

**Mayor and Councillors**  
COUNCIL

28 JUNE 2012

Meeting Status: **Public**

Purpose of Report: For Decision

**DEBENTURE TRUST DEED**

**PURPOSE OF REPORT**

- 1 To seek approval from Council to change from a Debenture to a Debenture Trust Deed as the security for Council's borrowings.

**SIGNIFICANCE OF DECISION**

- 2 This report does not trigger Council's Significance Policy.

**BACKGROUND**

- 3 In 2002, the Council put a Debenture in place in order to provide security to its financiers. Council could have established a Debenture Trust Deed at this time, however, as a Debenture Trust Deed was more expensive to establish and not considered essential to achieve attractive borrowing rates at that time, Council decided that a Debenture was sufficient.
- 4 Also with the Council deciding to join the New Zealand Local Government Funding Agency (LGFA) as a shareholder, Council is required to have a Debenture Trust Deed to be able to participate as a borrower and a shareholder of the LGFA and take advantage of the lower interest rate margins.
- 5 It is now proposed that Council move to a Debenture Trust Deed to bring Council in line with other local authorities and in line with the expectations of the financial markets.

**CONSIDERATIONS**

Issues

- 6 One of the key advantages of the Debenture Trust Deed is that it is recognised as an industry standard for local authorities. A Debenture Trust Deed is a deed entered into between a local authority and a trustee under which the local authority grants a security interest in its rates and rates revenue to the trustee to hold on behalf of holders of "stock" issued under the Debenture Trust Deed. The local authority can then issue "stock" to creditors which has the benefit of the security granted to the trustee.

- 7 Council currently grants security (being a charge over its rates and rates revenue) to its financiers by issuing security certificates under its Debenture. The security is recorded on the register kept by the Council.
- 8 Under a Debenture Trust Deed, Council would grant this same security to its financiers by issuing either "Security Stock" or "Debenture Stock". Debenture Stock is a type of debt instrument (for example, a bond) which also grants its holders the benefit of the security over rates granted to the trustee. The Council cannot issue bonds under its current Debenture. In contrast, Security Stock is not a debt instrument, it simply establishes security for the Council's obligations under a separate agreement (for example, a loan agreement) described in the security stock certificate.
- 9 A comparison of key features of a Debenture versus a Debenture Trust Deed are set out below.

<b>Comparison between Debenture and Debenture Trust Deed</b>		
	<b>Debenture</b>	<b>Debenture Trust Deed</b>
Holders of security on behalf of the secured parties	Security Agent (Westpac)	Trustee on behalf of stockholders
Security	Rates and rates revenue of the Local Authority	Rates and rates revenue of the Local Authority
Legal Instrument issued	Security Certificate	Debenture Stock (e.g. bond) or Security Stock
Purpose	Establishes security for Council's obligations under a separate agreement (e.g. a loan agreement). Council cannot issue bonds under the Debenture.	Establishes security for Council's obligations under a separate agreement (e.g. a loan agreement) and for Council's obligations in respect of debt instruments (e.g. bonds) issued under the Deed.

**Rates as security**

- 10 There is no difference between the security granted by a local authority under a Debenture and a Debenture Trust Deed. Both documents grant security over the rates and rates revenue of the local authority.

**Security Agent vs. Trustee**

- 11 Under the current Debenture, Council has appointed a security agent (Westpac), which holds the security on behalf of the secured parties. Under a Debenture Trust Deed, a trustee is appointed. As with the security agent, the trustee's role is to hold (and, if necessary, enforce) the security for all stockholders, and to monitor the local authority. The local authority is required to send various information to the trustee (such as annual plans and annual reports) to facilitate this monitoring. Similar information is currently provided to the security agent for the same purpose.

- 12 The security agent in most cases must act at the direction of a majority of security holders. In contrast, the trustee may act on its own discretion, but may also seek instructions from the majority stockholders. This reflects the fact that a Debenture Trust Deed is designed to cater for a potentially large number of stockholders. It also reflects the fact that professional trustees, such as Trustees Executors Limited and Perpetual Trust Limited, are better placed than a security agent to make decisions on behalf of stockholders.
- 13 Therefore, the security agent and trustee have substantially similar powers under the Debenture and Debenture Trust Deed (respectively) in relation to enforcing the rates charge on behalf of the security holders. However, the trustee has a broader discretion in relation to exercising those powers.
- 14 Trustees Executors Limited and Perpetual Trust Limited currently act as trustees for the majority of the local authorities with Debenture Trust Deeds in place.

#### **Perpetual Trustees**

- 15 Both Perpetual Trust Ltd and Trustees Executors provide the same Trustee services for a Debenture Trust Deed. They each have a different scale of charges and the Perpetual Trust Ltd charges are financially beneficial for our Council given our current debt and projected debt under the Deed. Perpetual Trust Ltd currently provide Trustee services for Debenture Trust Deeds for Hutt City Council and Porirua City Council. It is therefore recommended that Council appoint Perpetual Trust Ltd as its trustees.

#### **Reasons for moving to a Debenture Trust Deed**

- 16 Also as a shareholder of the LGFA, Council is required to have a Debenture Trust Deed in place as the security for Council's loans. It is proposed that Council move from the current Debenture to a Debenture Trust Deed because it is the recognised industry standard and so more acceptable to lenders.
- 17 Since the LGFA's initial bond tender, the interest rate margins have improved with each tender. This is partly due to the increasing level of LGFA bonds available in the market and also their high level of credit rating.
- 18 Establishing a Debenture Trust Deed will mean that Council will be able to refinance existing short term commercial paper loans with longer term funding arrangements through the LGFA at more attractive margins than would be available to the Council on the financial markets.

#### **Financial Considerations**

- 19 The ongoing annual Trustee costs are budgeted for in the Banks Fees and Charges budget.

#### **Legal Considerations**

- 20 The legal documents have been prepared by Simpson Grierson.

## Delegation

- 21 Only Council has authority to change the security structure for Council debt.

## Consultation

- 22 The change to the security structure for Council's borrowing was consulted on as part of the draft Long Term Plan.

## Policy Implications

- 23 The necessary changes to the Treasury Management Policy are included in the Final Long Term Plan.

## Tāngata Whenua Considerations

- 24 There are no Tāngata Whenua considerations.

## Publicity Considerations

- 25 There are no publicity considerations.

## **RECOMMENDATIONS**

- 26 That the Council notes that the Council's Treasury Management Policy in the final Long Term Plan allows for the security structure for Council loans to be a Debenture Trust Deed.
- 27 That the Council approve the form of Debenture Trust Deed attached as Appendix 1 to Report Fin-12-497 as the security structure for Council loans to replace the current Debenture structure (subject to any further changes being negotiated by the Chief Executive and Group Manager Finance)
- 28 That the Council authorise the Chief Executive and Group Manager Finance to negotiate with the Council's security agent, current security holders and incoming trustee to transfer to a Debenture Trust Deed security structure, and to make any necessary changes to the attached Debenture Trust Deed that result from these negotiations.
- 29 That the Council authorise the Chief Executive, Mayor and the Chairperson of the Corporate Business Committee to execute a Debenture Trust Deed and the Security Replacement Deed(s).
- 30 That the Council authorise the Chief Executive and Group Manager Finance to give one or more certificates including for the purposes of Section 118 of the Local Government Act 2002 in respect of the Debenture Trust Deed and the Security Replacement Deed(s).

- 31 That the Council authorise the Chief Executive and Group Manager Finance to provide Stock Issuance Certificates and Security Stock Certificates in relation to Council's borrowing as required in accordance with Council's Long Term Plans and Annual Plans.

**Report prepared by:**

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Appendix 1 – Debenture Trust Deed