

STATEMENT OF PROPOSAL TO ESTABLISH NEW COUNCIL CONTROLLED ORGANISATIONS AND TRANSFER HARBOUR AND SOLID ENERGY CENTRE TO WESTPORT HARBOUR LTD AND BULLER ARTS AND LEISURE LTD

This *Statement of Proposal* relates to Buller District Council's proposal to transfer two of its significant assets namely the harbour assets to Westport Harbour Ltd, and the Solid Energy Centre to a new subsidiary (Buller Arts and Leisure Ltd) within the holding company structure to allow for growth of their commercial activities. It also covers the need under Section 56 of the Local Government Act to consult when a new Council Controlled Organisation is established.

The statement of proposal is being published so that you can assess the merits and the potential impacts, and have the opportunity to submit your view on the proposal to Council. The Buller District Council is keen to know what you think about transferring these two assets into the holding company structure and the establishment of a new Council Controlled Organisation. Councillors will consider all of the submissions received on the proposal before making a decision. If you make a written submission, you will also have the opportunity to make an oral submission to the Councillors if you wish. Submissions on the proposal must be received by 4.30pm Monday 18 May 2009. Submissions will be considered during April and May, with the hearing of oral submissions planned for the end of May. Council view the effective governance of Council's assets is central to being able to provide for the present and future well being of the district. Because this proposal is viewed as significant, we have prepared this document to enable you to evaluate the options, and make comment.

The following information is provided:

- a description of the proposal
- a discussion of the rationale for the proposal
- an analysis of our proposal and the alternate options available
- an overview of the associated costs and benefits of the proposal
- a copy of the submission form

WHAT IS PROPOSED?

Buller District Council is proposing to transfer the Harbour assets to Westport Harbour Ltd. and to transfer the Solid Energy Centre assets to a new subsidiary within the holding company structure. Council, on behalf of ratepayers, currently has full ownership of these significant assets. At present, the Council has a management contract with Holcim to manage the Harbour. The Solid Energy Centre which was recently built is under the management of Council. There has been substantial investment into the construction of the Solid Energy Centre. Council believes the planned transfer of the Harbour assets and the Solid Energy Centre into the holding company structure will provide a greater commercial focus in the governance and administration of Council's commercial assets, allowing for maximum returns on behalf of ratepayers.

The holding company is managed by a board of appropriately skilled persons who have developed strategic plans to improve profitability, and Council believe will achieve business growth for these two operations. Under the holding company structure, the assets will remain in community ownership (via the holding company) under the governance of the Council, it is not the intention of Council to move assets into a holding company to on-sell them at a later date. Buller Holdings Limited is Council's 100% owned holding company and already owns 100% of Westreef Ltd and Westport Harbour Ltd. Council is proposing to establish a new subsidiary, Buller Arts and Leisure Ltd that will be 100% owned by the holding company.

RATIONALE FOR THE PROPOSAL

STRATEGIC MANAGEMENT FOCUS

For local authorities, one of the main benefits of using a holding company structure and transferring its commercial strategic assets into the structure is that it allows them to focus on their obligations to the community, instead of being involved in the management and governance of commercial trading activities which are not part of Council's core activities. Placing services such as this in the hands of a holding company allows Council to focus on the level of service provided to the community, rather than the management of the company.

GOVERNANCE

Transferring the assets into a holding company structure provides an opportunity for professional and experienced commercial governance. While Councillors bring a range of skills to the Council, the transfer of the assets enables the utilisation of the skills and specialist knowledge of the board of the holding company. It enables us to recruit and access resources and skill bases over and above those currently available to us, to assist us in taking better advantage of commercial opportunities within the district. Council is still able to maintain control of expectations through monitoring of board functions, director performance and regular reporting. An additional layer of governance is inserted between the company and Council, removing any political sensitivities, and enabling the company to make decisions based on commercial imperatives. Future investments can also be evaluated in a commercial, and non-political environment.

FINANCIAL CONSIDERATIONS

Council currently has significant financial investment in commercial assets of the port and Solid Energy Centre. The transfer of these assets into the holding company structure would provide the ability to run the assets more efficiently, including the ability to borrow money in a tax-efficient manner to provide funding for future infrastructure development. There would be a reduction in Council's income tax liability, via offsetting interest costs against income. The structure would enable Council to minimise funding costs and facilitate future borrowing. In summary, the holding company would allow these commercial businesses to be managed as distinct financial entities without being embedded in the overall financial structure of Council.

PROPOSED ASSETS FOR INCLUSION

Council is proposing to transfer the Harbour assets held solely by Council with day-to-day management contracted out to Buller Port Services Ltd to Westport Harbour Ltd via Buller Holdings. This will allow for both strategic direction and governance of Solid Energy Centre to be carried out by Buller Holdings Limited, while the day-to-day management will still be contracted out to Buller Port Services Ltd.

In addition Council is proposing to transfer the Solid Energy Centre assets to a new subsidiary via Buller Holdings Ltd. This will allow for both strategic direction and governance of Solid Energy Centre to be carried out by Buller Arts and Leisure Ltd whose management will have the skills and experience consistent with operating a recreation centre.

WHAT OTHER OPTIONS ARE AVAILABLE?

Before considering a structure for more effective administration of its commercial activities, Council agreed on the following criteria for assessing the suitability of any proposed options:

proposed options:

- The need for a greater commercial focus in the governance and administration of Council's commercial assets
- A structure which allows for maximum returns from Council assets
- Independence of decision making and action, but with Council consulted on strategic direction and decisions of material importance
- A more effective financing structure for future debt requirements
- Accountability to Council and the wider community

The main options considered by Council are summarised below, including the identified significant differences between options.

Option One - do nothing.

If Council maintains the status quo, both the port and the Solid Energy centre would remain under the control of the Council and would effectively be managed by Council itself.

Significant differences:

- No additional set-up costs
- No change to decision making processes
- No change to the efficiency of the financial structure or level of commercial focus

Option Two – transfer the port assets to Westport Harbour Limited and establish a charitable trust to own the Solid Energy Centre assets.

Under this option, Council could establish a charitable Trust, with either a board of individual trustees or with a corporate trustee. The Trust (rather than Council) would make management decisions.

Significant differences:

- Allows overall strategic direction and governance of Solid Energy Centre by the trustees
- Enables day-to-day management of Solid Energy Centre to be carried on by New Charitable Trust management with skills and experience consistent with operating a recreation centre
- Ability to fund Solid Energy Centre via deductible/rebateable charitable donations from Westreef Services Limited and non-Council sources
- Use of New Charitable Trust (instead of BART) ensures funds raised are applied solely for the benefit of Solid Energy Centre
- Administrative difficulties associated with change of trustees
- Structure of trust provides less flexibility for commercial management

Option Three – transfer the port assets to Westport harbour Limited and establish a new subsidiary within the Holding Company to own the Solid Energy Centre assets (Council's preferred option)

Council would establish a new subsidiary that would own and manage Council's commercial activities pertaining to the Solid Energy Centre. The port would be transferred to Westport Harbour Limited.

Significant differences:

- Lower set up and ongoing administrative costs
- Allows overall strategic direction and governance of Solid Energy Centre by Buller Holdings Limited
- Enables day-to-day management of the Solid Energy Centre to be carried out by Buller Arts and Leisure Ltd's management with skills and experience consistent with operating a recreation centre
- Grants from BART and external finance raised at Buller District Council can be contributed as equity to Bullers Arts and Leisure Ltd. via Buller Holdings Ltd.. Other
- options may also be possible for grant funding
- More effective structure for financing future funding requirements
- Structure would allow more flexibility and the ability to respond to commercial opportunities

WHAT WILL IT COST?

If this proposal is adopted, Council is in the process of obtaining a valuation of the assets to be transferred. Specialist advice has been obtained however, and generally the benefits of the holding company structure would outweigh any additional ongoing costs. Additional ongoing costs are likely to be in the region of \$ 230 000 per annum, which would include Director's fees and Buller Holding general Manager's costs, audit fees and administration costs. If Council continues to own and operate then it will incur all the costs on these two assets. The harbour are anticipated to break-even and the Solid Energy Centre would be operating at a loss which would need to be funded from general rates. If the assets are transferred, Council will pay management fee of \$535,000 per annum and the interest expense, but will receive subvention payments to offset the interest expense of approximately \$750,000.

ASSUMPTIONS FOR THE PROPOSAL

It has been assumed that Holcim will continue to operate the Westport plant for the foreseeable future and that Westreef will win the roading contract when it goes out for tender.

IMPACT IF ASSUMPTIONS CHANGE:

Should Holcim decide to move their cement plant to Weston in Oamaru, harbour profitability would decline significantly. While Buller Holdings Limited are actively seeking additional revenue streams for the harbour the relocation of Holcim could significantly affect the commercial viability of the port if additional revenue streams of reserves do not materialise. However the Board of Directors are actively seeking alternative revenue streams and a review of harbour property will be carried out. This review may result in some of the Harbour land being sold.

Within the Holding Company group Westreef's profits will be used to cover some of the costs of Solid Energy Centre which Council would otherwise have to pay for if it was owned. Whether the roading and vegetation contracts are maintained or lost there will be a low impact on Westreef's profitability.

ACCOUNTABILITY

As required by sections 65 and 66 of the Local Government Act 2002, the Council will continue to undertake monthly meeting with Buller Holdings Ltd. to monitor its performance to evaluate its contribution to its achievement of:

- Objectives set for the holding company and its subsidiaries
- Desired results as set out in the Statement of Intent for the holding company and its subsidiaries
- Receipt within 2 months after the first half of each financial year, delivery of a half yearly report to Council on the holding company operations and its financial
- Performance

Council has approved all Statements of Intents for the holding company and its subsidiaries with the exception of the Solid Energy Centre which is in the process of being finalised.

FINANCIAL DETAILS

- The harbour assets have been transferred at \$2,283,000 and the Solid Energy Centre assets at \$15,500,000 from Council assets to investments.
- Each year the Council will continue to provide a service fee of \$535,000 (increased annually by BERL inflation factors).
- The operating costs and revenues associated with the port will transfer to the Holding Company effective 01 July 2009 and the net effect thereof to the Council will be nil as the port will be operating at a breakeven point from 2010/2011 onwards.
- Should the assets of the Solid Energy Centre remain within Council, Council would be incurring a loss that would need to be funded by the ratepayer and there would be no tax deductibility of loan interest costs on \$15.5 million loan. Furthermore the loan interest costs are being serviced via subvention payments from Westreef.

CONFLICTS OF INTEREST

There are no conflicts of interest arising from the proposed transfer and ownerships of the assets. If any potential conflicts do arise through the submissions process these will be evaluated and mitigating strategies will be put in place to ensure that these are highlighted and effectively managed.

SUMMARY

Having investigated possible options, and reviewing specialist advice from external companies, Council believe that the transfer of the harbour assets and Solid Energy Centre to ownership by Westport Harbour Ltd and Buller Art and Leisure Ltd respectively, will provide the benefits they are seeking on behalf of residents and ratepayers. While the option of a trust may allow us to achieve a greater commercial focus and improved governance of our commercial activities, the holding company achieves these aims as well as providing cost benefits and a more effective financing structure.

The Buller District Council is keen to know what you think about the above proposal to assist in the more effective administration of its commercial activities. If you would like to make a written submission, either in support or against the proposal, please fill in the attached submission form, and send it to:

Buller District Council
Holding Company Submissions
PO Box 21
WESTPORT

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Completed submission forms can also be dropped off to the Council office on Brougham Street, or faxed to (03) 788 8041. If you would like additional information on this proposal, please contact:

Angela Oosthuizen

Manager - Corporate Services

Phone: (03) 788 9111 Email: angelao@bdc.govt.nz

www.bullerdc.govt.nz

Freephone: 0800 807 239

The consultation period will be open for public submission and feedback until 4:00pm on Monday 18 May 2009.

Submission Form

Proposal to Establish a new Council Controlled Organisation and transfer Harbour assets and the Solid Energy Centre to Westport Harbour Ltd and Buller Arts and Leisure Ltd

Date of Submission: _____

Name: _____

Address: _____

Email: _____

Phone: _____ (home) _____ (work) _____ (mobile) _____

Signature: _____

In order for the submission process to run smoothly, it is very important that your contact name, address and phone numbers are written clearly.

Please tick which box applies in each statement:

I wish to speak to my submission at the hearings to be held by the Buller District Council. (If yes, please ensure you have provided a contact phone number above. Council staff will contact you to arrange a submission time.)

Yes **No**

I support the establishment of a new Council Controlled Organisation and the transfer of the Harbour and Solid Energy Centre assets to Westport Harbour Ltd and Buller Arts and Leisure Ltd to assist in the more affective management of Council's commercial activities.

Yes **No**

My comments are:

(please use additional pages if required and attach to submission form)

(Privacy statement: *All written submissions (including name and details) are public information and will be made available to the Mayor and Councillors.*)