

Report PE05.346
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Committee Policy Finance and Strategy
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Transport Infrastructure Assets

1. Purpose

To inform the Council of the proposed ownership structure for the Council's transport assets.

2. Public Excluded

Grounds for exclusion of the public under section 48 (1) of the Local Government Official Information and Meetings Act are that the public conduct of the whole or relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists (i.e. to maintain legal professional privilege).

3. Significance of Decision

The matters in this report do not trigger the significance policy of the Council or otherwise trigger section 76(3)(b) of the Local Government Act 2002

4. Background

The Council will be purchasing, in the future, substantial amounts of transport infrastructure.

In particular:

- Trolley Bus overheads
- Wairarapa carriages
- 50 new EMU's
- Refurbished Ganz Mavags

There also may be other assets such as station improvements, carparks, etc.

The total expenditure of the above will exceed \$200 million. The majority of the monies required will come from the Government, but the ownership of the assets will be with the Council.

5. Land Transport Management Act 2003

This Act allows the Council to own transport infrastructure. Prior to this Act it was not legally possible for the Council to own these types of assets.

However, section 27(1) of the Act states:

“Any interest that a local authority has in a public transport service to which this section applies must be held in a Council Controlled Trading Organisations, whether or not in conjunction with another local authority”.

Section 27(3) states:

“A regional council may, subject to subsection (1), hold an interest in, or acquire the ownership of, a public transport or any public transport infrastructure”.

Our lawyers, Chapman Tripp, were asked whether the Council’s ownership of rolling stock constituted an interest in a public transport service.

They have come to the view that the assets noted above do constitute an interest in a public transport service and therefore those assets need to be held by a Council Controlled Trading Organisation (CCTO).

A copy of their opinion is attached (**Attachment 1**).

The logic for this clause is that the Government did not want any local authority to gain an advantage over a commercial operator because of the tax exempt status of the local authority. Therefore, to ensure a level playing field, these type of assets would be held in a CCTO.

6. Other Considerations

The Council has had a policy of putting its investment/commercial assets into CCTO’s. In particular, the policy states:

- Appropriate separation of management and governance;
- Imposing commercial discipline on the Group’s activities to produce an appropriate return by ensuring appropriate debt/equity funding and requiring a commercial rate of return.
- Separation of Council’s investment assets from public good assets.

In addition to the above, there is the question of risk management.

The assets in question will be used by various operators to earn a commercial return. Potentially, over time, something may go wrong in the operation of

those assets which could entail the Council being liable. While the Council carries public liability insurance, it is prudent to exclude that risk from the Council's public good assets. This can be done by putting the assets into a CCTO, where the company would be liable for any problems, not the Council.

A further means of reducing any risk (albeit slight) is to have separate CCTO's for certain assets. For example, the Trolley Bus overheads in one company, Wairarapa carriages in another.

7. Local Government Act Section 56

Section 56 states that prior to the establishment of a CCTO the Council must undertake the special consultative procedure.

It is proposed that in respect of the new CCTO for the transport assets this is undertaken at the time of the 2006/16 LTCCP consultation.

However, prior to that the Council is likely to take ownership of the trolley bus overheads and sign a contract for the refurbished Wairarapa carriages.

In the short term these could be owned by Pringle House Ltd, prior to the establishment of new CCTO's following consultation.

8. Other Matters

The decision to purchase the transport infrastructure assets will be the decision of the Directors of the CCTO to make. However, the dollar amounts involved will make them major transactions under the Company's Act, thus requiring shareholder approval.

9. Communication

No communications are necessary at this time.

10. Recommendations

That the Committee:

- (1) **Receive** the report.
- (2) **Note** its contents.
- (3) **Approve** the ownership of transport infrastructure assets by Council Controlled Trading Enterprises.

Report prepared by:

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Attachment 1: Opinion on Land Transport Management Act 2003 – Chapman Tripp