget**

From initial enquires the total estimated cost for the renewal of the binding ruling is \$70,000 made up from: PwC consultancy costs - \$50,000 and Inland Revenue fees - \$20,000. These costs will be offset against investment returns as part of the Treasury function.

##### **Future Implications**

The forecasted investment income in the 2009/2019 Ten Year Plan was based on the assumption that the binding ruling would be renewed as and when required over the ten year period.

##### **Ten Year / Annual Plan Implications**

The forecasted investment income in the 2009/2019 Ten Year Plan was based on the assumption that the binding ruling would be renewed as and when required over the ten year period.

Jen Warnes  
**Finance Manager**

**for Group Manager Corporate Services**

**29 January 2010**

**File Reference:** 7.00225  
**Significance of Decision:** Receives Only - No Decisions



**Report To:** Finance and Governance Committee  
**Meeting Date:** 18 February 2010  
**Report From:** Brian Trott, Group Manager Corporate Services

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## **Perpetual Preference Share Issue and Binding Ruling Costs**

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### **Executive Summary**

The purpose of this report is to clarify for the Finance and Governance Committee the historic costs incurred in obtaining the Inland Revenue Binding Ruling in September 2007 and the costs associated with the Perpetual Preference Share issue in March 2008.

### **1 Recommendations**

**That the Finance and Governance Committee under its delegated authority:**

- 1 Receives the report, Perpetual Preference Share (PPS) Issue and Binding Ruling Costs.**

### **2 Background**

In July 2006 PricewaterhouseCooper commenced preliminary work to obtain a binding ruling from Inland Revenue about the Perpetual Preference Shares (PPS) funding arrangement involving the sale of 200 million PPS in Quayside Holdings Limited by Environment Bay of Plenty. In September 2007 a ruling was issued by Inland Revenue. The PPS were offered to the public in January 2008 and this was followed by a fully subscribed share issue in March 2008.

### **3 PPS Issue and Inland Revenue binding ruling historic costs**

The total cost of obtaining the Inland Revenue binding ruling along with the costs associated with the Perpetual Preference Share issue was \$5.53 million. These costs were paid for from the proceeds of the \$7.8 million special dividend received from Quayside Holdings Limited during the year ended 30 June 2008. A breakdown of the costs is provided in the table on the following page:

<b>Inland Revenue Binding Ruling Costs</b>		
<b>Who</b>	<b>Details</b>	<b>Cost</b>
Chapman Tripp	Legal advice	\$31,930
Inland Revenue	Private ruling	\$57,350
PricewaterhouseCooper	Tax advisory services	\$127,725
Cooney Lees Morgan	Legal advice	\$4,340
<b>Total Cost of IR Binding Ruling</b>		<b>\$221,345</b>
<b>Perpetual Preference Share Issue Costs</b>		
<b>Who</b>	<b>Details</b>	<b>Cost</b>
Pricewaterhouse Cooper	Tax advisory services, due diligence and investment statement	\$519,380
Chapman Tripp	Legal advice, investment statement and prospectus, NZDX listing, due diligence.	\$929,115
Audit New Zealand	Audit of prospectus	\$64,665
Cooney Lees Morgan	Legal advice relating to the LGA	\$21,656
First NZ Capital	PPS issue: lead management fee, brokerage and disbursements	\$3,684,890
Guardian Trust	Administration agent	15,370
Russell McVeagh	Restructuring security with ANZ	26,000
Marsh	Prospectus liability insurance	\$25,875
ABN-AMRO Craig	Costs associated with the sale of PPS	\$21,615
<b>Total Cost of PPS Issue</b>		<b>\$5,308,566</b>

#### 4 **Financial Implications**

##### **Current Budget**

No current costs report details historic costs.

##### **Future Implications**

None

##### **Ten Year / Annual Plan Implications**

None

Jen Warnes  
**Finance Manager**

**for Group Manager Corporate Services**

**2 February 2010**

**File Reference:** 7.00225  
**Significance of Decision:** Receives Only - No Decisions



**Report To:** Finance and Governance Committee  
**Meeting Date:** 18 February 2010  
**Report From:** Brian Trott, Group Manager Corporate Services

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## Investment Fund - Application and Compliance Report

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### Executive Summary

This is the first biannual application and compliance report on the Investment Fund. The Investment Fund was established on 30 June 2008 with the \$200 million gross proceeds of the Perpetual Preference Shares (PPS) issue.

The purpose of this report is to show where the investment funds have been applied, why the fund was used and its movement over the proceeding six month period. As this is the first report it covers the extended timeframe from the establishment of the fund until 31 December 2009.

### 1 Recommendations

**That the Finance and Governance Committee under its delegated authority:**

- 1 Receives the report, Investment Fund - Application and Compliance Report.**

### 2 Background

In March 2008 the Council received the proceeds from the sale of 200,000,000 Perpetual Preference Shares (PPS) in Quayside Holdings Limited. The sale raised \$200,000,000 before costs and to provide transparency the total proceeds were transferred to an Investment Fund Reserve as at 30 June 2008. The PPS issue and application of the proceeds are subject to an Inland Revenue (IR) Binding Ruling, which stipulates that the funds are to be used exclusively for infrastructure projects defined in the ruling.

### 3 Application of Investment Funds

The application of the Investment Funds forecasted for 2009/10 in the Ten Year Plan are as follows:

#### **Loan Advances**

Waioeka – Otara River Scheme	\$37,939
Whakatane – Waimana River Scheme	\$350,000
Rangitaiki – Tarawera River Scheme	\$1,637,500
Kaituna River Scheme	\$417,295
Rotorua Lakes Programme	\$550,000

#### **Grant:**

Lake Rotoiti – Sewerage Subsidy	\$522,000
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The following table details the movements in the Investment Fund for the period 1 July 2008 to 31 December 2009. It should be noted that the loan advances and capital repayments are interim figures based on the current work in progress costs. At the end of the financial year (30 June) the loan requirements will be reviewed and adjusted as required.

**Investment Fund (IF) - Account Movements**

Date	Details	Investments	Internal Loans - Infrastructure Projects					Sustainable Water	Total
			River Schemes						
			Short & Long Term Investments	Waioeka - Otara	Whakatane - Waimana	Rangitaiki - Tarawera	Kaituna		
1-Jul-08	Opening Balance	\$205,000,000	\$0	\$0	\$0	\$0	\$0	\$205,000,000	
30-Jun-09	Internal Loans transferred to IF	(\$20,217,126)	\$1,555,875	\$4,609,033	\$6,004,637	\$964,069	\$7,083,512	\$0	
<b>30-Jun-09</b>	<b>Closing Balance</b>	<b>\$184,782,874</b>	<b>\$1,555,875</b>	<b>\$4,609,033</b>	<b>\$6,004,637</b>	<b>\$964,069</b>	<b>\$7,083,512</b>	<b>\$205,000,000</b>	
30-Sep-09	Loan Advances - Capital Works	(\$253,631)	\$9,160	\$17,743	\$32,353	\$98,278	\$96,097	\$0	
30-Sep-09	Capital Loan Repayments	\$233,068	(\$20,657)	(\$67,237)	(\$67,232)	(\$10,388)	(\$67,554)	\$0	
<b>30-Sep-09</b>	<b>Closing Balance</b>	<b>\$184,762,311</b>	<b>\$1,544,378</b>	<b>\$4,559,539</b>	<b>\$5,969,758</b>	<b>\$1,051,959</b>	<b>\$7,112,055</b>	<b>\$205,000,000</b>	
31-Dec-09	Loan Advances - Capital Works	(\$365,010)	\$0	\$14,939	\$104,255	\$189,869	\$55,947	\$0	
31-Dec-09	Capital Loan Repayments	\$238,715	(\$21,055)	(\$68,385)	(\$68,625)	(\$11,433)	(\$69,217)	\$0	
<b>31-Dec-09</b>	<b>Closing Balance</b>	<b>\$184,636,016</b>	<b>\$1,523,323</b>	<b>\$4,506,093</b>	<b>\$6,005,388</b>	<b>\$1,230,395</b>	<b>\$7,098,785</b>	<b>\$205,000,000</b>	

#### 4 Compliance – Inland Revenue Binding Ruling

PricewaterhouseCoopers has provided a “Binding Ruling Monitoring Checklist” to enable the Council to comply with the IR binding ruling. From the PPS allotment date the checklist is required to be reviewed and signed off every six months by both Quayside Holdings Limited and the Council.

On the date of the last compliance review, 12 September 2009, the Council was fully compliant with the conditions stipulated in the Inland Revenue Binding Ruling. A copy of the Compliance monitoring report covering the six months periods ending: September 2008, March 2009 and September 2009 are presented with this report for your reference.

#### 5 Financial Implications

##### Current Budget

The application and distribution of the Investment funds scheduled in this report are within the total forecasted amounts detailed in the 2009/2019 Ten Year Plan / 2009/10 Annual Plan.

##### Future Implications

The future use of the Investment Funds is forecasted in the 2009/10 Ten Year Plan.

##### Ten Year / Annual Plan Implications

The contents of this report have no implications on the Ten Year/Annual Plan

Jen Warnes  
Finance Manager

for Group Manager Corporate Services

4 February 2010

# Appendix



## Binding Ruling Monitoring Checklist (post allotment)

Issue as described in the Ruling	Nature of risk	Responsibility			BOPRC Sign offs		
		BOPRC	QHL	PwC	Sept 2008	March 2009	Sept 2009
<b>Post allotment of PPS</b>							
1 Actions taken by BOPRC and QHL are consistent with the representations made in the binding ruling application process that the commercial reasons for entering into the arrangement were that:	IRD uses the actions undertaken by BOPRC and/or QHL to argue that the condition concerning the commercial reasons for entering the arrangement was not satisfied.						
- BOPRC needed funds to carry out infrastructure projects described in the Ruling;		✓			B Trott 7/10/08	B Trott 11/3/09	B Trott 22/12/09
- BOPRC wanted to use its existing cashflow from POTL to fund the PPS while retaining the long term investment in POTL;		✓			B Trott 7/10/08	B Trott 11/3/09	B Trott 22/12/09
- BOPRC wanted to provide the public with an indirect economic interest in POTL;		✓			B Trott 7/10/08	B Trott 11/3/09	B Trott 22/12/09
- The arrangement provided QHL with flexibility to better manage its financial position during adverse financial circumstances without needing to sell assets;			✓				
- Setting the dividend rate on the PPS for a 3 year period provided QHL with the ability to plan its cash flow with little exposure to market interest rate volatility.			✓				

	Issue as described in the Ruling	Nature of risk	Responsibility			BOPRC Sign offs		
			BOPRC	QHL	PwC	Sept 2008	March 2009	Sept 2009
2	Funds received from the issue of PPS are used to fund infrastructure projects described in 'The Arrangement to which this Ruling applies' section of the Ruling.	IRD uses evidence of how the proceeds from the PPS have been used to argue that the arrangement is materially different to that outlined in the Ruling.	✓			B Trott 7/10/08	B Trott 11/3/09	B Trott 22/12/09
	- Minutes of BOPRC meetings indicate that the proceeds of the PPS are not to be used for purposes other than infrastructure projects. The proceeds of the PPS may be invested prior to infrastructure projects being identified. However, the minutes must evidence that the purpose of the investments is to efficiently hold the proceeds prior to infrastructure projects being identified. In other words, the minutes indicate that the investment is temporary, the proceeds of the PPS are for use in infrastructure projects.		✓			B Trott 7/10/08	B Trott 11/3/09	B Trott 22/12/09
	- All approved proposals to use proceeds from the PPS (both internal and external) are documented as an approved infrastructure project'. [A recommended approval checklist to be included in proposal checklist is attached as Appendix A].		✓			B Trott 7/10/08	B Trott 11/3/09	B Trott 22/12/09
	- Management is satisfied that PPS funds moved during the period have been either invested pending utilisation on infrastructure or applied to an approved infrastructure project.		✓			B Trott 7/10/08	B Trott 11/3/09	B Trott 22/12/09
3	Dividends on the PPS are funded primarily from POTL earnings (although QHL may receive a relatively small amount of income from other investments and utilise this in funding PPS dividends).	IRD uses evidence of how the PPS returns are funded to argue that the arrangement is materially different to that outlined in the Ruling.		✓				

	Issue as described in the Ruling	Nature of risk	Responsibility			BOPRC Sign offs		
			BOPRC	QHL	PwC	Sept 2008	March 2009	Sept 2009
4	Dividends on all classes of shares have been imputed at the maximum imputation ratio that can be used pursuant to the law applying at the time the dividend is paid (provided QHL has sufficient imputation credits).	Condition not satisfied.		✓				
5	POTL has not merged with Ports of Auckland Limited.	Condition not satisfied.	✓	✓		B Trott 7/10/08	B Trott 11/3/09	B Trott 22/12/09
6	PPS are classified as equity in QHL	IRD argues that the arrangement is materially different to that outlined in the Ruling.		✓				
7	There has been no change in ownership of the QHL group or POTL.	Condition not satisfied.	✓	✓		B Trott 7/10/08	B Trott 11/3/09	B Trott 22/12/09
8	Consider whether there have been or will be any changes in law that may impact the Ruling.	Ruling may no longer apply.						
	- Review the IRD's discussion document on the imputation review (due for release in June 2008)				✓			
	- Review the impact of any legislative amendments to the imputation regime as a consequence of the imputation review.				✓			
	- Consider whether there is any other legislative amendment (or proposed amendment) that may impact the Ruling.				✓			
9	There have been no material amendments to the arrangement.	IRD uses evidence identified to argue that the arrangement is materially different to that outlined in the Ruling.	✓	✓	✓	B Trott 7/10/08	B Trott 11/3/09	B Trott 22/12/09



**File Reference:** 1.00030  
**Significance of Decision:** Receives Only - No Decisions



**Report To:** Finance and Governance Committee  
**Meeting Date:** 18 February 2010  
**Report From:** Ken Tarboton, Group Manager Rivers and Drainage

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## **Contracting Quarterly Report - 1 October 2009 to 31 January 2010**

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### **Executive Summary**

This report provides summary information on Environment Bay of Plenty's contracts awarded during the period 1 October 2009 to 31 January 2010. All contractual agreements at Environment Bay of Plenty should be undertaken in accordance with the contracts manual which provides transparency to the contracting process and encourages good contract management.

Contracts to a total of \$1,009,056 were entered into during the period 1 October 2009 to 31 January 2010. During this period 45 contracts were executed: 43 were short form agreements (value of \$812,950) and two were full sealed contracts (value \$196,106).

### **1 Recommendations**

**That the Finance and Governance Committee under its delegated authority:**

- 1 Receives the report, Contracting Quarterly Report - 1 October 2009 to 31 January 2010.**

### **2 Background**

Environment Bay of Plenty's contracts manual has been operative since November 2006, and was developed to provide good practice guidelines for council staff in the use of contracts and to encourage transparency to the contracting process.

### **3 Tendering requirements**

The contracts manual lays out clear dollar value limits that designate whether a purchase order, short form agreement or full sealed contract is required.

The following table lists the thresholds and tendering requirements as per the contracts manual:

Contract type	Value limits	Tendering requirement
Purchase order	Up to \$20,000	<\$10,000 single quote. \$10,000 - \$20,000 three written quotes. Close in Tender Box.
Minor contract (short form)	Up to \$50,000	Three tenders generally sought. Close in Tender Box. Reduced assessment process.
Sealed contract	\$50,000 and above	Public tender. Close in Tender Box.

#### 4 Delegated authority

Tenders can be accepted or a contract signed on behalf of Council up to the following limits (GST exclusive):

Managers	Within financial delegation \$10,000 to \$30,000
Group Manager	Up to \$100,000
Chief Executive	\$100,000 to \$400,000
Chief Executive and Chairperson	\$400,000 to \$1,000,000
Council or Emergency Committee*	over \$1,000,000

\* when appointed

#### 5 Waiver of the contract procedures

In accordance with the contracts manual, any deviation from the standard contract procedure (that is, not fully tendering, seeking proposals or seeking quotes) must be supported by a written rationale and this must be authorised by the officer with delegated authority to approve the contract. Recommendation not to publicly advertise contracts over \$50,000 must be approved by the Chief Executive. Possible reasons for not publicly tendering include urgency, limited private sector capability, existing contracts extended and works needing a high level of control.

#### 6 Summary of contracts 1 October 2009 to 31 January 2010

All contracts issued in the quarterly period (over \$20,000) are listed as short form agreements in Appendix I or sealed contracts in Appendix II. A summary of all the contracts issued and their total value (including those under \$20,000) is given in Table 1 below.

**Table 1: Summary of 1 October 2009 to 31 January 2010 contracts**

	Number	Value
<b>Short form agreements</b>		
Short form agreements with values less than \$50,000	40	\$602,405.00
Short form agreements with values greater than \$50,000 (executive waiver obtained)	3	\$210,545.00
<b>Total</b>	<b>43</b>	<b>\$812,950.00</b>
<b>Sealed contracts</b>		
Publicly advertised	2	\$196,106.03
<b>Total</b>	<b>2</b>	<b>\$196,106.03</b>

Of the two sealed contracts, one was approved by the Chief Executive and one was approved by a Group Manager. Both of the sealed contracts were publicly tendered.

A total of 38 different contractors were used. Table 2 shows contractors that won more than one contract.

**Table 2: Contractors, Consultants or Companies awarded more than one contract in the period 1 October 2009 to 31 January 2010.**

<b>Contractor, Consultant or Company</b>	<b>Number</b>	<b>Total Value</b>
Landcare Research New Zealand Ltd	2	\$52,500
S M Pinkerton Ltd	2	\$50,660
Indigenous Landscape	2	\$47,960
R Irving	2	\$39,440
J Whale and Associates Ltd	2	\$16,300
J Rhodes	2	\$11,730
M Cole	2	\$9,000

## 7 Financial Implications

### Current Budget

Individual contracts are budgeted for in individual activities of the Ten Year Plan. Contract administration is budgeted for under corporate support. The budget covers updates to the contracts manual and funds the production of this report.

### Future Implications

There are no future financial implications.

### Ten Year / Annual Plan Implications

There are no Ten Year/Annual Plan implications.

Kirsty Brown  
**Asset Management Officer**

**for Group Manager Rivers and Drainage**

**5 February 2010**



# Appendix



**Appendix I - Short Form Agreements - 1 October 2009 to 31 January 2010 (over \$20,000)**

	<b>Contract number</b>	<b>Title</b>	<b>Contractor/Consultant</b>	<b>Cost (excluding GST)</b>	<b>Contract amount or maximum</b>
1	2009 0198	Pest Plant Control Matea Road, East Taupo	Environmental Pest Management Ltd	\$65,545.00	\$65,545.00
2	2009 0250	Coast care delivery – Eastern Bay of Plenty	Indigenous Landscape	\$40,000.00	\$40,000.00
3	2009 0251	Coast care delivery – Western Bay of Plenty	M Corbett	\$40,000.00	\$40,000.00
4	2009 0266	Technology One project	A Dixon	\$20,000.00	\$20,000.00
5	2009 0270	IM review	Collingbourne Ltd	\$30,240.00	\$30,240.00
6	2009 0273	Develop and populate the land use database.	S M Pinkerton Ltd	\$23,120.00	\$23,120.00
7	2009 0274	Commissioner for Environment Bay of Plenty resource consents hearings as agreed.	R Karu	\$40,000.00	\$40,000.00
8	2009 0277	Rotorua Lakes land use change and management plus related resource consent processing.	Headway Ltd	\$50,000.00	\$50,000.00
9	2009 0281	Resource consent processing.	Southern Skies Environmental Ltd	\$40,000.00	\$40,000.00
10	2009 0284	Land resources works monitoring 2010 (Rotorua)	Boffa Miskell Ld	\$38,580.00	\$38,580.00
11	2009 0343	Tasman appeals, Okere Gates proposal and Bay of Plenty Energy's dam proposal.	Ryder Consulting Ltd	\$95,000.00	\$95,000.00
12	2009 0356	Allophane investigation	Landcare Research NZ Ltd	\$47,000.00	\$47,000.00
13	2010 0006	Develop and populate the land use register – Part 7	S M Pinkerton Ltd	\$27,540.00	\$27,540.00
14	2010 0007	Populate land use register and assist with Council's pollution prevention programme – Part 7	R Irving	\$22,800.00	\$22,800.00

**Appendix II - Sealed Contracts – 1 October 2009 to 31 January 2010**

Contract number	Title	Tenderers	Contract manager	Contract price excluding GST	Approved by	Estimate (excluding GST)	Publicly tendered or selected tenderers	Comments
2009 2036	Waioho Canal Right Bank Stopbank Upgrade	<b>Tracks Concrete (2002) Ltd</b> Advance Civil Wilson Brothers Ltd Waiotahi Contractors Ltd Doug Gerrad Ltd Midland Civil Ltd JBT Andrews Ltd MIDAMAC R Mahy Contracting Ltd Bay Excavator Ltd	Arch Delahunty	\$103,706.03	Chief Executive	\$133,885.00	Publicly tendered	
2009 0198	Survey 2010 – Community Outcomes and Perceptions Survey	<b>Key Research Ltd</b> Nexus Planning and Research APR Consulting Research NZ Ltd	Toni Briggs	\$92,400.00	Group Manager Strategic Development	\$80,000.00	Publicly tendered	

\*Note: Bold demotes winning tenderer.

**File Reference:** 1.00424  
**Significance of Decision:** Receives Only - No Decisions



**Report To:** Finance and Governance Committee  
**Meeting Date:** 18 February 2010  
**Report From:** Brian Trott, Group Manager Corporate Services

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## **Group Managers' Report**

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### **Executive Summary**

The purpose of this report is to provide Finance and Governance Committee members with information on operational matters of interest.

#### **1 Recommendations**

**That the Finance and Governance Committee under its delegated authority:**

**1 Receives the Group Managers' Report.**

#### **2 Investigation into Conflicts of Interest at Environment Canterbury**

Attached as appendix 1 is a report from the Controller and Auditor-General's office regarding its investigation into complaints that four councillors at Environment Canterbury had breached section 6(1) of the Local Authorities (Members' Interests) Act (the Act) 1968 by discussing and voting on a proposal to recover the costs of managing water resources in Canterbury.

Section (1) of the Act prohibits members of a local authority from discussing or voting on a matter if they have a financial interest in it. The Auditor-General is responsible for taking enforcement action when the requirements of the Act are breached.

The report sets out the findings from the Auditor-General's investigations and concludes that the four councillors did breach section 6(1) by participating in a decision which they had a financial interest in. However, the Auditor-General decided that a prosecution would be unlikely to result in a conviction and that it would not be appropriate to seek to have the councillors prosecuted.

This report is for the Committee's information only.

#### **3 Information Management Services Review**

As part of the overhead cost review programme that Council asked for, one of the reviews proposed and agreed to by Council was a review of the information management services within Council. This includes all of the information technology and information services such as desktop, network, application development and geospatial services looking at the levels of service requested and supplied, benchmarking this against other like councils and industry in general.

The review is at the midway point and the Group Manager, Technology will provide a verbal update as to progress.

#### **4 Data Gathering Review**

A review of Council's data gathering services has been initiated. This review will identify the relevance of the data currently gathered, who should be gathering it, whether we should consolidate our data gathering services and whether there is any data that we are not currently gathering that we need to consider gathering. The report will go to Council through the relevant committees when completed. This is expected to be in the third quarter of the calendar year.

The report is being prepared through a combination of external consultancy and internal staff knowledge.

#### **5 Reporting on BoPLASS performance.**

To date BoPLASS Ltd has reported annually and half yearly on its performance. A half year performance report is expected shortly which will hopefully be delivered by the Chairman in person to Council outlining the work and achievements of BoPLASS through the first half of the current financial year. EBOP is an active participant of the BoPLASS shared services and procurement initiatives. A review of Council's involvement was reported to the 10th of February workshop meeting.

#### **6 Update on the Asset Management Implementation**

Whilst the implementation of the works and assets module has taken longer than anticipated, this is principally because of the demands of the business as usual activities of the finance team such as the Ten Year Plan and the Annual Report and now the Annual Plan.

Additional resources have been provided to the project team to ensure that the works and assets module is available for staff use from the 1 July 2010. Whilst additional costs have been incurred on this project, these extra costs are outweighed by the functional value of the system and the benefits it will bring to the next Ten Year Plan process.

#### **7 Broadband Update**

At the time of writing this report the outcome of the 'interest to participate' process for those interested in becoming local fire companies had not been published by the Ministry for Economic Development. A verbal report on the latest developments will be provided at the meeting.

#### **8 Rating review**

Following the recent adoption of the review's terms of reference by the Finance and Governance Committee, staff have been working with Stimpson and Co to finalise a project plan and resource structure for this review.

At the time of preparing this report, this information was not available. However, a verbal update will be provided at the Committee meeting.

## 9 **Financial Implications**

### **Current Budget**

There are no financial implications arising from this report.

### **Future Implications**

There are no future financial implications arising from this report.

### **Ten Year / Annual Plan Implications**

There are no Ten Year / Annual Plan implications arising from this report.

Brian Trott  
**Group Manager Corporate Services**

**2 February 2010**



# Appendix



# Investigation into conflicts of interest of four councillors at Environment Canterbury

This is the report of an investigation  
we carried out under the Local  
Authorities (Members' Interests) Act  
1968.

December 2009

ISBN 978-0-478-32641-3

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## Auditor-General's overview

In July 2009, we received a complaint that three councillors at Environment Canterbury (the Council) had breached section 6(1) of the Local Authorities (Members' Interests) Act 1968 (the Act), by discussing and voting on a proposal to recover the costs of managing water resources in Canterbury (the proposal). In October 2009, the complainant told us that a fourth councillor might have breached the Act.

Section 6(1) of the Act prohibits members of a local authority from discussing or voting on a matter if they have a financial (or "pecuniary") interest in it. Section 6(4) enables the Auditor-General to give a declaration that this prohibition will not apply if its application impedes the business of the local authority or is against the interests of electors.

The Auditor-General is also responsible for taking enforcement action when the requirements of the Act are breached. A breach of section 6(1) is a criminal offence and the Auditor-General is the sole prosecuting authority.

Therefore, we investigated the complaints made to us about the potential breaches of the Act. This report sets out our findings and conclusions.

We have concluded that the four councillors have breached section 6(1) by participating in a decision when they had a financial interest in it. However, we have decided that a prosecution would be unlikely to result in a conviction and that it would not be appropriate in these circumstances to seek to have the councillors prosecuted.

We consulted the Crown Law Office before finalising our view. That Office agreed that the Act had been breached and that a prosecution was not warranted.

We are concerned at the lack of awareness of the Act and of guidance on conflicts of interest that has been evident in this case. We intend to work with the Council and the individual councillors as necessary to help them deal more appropriately with any conflicts of interest in future decisions on water management issues. In particular, we are continuing to discuss with them whether it would be appropriate to grant a declaration to enable these councillors to participate in future decisions on water management issues.

I am conscious that decisions on water management are very significant for the Canterbury region. All those in the region need to be able to have confidence in the decisions of their elected decision-makers. It is important that procedural

matters such as possible conflicts of interest are carefully and openly managed in advance, to avoid procedural issues distracting the debate from the substance of these important and difficult questions.

I thank the councillors and Council staff involved in this investigation for their co-operation.

A handwritten signature in black ink, appearing to read 'Lyn Provost', written in a cursive style.

Lyn Provost  
Controller and Auditor-General

22 December 2009

# Part 1

## Background

### The proposal

- 1.1 Environment Canterbury (the Council) incurs costs in investigating and monitoring work associated with managing the region's water resources, including state-of-environment monitoring. In this report, we refer to these as water management costs. Water management costs are costs over and above the direct costs associated with individual water-related resource consents (for example, processing applications and compliance monitoring) that are separately paid for by consent holders. The Council's draft long-term council community plan (LTCCP) for 2009-19 estimated the water management costs to be \$7.1 million a year. These costs have previously been met from general rates.
- 1.2 The Council has been considering since early 2005 the use of funding sources other than general rates to meet these water management costs (for example, using uniform annual charges or "user pays" charges). When consulting on the 2006-16 LTCCP, the Council sought views on the concept of charging resource consent holders directly for the costs of managing water resources in Canterbury. The Council told us that there were 191 responses, with 132 (69%) supporting such charges, 57 (30%) opposing them, and two (1%) with no preference. Since the 2007 local authority elections, the Council has further considered the idea of recovering a portion of the water management costs directly from holders of certain types of consents issued under the Resource Management Act 1991 (the RMA).
- 1.3 In the draft 2009-19 LTCCP, the Council included a proposal to recover \$2.2 million (31%) of its water management costs from holders of certain types of consents through charges applied under section 36 of the RMA. The costs were to be recovered from the holders of permits to take ground water and surface water, and from holders of permits to discharge contaminants either to land or water. In this report, we refer to them as consent holders.
- 1.4 The remaining \$4.9 million (69%) of the Council's water management costs would be paid for out of general rates. Previously, the Council's water management costs had been paid for entirely out of general rates.
- 1.5 The proposal was quite complex. The Council proposed that the charges payable by consent holders would differ depending on the:
  - location of the consent;
  - type of consent held; and
  - amount of water taken and/or type of contaminant discharged to land or water.

- 1.6 The proposal presented a number of different options for differential charges. For example, it proposed different methods for levying the charge on water permit holders:
- a standard charge for each consent; or
  - a charge based on the rate of water take; or
  - a charge based on both a standard charge for each consent and on the rate of water take.
- 1.7 If the proposal had been adopted, consent holders would have paid \$2.2 million of the Council's total water management costs of \$7.1 million and \$4.9 million would have been met from general rates. Therefore, ratepayers who were not consent holders would have paid less in regional council rates. Ratepayers who were consent holders would have paid less in regional council rates, but would have also had to pay the charges under section 36 of the RMA.

### **The councillors and their interests**

- 1.8 The four councillors who held consents and were affected by the proposal were Cr Pat Harrow, Cr Angus McKay, Cr Mark Oldfield, and Cr Bronwen Murray. The councillors or their spouses held consents either in their own name or through companies in which they were shareholders:
- Cr Oldfield holds two permits to take ground water and a permit to discharge dairy effluent to land. He holds two of these consents jointly with his wife and the other jointly with his father. A property for which one of the consents is held is leased.
  - Cr Harrow is a shareholder in Berry Fields Limited, which holds a permit to take ground water.
  - Cr McKay is a shareholder in Kanuka Syndicate Limited, which holds a permit to discharge dairy effluent to land. Cr McKay also holds shares in companies or schemes that have consents to take water and those shareholdings entitle him to certain amounts of water to irrigate his land. He told us that these companies would be likely to pass on the water consent charges to him and to other shareholders.
  - Cr Murray's husband is the sole shareholder in The Wolds Station Limited, which holds two permits to take surface water. Cr Murray was a shareholder and director of that company until November 2008.

## Discussions on the risk of conflicts of interest

- 1.9 The Council considered the proposal at meetings during 2008 and 2009. The issue of whether Cr Murray may have a conflict of interest in the proposed charges was raised at a meeting of the Council's Finance and Audit Committee in February 2008.
- 1.10 At that meeting, the Committee considered a paper that showed the potential effect of water management charges on the 20 consent holders that would be most affected by the proposed charges, and the 20 consent holders that would be least affected. The list of the 20 consent holders most affected by a water management charge included The Wolds Station Limited, with a possible charge of \$13,675.<sup>1</sup> At that time, Cr Murray was a director and shareholder in that company, along with her husband.
- 1.11 The minutes of that meeting note that:
- Cr Murray asked if identifying her property as one of the most affected would compromise her role as a councillor in the decision-making process on this issue.
  - It was suggested that Cr Murray's interest was no more than an interest in common with the public, but she should seek advice on this matter.
- 1.12 In October 2008, the then Chairperson of the Council, Sir Kerry Burke, emailed Cr Oldfield suggesting that he may have a conflict of interest in relation to the proposal. He also raised the issue with Cr Murray at a briefing meeting of the Council's water portfolio group on 5 November 2008.
- 1.13 On 31 October 2008, Sir Kerry contacted us for guidance about whether councillors who were consent holders had an interest in common with the public in a proposal to recover a share of water management costs directly from consent holders rather than through general rates. He did not provide details about the number of councillors potentially affected or their interests, but sought general guidance only. He told us that consent holders were likely to make up about 1% of the population of any region in New Zealand,<sup>2</sup> and asked if we thought the interests of councillors with water consents were likely to be "in common with the public".
- 1.14 We replied to Sir Kerry on 14 November 2008. We advised him that the interests of councillors who are consent holders in a "user pays" charging regime is of a different nature and size to most members of the public. We said that such councillors would, therefore, be prohibited from participating in discussion or

1 As the proposal was further developed, the financial effect on The Wolds Station Limited was significantly less than this.

2 The Council has told us that 4.2% of its ratepayers are consent holders. Based on Council data on water and discharge consents, we calculate that 2.7% of Canterbury ratepayers are water or discharge consent holders.

voting on a proposal of that nature. We also noted the ability of the Auditor-General to make a declaration under Local Authorities (Members' Interests) Act 1968 (the Act) to enable a member with a financial interest to participate in the discussion and vote on a proposal where Council business would otherwise be impeded (for example, where several councillors were affected) or where it would be in the public interest that all members take part.

- 1.15 Sir Kerry wrote to Crs Harrow, Oldfield, and Murray on 27 February 2009 about their conflicts of interest in relation to the proposal. He also sent them a paper that cited part of our advice, and then gave this paper to all councillors. In the paper, Sir Kerry advised that Council staff could arrange for the three councillors to receive legal advice on the matter at the Council's expense if they wished. However, Sir Kerry did not provide a full copy of our November 2008 advice to him to the councillors, and nor did he advise the three councillors at that time about the option of seeking a declaration from the Auditor-General to enable them to participate.
- 1.16 Sir Kerry told us that councillors were aware of the declaration option, and showed us some notes on managing conflicts of interest that he prepared and gave to councillors in late September 2008 that referred to the declaration provisions in the Act.
- 1.17 Cr Oldfield took up the Council's offer to get legal advice about whether he had a conflict of interest. He received legal advice that he was not prohibited from voting or discussing the proposal at Council meetings. The legal advice considered that the exceptions in section 6(1A) and section 6(3)(f) of the Act applied. It argued that the prohibition on voting and discussing did not apply when the matter being considered was one of policy. It also said that, provided Cr Oldfield did not have an improper motive in voting or discussing the matter, the prohibition did not apply.
- 1.18 Cr Oldfield circulated his legal advice to the other councillors on 4 March 2009, before the Council met on 5 March 2009 to consider the draft 2009-19 LTCCP that contained the proposal. Sir Kerry considered that the legal advice was unsound, and tabled a paper setting out his concerns at the Council meeting on 5 March. He advised councillors that he did not consider that the legal advice provided a secure foundation for consent-holding councillors to participate in voting or discussion on the proposal. In this paper, he noted that the Auditor-General could make declarations to enable councillors with pecuniary interests to participate in discussing or voting on a matter. The legal advice, and Sir Kerry's letter of 27 February 2009 (see paragraph 1.15), were tabled at the 5 March meeting at Cr Oldfield's request.

- 1.19 Cr Oldfield told us that he got verbal assurance from his lawyers at the lunch break during the 5 March meeting that they stood by their advice, despite Sir Kerry's criticism of it. On 13 March 2009, the legal advisors reconfirmed in writing their earlier advice that Cr Oldfield had no conflict of interest. Cr Oldfield circulated this advice to the other councillors at their next meeting on 24 March 2009.
- 1.20 Crs Murray and Harrow told us that they saw the legal advice to Cr Oldfield and that they relied on it, believing that they were in a similar position to Cr Oldfield and that the legal advice applied to them. Cr McKay notes that the issue of his financial interest in the proposal was not raised with him until the complaint to our Office in October 2009, but that in hindsight he should have considered the financial effect of the proposal on him.

### **The Council meetings where the proposal was considered**

- 1.21 The proposal came before the Council at two meetings in 2009. The first meeting was on 5 March 2009, when the Council – as part of the draft LTCCP process – was required to vote on whether to approve the draft fees and charges for 2009/10 for consultation. The proposed fees and charges included the proposal to recover water management costs.
- 1.22 Crs Oldfield and Harrow declared that they were irrigators, but took part in discussion and voting. Crs Oldfield and Murray voted against approving the fees and charges for consultation, Cr Harrow voted in favour of consulting on them, and Cr McKay abstained from voting.
- 1.23 The Council then received and heard submissions on the draft LTCCP, including the proposal to recover water management costs. There were 360 submissions made on the proposal, of which 320 were opposed. This was in contrast to a Council survey of 380 households in February 2009, on views on the water charges, during the LTCCP consultation programme. The Council told us that 73% of those surveyed agreed that a proportion of costs should be borne by consent holders and 21% disagreed.
- 1.24 The Council met on 4 June 2009 to consider submissions on the draft LTCCP and to adopt the LTCCP. There were a number of motions put at the meeting about the proposal. Voting was split seven for and seven against the proposal to adopt the water management charges, and the motions that sought to introduce it six months into the 2009/10 financial year or introduce the charges from 1 July 2010.
- 1.25 All four councillors voted against the various motions that sought to adopt the proposal. A final motion was put that the charges under section 36 of the RMA be deferred for 12 months, to allow a working party to be established to discuss

charging options with major stakeholders. All four councillors voted against that motion. However, there were sufficient votes from other councillors for the motion to be carried.

### The effect of the proposal on the four councillors

- 1.26 The proposal was complex, and it was difficult for consent holders to determine from the draft LTCCP the exact financial effect of the proposal on them. However, the broad principle that consent holders would be directly affected by having to pay charges under section 36 of the RMA was clear.
- 1.27 The Council gave us information about the likely financial effect of the proposal on the four councillors. All four councillors owned high-value properties, and so would benefit significantly from the reduction in general rates that would accompany the new charges under section 36.
- 1.28 For two of the councillors, the charges under section 36 would have been very low and would have been outweighed by the reduction in their general rates. There would have been an overall financial benefit of around \$134 for one councillor and \$391 for the other.<sup>3</sup>
- 1.29 However, for the other two councillors, the charges under section 36 would have been reasonably significant despite their savings in general rates. The overall net effect would have been a cost of around \$977 to one councillor and \$1,628 for the other.

### The effect of the proposal on other ratepayers

- 1.30 Had the proposal been adopted, the Council would have raised \$2.2 million from consent holders who were subject to the charges under section 36 of the RMA rather than from other regional council ratepayers.
- 1.31 The Council has told us that:
- the effect of introducing the charges under section 36 of the RMA on rates would have been an average reduction in general rates of \$2.04 for every \$100,000 of capital value; and
  - the average capital value for each rateable assessment for the region is \$478,000, so the effect on the average property would have been a reduction of \$9.75 a year in general rates.

<sup>3</sup> This councillor told us that his benefit would be reduced by \$165-202 if irrigation companies supplying him with water passed on water consent charges.

## Part 2

# Have the councillors breached the Act?

- 2.1 Section 6(1) of the Act prohibits a councillor from discussing or voting on any matter at a council meeting in which they have, directly or indirectly, any pecuniary interest other than an interest in common with the public.

### Did the councillors have a pecuniary interest in the proposal?

- 2.2 The term “pecuniary interest” is not defined in the Act. However, the definition that we use is:
- ... whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned.<sup>4</sup>*
- 2.3 Section 6 of the Act also deems a councillor to have a pecuniary interest in a matter when their spouse, or a company in which they (or their spouse) holds 10% or more of the shares, has a pecuniary interest in the matter. All four councillors held consents either in their own name or in the name of their spouse or through companies in which they or their spouses had shareholdings of more than 10%.
- 2.4 The effect of the proposal was that consent holders would be liable to pay charges under section 36 of the RMA to the Council, but that this would be offset to some extent by decreased general rates, depending on the value of their properties. Therefore, all four councillors (or their spouse or companies) as consent holders would be liable to pay these charges under section 36. The proposal would have a direct financial effect on them, so they did have a pecuniary interest in it.
- 2.5 The definition of pecuniary interest that we use requires a councillor to have a reasonable expectation of gain or loss of money at the time they discuss or vote on a matter. In practice, it is common for debate on issues of this kind to progress from broad consideration of a problem, to options for addressing it, through to a developed proposal being recommended for adoption.
- 2.6 It can be hard to determine at which point a general discussion becomes firm enough for an individual councillor to have a “reasonable expectation” of being financially affected. For the purposes of the Act, we usually draw a distinction between a council approving proposals as a basis for consulting with the community, when we consider that there is often still uncertainty about the shape of the final proposal, and later stages when the council is deciding to adopt the final proposal.
- 2.7 At the meeting of 5 March 2009, the councillors voted on whether to approve the draft fees and charges for public consultation. At this point, it was uncertain

<sup>4</sup> Office of the Auditor-General, *Guidance for members of local authorities about the law on conflicts of interest*, June 2007, paragraph 3.5.

whether the proposal would be adopted in its proposed form by the Council, because it might change significantly as a result of public submissions. There were also still several different options being put forward, with different financial effects. Therefore, at the meeting of 5 March 2009, we do not consider that the councillors could have had a reasonable expectation of loss or gain of money because there was still some uncertainty about the shape of the final proposal.

- 2.8 However, at the meeting of 4 June 2009, the councillors were required to vote on whether to adopt a final proposal for including in the final LTCCP and to take effect during the 2009/10 financial year or the next financial year. We consider that, at this meeting, the councillors did have a reasonable expectation that the proposal would affect them financially. Therefore, they had a pecuniary interest in the decision at the June meeting.
- 2.9 We do not agree with the legal advice provided to Cr Oldfield, which he shared with the other councillors, that the prohibition in the Act does not apply to policy decisions of this kind.

### **Do any of the exceptions or defences in the Act apply?**

- 2.10 There are some exceptions to the prohibition in section 6(1) of the Act, and also some defences. We do not consider that any of the exceptions or defences apply to these councillors. We have set out our reasons for this in paragraphs 2.11-2.21.

#### **Section 6(1) – interest in common with the public**

- 2.11 The prohibition on discussing and voting in section 6(1) of the Act does not apply where the pecuniary interest held by a councillor in the matter under discussion is one in common with the public. There is no guidance given in the Act about when this exception applies.
- 2.12 The issue of whether a councillor's pecuniary interest is an interest in common with the public will always depend on the circumstances of the case, and is always a question of degree. We consider that a pecuniary interest does not need to be shared by the entire public for the exception to apply. In our view, it is enough that a councillor is part of a large group of people affected in a similar way.
- 2.13 The Council told us that there are around 10,919 RMA consent holders and 260,000 ratepayers, so around 4.2% of ratepayers are consent holders. However, not all of these consents are subject to the proposed water charges. The Council told us that 6950 water and discharge consent holders would be subject to the charges under section 36 of the RMA. So, about 2.7% of ratepayers hold consents that would be subject to the water charges.

- 2.14 We considered whether the fact that the proposal could indirectly affect ratepayers was relevant to the “interest in common with the public” exception. Possible indirect effects include:
- costs passed on to ratepayers by territorial authorities, who are among the water consent holders most affected by the proposed water charges; and
  - costs passed on to ratepayers, as consumers or shareholders, by large companies and organisations that hold water consents.
- 2.15 However, we consider that the pecuniary interest of the councillors who held consents was different to the public generally. Although the proposal affected all ratepayers through the reduction in general rates, and some ratepayers could be indirectly affected if large entities that became subject to the charges passed them on, it affected the relevant consent holders differently because they became liable to pay charges under section 36 of the RMA. This would be a direct effect that is different in kind and extent to the effect on the public generally. As noted in paragraph 1.31, the reduction in general rates for the average property would have been just under \$10.
- 2.16 Although many consent holders would have been affected by the proposal, we consider that they do not make up a large enough group of the public for the exception in section 6(1) to apply. There is no formula that can be applied to determine whether this exception applies; it requires judgement. However, in our view, consent holders are in a small and clearly-identified subset that is affected differently by this proposal, compared to the rest of the rate-paying population in the region.

### **Section 6(1A) – elected to represent a particular group**

- 2.17 Crs Murray and Oldfield argued that the exception in section 6(1A) of the Act applied. Section 6(1A) provides that the prohibition in section 6(1) does not apply where the councillor has been elected by, or is appointed to represent, any activity, industry, business, organisation, or group of persons, and their pecuniary interest is not different in kind from the interests of other persons in the activity, industry, business, organisation, or group by which the councillor is elected, or in respect of which they are appointed. The councillors argued that they had been elected to represent South Canterbury, that the rural sector is a major part of South Canterbury, and that irrigation was a major issue for those within the rural sector. They argued that they had been elected by rural sector voters and that their pecuniary interest was the same as other members of the rural sector.

- 2.18 In our view, section 6(1A) does not apply to local authority elections for general constituencies or wards. Rather, it applies when a person is explicitly elected or appointed to represent a particular group. An example is a student representative on a University Council. Even if section 6(1A) were to apply to local authority elections, because the vote is by secret ballot, a councillor could rarely if ever prove that they had been elected by particular voters. Therefore, we do not consider that Crs Murray and Oldfield are covered by the exception in section 6(1A).

### **Section 7(2) – member did not know they had a pecuniary interest**

- 2.19 Under section 7(2) of the Act, it is a defence in proceedings under the Act if a member can prove that they did not know, or had no reasonable opportunity of knowing, that they had a financial interest other than an interest in common with the public. None of the councillors have argued that this defence applies, but we deal with it for completeness.
- 2.20 All four councillors are experienced councillors and they had previously been given information about conflicts of interest. The issue of whether Cr Murray had a conflict was raised directly with her at meetings, and with Crs Oldfield and Harrow by the then Chairperson, Sir Kerry Burke, by email. These three councillors were also given information on conflicts of interest in relation to the proposal by the then Chairperson in February 2009, and that advice was then given to all councillors. In particular, they were given material on deemed pecuniary interests (that is, where a councillor's spouse, or a company in which a councillor or their spouse is a shareholder, has a pecuniary interest).
- 2.21 The councillors could have asked Council staff for advice on how the proposal would affect them financially. None did so before the June 2009 meeting. We appreciate that they may have been relying on legal advice that said they were not barred from participating at that time.

### **Conclusion on breach of the Act**

- 2.22 In our view, each of the four councillors had a pecuniary interest in the proposal when it was considered at the Council meeting on 4 June 2009. Their pecuniary interest was not one that was in common with the public, and none of the other exceptions or defences in the Act applies. Therefore, all four councillors breached section 6(1) of the Act by voting on the proposal at that meeting.

## Part 3

# Consequences of participating in the decision

- 3.1 If a member of a local authority breaches section 6(1) of the Act, the Auditor-General has the discretion to seek to have that person prosecuted if the circumstances warrant taking that step. That discretion needs to be exercised in keeping with the Solicitor-General's *Prosecution Guidelines* issued by the Crown Law Office. These guidelines have been in place since 1992 and are the accepted and authoritative description of how any prosecuting agency should exercise its discretion.
- 3.2 The guidelines issued by the Crown Law Office require both that the facts provide evidence of a breach of the Act and that it is in the public interest to bring a prosecution. Factors relevant to that assessment of the public interest include:
- whether it is more likely than not that a prosecution will result in conviction;
  - the size and immediacy of any pecuniary interest, the damage caused, the level of public concern, and the extent to which the member's participation influenced the outcome;
  - mitigating and aggravating factors, including any previous misconduct, willingness to co-operate with an investigation, evidence of recklessness or irresponsibility, and previous breaches, cautions, and warnings;
  - the effect of a decision not to prosecute on public opinion;
  - the availability of proper alternatives to prosecution, such as reporting publicly to the council or the public;
  - the prevalence of the offending and need for deterrence;
  - whether the consequences of a conviction would be unduly harsh or oppressive; and
  - the likely length and expense of the trial.
- 3.3 Although we consider that all four councillors have breached section 6(1) of the Act, we have decided not to seek to have them prosecuted. We have considered the criteria in the prosecution guidelines, and our overall assessment is that a prosecution would be unlikely to result in a conviction and it is not in the public interest to proceed. Factors relevant to that judgment include:
- the councillors all relied on legal advice that they could participate in discussing and voting on the proposal;
  - this is the type of situation where we would have given careful consideration to an application to participate, if one had been made at the right time;
  - the councillors co-operated with our investigation;
  - there are no aggravating factors in terms of a history of breaches or warnings

from us;

- the potential financial effect of the decision was unlikely to be particularly significant for the councillors concerned;
- previous court decisions have shown that courts are reluctant to impose a conviction in situations of this kind and will consider options such as discharging without conviction; and
- other sanctions are available, in particular the sanction of a public report by the Auditor-General.

3.4 Therefore, we consider that, in this situation, it is enough that we are reporting our findings publicly. We would not necessarily take the same approach if a similar breach occurred again.

3.5 The Crown Law Office has reviewed our approach. It agrees that the councillors breached section 6(1) of the Act, and agrees that seeking to have them prosecuted is unlikely to result in a conviction and is not warranted in the circumstances.

## Part 4

### Other comments

- 4.1 The proposal to recover water management costs is an ongoing issue for the Council. The Council has set up a working group that includes Cr McKay, to further consult on the proposal. The issue will come back to the Council in the near future for further decisions. The councillors risk further breaches of the Act, depending on the nature of those decisions.
- 4.2 The Act contains two possible options for dealing with this situation. Under section 6(4) of the Act, the Auditor-General can grant a declaration to allow a member to participate in a matter in which they have a disqualifying pecuniary interest, in a limited range of circumstances. In particular, the Auditor-General can grant a declaration if the prohibition on discussing and voting would impede the business of the council (for example, if a large number of councillors are affected, or if it would be in the interests of the electors or inhabitants of the district that the prohibition should not apply).
- 4.3 For a declaration based on the need not to “impede the transaction of business”, the Auditor-General considers factors such as whether:
- the pecuniary interest rule would preclude most of the members of the council from participating in the matter;
  - the declaration sought is only for minor or procedural decisions; or
  - the application of the rule could unduly distort the way in which the council deals with the matter.
- 4.4 For a declaration based on participation being in the “interests of the electors or inhabitants”, relevant considerations include whether:
- the members have any particular expertise in the matter under consideration;
  - the views of the people in the area would be inadequately represented if the members were not able to participate; and
  - the matter justifies the involvement of all elected members because of its significance to the community as a whole.
- 4.5 The Auditor-General must weigh the benefits of allowing members to participate against the risk that their pecuniary interests could be seen to unduly influence the outcome. The Auditor-General can grant a declaration on her own motion, or after considering applications from members.
- 4.6 The other option that may apply to some councillors is section 6(3)(f) of the Act. Under that section, a member can apply to the Auditor-General, before an issue is debated at a meeting, arguing that the prohibition in section 6(1) of the Act should not apply because the member’s financial interest is so insignificant that it cannot reasonably be regarded as likely to influence their decision.

- 4.7 We have been concerned at the lack of awareness of the Act and of general guidance on conflicts of interest that has been evident in this case. We intend to work with the Council and the individual councillors as necessary to help them deal more appropriately with any conflicts of interest in future decisions on water management matters. In particular, we are continuing to discuss with them whether it would be appropriate to grant a declaration to enable these councillors to participate in future decisions on these issues.