

13. CENTRAL PLAINS WATER – ASSESSMENT OF ENVIRONMENTAL EFFECTS (AEE) APPROVAL

General Manager responsible:	Director of Strategic Investment
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PURPOSE OF REPORT

1. The purpose of this report is to advise the Council regarding an oversight on the part of the Central Plains Water Trust (CPWT) to obtain prior Council approval of the Assessment of Environmental Effects (AEE) before lodging the resource consent applications for the scheme.

EXECUTIVE SUMMARY

2. CPWT has overlooked obtaining Council approval of the AEE before lodging applications for resource consents, as required by the Council in terms of the approval it gave to establish the Trust in November 2002.
3. The oversight was not deliberate on the part of CPWT.
4. Resource consent applications were lodged approximately six months ago and notification is due to be given publicly on 24 June 2006 allowing two months for the lodging of objections.
5. CPWT want to work with the Council to satisfy the Council that its concerns over the environmental effects, if any, are resolved and provided for by the scheme.
6. Maintaining the timetable for the resource consents is critical to the public scheme obtaining first priority for water rights over other private applications.
7. The consent application and hearing process is the major protection of the environmental and community issues through a well established system of review.

FINANCIAL AND LEGAL CONSIDERATIONS

8. The Council and CEDF have invested around \$900,000 through funding the feasibility studies for this project. The only chance it has to see a return of these funds is if the scheme obtains water rights and is able to obtain its consents and become viable.
9. The Trust documentation does not specifically require the Trust to seek prior approval of the Council and the trustees have been following this documentation carefully. However, a Council resolution was passed by the Council and conveyed to the Steering Committee (which was the predecessor of the Trust) and it should have been passed on.

STAFF RECOMMENDATIONS

It is recommended that the Council agree to:

- (a) Allow the applications for resource consent to be notified on 24 June 2006 and evaluate the AEE over the next month on condition that:
 - (i) CPWT agrees to work with the Council with a view to satisfying the Council regarding any reasonable concerns which it has with the AEE .
 - (ii) If the Council identifies significant issues from the AEE which will affect the Council's long term use of its aquifers for drinking water then CPWT will modify its applications as the resource consent process proceeds.
- (b) Reserve the right to make objections in its own name to the resource consent applications as notified.

BACKGROUND ON NEED FOR APPROVAL OF AEE BY COUNCIL

10. In November 2002 when the Council approved the Trust structure recommended for the Central Plains Irrigation scheme by the Joint Steering Committee the Council added the following additional clause to the staff recommendations:

“That the Central Plains Water Enhancement Trust report back to the Christchurch City Council and the Selwyn District Council for approval of the assessment of the environmental effects (AEE) of the proposal before the lodging of applications for resource consents for the transport, storage and use of water.”

11. It has been drawn to my attention a few days ago that the Trust has overlooked formally seeking this approval direct from the Council. Upon investigation it is clear that the request was conveyed to the Steering Committee at the time it was passed but it was not passed on to the Trust when it was formed several months later. I have taken the matter up with the Trust and it has acknowledged that there has been a serious oversight but it is very clear that this was not deliberate.
12. The problem appears to have arisen because the request was not included in the trust deed which had been drafted and circulated to the Council prior to the Council meeting in November 2002. The Trust has taken seriously the provisions of the Trust deed and the Memorandum of Understanding but because the extra requirement (to get prior Council approval) was not transferred to Trust documentation by the Steering Committee it was overlooked when the AEE was completed three years later (November 2005).
13. The AEE document is extremely large and not at all practical to email or for Councillors to read in detail, that is the nature of such documents. In November 2005 the Trust therefore transferred it to CD format and gave it wide circulation. Their records show that this circulation included Councillors. It is not contended that this fulfilled the requirements of the Council resolution but it does indicate that the Trust was very open in the way that it made the document available. It is a highly technical document designed to meet the requirements of the various Regional Council resource consent applications. Following requests from two Councillors after the recent seminar for Councillors in May 2006 further CD copies of the document were made available by the Trust to two Councillors who requested it and CCC staff had hard copies made for them as well.
14. Applications for the various resource consents were lodged with the Selwyn District Council and Environment Canterbury approximately six months ago and these are due to be notified by those two bodies on 24 June 2006. Groups interested in the scheme, including those who are opposed to it, are anxiously awaiting the notification so that they can get on with making submissions in respect of the project. There will be a period of two months in which to make submissions on the resource consents and only if the notification proceeds as planned is there any likelihood that the hearings will be completed in the current calendar year.
15. The timing of the notifications for the resource consents is seen by the Trust to be critical and it is very anxious that the notifications are given before an Environment Court hearing scheduled to commence on 26 June. This hearing relates to another party wishing to take water from the Waimakariri that challenges CPW's priority to the scheme. It is felt that any delay in notification could allow the other party to gain advantage ahead of the proposed public scheme.
16. Although the Trust recognises that it should have sought Council approval before the resource consent applications were lodged it feels that it has acted in the Council's interest by thoroughly reviewing the documentation prepared by Central Plains Water Limited (CPWL). The independent trustees in particular have seen this as an important part of their role. The trustees who are not directors of CPWL are David Haslam, Dick Davison, Denis O'Rourke (appointed by CCC and SDC), Viv Smart and Clare Williams (appointed by Ngai Tahu). The Mayor of Selwyn District has advised the Chairman of the Trust that his Council is prepared to accept that the independent review by the Trust is sufficient to protect the interests of his Council and is not seeking any further involvement in the decision making at this time.

17. Attached is a letter received from the Project Manager for the project sent on behalf of the Trust setting out the circumstances surrounding the oversight and the importance of retaining the priority it currently has for consideration of the applications for takes of water from the Rakaia and Waimakariri rivers. The Trust is offering to meet with the CCC to address any concerns it has about the process. Representatives of the Trust have been invited to attend the Council meeting.
18. The Council's concern in putting the extra requirement in the November 2002 Council resolution would appear to have been primarily to ensure that the scheme would not be detrimental to the interests of the city and in particular its source of drinking water and aquifers. It will therefore be important to find a way to ensure that the Council can be satisfied that adequate provision has been made to protect those and other important issues.
19. The consent application process is the major public protection in respect of the scheme. While the Council has understandable concerns about the possible outcomes from the scheme the resource consent process is the best way of fairly judging those impacts. The Council itself is not geared to evaluate the full environmental impact by itself in this specialist area without expert assistance.

OPTIONS

Option 1

20. The Council could seek, under its November 2002 resolution, to require that the Trust withdraw the resource consent applications until such time as it has conducted its own review of the AEE. However, this would require the Council to spend some time in a review of the AEE and has the potential to cause delays to the project and the loss of priority consideration ahead of other rival schemes which are not in the public domain. The Council should consider carefully the likely ramifications of taking this course.

Option 2

21. A further option is to rely upon the Council lodging objections to the resource consent applications, as it is entitled to do under the provision of the resource consent notification law. However this may not be particularly effective if the Council develops a major concern especially since it is a key sponsor of the project. It would be normal to expect that the CCC would analyse the resource consent applications for such a major application in any case and make objection/submissions but normally this would be on finer points. A more effective way to challenge any major concerns, if there is opportunity, would be to have them addressed by the applicant as envisaged in the Council resolution.

PREFERRED OPTION

Option 3

22. The Trust has offered to work with the Council on this issue to ensure that the Council's needs are met and the preference would be to do this in parallel with the notification and objection period provided that there is an understanding with the Trust that it will ensure that if the Council has reasonable needs and concerns that it will amend its proposal to take into account the Council's concerns.
23. This option would have two advantages over the other options:
 1. The Council's needs would be reflected in the main application and more likely to be effective than if processed by way of objection.
 2. This would enable the critical timing of the resource applications to proceed so that the public scheme can maintain its position in the queue for water rights.
24. The Council could seek agreement from CPWT to work with the Council over the next month to examine the AEE and if necessary find ways to overcome the difficulties and have these presented as modifications to the original application if they are significant. Urgent agreement from the Trust should be sought that it will accept this approach before the notifications take place on 24 June.