

**TRANSCRIPT OF MEETING**

**Date:** Monday 1 August 2016  
**Time:** 10.00am  
**Venue:** Council Chamber, Municipal Chambers, The Octagon, Dunedin

**Present:** Mayor Dave Cull  
Deputy Mayor Chris Staynes  
Cr David Benson-Pope  
Cr John Bezett  
Cr Hilary Calvert  
Cr Aaron Hawkins  
Cr Mike Lord  
Cr Jinty MacTavish  
Cr Andrew Noone  
Cr Neville Peat  
Cr Richard Thomson  
Cr Lee Vandervis  
Cr Andrew Whiley  
Cr Kate Wilson

**Absent:** Cr Hall (withdrawn due to conflict of interest)

**In Attendance:** Sue Bidrose, Chief Executive Officer, Dunedin City Council  
Grant McKenzie, Group Chief Financial Officer, Dunedin City Council  
Sandy Graham, General Manager Corporate Services, Dunedin City Council  
Kristy Rusher, Manager Civic and Legal, Dunedin City Council  
Graham Crombie, Chair, Dunedin City Holdings Ltd  
Keith Cooper, Director, Dunedin City Holdings Ltd  
David Smillie, Legal Counsel, Dunedin City Holdings Ltd

I confirm that this is a verbatim transcript of the non-public section of  
Dunedin City Council's Council meeting held on Monday 1 August 2016.



Megan Chilcott  
Independent Audio Transcriber

MAYOR CULL: Okay, welcome, everyone, back to the Council meeting. The way we are going to do this -- order. The way we are going to do this is we will go directly to the report C6 on the Noble/Yaldhurst Village Update, and then we will get that out of the road and then we will go to the other items.

So can I invite Mr Crombie and Mr McKenzie --

Sorry? Yes, and just for noting, Cr Hall declared an interest in the -- this particular item and has withdrawn from the meeting as a result. Yes, and the other thing --

MALE SPEAKER: Do we need a motion to change the order?

MAYOR CULL: Yes, that was -- that was foreshadowed when I -- when I -- when the Chief Executive put the note out that we would -- it was foreshadowed that we would go to this because Mr Crombie was here for the meeting, and we may as well -- rather than having him sit around.

And the other thing that we should note at the request, or the suggestion of myself and one or two other councillors, this meeting is being recorded by audio, not by video, which is a departure from normal practice in non-public meetings, but it was felt that a record would be useful, so that's what's happening.

So, welcome, Mr Crombie, Mr Cooper and Mr McKenzie.

I am just going to outline now the process that we will go through. We will start with questions. Now obviously there are -- there's a whole range of questions of an historical nature if one wanted to explore the antecedence to this issue completely, but this is a -- the piece before us is a current proposal aimed, admittedly it's sorting out an old issue, but this is -- this issue is not about the original -- this proposal is not about the original contract, it's about mending the old problem. So please can I request that you keep your questions relevant to the proposal that's in front of us, but I will leave it to Mr Crombie, Mr Cooper and Mr McKenzie to make a call on that. And then when we've had questions we'll go on to a recommendation -- to the recommendation. I've had an indication from the Chair of Finance that he wants to move. So there's a mover and seconder for that as it stands. So I am also aware that there are other suggested motions, and the recommended proposal as a motion can be the basis for discussion and debate, and those others can be subsequential to that. So we'll start with questions, and I see Mr Thomson has his -- Cr Thomson has his hand up, so --

CR THOMSON: I have a number of questions.

CR HAWKINS: You needn't stand, Richard.

CR THOMSON: Excellent.

I have a number of questions which -- some of which are generic in the sense that -- as I am sure you are aware councillors have been bombarded with various information on this matter, but one question that I think is relevant is how was the valuation derived? Can you just -- can you just explain the background to the valuation, and if I can perhaps give the reason for the question. It's been suggested to councillors by other parties that the value of the completed subdivision might be in the order of 35 or 40 million, and how does that -- how does the valuation presented in the papers relate to a potential finished valuation?

MR MCKENZIE:

So on an annual basis Delta has had an independent valuation done by third parties. That has looked at a number of factors, one being the net present value of all the potential cash flows, and then also current market values for those types of activities. So the valuers then weigh those up and look at actually what is the most likely outcome.

The issue you have with trying to value something like this particular property is that there are a number of conditions that need to be met to ensure that you can actually sell it, which is why the valuation has been discounted in the past. So those caveats that have been in place, in effect they reduced the value of the property because you actually haven't been able to do what you want to, and therefore your certainty over -- around the discounted cash flow is not there, and it means that the likely timeframe is to take more.

So it has been done by third parties, it's been outside of the -- so it's been third parties, and, you know, it's been provided to Delta on an annual basis. And you have seen the valuations that have come down in the recent years have dropped slightly, and that's just due to the simplistic -- due to the fact that it's actually taken significantly longer than expected to actually get the properties moving, and the market values in Christchurch are changing. You know, if this had been sold four or five years ago, or completed four or five years ago, it would have been worth significantly more than it is now because Christchurch was in dire need of properties, that need now is reduced.

CR THOMSON:

So in seeking the valuation, were there instructions provided to the valuer or the valuers, as to how they were to come to that valuation? Were there limitations for -- were they -- were they instructed, for example, to take, I don't know, a certain position around the caveats, for example, or were they simply given an instruction to value the subdivision, or value the land?

MR MCKENZIE:

It was to value the land effectively.

CR THOMSON:

Right.

MR MCKENZIE:

And it is part of the annual financial reporting process that they actually need. So you have the valuers and then you actually have it peer-reviewed effectively by Audit New Zealand, because it's a significant issue for audit assurance as well.

CR THOMSON: And so just so I can be clear for myself, the valuation is based on the land as it is, as opposed to the value of the land completed ready to -- ready for sale with for sale signs out in the lots?

MR MCKENZIE: That is correct. If it was for sales out on the lot the value would be higher.

CR THOMSON: In that context, one of the suggestions that's been made to councillors is that Delta could have exercised or -- not exercised a right, but could have bought out the balance of the first debenture from the finance companies and become the entity that completed the subdivision, and that's clearly a -- not something that you are recommending to us. Was that something that the Delta board and/or DCHL considered?

MR CROMBIE: Certainly at the earlier times we looked at the various options which are -- there were four basically. That was one of the options considered. By simply buying out the finance company's first mortgage, that wouldn't actually change the position other than Delta would have spent some more money.

To obtain access to deal with the project you would have had to go through a mortgagee sale anyway to that process, and then you would also require, I understand, well I am not a lawyer, called "clearances of secured creditors" to take control of that land. That would have placed Delta in a developer role, and that was one of the scenarios that we did not believe Delta should be in. We believe that the skillset required for that development is not within the company, and that's been proven in the past, and they have a clear strategy that they do not want to be the developer of the company -- of the -- of the site, and we concurred with that.

CR THOMSON: The previous offer that didn't proceed, the higher offer, are you aware of what -- of why that offer didn't proceed, other than that it ran out of time?

MR CROMBIE: No, we're not. We had no visibility over other people's offer and what was involved in them. Delta was advised by those running the tender process, or the mortgagee process, that a higher offer had been received and accepted, subject to them delivering on their -- what they had to deliver on, that the offer that we have in front of us today was there as a backup (overspeaking) should that not go forward, and we were then advised, I understand around the beginning of May, that the higher offer had not been able to settle, and therefore this offer became on the table. So we've had no visibility at all about what's in that tender.

Comment [MDC1]: 18:29:3

CR THOMSON: Can I ask, roughly what the amount owing to Delta would have looked like if the Board hadn't decided to stop booking their interest and to, you know, make various write-downs around that debt? I don't need it to the cent, but a rough order?

MR MCKENZIE: So the total debt outstanding, if you allow for the interest and you -- and all the other associated costs, is in excess of \$23 million. Now I haven't got the exact number in my head, but that number is a bit of a misnomer

because the interest rate that has been charged is at 22%. So while it would be nice, and the accounting laws dictate that they actually have to include it and then write it back each year, it is a bit of a misnomer, so --

CR THOMSON: The decision to purchase, and I may not be using the correct technical terms, but to purchase a share of the finance company's first debenture, I just want to check that my understanding of this is correct; that the finance company continued to, and I assume still continues, to charge interest on the amount that it's owed, and to the extent that you ranked behind them. If you hadn't taken that action, would it have been the case that the finance company would have effectively, through the interest charges, continued to soak up more and more of any likely realisable value, so that sitting in behind them you would have been -- you would have been at risk of receiving even less money back? Is that essentially the reason for that action?

MR MCKENZIE: So there's two main reasons. One is the reason you stated, where actually you're dead right, they would have been earning that interest. The second one, though is it puts them in a more secure position because they have wider access to the security arrangements than they had. So --

CR CALVERT: Point of order. Can we know whether Mr McKenzie is speaking for DCHL here to DCHL's report, or whether he's speaking to the report that the Executive Leadership Team provided to us, which he authored? Because if he's speaking to DCHL's report, then can we have somebody who is speaking to the other report that we can talk to on behalf of Executive Leadership Team who have given us a report?

MAYOR CULL: Well I'm not sure that it's a point of order, but to answer your question I assume, and I can be corrected by the Chief Executive, Mr McKenzie is the Group Chief Financial Officer, he speaks in both capacities, and in any case he is answering questions. So I take it that he is answering questions as a matter of fact, regardless of which hat he has on.

CR CALVERT: Yes, but one report recommends we choose the other report as an option, and the other report has got the guts of the information in it, and if I want to ask a question about why the Executive Leadership Team recommends this report, who would be answering that?

MAYOR CULL: You can ask the question and one of the team at the table will be able to answer you.

CR CALVERT: Well, no, because I am asking of the Executive Leadership Team, and that's not --

MAYOR CULL: Mr McKenzie is on the Executive Leadership Team.

MS BIDROSE: Correct. So Grant is my employee. On your behalf he is the Group Chief Financial Officer, he is the chief financial officer for both DCHL and Council, and Grant can answer both of those things. If I think Grant has erred, I can

step in on behalf of ELT, but it's never happened before and I don't expect it to happen today.

CR THOMSON: So one further question at this stage, and that's has Delta or DCHL got any view as to the likely cost to complete the subdivision to the point at which all of the land could be marketed for sale? Is that something you have an approximate idea about in terms of cost?

MR MCKENZIE: No, we don't have a specific idea, sorry on a specific base.

CR THOMSON: So one of the -- I guess one of the comments that's been made is that the value at completion is substantially more than the value as it stands now, and so understanding what else would have to be thrown at the subdivision to realise that value becomes, you know, one of the factors that has to be considered. And you say -- you said that you hadn't considered -- well, sorry, you had ruled out the possibility of Delta completing the subdivision. I guess it would be helpful if you have any idea as to how much you have -- you might have to discount that likely retail value back for the cost of finishing it, and I don't expect you to have that exact answer, but I thought you might possibly have an indication.

MR MCKENZIE: Infinity, in the report, if you refer to paragraph 21, talks about -- they believe they need an extra 2.1 to do some -- to clear some of the development, but that won't be all of the development. That's at Stage 1 part of it, so when you're talking about the whole development, there's a number of stages, so we don't have the whole cost, but Infinity are estimating it will be about 2.1 to finish that first stage --

CR THOMSON: Right.

MR MCKENZIE: -- and that's in paragraph 21.

CR THOMSON: Yes, but we -- what we don't -- what we don't know is what it would cost us -- not us, sorry, what it would cost to complete the rest?

MR MCKENZIE: Correct, yes.

CR THOMSON: Alright, thank you. I may have some other questions later.

MAYOR CULL: Cr Calvert, you had some questions.

CR CALVERT: I do as it happens. Have we got a more recent valuation than a year ago?

MR CROMBIE: No, there's no written valuation (inaudible) for 30 June audit process, which we don't have yet in play. We have the -- obviously the tender in the market has been the closest we would have to that.

CR CALVERT: Is there -- I did ask, I think, whether we could see a copy of the valuation that was obtained a year ago, is that available?

MR MCKENZIE: It can be made available, but it will be a redacted version of the valuation.

Comment [MDC2]: 18:36:5

CR CALVERT: I had already asked for it, so today would have been the time I -- if we are making a decision.

MR MCKENZIE: As I recall, I think you asked on Friday for the valuation, so I haven't -- I haven't had a chance to --

CR CALVERT: Yes.

MR MCKENZIE: -- go and redact the thing, because funny enough, I've been in Council.

CR CALVERT: Yes, my apologies for my questions being late, but I would say that we were just about to get this report before the Finance meeting three weeks ago, so if we had this coming I could have asked you this three weeks ago and given you time. So can we have a copy of the contract that's currently afoot, which I presume is the one that was a backup starting early May, or around about then?

MR MCKENZIE: We do not have a copy of that contract. So you are talking about the original offer that was made to Gold Band?

CR CALVERT: I'm talking about the current contract, which I presume is what we are encouraged today to --

MR MCKENZIE: Yes, so we can get a copy of that, but once again it will be a redacted version of the contract.

CR CALVERT: So you are saying you will give us one at some stage or --

MR MCKENZIE: Yes, correct.

CR CALVERT: -- but not for today, not before we decide?

MR MCKENZIE: Yes.

CR CALVERT: Was it due for confirmation on the 29th of July?

MR CROMBIE: My understanding is no. I think there was a target in play but that was subject to clearance of both Dunedin City Holdings and the Council, and also Infinity completing their due diligence.

CR CALVERT: So when the judge understood it to be due for confirmation by 29 July, as a result of somebody presumably explaining to the judge that it was important that the caveats were lifted by 29 July, that wasn't quite the position?

MR CROMBIE: I am not sure what was told to the judge, I'm sorry.

CR CALVERT: I mean he said, "This is due for confirmation on the 29th".

MR CROMBIE: (inaudible)

Comment [MDC3]: 18:39:4

CR CALVERT: He said that he had been told that it was due for confirmation on the 29th. It's now overdue for that confirmation.

MR CROMBIE: I am sorry, I don't have any other comment really other than what I've said.

CR CALVERT: When is the settlement proposed?

MR CROMBIE: The settlement will follow the confirmation of contract.

CR CALVERT: Again --

CR BENSON-POPE?: What was that, I didn't hear you?

MR CROMBIE: Sorry, the settlement will follow the confirmation of the contract, which still is subject to approval here and approval from Infinity and their due diligence.

CR THOMSON: Sorry, just a point of clarification. In terms of the timing, this was originally projected to come to the Finance Committee for approval some -- a couple of weeks ago, so I don't know whether that's relevant to the question in terms of 29 July. It was the -- but the decision was to have been made earlier.

CR CALVERT: The contract, have we had it since presumably not only the beginning of May, but we must have known about it before the offer was made by Infinity, as a backup contract, because it involved us cooperating with it. It -- well it involved us financing. Infinity is not putting any money in. It involved us putting money in, 12-point-something million, so we must have had discussions with them back then?

MR CROMBIE: Sorry, just to be clear, the tender process happened in February this year, and that's when the decision was made to put a tender in. When the tenders were then approved, and as we have indicated, the first tender was accepted, this was a backup situation. When the first tender fell over, this was then -- came into play. At that point the review provisions came in, so DCHL was approached at that time to say, "The Board of Delta have recommended that we go with this", we worked through that process at that time. That was in May that we did that.

CR CALVERT: Yes, so --

MR CROMBIE: We then looked to bring that to Council, and as we worked through the timing of that, you will be aware that there was a stay proceeding in place, and we also looked to bring it to Finance Committee in July. The delegation was higher than Finance Committee's delegation, which is why it is here today.

CR CALVERT: Yes, now, I am just thinking about the beginning of this. Delta must have had discussions with Infinity prior to the contract that fell over for 21, because it involved Delta --



- MR CROMBIE: We -- yes (overspeaking)
- CR CALVERT: -- and was the backup contract already in place before the 21 fell over?
- MR CROMBIE: Yes, that would have happened in February when Infinity would have -- would have approached Delta and the other second mortgagees around the financing of a tender that they would be looking to put in. So remember Infinity put this tender in, not Delta. Delta are there as a financier.
- CR CALVERT: Yes, so this proposal is for us to finance it, and we were already seriously in play between February and May; Delta was?
- MR CROMBIE: Sorry, I don't understand your question. Could you say again?
- CR CALVERT: I think you're saying that since February, Delta was talking to Infinity about it?
- MR CROMBIE: Infinity would have approached all the second mortgagees prior to the tender going in in February, so they would have said, "If we're going to put a tender in with this scenario, and you backing up as a second mortgage, that's how we would structure this tender. Do you have agreement around that?" And then at that point they would have put a tender in subject to, if it were being successful, clearance by the boards of Delta, DCHL, and eventually Council because of the size of where it is.
- CR CALVERT: I think you've suggested, or somebody, and I think it's maybe Delta or, I'm not sure who, that this is a process by Gold Band not sort of as if they're out there. Do you believe that Gold Band will do what Delta tells it to, and Delta was effectively behind the Gold Band process?
- MR CROMBIE: No, I don't. The process that -- when they went into the mortgagee sale, the advisors to Gold Band -- so Gold Band put the property law notices in place 2014, I think. The advisors, being Anthony Harper and Harcourts, to the arrangement, they were very explicit that potentially Delta might be involved in a tender, and therefore they should have no involvement at all in the assessment of, or the decisions around, the tender process. So at this point I am very comfortable that there was an arm's length scenario going on there, and Gold Band are acting in their own commercial behalf, and I think that was backed up by the judgment last week from the judge in the High Court.
- CR CALVERT: I am just looking at the security sharing agreement, which I did ask for some time ago and haven't received, saying:
- "Gold Band irrevocably appoints Delta to be its attorney on behalf of Gold Band to complete, execute, effect any transfers, assignments or agreement, and generally to do all such acts and things that Gold Band Finance could do."

That's effectively an instruction that says that Delta can tell Gold Band Finance what to do.

MR CROMBIE: So I am not aware of the clause that you are reading there, and I am sure there's a context around that, but I would reiterate that the process that's gone through here has separated Delta out from the mortgagee process totally, and that Anthony Harper had gone beyond the call in that scenario. So I am very comfortable that Delta does not tell Gold Band what to do. They are acting in their own race.

CR CALVERT: Are you suggesting some sort of peculiar Chinese wall arrangement, or --

MR CROMBIE: Well, that's not peculiar, it's exactly what happened in the mortgagee process; that Delta hadn't seen the (overspeaking), they are not involved in the tender process. Gold Band made that decision. That's so -- sorry --

Comment [MDC5]: 18:46:2

CR CALVERT: But this says Gold Band -- well Delta can tell Gold Band what to do.

MR CROMBIE: It's not what happened.

CR CALVERT: Delta is two-thirds of Gold Band's security.

MAYOR CULL: Can I just interrupt there. This is question time, and you may have a different interpretation of that, but the -- when you asked the question, Mr Crombie said that he didn't agree with that interpretation, so please move on to the next question. This is not a discussion time.

CR CALVERT: Are you aware of anybody else who -- well, I guess you are aware that the neighbours have got a different suggestion of how to get through this. Are you aware of anybody else?

MR MCKENZIE: As part of the mortgagee process, there was no other bids put on the table, so --

CR CALVERT: I was told last -- that last week Delta was approached by somebody?

MR MCKENZIE: I am not aware of --

CR CALVERT: Is it possible somebody in Delta might have been aware?

MR MCKENZIE: Look, I can't speak for Delta. So my -- there -- over the weekend there was a bid -- a letter sent to Delta, but it's not following the due process. If you have gone through a mortgagee process you -- and it's closed, you can't then just go and actually go and put a bid on the table. There is a process that had to be worked through.

CR CALVERT: Although our process involves us looking at options, and this may be an option, so we're being asked to choose an option --

MR MCKENZIE: So, but the option would be there, is that we then did nothing, and then Gold Band would then have to decide what it wanted to do, and then they

might then decide that they want to re-tender it again. But that's pure speculation on my behalf.

CR CALVERT: The -- we got -- we received an email that I think was from Grant Dixon, but it may have been from Grady sometime on this over the weekend period.

FEMALE SPEAKER: It was Gary --

Comment [MDC6]: 18:48:4

CR CALVERT: Gary --

FEMALE SPEAKER: -- Martin.

CR CALVERT: -- sorry, yes, Gary Dixon, Grady Grant, yes. I think it might have been Gary.

MAYOR CULL: Can we have clarity of the question, it's very --

CR CALVERT: Yes.

MAYOR CULL: -- it's going to be very difficult to know if the answer's right --

CR CALVERT: Yes, I'm just --

MAYOR CULL: -- if we don't know what the question means.

CR CALVERT: It probably came from Gary, but the suggestion was that this process would in some way -- and the -- this Infinity agreement that we haven't got, would in some way protect the interests of the caveators. Do you know anything about that?

MR MCKENZIE: Sorry, can you restate the question, sorry, I --

CR CALVERT: Well the suggestion in an email we received --

MR MCKENZIE: Yes.

CR CALVERT: -- was that the interests of the neighbours to do with their infrastructure and their abilities to use their land or continue to do what they needed to do would be protected, and was protected in some ways -- way with the Infinity deal, and it had been protected earlier.

MR MCKENZIE: Yes.

CR CALVERT: Is that what you understand to be the position?

MR CROMBIE: That was the thing that (inaudible).

Comment [MDC7]: 18:50:1

MR MCKENZIE: That is -- I am just trying to find the dot point that Gary spoke about, sorry.

CR CALVERT: Yes, I have got it somewhere in the middle of --

MR MCKENZIE: So I think the point you are referring to is:

"The current conditional purchaser has agreed to similar -- to a similar provision with only related conditions between matters that nine can agree to at no cost to them and which will enable the subdivision to proceed."

CR CALVERT: Yes, so that suggests that in some ways their interest would be protected in this Infinity contract that we haven't seen, because in the judgment that we were also circulated with, and I haven't got it in front of me because my iPad won't produce it, but I think about para 58 there's something from the judge saying that he thought that Gold Band had done very well in general and it was -- with the neighbours, and it was only after something fell over earlier that Delta gave up and stopped taking any notice of the interests of the neighbours. And this email we've got suggests that they have tried to protect them, and we haven't seen what this agreement says. But the judge is saying they have given up trying to protect them, and Gary's saying this contract says they do try and protect them.

MAYOR CULL: So could you explain the question?

CR CALVERT: Well if the neighbour's interests were protected under the Infinity arrangement, I may personally feel differently about whether it's a good deal or not. If they are not protected, and we can't see it, we've just got Gary saying we -- as Grant just read out, we have taken their interests into account, whereas the judge has said they were good earlier and they took them into account and it's not their fault that they no longer are.

MR CROMBIE: Councillor, if it's all right with you, David Smillie is with us from Gallaway Cook Allan, who's our legal advisor on these, and I am just being careful about the wording to respond to your question.

CR CALVERT: Yes, it might not be, because I haven't got the words.

MR CROMBIE: No, no, that's fine.

So I wonder, David, if -- can you comment on the councillor's --

MR SMILLIE: Yes, sure. The provision I think you are referring to, Hilary, is in the tender terms where there was, what was called the "anti-staying provisions", were included in there, essentially saying that a purchaser would agree to give Lot 9 easements to satisfy their interests, to the extent that they were upheld on an appeal, but when Lot 9's appeal process lapsed because they didn't proceed with it, that's when those anti-staying provisions came out of the tender documents. That's the -- I think that's the paragraph you're referring to in the judgment. Infinity has, or is willing to agree to give right-of-way easements, and easements for surfaces to Lot 9, provided Lot 9 give a couple of things in exchange to do with the Lot 22 accessway, and that is recorded in the agreement.

CR CALVERT: Yes, so that's in the Infinity agreement at the moment, or it's something that we know Infinity --

MR SMILLIE: It's not in the Infinity contract, but it is agreed between Delta and Infinity that they would do that if requested.

CR CALVERT: So if we are being provided with that agreement -- the Infinity agreement, we could also be provided with that?

MR SMILLIE: I imagine you could be.

CR CALVERT: What parts of the Infinity agreement would be redacted if we get it?

MR MCKENZIE: I would ask my colleague, Sandy Graham, to answer that question.

MS GRAHAM: The answer I will give is probably not very helpful, but until we see it and read the document, we can't know what would need to be redacted until we run the LGOIMA test across it. I haven't seen it, so I can't say anything more than that, I'm sorry.

MALE SPEAKER: So who has seen it?

Comment [MDC8]: 18:55:0

CR CALVERT: So where I'm going with this is that for something to come to us because DCHL is not allowed to decide it on its own without coming back to us, it seems to me that nothing can be commercially sensitive in there because we are being asked to decide on it, and say that it would be commercially sensitive is a -- is really tantamount to saying, "Just trust me, it's fine", isn't it? Is it --

MAYOR CULL: What's the question?

CR CALVERT: I'm just like trying to -- because I haven't been given this agreement, and I have asked for it, and DCHL has had it for quite some time, has known about it since February, I am wondering why we can't just have it in its form, because I can't see how anything in here would need to be redacted from the people who, at the end of the day, have to be making this decision based on commercial reasons.

MAYOR CULL: It's still not a question, I'm sorry.

CR CALVERT: Has anyone taken it into any account or quantified litigation risk, costs of the current -- not in general, of the current proceeding that's (inaudible)?

Comment [MDC9]: 18:56:4

MR CROMBIE: So again it's probably useful for David to speak to the proposed litigation that has been doing the rounds in the last week or so, and the fact that Delta hasn't -- has been joined to it and how they may respond to that. David, if I ask you to cover that off?

MR SMILLIE: Yes, so the proceedings that Colin Stokes has suggested that Delta and Gold Band are going to be joined to, but in play for a couple of years, as I understand it, and those are between Stokes and Greg Smith and Noble and Cardno, the surveyor, and various other parties. At this stage Delta hasn't been officially served with those proceedings, and to be properly

joined to those proceedings, as I understand it, Stokes would need to apply to Court to have a judge hear that application that it's appropriate for Delta and Gold Band to be joined to those proceedings. That process doesn't seem to have been followed at this stage. All we have had is an email from Duncan Cotterill, acting for Stokes, so that -- those proceedings -- that proceeding is still to play out in that process. But we don't have any sort of idea of litigation, risk or cost at this stage.

CR CALVERT: So we are sort of presuming that it's unknown and unquantifiable and therefore we're not taking it into consideration, or?

MR SMILLIE: Well as I say, it's only been sort of come to fruition in the last -- and the end of last week, being provided with that draft statement of claims, so there hasn't been an in-depth analysis at this stage.

CR CALVERT: And one, possibly, you'll be pleased to know, last question. Is there any reason why this proposal today is urgent, such as that it couldn't be delayed while we do get information that we've only had two working days to be thinking about asking for? Is there a reason why this is urgently required to be done right now?

MR CROMBIE: I guess there are two key reasons probably from that for the encouragement to make a decision. First of those is that we -- you'll be aware of the \$1 million-roughly payment due to Delta that gets eaten away by the interest bill as that continues on. So a delay there costs money. I guess the second one is making sure that the developer, Infinity, stays with the deal. Any further delay, and so I'll make some decisions around that, remembering that Council is being asked today to approve the loan, not to negotiate the transaction. There's a transaction there. So it's the loan which you're being asked to approved.

CR CALVERT: Sorry, there was one last question. Can Grant, having shifted his hat very quickly to his ELT hat, tell us what was it about this proposal that encouraged him to -- him or ELT to recommend it since the only thing we know about its financial considerations is "the report fulfils the reporting requirements to Council", what was in the minds of ELT that made them decide to recommend this?

MR MCKENZIE: Yes, look, the covering report that's gone with it is very brief because it's really trying to just introduce the main body of the report, which is what the report -- which is written by myself, with the assistance of Graham and a number of other people. So it is just trying to get DCHL's view across, and also then looking at what the potential impact is on Council, which is what's required as per the reporting template for Council.

CR CALVERT: Yes, it was ELT's report I was asking about, not DCHL.

MAYOR CULL: Cr Vandervis?

CR VANDERVIS: A question for Your Worship first. Which standing order is it under that you have decided to make an audio recording; under what standing order?

MAYOR CULL: I didn't make it under a standing order, I requested that the meeting be -- I suggested that the meeting be recorded. It was at a meeting of councillors and ELT. There was general agreement that that would be useful, so we did that, and I informed this meeting at the beginning. So it is no standing order I did it under.

CR VANDERVIS: Right. The reason I bring it up is that my understanding of Standing Orders 3.3.7 is that recordings of meetings may occur with the leave of the chairperson, as you have just suggested, with the knowledge of the meeting and "must be carried out in an unobtrusive manner and may not be distracting to members". If that is the article of standing orders under which you have the authority to make this recording, that would be fine, except for the fact that under 3.3.7 this only applies when the local authority is open to the public, and those provisions will apply. Since we are not open to the public those provisions don't apply, and I would like to know under what provisions a non-public meeting is recorded?

MAYOR CULL: Well on that, if it's the will of the Council that we turn it off, then that's -- if there is no standing order to allow this then it may have to discontinue, but I can get some advice.

CR VANDERVIS: Yes, I would like you to get some advice. My follow up question --

MAYOR CULL: No, no, well let's just get the advice on this, and then we'll move on to whatever other questions you have.

The answer to this, and I guess I apologise for not knowing this first, but on page 58 of our Standing Orders, Appendix C, Powers of the Chairperson:

"The Chairperson is to decide all questions where these standing orders make no provision or insufficient provision. The Chairman's ruling is final and not open to debate."

What's your next question?

CR VANDERVIS: My next question is who will the audio recording be made available to?

MAYOR CULL: "Who"?

CR VANDERVIS: And for what purpose?

MAYOR CULL: There is no plans to make it available to anybody at the moment. If --

CR VANDERVIS: So if there's no plans to make it available, why then are we doing it?

MAYOR CULL: Well it's not open for debate, I have just explained that. We are doing it as a record. And my suggestion --

CR VANDERVIS: A record for whom?

MAYOR CULL: For -- a record for the Council.

CR VANDERVIS: So does that mean that --

MAYOR CULL: Let's see what Ms Graham has to say.

MS GRAHAM: If I can just assist, it will be a public record, and the provisions of LGOIMA would apply to it, as they would a document or any other information that we hold. And so if someone were to request it, we would consider what was in it. If the grounds for withholding it still remain, and if they didn't then we would release those bits that we were able to under the Act.

CR VANDERVIS: Is there any precedent for recording of a non-public meeting in this way?

MAYOR CULL: No idea.

MS GRAHAM: I am unaware of it, but I don't know that there's a precedent or not.

CR VANDERVIS: Thank you for those answers.

Mr Crombie, under what authority have you decided to thwart the requests of Cr Calvert and myself to question the Delta chief executive at this meeting?

MR CROMBIE: Well there are two levels I would say. First of all this is a DCHL request to Council --

CR VANDERVIS: I am not talking about the DCHL request, I am talking about our request -- my request as a supposed maker of decisions, Cr Calvert's request as a supposed maker of decisions; our decision makers' requests to be able to question the chief executive of Delta. Under what authority have you thwarted that?

CR BENSON-POPE: Point of order. The rumours aside, Mr Chairman, in that there's a very clear procedural issue here, because just as we have one employee sitting to your right, we also have one entity that's responsible for the management and oversight of the other companies of which we are the beneficial owners, but not the actual legal owners, and Mr Crombie is the chair of that Board, and he is the person who is responsible for the questions to staff of those subsidiaries, because it's within his oversight, and I think an attack on Mr Crombie is entirely inappropriate, as well as unfair, and we should focus on the procedural issues that relate to the ownership chain and the responsibility of that reporting chain.

MAYOR CULL: Well I'm not absolutely sure it's a point of order, but I was about to ask you, Cr Vandervis, to allow Mr Crombie to answer your initial question.

CR VANDERVIS: Which is under what authority --

MAYOR CULL: Yes, and he was halfway through when you interrupted him. So could you be so good as to let him --



CR VANDERVIS: My apologies.

MAYOR CULL: -- proceed.

MR CROMBIE: So again, the resolution that we are seeking approval for comes from Dunedin City Holdings Ltd, yes, from there, which is the reason we are here. We have looked at what the issue was that is to be discussed here, and we have the information available. The adding of the chief executive of the company would not add any value to this discussion because what we're asking you to do is transfer a loan from one person -- one entity to another. So we believe we are here as DCHL asking you that question. The Statement of Intent requires us to come to you, as DCHL comes to you, not Delta.

CR VANDERVIS: Right. I will just move on then since I don't believe you have given me under what authority you have, I don't believe you have the authority. I don't believe that --

MAYOR CULL: Please ask questions, councillor.

CR VANDERVIS: I will carry on. The lack of an original valuation document for us to look at here; why is it that we don't have the original valuation document to look at?

MR MCKENZIE: So I think the key point there is that the valuation was done at 30 June last year, and that's basically what the valuation of the transaction has been based on. So as I said earlier we can get you a copy of that valuation, but I don't have that with me today.

CR VANDERVIS: My question is why isn't -- why is that copy not included in this agenda?

MR MCKENZIE: So the key thing here is that we are talking about the transfer of the loans between two entities --

CR VANDERVIS: Yes.

MR MCKENZIE: -- not necessarily about the valuation. We are talking about the transfer of loans.

CR VANDERVIS: We are talking about a decision, with due respect, that I, as an elected representative, have to make on behalf of ratepayers. This decision involves trying to determine what value there is in making this transaction. Trying to determine what value there is without seeing the valuation is something which I find to be extraordinarily difficult, but I will move on.

Why have we not seen the original Option 1 contract, why is that not available to us, because that is essentially the reason for the transfer that we are here to discuss; why have we not seen the original contract? Why is it not an attachment in this agenda?

MR MCKENZIE: So, the "original transaction", you are talking about the original offer from another third party?

CR VANDERVIS: From Infinity. The whole reason for making this transfer is that Infinity want basically to take this whole thing over. They want us to loan them an enormous amount of money to do it, they want us to release our first mortgage standing in the process, they want us to take a mill for the privilege with promises up to 2024 that we might get some money for it. Why have we not seen the detail of that contract?

MR MCKENZIE: The same answer I gave Cr Calvert. This is about a transfer of loans between two entities -- between -- so for transferring this to Infinity. So are you talking about the loan between us and Infinity?

CR VANDERVIS: What I am saying, and I am amazed that you haven't picked this up yet, is that as an elected representative I need reasons to be able to approve this rather massive loan. And those reasons revolve entirely around a contract which we are not allowed to see, but based on a valuation that we are not allowed to see, and they are to do with a company that we are not allowed to interrogate the chief executive of, which by the way has already cost us an extraordinary amount of money.

The reason why I believe we should be able to see the original contract, and the original valuation, and speak with Mr Cameron, is because for us to make the decision that you're asking us to make, for that to be an informed decision we need to why the transfer is to be made, we need to know whether there is value in making that transfer, and we also need to know whether past mistakes in investing public funds in subdivisions are not being made again by the same people. So --

MAYOR CULL: Right, can I -- I think you're speaking at -- talking at crossed purposes, with respect. And so can I ask you to let Mr McKenzie carry on where he was, because I think -- my sense is you have a different understanding of the nature of the transfer of the loan.

CR VANDERVIS: What I understand --

MAYOR CULL: No, can we --

CR VANDERVIS: Yes, okay, sure.

MAYOR CULL: We have got a lot of what you understand so far, but it's -- obviously there's a bit of a lack of connection, so can I ask Mr McKenzie to address that difference of understanding?

MR MCKENZIE: So as I said earlier, we will make available the redacted versions of those agreements, and as Cr Graham has --

CR VANDERVIS: What's the --

MR MCKENZIE: -- at least Sandy has said, as per the LGOIMA rules --

CR VANDERVIS: What is the point of making the information we need to make a decision, making it available to us after we've made the decision? What is the point of making it available to us too late? Why are we being denied the very information that we need to make an informed decision here? And we're being denied it in three areas already that I have spoken of. You have said that we are simply here to authorise a transfer, and that's the mechanics of it, but we need a reason to be able to do that. We need a number of reasons; we need a contract, we need a valuation, and we need to ask some very detailed questions of Delta for us to be able to make that informed decision. But moving on --

MAYOR CULL: Can I -- can I -- I have got to a bit of a stalemate here, because I -- I understand your question, so I am not sure that there is still a -- a complete meeting of minds here. So I'm going to call for an adjournment to ask Mr McKenzie to clarify some of the things and then we'll come back. So I am going to move through the Chair that we have an adjournment of five minutes, seconder Cr Staynes, and I am seeking to get genuinely to the bottom of this.

CR VANDERVIS: Thank you very much, I appreciate it.

MAYOR CULL: All those in favour, please say "Aye".

COUNCILLORS: Aye.

MAYOR CULL: Against? Carried.

**(A short adjournment)**