

# The Treasury

## South Canterbury Finance Limited Information Release

### Release Document

April 2011

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Key to sections of the Official Information Act 1982 under which information has been withheld.

Certain information in this document has been withheld under one or more of the following sections of the Official Information Act, as applicable:

- [1] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [2] 9(2)(b)(i) - to protect trade secrets
- [3] 9(2)(b)(ii) - to avoid unreasonable prejudice to the commercial position of the person who supplied the information or who is the subject of the information
- [4] 9(2)(ba) - to protect information that is subject to an obligation of confidence, or that was or could be provided under legal compulsion, where making the information available would be likely to prejudice the supply of similar information and it is in the public interest for that information to continue to be supplied
- [5] 9(2)(d) - to avoid prejudice to the substantial economic interests of New Zealand
- [6] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [7] 9(2)(h) - to maintain legal professional privilege
- [8] 9(2)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice.

Where information has been withheld, a numbered reference to the applicable section of the Official Information Act has been made, as listed above. For example, an [8] appearing where information has been withheld in a release document refers to section 9(2)(i).

In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.

**From:** [1] @scf.co.nz]  
**Sent:** Wednesday, 10 June 2009 4:59 p.m.  
**To:** Craig Murphy  
**Cc:** Stephen Reville; John Park  
**Subject:** Independent expert Terms of Reference  
**Attachments:** 09-05-28 - Terms of Reference.pdf

Dear all

Following my conversation earlier with John, please find firstly the Terms of reference for the Independent Expert - Morgan Wallace

The next email will include his opinion

Regards

[1]

## TERMS OF REFERENCE

### **Independent Expert's Opinion – Acquisition by South Canterbury Finance Ltd ('SCF') of shares in Dairy Holdings Ltd ('DHL') from Southbury Group Limited ('SGL')**

#### **Engagement**

Morgan Wallace Limited ('Morgan Wallace') assisted by Parker O'Connor Trust Co. Ltd ('Parker O'Connor') has been engaged to prepare an independent report ('the Independent Report') for South Canterbury Finance Limited ('SCF') and an independent expert opinion ('the Independent Expert Opinion') for the Crown on the acquisition by SCF of shares in Dairy Holdings Ltd ('DHL') from Southbury Group Limited ('SGL').

#### **Background**

The Board of SCF wishes to transact with a related party, SGL, whereby SCF acquires SGL's shares in DHL and SGL subscribes for SCF shares (the 'DHL transaction').

Pursuant to Clause 6.2 of a Crown Deed of Guarantee dated 19 November 2008 between Her Majesty the Queen in right of New Zealand (the 'Crown') and SCF the DHL transaction requires an independent expert approved by the Crown to certify in writing that the transaction is, in the opinion of that expert, on arms' length terms.

SCF has sought and been granted approval from the Treasury for Morgan Wallace assisted by Parker O'Connor to prepare an Independent Expert Opinion on the DHL transaction pursuant to these Terms of Reference.

#### **Personnel**

[1] of Morgan Wallace will lead this assignment. [1] of Parker O'Connor will lead Parker O'Connor's involvement with this assignment and various Parker O'Connor staff will assist as required.

Please note that subsequent to the submission of our application for approval as independent expert dated 8 May 2009, the substance of the transaction upon which an opinion is required has changed from a proposed amalgamation of SCF and SGL to the acquisition by SCF of the SGL interest in DHL. Because of this change [1], rather than [1], will now lead Parker O'Connor's involvement as he has particular expertise in the dairy sector. A Curriculum Vitae for [1] will be made available if required.

#### **Process**

The Independent Expert Opinion will be addressed to the Crown. The Independent Report will be addressed to SCF and will be made available to the Crown on a commercially confidential basis.

Prior to finalising drafts of the Independent Expert Opinion and the Independent Report will be made available to the Treasury. The Treasury and/or its representative will have the opportunity to meet with the independent expert to discuss the drafts.

The independent expert reserves the right to retain independent legal advice.

Time is of the essence and thus it is anticipated that all parties involved in the process will respond in a timely manner to requests for information and/or feedback on draft documentation.

## **Scope**

The Independent Expert Opinion will certify whether or not in the expert's view the DHL transaction is on arms' length terms.

The Independent Report will present the background, reasoning and information sources relevant to determining the expert opinion.

## **Information Sources**

The independent expert in preparing its reports will rely on information provided by SCF and DHL including:

- DHL transaction documentation
- SCF and DHL Director and management, and related party, representations;
- Such other information as Morgan Wallace and/or Parker O'Connor reasonably requires to undertake this assignment.

[1] SCF Chief Financial Officer will be the primary SCF contact for the independent expert during the course of the engagement.

## **Indemnity and Timing**

SCF will engage the independent expert and meet all costs associated with its appointment. SCF and SGL will indemnify the independent expert in respect of any liability suffered or incurred as a result of or in connection with this engagement. The liability of Morgan Wallace and Parker O'Connor to SCF in respect of this engagement will be limited to the fees paid to those parties.

The independent expert, subject to the timely provision of relevant information by SCF, DHL and related parties, will endeavour to provide a draft Independent Report and draft Independent Expert Opinion to SCF by Friday, 5 June 2009.

28 May 2009