



Report 07.266  
Date 30 April 2007  
File M/30/01/10

Committee Policy, Finance and Strategy and Council  
Author Margaret Meek Policy Analyst

## **Assignment of Wairarapa SW Carriages Supply Agreement to Greater Wellington Rail Limited**

### **1. Purpose**

To seek approval for the assignment of the Wairarapa SW Carriages Supply Agreement from the Council to Greater Wellington Rail Limited.

### **2. Significance**

The matters for decision 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.

### **3. Background**

In September 2005 Pringle House Limited (PHL) and the Council resolved to enter into a contract with Toll NZ Consolidated Ltd (Toll) to supply 18 railway passenger cars for the Wellington to Masterton services.

In December 2005 Greater Wellington and Pringle House Limited entered into a supply agreement with Toll NZ for the supply of 18 SW Rail Passenger Cars (Supply Agreement).

PHL was a party to this agreement as Greater Wellington is obliged to hold its interests in rail rolling stock in a Council Controlled Trading Organisation (CCTO). It was intended that a new CCTO be established to hold these assets. However, under the Local Government Act 2002 a new CCTO can only be established after consultation.

On 3 August 2006, following this consultation, Greater Wellington established Greater Wellington Rail Limited to own the rail rolling stock.

At the time the Supply Agreement was entered into there was expectation that PHL and Greater Wellington would assign the Supply Agreement with Toll to this new CCTO.

## 4. Assignment

Generally speaking, an assignment is the method of transferring a right or contract from one person to another. In this case the proposed assignment will transfer the benefits of the Supply Agreement from Greater Wellington and PHL to Greater Wellington Rail Limited (GWRL).

Phillips Fox has drafted a proposed Deed of Assignment to assign the Supply Agreement.

GWRL agrees that it will comply with the supply agreement and indemnify both PHL and Greater Wellington against any liability arising out of any default by GWRL in its performance of the Supply Agreement.

Liabilities are unable to be assigned. Greater Wellington and PHL, as assignor, will still remain liable for the entire term of the contract even after the Deed of Assignment has been entered into.

PHL, GWRL and Greater Wellington will all need to consent prior to entering into the Deed of Assignment.

Under the Supply Agreement Greater Wellington and PHL are permitted to assign the agreement. Toll will also be a signatory to the Deed of Assignment.

## 5. Pringle House Limited and Greater Wellington Rail Limited

The directors of these companies will be considering this matter at their meeting on 8<sup>th</sup> May.

## 6. Communication

No communications are necessary.

## 7. Recommendations

*That the Committee recommends that Council:*

- 1. Receives the report.*
- 2. Notes the content of the report.*
- 3. Approves the entering into the Deed of Assignment for the supply of SW carriages.*
- 4. Notes that the Common Seal will be used when entering into the Deed of Assignment.*

*5. Notes that this approval is subject to both Pringle House Limited and Greater Wellington Rail Limited consenting to entering into the Deed of Assignment.*

Report prepared by:

Report approved by:

**Margaret Meek**  
Policy Analyst

**Barry Turfrey**  
Chief Financial Officer