

Dated

2002

MEMORANDUM OF UNDERSTANDING

relating to

**CENTRAL PLAINS WATER ENHANCEMENT
SCHEME**

between

CHRISTCHURCH CITY COUNCIL

and

SELWYN DISTRICT COUNCIL

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CENTRAL PLAINS WATER ENHANCEMENT SCHEME

MEMORANDUM OF UNDERSTANDING

DATED

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PARTIES

- (1) **CHRISTCHURCH CITY COUNCIL** ("CCC")
- (2) **SELWYN DISTRICT COUNCIL** ("SDC")

RECITALS

- A. In summary:
- (a) The work over the past two years of the Central Plains Water Enhancement Steering Committee ("Steering Committee") is coming to an end.
 - (b) To progress the Central Plains Water Enhancement scheme ("CPWE") the Parties intend to work through a Water Trust which will have the objectives, functions and capabilities outlined in this Memorandum of Understanding.
 - (c) It is intended that the Water Trust will apply for and own the resource consents necessary for CPWE. As the holder of the necessary consents the Water Trust will have a role in attracting funding for CPWE. The Water Trust will also have the flexibility to permit long term partners to increase their ownership or influence in CPWE if the Parties see fit.
- B. In 2000 the parties established terms of reference for a joint committee of CCC and SDC to investigate ways of improving the security and prosperity of the Central Canterbury region through water management schemes that enhance ecological and recreational values while providing opportunity for agricultural and horticultural diversity. The joint committee is known as the Steering Committee.
- C. In particular the Steering Committee's objective has been to undertake feasibility studies for the Central Plains area to allow decisions on the advisability of proceeding to resource consent applications and eventual scheme implementation.
- D. A major feasibility study report for CPWE was completed in January 2002 covering the technical, financial, economic, environmental, social and cultural issues relevant to CPWE. The study was reported to CCC and SDC in February 2002, together with a recommendation from the Steering Committee that the proposals were (subject to concept refinement) feasible and affordable and that any detrimental effects could satisfactorily be mitigated.
- E. CPWE is based on harvesting high flows from the Rakaia and Waimakariri Rivers within the limits of the existing management regimes applying to both rivers. When water is required for irrigation it will be distributed to users from river intakes via a level headrace canal at the 235m contour. When

not required for irrigation, high flows will be used to fill a storage reservoir in the foothills for use when water is not available from the rivers. CPWE will provide water at a high level of reliability for the irrigation of up to 84,000 hectares. The Steering Committee is in the process of refining the CPWE concept as an extension of the feasibility studies undertaken to date.

- F. The Steering Committee's work has produced other achievements including:
- (a) Securing Central Government investment in CPWE totalling \$537,500.00 to date from The Agricultural and Marketing Research and Development Trust ("AGMARDT") administered by the Ministry of Agriculture and Forestry and from the Ministry for Economic Development.
 - (b) Securing additional funding from The Community Trust of \$79,500.00 and from various water groups of \$16,000.00.
 - (c) Being requested by the Ministry of Agriculture to coordinate and administer funding support from a number of water enhancement groups, required for a series of major studies relating to the development of Central Government policy in regard to funding of large scale water enhancement projects.
 - (d) Establishing a formal agreement with a neighbouring water enhancement group, the Ashburton Community Water Trust ("ACWT") regarding a co-operative approach to potential use of water from the Rakaia River.
 - (e) With ACWT, lodging notifiable resource consent applications with Environment Canterbury to secure for CPWE the right to take sufficient water to supply the community scheme.
 - (f) Generating sufficient interest in CPWE to encourage an independent farmer representation group to be formed in support of CPWE, known as The Ritso Society Incorporated ("Ritso").
 - (g) Securing contestable funds from the Canterbury Economic Development Fund administered by the Canterbury Development Corporation totalling \$625,000.00 to date on certain conditions.
- G. CPWE is ultimately expected to provide large scale water enhancement in the Central Plains region and to provide the following benefits:
- an appropriate return on investment;
 - by leveraging the Region's natural assets, provide major economic transformation of the Canterbury region, including through vertically integrated value added industries;
 - provide in excess of 2,300 new full time jobs;
 - mitigate all environment, social and cultural impacts; and
 - build on New Zealand's sustainable competitive advantage centred around primary production.

Accordingly, the Parties to this Memorandum have already provided some financial support to enable feasibility studies to be undertaken.

- H. Upon completion of all of the feasibility study work, the Steering Committee will have largely discharged its responsibilities, except for assisting to implement the next stage of CPWE.
- I. In furtherance of CPWE, the Steering Committee has been funded as follows:
- (a) In 2000 and 2001, in addition to the \$633,000.00 provided by Central Government, the Community Trust and water groups, the Parties to this Memorandum provided financial assistance totalling \$979,000.00 to enable CPWE to be progressed to initial feasibility.
 - (b) In 2002 to date, as a contribution towards some of the further work required to complete CPWE investigations, and on various conditions, CCC (through CEDF) has committed to provide \$625,000.00, SDC has committed to provide \$530,000.00 and Ritso has committed to provide \$250,000.00.
- J. The broad programme for CPWE was included with the feasibility study report, with the programme being divided into 4 phases:
- Phase I – concept refinement;
 - Phase II – consenting;
 - Phase III – establishment;
 - Phase IV – implementation.
- K. The Phase I work is underway and the Parties have reached broad consensus about the structuring, governance and management to apply during completion of Phase I and during Phase II.
- L. To complete Phases I and II, in addition to existing commitments further funding is required estimated to total \$1,900,000.00.
- M. It is the common intention of the Parties that where possible any structure which is established for the purposes of Phases I and II should be capable of adaptation into the permanent structures which would be used for the operation of CPWE, should CPWE proceed to Phases III and IV.
- N. The Parties intend that a Water Trust will be formed to carry out Phases I and II and to own the resource consents necessary for CPWE in the longer term.
- O. The purpose of this Memorandum is to set out the common agreements, understandings and expectations of the Parties in respect of CPWE, both during the completion of Phase I and during Phase II and (if CPWE proceeds) Phases III and IV.
- P. The work of the Steering Committee will cease (having exhausted its original terms of reference) when the agreed structure to operate Phases I and II has become fully operational.
- Q. The Parties contemplate that other persons and organisations will provide additional funding and will have an interest in the development and outcome of CPWE. A farmer representation group such as Ritso may be one such organisation. The existing Parties expect that any new Parties will abide by the agreements set out herein.

IT IS AGREED

1. INTERPRETATION AND CONSTRUCTION

1.1 In this Memorandum, unless the context requires otherwise:

- (a) **“CEDF”** means the Canterbury Economic Development Fund, a charitable trust of which Canterbury Development Corporation Limited is the trustee;
- (b) **“Central Government”** means the New Zealand government and any Ministries and Departments thereof and also includes any government agencies and funds;
- (c) **“Confidential Information”** means all information made available by one party to the other as a result of the arrangements envisaged by this memorandum but does not include any information which comes into the public domain otherwise than as a result of any breach by the recipient of that information or the actions of any person for whom the recipient is responsible;
- (d) **“Party”** means CCC or SDC and **“Parties”** has the appropriate contextual meaning;
- (e) **“Regions”** means the respective areas within the geographical boundaries of CCC and SDC;
- (f) **“Ritso”** means The Ritso Society Incorporated;
- (g) **“Water Trust”** means the charitable trust which is constituted and described under clause 6.

1.2 In the construction of this Memorandum, unless the context requires otherwise:

- (a) A reference to a clause is to a clause of this Memorandum;
- (b) Words of the singular include the plural and vice versa;
- (c) Unless otherwise expressly provided, any reference to any enactment or regulation shall mean an enactment or regulation of New Zealand and shall include any amendment or enactment or regulation in substitution therefore whether before or after the date of this Memorandum;
- (d) Clause headings shall be ignored in interpreting this Memorandum.

2. FURTHER PARTIES

2.1 The Parties acknowledge that although at this early stage of CPWE they are the only Parties to this Memorandum, as CPWE progresses additional persons or organisations may require to become Parties to the agreements which are contained in this Memorandum, by reason of their having committed to make a substantial financial commitment to CPWE.

2.2 As at the date of this Memorandum, in addition to CCC and SDC, Central Government and Ritso present themselves as the most likely possibilities to commit further significant financial resources to CPWE.

- 2.3 The Parties acknowledge that although at this early stage of CPWE it is not possible to predict the terms and conditions upon which other persons or organisations may make a financial investment into CPWE, nevertheless there should be a joint recognition by the Parties that any such persons or organisations may, in return for agreeing to make financial investment into CPWE, be granted a commensurate degree of participation and influence in CPWE and that this will necessarily reduce the degree of control which the Parties may have as at the date of this Memorandum.

3. COMPLETION OF PHASE I

- 3.1 The Parties acknowledge that Phase I requires significant further work before it is completed and that the common wish is that in respect of the various Phase II tasks, the Phase I concept refinement studies for CPWE will have been completed to a high degree of certainty before the respective Phase II tasks are proceeded with.
- 3.2 The completion of Phase I will require the following matters to be attended to:
- (a) Further technical enhancement of the CPWE scheme design, including identification of appropriate storage lake site/s.
 - (b) Definition of funding strategies and identification of sources;
 - (c) Definition of the best strategies for passing governance over to the ultimate operators of the CPWE scheme;
 - (d) Definition and implementation of a strategy involving key stakeholders in a cooperative effort aimed at accommodating concerns before consent applications are completed, the intent being to obtain consents with minimum objections;
 - (e) Identification and formal engagement (by a contestable tender process) of key external consultants for the consenting process;
 - (f) Identification of required statutory consents;
 - (g) Completion of concept design, investigations and assessment of environmental effects;
 - (h) Formulation of a land acquisition strategy including a decision whether the land acquisition strategy will require CCC and/or SDC involvement in order to be effective;
 - (i) Formulation and implementation of a communications, marketing and public education strategy to disseminate the benefits of CPWE, both on and off farm including the potential for significant regional economic transformation;
 - (j) Providing for appropriate engagement of and consultation with environment and social interest groups and tangata whenua;
 - (k) Ensuring that the proposed Phase II consent applications are likely to be consistent and coordinated with consents already lodged by co-operating organisations (for example, ACWT);

- (l) Establishment of the entity which should apply for and own the statutory consents including reaching preliminary agreement as to the broad terms and conditions on which the entity which owns the consents will make the consents available to CPWE;
- (m) Undertake any other preparation necessary for Phase II.

4. OUTLINE OF PHASE II

- 4.1 The central activity of CPWE in Phase II will be the application for and obtaining of all necessary statutory consents (including resource consents) to enable CPWE to proceed. This will include the lodging of consent applications and subsequent hearings, further investigations, appeals and other steps.
- 4.2 In conjunction with or as incidental to the consenting process, Phase II will require the following matters to be attended to:
 - (a) Completion and implementation of a strategy involving key stakeholders in a cooperative effort aimed at accommodating concerns before consent applications are lodged, the intent being to obtain consents with minimum objections;
 - (b) Working with key external consultants for the consenting process;
 - (c) As appropriate, advancement of land acquisition strategy;
 - (d) Implementation of a communications, marketing and public education strategy;
 - (e) Appropriate engagement of and consultation with environment and social interest groups;
 - (f) Verification that Phase II consent applications are consistent and coordinated with consents already lodged by co-operating organisations (such as ACWT);
 - (g) Undertake any preparation necessary for Phases III and IV.

5. OUTLINE OF PHASES I AND II STRUCTURE

- 5.1 The Parties agree that their intentions in relation to the structure for Phases I and II are as follows:
 - (a) Any structure which is agreed upon for Phases I and II will as far as is practicable have the capability of adaptation and transition into permanent structures for the ownership and/or operation of CPWE;
 - (b) A Water Trust will be formed as the vehicle to carry out all Phase I and II activities including application for and ownership of the resource consents for CPWE and general management of all Phase I and II activities;
 - (c) A contract will be entered into between the Water Trust and the entities which will constitute the permanent structure for the ownership and/or operation of CPWE, setting out the relationship between those entities and in particular dealing with the following matters:

- (i) the terms and conditions upon which the Water Trust will make the benefit of the resource consents exclusively available to CPWE; and
 - (ii) the ongoing maintenance and renewal of any required consents.
- 5.2 The Parties acknowledge that some modifications to the foregoing structure may be required in order to accommodate the expectations of further participants in CPWE.
- 5.3 The Parties agree that it is their intention that although tax considerations will not be a predominant consideration in devising the structure for either Phases I and II or CPWE in general, nevertheless, as far as is practicable and consistent with the joint aspirations of the Parties with respect to CPWE, they will endeavour to devise structures which provide the best taxation outcome for the Parties and in particular those Parties which have provided or committed to provide significant financial support for the purposes of Phases I and II and beyond.

6. ROLE AND STRUCTURE OF WATER TRUST

- 6.1 The Parties agree that the Water Trust will be established as a charitable trust which has as its overriding objective continued public ownership (through CCC and SDC) of the resource consents to be obtained by CPWE, which will ensure long-term community protection of the Region's scarce water resources. Accordingly, the Parties acknowledge that the Water Trust will not be established purely to pursue commercial objectives, it being the intention that such commercial objectives will instead be pursued through the entities which will constitute the permanent structure for the ownership and/or operation of CPWE.
- 6.2 In order to achieve the non-commercial objectives outlined in clause 6.1, CCC and SDC will have the controlling right to appoint and remove trustees of the Water Trust. However, the Parties also recognise that their degree of control over the Water Trust may be required to change in order to accommodate the legitimate expectations of any additional person or organisation which commits to provide substantial financial investment into CPWE.
- 6.3 The Parties acknowledge that should either of them (for any reason) decide not to proceed with involvement in CPWE, nevertheless the remaining Party will have the right to continue its involvement with CPWE and consequently to continue with the Water Trust. Accordingly, the Party deciding not to continue with its involvement in CPWE will at the appropriate time be removed from the Water Trust structure and the trust deed which will establish the Water Trust will make appropriate provision for this.
- 6.4 The Water Trust will also be used as a forum for representation of other interest groups, with a view to having those Parties support CPWE and its objectives.
- 6.5 The trust deed which establishes the Water Trust will make appropriate provision for different classes of trustees and differential rights of the Parties and other named interest groups to have the right to appoint certain numbers of trustees, it being recognised that CCC and SDC intend they shall maintain (through their appointed trustees) voting control of the Water Trust.
- 6.6 The board of trustees of the Water Trust will manage the affairs of the Water Trust. The trustees will be accountable for the extent to which they have assisted in achieving the predetermined

objectives of the Water Trust and the required competencies for the trustees of the Water Trust will be set accordingly.

- 6.7 All trustees of the Water Trust will be expected to possess the following generic competencies:
- (a) Ability proactively to contribute to decision-making and in particular exhibiting strategic awareness and a broad perspective of the overall aims of the Water Trust;
 - (b) Analytical understanding with particular emphasis on creative problem solving;
 - (c) A passion for both regional economic growth and responsible and sustainable use of water resources;
 - (d) Ability to exhibit leadership in areas of personal interest;
 - (e) Ability to commit sufficient energy and time to the project.
- 6.8 In addition to the generic competencies required for the trustees of the Water Trust, the following specific competencies are required amongst the trustees:
- (a) **Financial:**
 - (i) Sound industry leadership reputation and proven high level knowledge;
 - (ii) Financial interpretive experience and reporting;
 - (iii) Experience with major infrastructural capital asset structures;
 - (iv) Expertise in funding infrastructure projects;
 - (v) Capital budgeting;
 - (vi) Cashflow management;
 - (vii) Negotiating funding facilities;
 - (viii) Awareness of local and Central Government requirements, processes and contacts;
 - (b) **Legal:**
 - (i) Overview of legal environment including:
 - Resource Management Act;
 - Land acquisition;
 - Contract development and management;
 - Risk management;
 - Financing and securities;
 - (ii) Providing interface between the board of trustees and specialist legal providers.

(c) **Engineering:**

- (i) Proven management and technical capability in the investigation, funding and implementation of major civil engineering projects;
- (ii) Experience, reputation and standing in the Canterbury engineering community that will ensure the trustee's advice will be sought and respected;
- (iii) Ability to lead or prompt innovative engineering solutions or alternative proposals;
- (iv) Comprehensive understanding of environmental, cultural and social impacts of civil works and of the opportunities for realizing win/ win solutions;
- (v) Capable of peer reviewing engineering work commissioned by the Trust.

(d) **Farming:**

- (i) Recognised industry leader;
- (ii) Local knowledge;
- (iii) Wide network of industry contacts;
- (iv) Sound knowledge of farming practices (with particular reference to irrigation).

(e) **Business:**

- (i) Local knowledge;
- (ii) Proven experience in commercial governance;
- (iii) Leadership capability;
- (iv) Sensitivity to stakeholder values;
- (v) Networking abilities;
- (vi) Marketing, financial, engineering and agriculture general experience;
- (vii) Passion for Canterbury economic growth.

(f) **Environmental:**

As nominated by the Parliamentary Commissioner for the Environment and approved by CCC and SDC.

(g) **Tangata Whenua representing Te Runanga o Ngai Tahu:**

As nominated by Te Runanga o Ngai Tahu and approved by CCC and SDC.

6.9 The trust deed for the Water Trust will be in or substantially in the form of the Trust Deed annexed hereto.

6.10 The management of Phases I and II through the Water Trust will be carried out with the assistance of appropriate external consultants. The Water Trust will make decisions in relation to the management of Phases I and II after all necessary public consultation.

7. INTERESTS AND EXPECTATIONS OF PARTIES

7.1 The Parties acknowledge that:

- (a) During Phases I and II, the nature and extent (if any) of their interests and/or claims against CPWE will be the subject of further negotiation; and
- (b) The permanent structure which is eventually adopted for CPWE will require considerable development and refinement in order to achieve the objectives of CPWE and as far as possible to accommodate the expectations of the various Parties, which may to some extent conflict.

7.2 Accordingly, the Parties commit to each other to deal with each other in good faith in respect of the further negotiation of these matters and not independently to pursue other options or alternatives which could result in CPWE not proceeding or CPWE proceeding in a manner not presently envisaged by the Parties.

7.3 Notwithstanding that this Memorandum is primarily designed to address Phases I and II, the Parties acknowledge that it is appropriate that this Memorandum also contain some general expression of the benefits which the Parties expect eventually to derive from CPWE, it being recognised at the outset that if CPWE in the end does not proceed, moneys committed by any of the Parties for the purposes of Phases I and II will be at risk and will probably not be recoverable.

7.4 In the context of those introductory comments, the likely expectations of the Parties in respect of CPWE are summarised as follows:

(a) **CCC:**

- (i) To have a controlling interest (with SDC) in the Water Trust;
- (ii) Through the Steering Committee, management of CEDF terms and conditions;
- (iii) Economic development for the Regions and Canterbury;
- (iv) Enhancement of the environment;
- (v) Use, development and protection of the Region's water resources so as to provide for the social, economic and cultural wellbeing of the inhabitants of the Region;
- (vi) Enhancement of, or at least no damage to or a neutral affect on, the CCC water supply aquifers;
- (vii) Beneficial to CCC interests in the airport and port;
- (viii) Protection of rural land productivity;
- (ix) Working co-operatively with SDC;

- (x) Consistent with SDC, to treat its financial contributions as either equity or a loan;
 - (xi) If appropriate at the time, to be involved in development of financing structures for CPWE.
- (b) **SDC:**
- (i) To have a controlling interest (with CCC) in the Water Trust;
 - (ii) Through the Steering Committee, management of CEDF terms and conditions;
 - (iii) Economic development for the Regions and Canterbury;
 - (iv) Enhancement of the environment;
 - (v) Use, development and protection of the Region's water resources so as to provide for the social, economic and cultural wellbeing of the inhabitants of the Region;
 - (vi) Enhancement of, or at least no damage to or a neutral affect on, the CCC water supply aquifers;
 - (vii) Beneficial to CCC interests in the airport and port;
 - (viii) Protection of rural land productivity;
 - (ix) Working co-operatively with CCC;
 - (x) Consistent with CCC, to treat its financial contributions as either equity or a loan;
 - (xi) If appropriate at the time, to be involved in development of financing structures for CPWE.

8. CONFIDENTIALITY

8.1 Subject to clause 8.2, each Party acknowledges and agrees that it will:

- (a) Ensure that the Confidential Information is at all times dealt with in such a manner as is appropriate to private, confidential and restricted information and is kept in a place access to which is restricted;
- (b) Ensure that the Confidential Information is kept out of any computer which is owned or controlled by any person other than the Parties and their consultants and professional advisers (subject to any exception to which the Parties may agree in writing);
- (c) Will not (and will ensure that any employee, consultant or professional adviser of the recipient of such information does not) exploit, or use the Confidential Information or, under any circumstances, divulge that information to any third party unless required by law or any binding court order.

8.2 Notwithstanding clause 8.1, it is acknowledged that any Party which is subject to the Local Government Official Information and Meetings Act is required to treat any request for information

under that Act in accordance with that Act's provisions. Any Party receiving a request for information under that Act shall:

- (a) Give notice to the other Party of the nature of that request;
- (b) Give reasonable notice to the other Party of the response which it proposes to make to that request,

and any party aggrieved by the decision referred to in (b) above may at any time thereafter, without notice, take such steps as are available to it at law to prevent disclosure.

9. NOTICES

9.1 Any notice or other communication required or permitted to be given under this Memorandum shall be in writing. A Party may give or serve a notice upon another Party by:

- (a) Delivering the notice by hand at that other Party's address for service;
- (b) By sending the notice by pre-paid post to the other Party's postal address; or
- (c) By sending the notice by facsimile transmission to the other Party's facsimile number.

9.2 If before 4.00pm local time on a business day in the place of delivery, a Party delivers a notice:

- (a) By hand; or
- (b) By facsimile transmission (and the Party completes the transmission),

the notice will be taken as having been given on the day of delivery or transmission and, in any other case on the next succeeding business day in the place of delivery. If a Party sends a notice by pre-paid post, the notice will be taken to have been served on the third business day (in the place to which it was sent) after the day on which it was posted.

9.3 The Parties' addresses and facsimile numbers for service are until other wise notified in writing as follows:

CCC

163-173 Tuam Street,

Christchurch.

Fax: 941 8786

SDC

High Street,

Leeston.

Fax: 324 3531

10. MISCELLANEOUS

10.1 Either Party may execute a counterpart copy of this Memorandum by photocopying a facsimile of this Memorandum and executing that photocopy. The transmission by facsimile by either Party of a

signed counterpart copy of this Memorandum to the other Party shall be deemed proof of signature of the original and the signed facsimile so transmitted shall be deemed an original for the purposes of this Memorandum.

- 10.2 Neither of the Parties to this Memorandum shall assign its rights under this Memorandum without the written consent of the other Party such consent not to be unreasonably withheld.
- 10.3 This Memorandum constitutes the full and complete Memorandum between the Parties with respect to the subject matter of this Memorandum. No modification or amendment of this Memorandum shall be valid or binding on either Party unless made in writing and duly signed by or on behalf of each Party by its proper and duly authorised officers or representatives.
- 10.4 The rights and obligations and remedies afforded to the Parties by this Memorandum are in addition to and not in derogation of any obligations, rights and remedies which may exist in law or in equity.
- 10.5 Any dispute arising out of the interpretation of this Memorandum of Understanding, including any question regarding its existence, validity or termination, shall be dealt with as follows:
- (a) First the parties shall attempt to resolve the dispute through negotiations in good faith (with the assistance of a mediator if the parties agree);
 - (b) If within fifteen (15) working days of the dispute arising the Parties have not been able to resolve the dispute by negotiation then it shall be referred to arbitration in accordance with (c) and (d) below;
 - (c) Arbitration shall commence upon provision of written notice by one party to the other outlining the issue in dispute and requesting resolution through arbitration;
 - (d) If the Parties are unable to agree upon the appointment of a single arbitrator within five (5) working days of the receipt of the written notification in (c) above, or if any arbitrator agreed upon refuses or fails to act within ten (10) working days of his or her appointment then any party may request the President for the time being of the Canterbury District Law Society to appoint an arbitrator and the arbitration shall be carried out in accordance with the Arbitration Act 1996;
 - (e) In this clause time shall be of the essence and the Parties hereto agree to be bound by any decision, determination or award given pursuant to the provisions hereof.
- 10.6 In the event of any circumstances arising that were unforeseen by the Parties at the time of entering into this Memorandum of Understanding the Parties hereby record their intention that they will negotiate in good faith to add to or vary this Memorandum of Understanding so to resolve the impact of those circumstances in the best interests of:
- (a) The Parties; and
 - (b) The Canterbury community represented by the Parties considered together.
- 10.7 Subject to clause 10.5, if it is held by a court of competent jurisdiction that:

- (a) Any part of this Memorandum is void, voidable, illegal, unenforceable or contrary to or inconsistent with any applicable statute, rule or order of a court of competent jurisdiction; or
- (b) This Memorandum would be void, voidable, illegal or unenforceable unless part of this Memorandum was severed from this Memorandum,

that part shall be severed from and shall not affect the continued operation of the rest of this Memorandum unless to do so would materially change the principal commercial arrangements evidenced by this Memorandum.

- 10.8 Subject to clause 10.5, each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand and courts entitled to hear appeals from those courts. Each Party waives any rights it has to object to any action being brought in those courts, to claim that the action has been brought in an inconvenient forum or to claim courts do not have jurisdiction.
- 10.9 This Memorandum shall be governed by and construed in accordance with the laws of New Zealand.

EXECUTION

THE COMMON SEAL of)
CHRISTCHURCH CITY COUNCIL)
was hereunto affixed by and in the)
presence of:

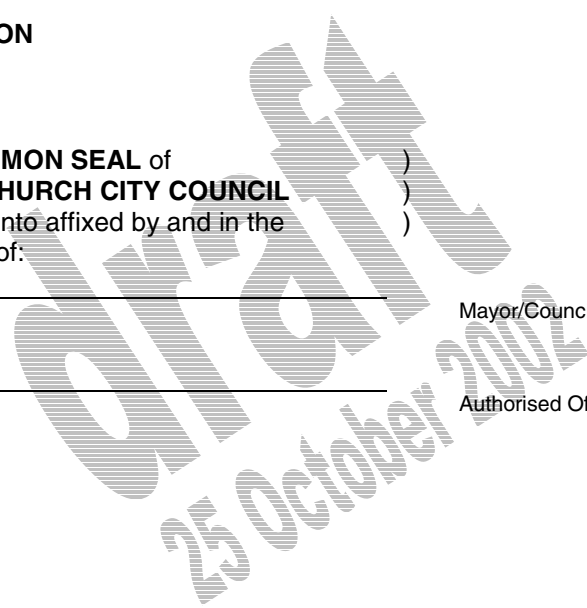
Mayor/Councillor

Authorised Officer

THE COMMON SEAL of)
SELWYN DISTRICT COUNCIL)
was hereunto affixed by and in the)
presence of:

Mayor/Councillor

Authorised Officer



APPENDIX

The Trust Deed for the Water Trust follows

draft
25 October 2002