

Performance Audit Group,  
Auditor General's Office,  
Wellington

31<sup>st</sup> January 2017

[enquiry@oag.govt.nz](mailto:enquiry@oag.govt.nz)

Attention Assistant Auditor General Mike Scott

**Re: Dunedin City Council – information provided to Council by Dunedin City Holdings Ltd- request for examination under section 16 Public Audit Act 2001.**

**Complaint- request for determination.**

I understand that you have responsibility under the Act for ensuring that public entities are carrying out their responsibilities without showing, or appearing to show, by act or omission a lack of probity or financial prudence. I request that you look into the matters surrounding the production of the report detailed below with a view to making a determination as to whether it is acceptable for a council owned entity to provide misleading information to a council so as to obtain approval for a loan arrangement, such approval which is required under a Statement of Intention between the company and the council.

**Executive summary of the complaint:**

DCHL has provided a report to DCC which was on the face of it is intentionally misleading, with a view to enticing the Council to approve a loan to a company, Infinity Yaldhurst Ltd, which has no record nor any obvious assets, and therefore has no reason to be granted finance. It is unclear why DCHL did this but it may relate to a hoped for ongoing relationship between Delta Utilities Services Ltd, a subsidiary of DCHL, and Infinity Yaldhurst Ltd.

In the meeting to discuss this proposal Council was advised by a DCHL representative that it was good practice to set up such a subsidiary, when actually it is not good practice for a lender to accept such an arrangement without any guarantee from the parent company. The chair of DCHL advises that there is no such guarantee in place.

There appears to be ongoing related party benefits to this loan which were not disclosed to the Council.

**Description of the subject of the complaint.**

DCHL provided a report to the Dunedin City Council dated 1<sup>st</sup> August 2016 which recommended

“ That the Council

- a) **Approves** the Dunedin City Holdings Limited (DCHL) recommendation for Delta Utility Services Limited (Delta) to enter into a new loan agreement with Infinity to replace the existing \$13.4 million debt owed to Delta by Noble Investments on settlement of the Gold Band Finance driven mortgage sale."

The report (copy attached) under point 17 said "A company profile of Infinity is included as attachment B." The word "Infinity is defined in para 16 as Infinity Yaldhurst Limited (Infinity).

Attachment B contains information relating to a company called Infinity Investment Group Holdings Limited. The executive summary contained in attachment B concerning the Yaldhurst Village proposition includes the following.

- "6. Infinity has the team and resources already in place to complete the project.  
7. Infinity provides the project with a reputable developer that has an excellent track record.  
8. Infinity already has a strong presence in the Christchurch market and has relationships with key builders, agent etc."

The clear inference is that the company which DCHL says it is recommending for the approval of the Dunedin City Council is the company which has the proven record etc, described throughout as Infinity. The recommendation includes a recommendation to approve an agreement with Infinity.

However the intention of DCHL was always that the loan agreement would be to Infinity Yaldhurst Ltd, a recent company with a shareholding of some 10,000 shares with no proven track record at all, and none of the relationships described in the report.

It appears on the face of the report that it was the intention of DCHL to provide details of a different company with a proven record, with the intention to mislead Council and thereby to achieve approval for a loan agreement with a company which would never have been worthy of lending \$13.4 million to, and without any reason for so doing.

This report is in effect a request for investment. Had it been a prospectus as would be the usual way of requesting financial investments, it would have been subject to the Financial Markets regime, with it's demand for providing initial and ongoing material information, and it's potential for intentional breaches of imprisonment.

Since it is not, it falls within section 16 of your Public Audit Act which requires probity and financial prudence.

The report is deficient in other ways, and the meeting where it was produced, with the expectation I understand of the report not being made public at any time, was intended to be recorded, although in the event this only happened for part of the meeting.

In the event the matter of the companies not being one and the same was noticed and canvassed, and a representative from DCHL in answer to a query as to why the worthwhile company would set up a subsidiary for the purpose, explained that it was good practice to do so.

(As background, Infinity Investment Group Holdings Ltd had deployed the same manoeuvre earlier with the Pegasus Development, which lost some \$80 million, for which the parent group, IIGHL were not responsible. The Pegasus Development is recorded in the report and summarized in the sentence "The Pegasus project was ring-fenced from all other Infinity development interests.").

The report also has oblique references to working with Infinity in the future. While it is not stated in the report, it now appears that Delta is intending to have an ongoing working relationship with Infinity. This suggests that there are ongoing related party benefits for Delta recommending the loan to DCHL, who recommended it to Council. Related party benefits are discouraged throughout our financial statutory controls, and particularly where these related party benefits are not disclosed.

Yours faithfully,

Hilary Calvert'

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Attachment: report prepared for meeting 1<sup>st</sup> August 2016 released under the Local Government Official Information and Meetings Act